

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

Civil Writ Petition No.802 of 2015
Date of Decision: January 19, 2015

Dharambir SinghPetitioner
versus
Bharat Sanchar Nigam Limited and others
.....Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT.
HON'BLE MR.JUSTICE RAJ MOHAN SINGH.

Present:Mr.Balwinder Singh, Advocate, for the petitioner

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1. *Whether Reporters of Local papers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the Digest?*

Surya Kant, J. (Oral)

The petitioner assails the order dated 01.10.2014 (Annexure P-1) passed by the Central Administrative Tribunal, Chandigarh Bench, whereby his Original Application claiming seniority above the private respondents in the cadre of Junior Telecom Officers (for short, 'JTOs') as well as questioning the selection of respondent Nos.4 to 9 in the aforesaid cadre, has been dismissed.

[2] The petitioner as well as private respondent Nos.4 to 9 belong to reserved category of 'Scheduled Caste'. Bharat Sanchar Nigam Limited (for short, 'BSNL') held a departmental exam to fill-up the posts of JTOs against 15% quota meant for the inservice candidates. The said exam was held on 21/22.10.2000. The result of the exam was declared in phases. In the first two phases, the petitioner did not qualify but in the third phase when the supplementary result was declared on

02.04.2003 after relaxing the standard of qualifying marks from 40% to 30% for General Category and 30% to 20% for Schedule Castes and Scheduled Tribes candidates, 35 candidates of General Category, 5 candidates of Scheduled Caste category and two candidates of Scheduled Tribe category were declared passed. The petitioner though belongs to Scheduled Caste category but he was declared qualified in the General Category.

[3] After some time, i.e., on 13.06.2003, Haryana Telecom Circle converted 5 posts reserved for Scheduled Tribe category to Scheduled Caste category as those posts were not filled up during the years 1996, 1997 and 1998 and were carried forward for recruitment in the year 1999. On availability of these five converted posts for Scheduled Caste category, another supplementary result was declared on 24.07.2003 in which respondent Nos.4 to 8 were declared successful. Meanwhile, one of the Scheduled Caste category candidate who was declared successful in the fifth supplementary result, unfortunately died and on availability of the resultant vacancy, the result of respondent No.9 was also declared. This is how the petitioner as well as respondent Nos.4 to 9 were declared successful for appointment to the posts of JTOs on different dates in the year 2003 after relaxing the standard of minimum qualifying marks.

[4] The inter se seniority of the petitioner as well as private respondents was determined on the basis of the marks obtained by them in the Training which they underwent on their selection as JTOs. Based upon the inter se merit, those of the private respondents who got marks higher than the petitioner, were placed above him in the seniority list. This

action of the authorities in assigning seniority to some of the private respondents above him, is claimed to have given the cause of action in favour of the petitioner for questioning the very selection of respondent Nos.4 to 9 in the year 2013 and consequential assignment of seniority above him to some of them.

[5] The ground taken by the petitioner was that as per the government of India Instructions dated 25.3.1970 (Annexure A-9) and 06.11.2003 (Annexure A-11), the posts reserved for Scheduled Tribe category could not have been converted to Scheduled Caste category, for such a recourse, even if permissible, there has to be a specific stipulation in the advertisement/requisition for such conversion. Since no such stipulation was made at the time of conversion of five posts reserved for Scheduled Tribe category to Scheduled Caste category, that the very induction of private respondents as JTOs against those posts is illegal and unsustainable.

[6] The Tribunal has dismissed the Original Application, inter-alia, observing that the conversion of vacancies from Scheduled Tribe category to Scheduled Caste category already stood upheld vide an earlier order passed by it in TA No.36-HR of 2010 decided on 25.02.2011, being in conformity with the Instructions issued by the Competent Authority. It was thus held that the Original Application in a way is barred by principle of constructive res-judicata. The Tribunal has further observed that assigning seniority to some of the private respondents above the petitioner cannot be faulted with as it was based upon their inter-se merit.

[7] We have heard learned counsel for the petitioner at some considerable length and gone through both the

Instructions as well as the relevant record.

[8] In our considered view, the Tribunal ought to have dismissed the petitioner's Original Application at the outset being barred by limitation. It may be true that the petitioner challenged the order dated 23.07.2013 (Annexure A-16) rejecting his representation but that representation itself was made on 26.03.2013. The Original Application filed in the year 2013 questioning the selection made in the year 2003, was hopelessly time barred. The Tribunal was thus not obligated to decide the issues on merits.

[9] Having held so and in all fairness, we are inclined to consider the petitioner's claim on merits as well.

[10] The Instructions referred to by the petitioner provide vice-versa conversion of posts reserved for Scheduled Caste category and Scheduled Tribe category with the avowed object that the posts reserved for these categories can be filled up and such reserved slot does not fall in the hands of open category. This was the precise exercise resorted to by the authorities in the instant case where due to non-availability of Scheduled Tribe candidates the posts reserved for them were carried forward for three years and were then given to the Scheduled Caste candidates.

[11] The petitioner can have no offense against this conversion and has no locus-standi to challenge the same. The grievance, if any, ought to have been shown by some Scheduled Tribe candidate and not by a Scheduled Caste. Similarly, the petitioner cannot claim undue benefit towards seniority for he too qualified the examination in third supplementary phase after the standard of qualifying exam was relaxed. The private respondents also qualified on the

basis of same relaxed standard.

[12] The petitioner's assertion that no examination for Scheduled Tribe candidates was held in the years 1997 and 1998 is equally mis-directed as such a plea could be taken by Scheduled Tribe candidates and not by Scheduled Caste candidates. Similarly, the plea that the Instructions dated 06.11.2003 (Annexure A-11) were not considered by the Tribunal while deciding the earlier case cited in para No.6 of this order, is inconsequential as even in the absence of those Instructions, the action of the authorities is fully justified in law as well as in equity.

[12] No case to interfere with the order passed by the Tribunal is made out.

[13] Dismissed.

[SURYA KANT]
JUDGE

January 19, 2015
Mohinder

[RAJ MOHAN SINGH]
JUDGE