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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 4855/2015 & CM No.8767/2015**

TELECOM EXECUTIVES ASSOCIATION OF MTNL & ORS.

..... Petitioners

Through: Mr. L.N. Anchal, Advocate

versus

UNION OF INDIA & ANR

..... Respondents

Through: Mr. Ashwani Bhardwaj, Advocate for
respondent No.1
Ms. Jyoti Singh, Senior Advocate
with Ms. Neha Bhatnagar, Advocate

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

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03.02.2016

We have heard the learned counsel for the petitioners and perused the impugned order dated 23.12.2014, disposing off OA Nos. 722/2012 and 643/2012 and a number of applications filed in the said OAs.

It is apparent that the primary challenge of the petitioner Union was to the Notifications dated 26.11.2011 and 16.1.2012, by which the respondent MTNL had invited applications for recruitment of Senior Management Trainees at E-5 level. The petitioner Association had objected to the lateral entry of direct recruits at E-5 level.

The learned counsel for the respondent has pointed out that the Examination and the results, pursuant to the said advertisement, have been

scrapped by two letters, both dated 16.4.2015. In view of the aforesaid position, the challenge to the two Notifications is rendered infructuous.

Learned counsel for the petitioners has submitted that some of the persons, who had appeared in the said Examination and were selected, have filed an OA before the Central Administrative Tribunal and the petitioners' Association has filed an application. Be that as it may, that is a separate aspect.

We have also examined observations and findings of the Tribunal in paras 40 to 45 of the impugned order. The claim of the petitioners' Association is that the respondent/MTNL must adhere to the provisional Terms and Conditions for permanent absorption of Department of Telecommunication (DoT) Staff (A&B) in the service of MTNL. The said provisional Terms and Conditions were applicable to the staff of DoT on permanent absorption in the service of MTNL w.e.f. 1.10.2000. Para XII relating to promotional avenues reads as under:

“Promotion of the Officers will be made time bound by personal upgradation of posts upto the level of JAG Selection Grade and beyond JAG Selection Grade the same will depend upon availability of posts and their suitability and selection for promotion which will be uniformly evaluated in the various streams of discipline. The average eligibility period for promotion from one grade post to the next higher grade will vary between 4 to 6 years upto the level of JAG Selection Grade and beyond that as already mentioned above, the same will be dependent on the selection process and availability of vacancies.”

We had asked the learned counsel for the petitioners to take us through the pleadings in the OAs and point out on what basis it was contended and averred that there was violation of the aforesaid para XII.

Our attention has been drawn to paras 4.32 and 4.33 of the OA No. 722/2012, which read as under:

“4.32 The position regarding filling up of the posts in E5 scale in Telecom Operations is summarized as under:

(a) Total sanctioned posts

798

(b) Total posts filled by regular promotion of E3/E4 Executives 233 (rest of the regular promotees were further promoted on officiating basis to E-6 scale i.e. DGM)

(c) Total posts filled by Ad hoc promotion, local officiating promotion etc. of E3/E4 Executives 526

4.33 A seniority list of E3/E4 scale executives (Sub Divisional Engineers) as on 29.1.2009 is annexed and marked as Annexure A-9 for kind perusal of this Hon'ble Tribunal. The last general category candidate promoted on regular basis by order dated 05.11.2011 ibid figures at Serial No 683 of the seniority list. All other executives below Serial No 683 who were appointed as Sub Divisional Engineer, presently E3/E4 scale executives, since 1994, that is, for more than 17 years, continue to stagnate.”

The aforesaid pleadings, we observe, are vague and do not make out a specific case that the respondents had violated para XII of the Terms & Conditions for permanent absorption of DoT staff (A&B) in MTNL. In case there has been any violation and negation of the rights under paragraph XII, then the specific details with reference to a particular employee, with particulars, should have been highlighted and set out. Even if there are a large number of similarly situated employees, their details have to be so stated, for a specific answer.

Thus, while finding no merit in the present petition, we would observe that in case a particular employee or a group of employees are aggrieved and feel that para XII of the aforesaid Terms & Conditions has been violated, they would be at liberty to raise their claims and pleas

as per law. It will be equally open to the respondents to raise all pleas and contentions, including the contention that the employee in question cannot rely on provisional Terms & Conditions. We express no opinion on the merits of these aspects.

With the aforesaid observations, the writ petition is dismissed. Consequently, CM No.8767/2015 too is dismissed.

SANJIV KHANNA, J

NAJMI WAZIRI, J

FEBRUARY 03, 2016

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