

CENTRAL ADMINISTRATIVE TRIBUNAL, CALCUTTA BENCH
KOLKATA

O.A. 182/2012

Date of Order : 02.05.2016

Present : Hon'ble Mr Justice Vishnu Chandra Gupta, Judicial Member
Hon'ble Ms Jaya Das Gupta, Administrative Member

Sri R. N. Basak
.....Applicant

-Vs-

Union of India & ors. (BSNL)
.....Respondents

For the petitioner : Mr S. K. Dutta, Counsel

For the respondents : Mr S. K. Ghosh, Counsel

ORDER (ORAL)

JUSTICE V. C. GUPTA, JM:

Heard Mr S.K.Dutta, learned counsel for the applicant and Mr S.K.Ghosh, learned counsel for the respondents and perused the records. By means of this O.A. filed under Section 19 of the Administrative Tribunals Act 1985 the applicant prayed for the following reliefs :

- a) An order quashing and/or setting aside the revised examination notice dated 3.1.2012 and any further follow up action on the basis of such notice.
- b) An order directing the respondents to issue fresh notice for holding separate examination for each year in respect of LDCE for promotion to the grade of SDE (Telecom) under 33% quota granting further opportunity to the applicant and other Officers who were eligible for the said examinations in respect of vacancy years 2006-07, 2007-08, 2008-09 and 2009-10.
- c) An order directing the respondents to produce/cause production of all relevant records.
- d) Any other order or further order/orders as to this Hon'ble Tribunal may deem fit and proper.

2. The brief facts for deciding this application are that the applicant was working as a Junior Telecom Officer in the BSNL in 2010. On 18.3.2010 a Circular was issued for Limited Departmental Competitive Examination (LDCE for short) for promotion to the post of Sub Divisional Engineer, Telecom for the vacancy years 2006-07, 2007-08, 2008-09 and 2009-10. It has been contended in para 4 (b) of the O.A that although the applicant was eligible for

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appearing in the examination for the vacancies in respect of all the vacancy years but due to some personal reasons as well as due to the fact that all vacancies were clubbed together and there was a single examination for the post to be held, the applicant did not chose to participate in the said examination. Later on this circular dated 18.03.2010 was challenged before the Central Administrative Tribunal, Chandigarh Bench in O.A.No.515/HP/2010. The said application was allowed by the Chandigarh Bench of the Tribunal by order dated 15.04.2011 and direction was issued to the competent authority to hold independent examination for vacancy of each year giving an interval of two months for separate examination. It was alleged that some other O.As were pending in the Principal Bench at Delhi so the examination could not be conducted. However, all the O.As were finally disposed of on 12.8.2011. Thereafter, a fresh notification was issued for LDCE for the same vacancies on 03.01.2012. It has been averred in the application that again the competitive examination was clubbing for all the vacancies in contravention of the order of the Chandigarh Bench. As the candidature of the applicant in the fresh examination was not considered due to bar contained in para 5 of the circular dated 03.01.2012, a fair opportunity for appearing in the said examination was slashed away though he was eligible and ought to have been considered.

3. Reply has been filed alleging therein that this application is barred by time and the applicant concealed the material fact that the order of Chandigarh Bench has been modified by the Hon'ble High Court and examination for all the vacancies was permitted simultaneously and the applicant who himself choose not to appear in the examination cannot be permitted to seek the relief as prayed. It was further contended by learned counsel for the respondents that in view of averments made in para 4(b) of O.A the cause of action accrued to the applicant in 2010 and the application was filed on 21.02.2012, i.e. after more than one year. Hence the same is barred by limitation. It was further contended by the learned counsel for the respondents that once the applicant chooses not to appear in the examination and knowing it well the order of the Chandigarh Bench was modified which he has concealed would not be entitled to any relief as he has not come with a clean hand before this Tribunal.

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4. The operative portion of the order passed by the Chandigarh Bench of the Tribunal is necessary to be re-produced herein below for ready reference :

"The O.A. shall stand allowed, accordingly, with a direction that the competent authority shall hold independent examination for each vacancy-year. In other words, separate examinations shall be held for the vacancy years 2006-07, 2007-08, 2008-09 and 2009-10. A period of two months shall intervene each examination. The period intervening the two examinations shall, obviously, be utilized for preparation of the result and other examination-related formalities. There should be no difficulty in the context in view of the conceded position that there is computerization all over."

The department challenged this order of the Chandigarh Bench before the Hon'ble High Court of Punjab & Haryana in WP NO.6264/2011, which passed an interim order on 24.08.2011, which reads as under :

"Learned Standing Counsel for the petitioners, on the basis of instructions dated 18.8.2011, submits that BSNL proposes to hold one examination in the coming month of December/January for the vacancy years 2006-07, 2007-08, 2008-09 and 2009-10. It is further submitted that as per order of the Hon'ble CAT Chandigarh, separate examinations shall be held for the vacancy years 2006-07, 2007-08, 2008-09 and 2009-10. The above submissions are recorded, with a direction to the appellants to strictly adhere to the submissions as above and see that if possible the examinations, as above, are conducted in December, 2011 itself. In view of the above, there will be stay of operation of the order passed by CAT, Chandigarh, as far as other directions are concerned.

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Thereafter the aforesaid order was modified on 08.12.2011 which reads as under :

"This is an application for modification of order dated 24.8.2011, wherein this Court directed the BSNL to conduct separate examination for the vacancy years 2006-07, 2007-08, 2008-09 and 2009-10. Separately, Learned standing counsel for the BSNL for conducting separate examination for the previous years, BSNL may be permitted to conduct one examination for all the previous years.

The respondents have not chosen to appear despite the service of notice. Therefore, without prejudice to the contentions available to the respondents, the application for modification is allowed permitting the BSNL to conduct one examination for all the four vacancy years starting from 2006-07, subject to the following: From the year 2010-11 the BSNL shall conduct a separate examination for each vacancy year and

In case any prejudice has otherwise been caused to anybody in view of the conduct of examination in a bunch, as above, the conduct of examination will be subject to the result of the writ petition."

and only thereafter fresh circular dated 03.01.2012 was issued having clause No.5 as under :

"5. All other terms and conditions as mentioned in the earlier notification of even No. dated 18.3.2010 shall remain unchanged. The online registration done by the candidates w.r.t. the aforementioned holding notice is valid for this exam and no fresh registration is required. In other words, only the candidates who were declared eligible to appear in the exam, which was to be held on 1-7-2010 shall be eligible to appear in the exam now scheduled to be held on 04-03-2012."



5. In view of the above and the order passed by the Hon'ble High Court and in view of the submission made by the learned counsel for the parties, we are of the view that when applicant himself did not choose to participate in the LDCE for his personal difficulties and when department restricted only those candidates who got themselves registered for LDCE in pursuance of earlier circular the applicant seems to have not prejudiced in any way by conducting a fresh examination in terms of the order of the Hon'ble High Court. It was further pointed out by learned counsel for the respondents that examination is now being concluded and promotions were made and hence this application has become infructuous and the relief sought cannot be granted.

6. We are in full agreement with the submission of the learned counsel for the respondents and we are of the view that application lacks merits. Accordingly O.A is dismissed with costs.

(Jaya Das Gupta)
Administrative Member


(Justice V.C.Gupta)
Judicial Member

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