

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 31.01.2017

Delivered on: 21.02.2017

Coram

The Honourable **Mr.Justice K.K.SASIDHARAN**

and

The Honourable **Mr.Justice V.PARTHIBAN**

W.P.Nos.7683, 12615 to 12617 and 18205 of 2015
and M.P.Nos.1&2, 2 to 2, 3 to 3 and 2&3 of 2015

W.P.No.7683 of 2015:

N.Senthil Kumar

.. Petitioner

versus

- 1 Union of India
Rep. by its Chairman cum Managing Director
BSNL Corporate Office, Bharat Sanchar Bhavan,
Harish Chandra Mathur Lade, Janpath
New delhi-110 001.
- 2 The General Manager(Personnel)
BSNL Corporate Office Bharat Sanchar Bhavan,
Harish Chandra Mathur Lade, Janpath
New Delhi-110 001.
- 3 The General Manager
(Recruitment) Corporate Office,
Eastern Court, Janpath,
New Delhi-110 001.
- 4 The Chief General Manager

Telecommunications,
BSNL Tamil Nadu Circle
80 Anna Salai Chennai-600 002.

5 The Registrar
Central Administrative Tribunal,
High Court Building,
Chennai-600 104.

.. Respondents

Prayer: This Writ Petition is filed under Article 227 of the Constitution of India, for the issuance of Writ of Certiorarified Mandamus, to call for the records pertain to the common order dated 18.02.2015 made in RA No.39 of 2013, quash the same and restore the common order dated 02.01.2013 made in OA.No.55 of 2011 in so far as the petitioner is concerned.

For Petitioners : Mr. AR.L.Sundaresan, SC for
M/s.B.Dhanasekaran

For Respondents: Mr.K.M.Vijayan, SC for
M/s.K.R.Ramesh Kumar

COMMON ORDER

V.PARTHIBAN, J.

These Writ Petitions arose out of the common order passed by the Central Administrative Tribunal, Madras Bench, Chennai in Rev.Application Nos.38, 39, 40 and 41 of 2013 in O.A.Nos.42, 55, 56 and 736 of 2011 allowing the review applications filed by the Union of India, against the original

order, dated 02.01.2013 in the above said Original Applications.

2. The present Writ Petitions are filed by the applicants before the Tribunal, seeking to quash the order, dated 18.2.2015 in R.A.Nos. 38, 39, 40 and 41 of 2013 in O.A.Nos.42,55,56 and 736 of 2011 and for restoration of the original order dated 01.01.2013 passed in the Original Applications.

3. For the sake of clarity, the employees are described as "the applicants" and the Union of India as "the official respondents".

4. The facts which gave rise to the present Writ Petitions, are stated hereunder:

5. The applicants were working as Junior Telecom Officers (Telecom) (in short, 'the JTO (T)'). The next avenue of the promotion for the post of JTO(T) is to the post of Sub Divisional Engineer (Telecom) (in short, 'SDE(T)'). According to the relevant Recruitment Rules, appointment to the post of SDE(T)

is by way of promotion on the basis of seniority-cum-fitness and also by way of Limited Departmental Competitive Examination from amongst JTOs who have put in not less than three years of regular service as on 1st July of the year of examination. 25% of posts were also earmarked for LDCE.

6. As far as the subject selection is concerned, it is only in respect of LDCE, which was conducted on 15.07.2007 for the vacancies pertaining to the year 2005-06. After due selection, the applicants were appointed as SDE (T) in 2008 and they have been working ever since in the said posts.

7. While so, on the basis of some clarification issued by the competent authority, i.e. Union of India, a show cause notice was issued on 20.9.2010 to the applicants as to why their appointment to the post of SDE(T) should not be cancelled. The basis on which the show cause notice was issued, was that the applicants did not complete three years of regular service on the date of vacancies which arose. However, according to the applicants, the Recruitment Rules clearly specified that the

prescribed three years of regular service in the JTO grade should be reckoned as on 1st July of the examination and not of the year in which, the vacancies arose and in that event, all other were eligible to be considered for selection and appointment as admittedly, the examination was conducted on 15.7.2007. The applicants having joined as JTO(T)s in the year 2002-03, became eligible on the date of subject examination conducted.

8. In the circumstances, the applicants approached the Tribunal by way of afore said Original Applications, challenging the show cause notice issued by the official respondents.

9. The issue that was placed before the Tribunal is whether three years of regular service should be reckoned as on 1st July of the year of examination or 1st July of the year to which, the vacancies pertain?

10. The applicants contended before the Tribunal that the Recruitment Rules clearly specified the date to be reckoned as

1st July of the year of examination and any subsequent clarification issued by the authority, cannot override the substantive provision contained in the Recruitment Rules and therefore, the show cause notice issued to the applicants, cannot be countenanced in law.

11. Per contra, it was contended on behalf of the official respondents that Column 12-Note(iii) which was appended along with the Recruitment Rules, clearly stipulated that the crucial date for determining the eligibility shall be 1st July of the year to which the vacancies pertain and therefore, the examination which was conducted on 15.7.2007 was in respect of vacancies which arose in 2005 and the applicants having been appointed in 2002-03 were not eligible to be considered, however, they were mistakenly considered and granted promotion.

12. The above said contention was refuted by the applicants stating that Column 12-Note(iii) is applicable only in respect of other mode of appointments, namely, seniority-cum-

fitness for which 75% of posts were earmarked and not with the present mode of appointment through LDCE for which, 25% of posts were earmarked.

13. The learned Tribunal, after taking note of the submissions, accepted the contentions raised on behalf of the applicants and allowed the Original Applications principally on the ground that the applicants have completed three years of regular service as on 1.7.2007 as per the Recruitment Rules. While allowing the applications, the Tribunal set aside the clarificatory orders dated 30.7.2010 and the show cause, dated 20.9.2010 as being illegal and unlawful.

14. While the matters stood thus, the official respondents filed Review Applications against the order passed in the afore said Original Application, seeking to review the order of the Tribunal on the ground that the same Recruitment Rules was subject matter of adjudication before the Principal Bench of Central Administrative Tribunal, New Delhi in O.A.No.1562 of 2010 (***Vinit Kumar versus BSNL Limited***), wherein, the

Bench had clearly held in favour of the Department that the three years of regular service must be reckoned as on 1st July of the year to which vacancies pertain. According to the official respondents, the detailed order passed by the Principal Bench of New Delhi was subsequently followed by the Hyderabad Bench of the Tribunal. Although the order of the Principal Bench of the Central Administrative Tribunal, dated 12.08.2011 was circulated before the learned Tribunal at the time of hearing of the subject Original Applications, the same was not considered by the Tribunal. Therefore, the official respondents reasoned that the Review Applications became necessary for the purpose of achieving an uniformity in the matter of selection and appointment to the post of SDE(T).

15. The learned Tribunal, after taking note of the submissions made in the Review Applications, has over turned its own order dated 12.08.2011 and allowed the Review Applications filed by the official respondents. As against the order passed in the Review Applications, the present Writ Petitions have been filed.

16. Shri AR.L.Sunderesan, learned senior counsel appearing for the petitioners reiterated his contentions which were put forth before the Tribunal. He emphasized the fact that Column 12-Note(iii) can be pressed into service only in respect of other mode of selection and appointment to the post of SDE(T), namely, seniority-cum-fitness, for which, 75% of posts were earmarked for such mode of appointment and the subject mode of appointment through LDCE, for which, 25% of posts were earmarked and such mode being a fast track promotion, the said criteria prescribed in Column 12-Note(iii) cannot be applied and more particularly, the substantial provision of the Recruitment Rules is only stipulated the reckoning the year as the year of examination and not the year to which, the vacancies pertain.

17. In support of his contentions, learned senior counsel for the applicants, relied upon a decision of the Hon'ble Supreme Court reported in (1995) 1 SCC 170 (*Meera Bhanja (Smt.) versus Nirmal Kumari Choudhury (Smt.)*) and contended

that in the matter of review, reappraisal of the entire evidence on record for finding the error would amount to exercise of appellate jurisdiction, which is not permissible. But it is to be noted that in the instant case, there was no reappraisal of the evidence, but only rectifying the error in not following the decision of other co-ordinate Bench which dealt with the same issue. Therefore, the reliance placed on by the learned senior counsel on the above said decision, may not advance the case of the applicants. The other decision relied upon the learned senior counsel reported in (1996) 9 SCC 637 (*Pilla Sitaram Patrudu and others versus Union of India and others*), regarding the delayed appointment for no fault of the employee, cannot take away his right to appropriate ranking in the select list, is not the subject matter of the present Writ Petitions. Therefore, the said decision cannot be applied to the factual matrix of the present case.

18. On the other hand, Shri K.M.Vijayan, learned senior counsel appearing for the official respondents, contended that the Tribunal has originally passed the orders mistakenly,

without proper consideration of the issues and overlooked the Column 12-Note(iii) and also the orders passed by the Principal Bench of Central Administrative Tribunal while disposing of the original applications. He would further contend that the order passed by the Co-ordinate Bench is binding on the other Benches, namely, Madras Bench, etc., and therefore, the order allowing the applications by the Tribunal without considering the above said order, was not in order. He further contended that as far as reversal of the order passed by the Tribunal in the Review Applications, the same was done after proper appreciation and examination of the issues and on the basis of harmonious construction of the real position and elaborate reasons have been recorded for allowing the Review Applications.

19. We gave our anxious consideration to the submissions made by the learned senior counsel appearing on either side and we have gone through the detailed orders passed by the Tribunal in the Review Applications.

20. As rightly contended by Shri K.M.Vijayan, learned senior counsel appearing for the official respondents, the Tribunal has given detailed reasons for reversing its original order passed in the Original Applications while allowing the Review Applications. The Tribunal, in extenso, extracted the order passed by the Principal Bench and from the extract, it could be seen that the reasoning of the Tribunal cannot be faulted with. Column 12-Note(iii) which was part of the Recruitment Rules has to be read in conjunction with the main Rule in order to achieve the object behind framing of the Rules. Only by harmonious construction of Rule and Column 12-Note (iii), such object could be achieved as otherwise, it will only lead to unavoidable situation where examination is not conducted year-wise as originally envisaged in the Rules. Therefore, the learned Tribunal has rightly constructed the Rules in order to achieve the larger equity and justice and the same cannot be termed to be incorrect.

21. Shri AR.L.Sunderesan, learned senior counsel also contended that in the guise of reviewing the order, the Tribunal

has literally sat in the appeal over the orders passed by the same Tribunal in the Original Applications. We do not see much merit in the contention of the learned senior counsel for the reason that originally the order passed by the Principal Bench was circulated before the order could be passed in the Original Applications. However, the same was not considered. It is always open to the learned Tribunal to correct its own mistakes in case of overlooking any crucial materials unwittingly. In the instant case, the issue on hand had been much deliberated and considered by the Principal Bench of Central Administrative Tribunal, New Delhi and the same was followed by the Hyderabad Bench wherein extensive reasons were accorded for passing orders accepting the case of the Department. We do not see any infirmity in the overall approach of the Tribunal in reversing the orders passed by it while allowing the Review Applications filed by the official respondents.

22. The very purpose of seeking review is only to correct any error apparent on the face of the record and there cannot be two opinions. In the instant case, the Tribunal has only

attempted to correct the error which had originally crept in the order passed in the Original Applications.

23. In the conspectus of the above discussion, we do not find any merit in the contention put forth on behalf of the applicants and therefore, all the Writ Petitions are liable to be dismissed as devoid of merits.

In the result, the Writ Petitions are dismissed. No costs. Consequently, connected MPs are closed.

suk

(K.K.S.,J.) (V.P.N.,J.)
21-02-2017

Index: Yes/No

Internet: Yes/No

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V.PARTHIBAN, J.

Pre Delivery common order in
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