

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

O.A. No. 1508/2003 with
O.A. No. 2607/2003

New Delhi, this the 8th day of January, 2004

HON BLE MR.KULDIP SINGH, MEMBER(JUOL)
HON BLE MR.S.K.NAIK, MEMBER(ADMN)

O.A. No. 1508/2003

1. BSNL Officers Association
(Affiliated to BTEF/BMS) Regd. No. 4942
Chq-T-15, Atul Grove Road
New Delhi-110 001.
(Through its General Secretary Subhash Chander
Gaur S/o Shri Charan Dutt Sharma)
2. Naresh Singh
S/o Shri Uddal Singh
R/o C-2, Telephone Colony Khatouli,
Distt. Muzzafarnagar. Applicants

(By Advocate: Mrs. Rani Chhabra)

Versus

1. Union of India
Through Department of Telecom
Sanchar Bhawan, Ashoka Road,
New Delhi-110 001.
2. The Chairman
Telecom Commission,
Sanchar Bhawan, Ashoka Road,
New Delhi-110 001.
3. Union Public Service Commission
Through Chairman,
Dholpur House, New Delhi. Respondents.

(By Advocate: Shri R.N.Singh for R.V.Sinha)

O.A. No. 2607/2003

1. K.Ramakrishnan, Age 53 years, Asstt.General Manager
Bharat Sanchar Niagar Limited, B.S.N.L.Bhawan,
Lalathipaambil Road, Cochin-16, S/o K.Achuthan Nair,
40/1005, SURBHI, St.Vincent Road, Palarivattom,
Cochin-25.
2. T.K.S.Warrier, Age 54 years, Divisional Engineer,
Bharat Sanchar Niagar Limited, B.S.N.L.Bhawan,
Lalathipaambil Road, Cochin-16, S/o Late Krishna
Warrier, PRIYAM, Kottapuram, Irupunithura.
3. K.Sreekumaran, Age 58 years Divisional Engineer,
External West, Kaithamukku, Thiruvanthapuram-23,
S/o L.V.Keshava Pillai, TC/41/2515 SREELA
Thiruvananthapuram-9. Applicants

(By Advocate: Shri R.K.Kapoor)

Versus

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1. Union Public Service Commission,
Dhaulpur House, Shahjahan Road,
New Delhi.
2. Union of India represented by Secretary,
Ministry of Communications, Government of India
Sanchar Bhawan, 20 Ashoka Road, New Delhi.
3. Bharath Sanchar Nigam Limited represented by the
Chairman, B.S.N.L. Corporate office, Statesman
House, New Delhi.

. Respondents

(By Advocate: Shri R.N.Singh for Shri R.V.Sinha)

ORDER •

Hon'ble Mr. Kuldip Singh, Member IJ

By this order we shall decide two OAs bearing No.OA 1508/203 with OA 2607 of 2003 as facts in issue in both the OAs are common one.

2. The applicants in both these OAs are aggrieved of the action on the part of the respondents, i.e., Department of Telecommunication, Government of India as they had issued an advertisement through UPSC for holding an Engineering Service Examination, 2003. There is a Note appended to the advertisement, which is as follows:-

"NB(1) "Officers appointed to Indian Telecommunication Service, Group A Posts of Assistant Manager (Factories), Group-A in the P&T Telecom Factories Organisation and Assistant Executive Engineers in P&T buildings works (Group -A) service likely to be placed at the disposal of BSNL/MTNL initially on deemed deputation basis and subsequently they will be offered option for absorption in BSNL".

3. The applicants allege that the Government of India should not be allowed to recruit engineers for the above said post for BSNL/MTNL because BSNL and MTNL are Corporate Bodies having their own independent status and have been formed in view of the New Telecom Policy, 1999 as the Government of India has decided to corporatise the service provisions and functions of the Department of

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Telecommunications (DoT). Government of India has also decided to transfer the business of providing telecom services in the country currently run and entrusted with the Department of Telecom Services (DTS) and Department of Telecom Operations (DTO) as was provided earlier by the Department of Telecommunications to the newly formed Company viz. Bharat Sanchar Nigam Limited and Mahanagar Telephone Nigam Limited.

4. It is also stated that BSNL had earlier issued an advertisement for recruitment of about 4000 graduate engineers for the post of JTOs through competitive examination which was held in February, 2001 and after the said examination had almost recruited 4000 JTOs, but the applicants were surprised and shocked that respondent No.3 UPSC had issued the examination Notice No.5/2003 dated 18.1.2003 for Engineering Services examination 2003 and along with it a note is also appended wherein it was mentioned that the officers appointed to Indian Telecommunication Services Group 'A', i.e., Post of Assistant Manager (Factories) Group 'A' in the P&T Telecom Factories Organisation and Assistant Executive Engineer in P&T building works (Group-A) service likely to be placed at the disposal of BSNL/MTNL initially on deemed deputation basis and subsequently they would be offered option for absorption in BSNL/MTNL.

5. It is submitted that this advertisement has taken a contrary decision to the earlier decision of the Government vide which the BSNL and MTNL were corporatised and power had been given to BSNL to create posts and/or recruit all kinds of officers including JTOs and now

respondent Nos. 1 and 2 have no authority to recruit officers for BSNL as such the impugned legislation/notification should be quashed and respondents should not be allowed to hold the examination.

6. The respondents are contesting the OA. The respondents in their reply pleaded that Indian Telecommunication Service (ITS) is an organised service of the Department of Telecommunications. The Junior Time Scale of ITS Group A is the induction stage in ITS Group-A. In accordance with the recruitment rules of ITS Group-A notified in 1992, 50% posts in JTS of ITS Group-A are filled by making direct recruitment through UPS and 50% are filled by promotion of officers of TES Group-B with three years regular service in the grade.

7. It is further stated that operations in telecommunications Sector in the erstwhile Department of Telecommunications (DoT), Department of Telecom Services (DTS) and Department of Telecom Operations (DTO) admittedly had been corporatised by formation of BSNL, MTNL. However, it was decided by the Government of India to allow ITS Group A Service Officers to remain on deemed deputation for a period of 5 years. Since that provision continues so it has become imperative that recruitment to ITS Group-A be made through Engineering Services Examination conducted by the UPSC. Thus the department submits that they have a right to recruit employees for the said service.

8. It is also submitted that employees of the erstwhile departments were placed in BSNL on as is where is basis. Further since the status of the ITS officers was retained as Government servants, the cadre control over ITS Group-A remained with the DOT and not with BSNL.

9. It is submitted that BSNL has an authority to make recruitment and promotion etc. in respect of those officers who are recruited by BSNL but it does not have an authority over recruitment etc. in respect of grades of JTOs which are still under the control of the Government of India. It is submitted that since the cadre is being controlled by the Government so the respondents have a right to conduct an examination.

10. The applicants in OA 2607 of 2003 (PB) in addition to the above have pleaded that they are working in Group 'A' post of Indian Tele Communication Service on ad hoc basis by promotion. They are at present in the service of the BSNL and since their services are not being regularised by the third respondent company so respondents cannot make direct recruitment in the absence of rules and regulations having being notified as the same will adversely effect their service career.

11. We have heard the learned counsel for the parties and gone through the record.

12. The learned counsel for the respondents submitted that a similar writ petition had been filed by some other employees of the BSNL before Hon ble High Court of Gujarat at Ahmedabad wherein they had prayed for

quashing of the same advertisement/notificaiton for conducting of the examination by the UPSC and the Hon'ble Gujarat High Court while dismissing the Writ Petition observed as under:-

"4. It is clear to us from the examination notice that the UPSC was holding examination for recruitment to the posts under DoT and not for any direct recruitment to BSNL/MTNL. Merely because it was started in the examination notice that Officers appointed to Indian Telecommunication Service, Group-A, Posts of Assistant Manager (Factories), Group-A in P&T Telecom Factories Organisation and Assistant Executive Engineers in P&T Building Works (Group-A) Service were likely to be placed at the disposal of BSNL/MTNL initially on deputed basis and that subsequently they would be offered an option for absorption in MTNL/BSNL, it cannot be said that initial appointment is being made through the UPSC to the Companies. Even the above note clearly mentions that they would be appointed in Indian Telecommunications Service, Group-A posts. After such recruitment, if a person is to be sent on deputation or ultimately given an option for absorption that cannot nullify the issuance of examination notice which is issued specifically for recruitment to the posts under DoT. There is, therefore, no substance in the petition and it is summarily rejected".

13. The plea of the applicant that this is a direct recruitment made by the BSNL through UPSC was rejected.

14. Shri Kapoor appearing for the applicants also submitted that under the constitutional provisions UPSC has been permitted to make recruitment for the Government of India and not for the Companies of the Government of India and the note appended to the advertisement shows that even at the initial stage recruitment made through advertisement of UPSC will be utilised for the corporations such as BSNL, MTNL etc. Thus it amounts to direct recruitment by BSNL, MTNL so the same cannot be allowed. Since the Hon'ble High court of Gujarat has repelled all the contentions in the same very judgment and on going through the same we also find that the

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judgment delivered by the Hon'ble High Court had clearly taken note of the Note appended to the advertisement also but still found that the contention of the applicants have no substance.

15. So on the same lines we also find that though the note shows that the officers selected through the competitive examination held by the UPSC are likely to be placed on deemed deputation to BSNL/MTNL that does not show that the recruitment is being made for the BSNL or MTNL rather the recruitment is being made for the department of telecommunication itself and not for BSNL so we find that both the OAs have no merits and the same are liable to be dismissed.

16. Accordingly the OAs are dismissed. No costs.

Naik
(S. K. Naik)
Member (A)

Kul
(Kuldeep Singh)
Member (J)

Rakesh