

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No.5692 of 2014

Rajesh Ranjan (Sriwas), S/o Shri Jairam Sriwas, aged about 44 years, at present posted as Sub Divisional Engineer, Office of the Chief General Manager Telecom, C.G. Circle, P.S. Civil Lines, Raipur, District Raipur (Chhattisgarh)

---Petitioner

versus

1. Bharat Sanchar Nigam Limited through its Chief Managing Director Bharat Sanchar Bhawan, Harish Chandra Mathur Lane, Janpath, New Delhi – 110001
2. The Chief General Manager, Bharat Sanchar Nigam Limited Chhattisgarh Circle, Khamardeeh, Raipur (Chhattisgarh)

---- Respondents

For Petitioner	:	Shri Jitendra Pali, Advocate
For Respondents	:	Shri Sandeep Dubey, Advocate

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Order on Board

Per Navin Sinha, Chief Justice

28/1/2016

1. The Petitioner is aggrieved by order dated 6.2.2014 in O.A. No.1135 of 2011 passed by the Central Administrative Tribunal, Jabalpur Bench, Circuit Court sitting at Bilaspur declining to interfere with orders dated 14.7.2009 and 13.7.2011 canceling the earlier assignment of the year of eligibility as 1997-98 to the Petitioner for seniority in promotion to the Telecom Engineering Service Group 'B' and assigning the year of eligibility as 1998-1999. The representation against the same has also been rejected.
2. Learned Counsel for the Petitioner submits that 25% posts for promotion from Junior Telecom Officer to Telecom Engineering Service Group 'B' is done through limited departmental competitive examination. The Petitioner appeared successfully at the examination held on 1.12.2002 and was assigned year of eligibility 1997-98 to be considered for promotion.

A provisional gradation list of Sub-Divisional Engineers was issued on 4.12.2008 in which his seniority was shown according to the assignment of the year of eligibility as 1997-1998. This was changed to his prejudice by order dated 14.7.2009 to 1998-1999 without any show cause notice or opportunity of defence. The representation having been rejected on 13.7.2011, the Petitioner had approached the Tribunal.

3. Relying on the Telecom Engineering Service (Group B Posts) Recruitment Rules, 1996 with reference to Note 4 it was submitted that if a junior who had completed the qualifying eligible service of three years to be considered for promotion, a senior was also required to be considered provided he was not short of requisite qualifying service by more than one year. The cut off date for reckoning eligibility was the First of July of the year concerned. The Petitioner joined service on 25.7.1994 in the erstwhile Madhya Pradesh Circle Office, Bhopal and was allocated Chhattisgarh after reorganization of the State. He completed three years on 25.7.1997. Therefore as on 1.7.1997, the Petitioner was short of the three year eligibility by 24 days only. His juniors in the gradation list of Junior Telecom Officers mentioned in paragraph 8.12 of the petition were assigned the year of eligibility as 1997-98 to be considered for promotion. The Petitioner was therefore to be assigned year of eligibility in accordance with Note 4. The contention of the Respondents that the Petitioner belonged to the Chhattisgarh Telecom Circle and the juniors referred to by him belonged to Madhya Pradesh Telecom Circle, the seniority being circle wise and that no person junior to him had been promoted in Chhattisgarh Telecom Circle are irrelevant considerations. Chhattisgarh Telecom Circle was created on 15.1.2001. The question of assigning seniority for the year 1998-1999 to him simply does not arise. The authorities were considering assignment of year of eligibility by a legal fiction taking issues back to the stage when reorganisation of the State had not taken place. The fiction therefore had to

be taken to its logical conclusion. The Tribunal has erred in observing that seniority being circle wise, the question of assigning year of seniority on basis of Note 4 did not arise because no person junior to the Petitioner has been promoted in the Chhattisgarh Telecom Circle. The Petitioner is therefore entitled to a direction assigning year of eligibility as 1997-1998 and to be assigned seniority accordingly in accordance with law.

4. Learned Counsel for the Respondents submitted that Chhattisgarh Telecom Circle came into existence on 15.1.2001. The examination in question was held on 1.12.2002. Seniority was determined circle wise. No person junior to the Petitioner in Chhattisgarh had been assigned 1997-1998 as year of eligibility and therefore Note 4 had no application. Since the Petitioner completed three years of qualifying service on 25.7.1997 which was after the cut off date of 1.7.1997, his year of assignment affecting seniority was changed to 1998-1999.

5. Learned Counsel for the Respondents relied upon the order of the Supreme Court in Civil Appeal No.7830 of 2014 (Bharat Sanchar Nigam Limited v. S.K. Dubey) dated 12.8.2014 to submit that pursuant to the same the entire seniority list has been revised and the seniority position of the Petitioner has also been changed as assigned to him on basis of year of eligibility as 1998-1999.

6. We have considered the submissions on behalf of the parties.

7. The seminal question falling for consideration is if the Petitioner is entitled to assignment of the year of eligibility to be considered for promotion to Sub Divisional engineer as 1997-98 or 1998-99. The Chhattisgarh Telecom Circle was created on 15.1.2001. If the Respondents were assigning him the year of eligibility as 1998-99, it is obvious that it was sought to be done by creating a legal fiction and seniority was then to be assigned accordingly. Note 4 to the Telecommunications Engineering

Services (Group 'B') Recruitment Rules, 1996 has been reiterated in Note 12 to the Schedule to Rule 9 of the Sub Divisional Engineers (Telecom) Recruitment Rules 2002 dated 1.3.2002 (hereinafter called 'the Rules').

8. It is not in dispute that persons junior to the Petitioner in the cadre of Junior Telecom Officer have been assigned the year of eligibility 1997-98 and given seniority accordingly. The purpose of Note 12 to the Rules was to protect the seniority of certain persons in specified circumstances. The Respondents have not disputed that the Petitioner fulfills the pre-requisites for protection of his year of eligibility to be considered for promotion and falls short by 24 days only. If he is not provided benefit of the same he would become junior to such persons defeating the very purpose for which Note 12 was incorporated. The provisional seniority list dated 1.4.2015 brought on record by the Respondents does not reflect that it was circle wise seniority and on the contrary reflects a common inter se seniority of Sub Divisional Engineers (T). No other material has been brought on record by the Respondents by way of any Rules, Regulations or Notification in support of the submission that seniority was to be determined circle wise. The communication dated 30.5.2001 with regard to the limited departmental examinations reflects to the contrary. No material in this regard appears to have been placed before the Tribunal also except for a bald submission. Note 2 of the Schedule to Rule 9 reflects that the eligibility list of Junior Telecom Officers for appearing at the departmental examination was on all India basis maintained at the Corporate head quarters. The order dated 13.7.2011 rejecting the Petitioners representation is cryptic and completely non-speaking in nature.

9. If the year of eligibility to be considered for promotion was being done in 2002 by a fiction in the year 1998-99, the legal fiction has to be given full effect by considering if any person junior to him as matters may have existed in 1998-99 was being assigned an year of eligibility earlier to him. In that

event the Petitioner was entitled to protection of Note 12. Once a legal fiction had been created by the Respondents it was required to be taken to its logical conclusion and the Respondents could not be allowed to let their mind boggle by holding that no person junior to the Petitioner was being assigned a lower year of eligibility in the Chhattisgarh circle. In that event the Petitioner would be subjected to loss of seniority by reason of a fortuitous event of reorganization of the State affecting his rights under Article 14 of the Constitution by causing hostile arbitrary discrimination. The principle for giving full effect to a legal fiction was considered in 1959 Supp (1) SCR 394 (CIT v. S. Teja Singh) observing as follows :-

“6.....It is a rule of interpretation well settled that in construing the scope of a legal fiction it would be proper and even necessary to assume all those facts on which alone the fiction can operate. The following off-quoted observations of Lord Asquith in *East End Dwellings Co. Ltd. v. Finsbury Borough Council* may appropriately be referred to:

“If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it. One of these in this case is emancipation from the 1939 level of rents. The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs.”

10. The controversy in the present case is confined to the question regarding assignment of year of eligibility to be considered for promotion and allotment of seniority accordingly and not the actual date of promotion or grant of retrospective promotion. The eligibility for promotion naturally arises only after the Petitioner cleared the examination in December 2002 but his seniority will have to be fixed in accordance with his year of eligibility. S.K. Dubey (supra) was concerned with the issue for grant of retrospective notional promotion with certain benefits as Sub-Divisional Engineer after promulgation of the Recruitment Rules, 1996 and 2002 which was fundamentally different from the Recruitment Rules 1981 providing for

holding of annual examinations. Note 12 to Rule 9 did not fall for consideration therein. The Respondents had therefore rightly assigned the year of eligibility to the Petitioner as 1997-98 and which is restored. The Petitioner is held entitled to correction of his seniority accordingly to that extent as wrongly assigned by the Respondents on basis of 1998-99.

11. The writ application is allowed to the extent indicated.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE