

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 4563 of 2016

- Devendra Kokje S/o Sri D.R. Kokje, Aged About 48 Years Working As Personal Assistant To G.M.T.D. B.S.N.L. Durg, Doorsanchar Bhawan, Patel Chowk G.E. Road, Durg, Chhattisgarh, R/o. M I G- 120, Padmanabhpur, P. S. Padamanabhpur, Tahsil And District Durg Chhattisgarh

---- Petitioner

Versus

1. Bharat Sanchar Nigam Limited Through The C.M.D. B.S.N.L. Corporate Office Bharat Sanchar Bhavan, Janpath New Delhi, Pin 110001
2. The Director, H.R.D. B.S.N.L. Corporate Office, Bharat Sanchar Bhavan, Janpath New Delhi Pin 110001
3. The Chief General Manager, B.S.N.,L. Chhattisgarh Telecom, Circle Khamardih Raipur Chhattisgarh
4. Central Administrative Tribunal, Through Its Registrar, Jabalpur Bench, Distirct Jabalpur M.P.

---- Respondents

For Petitioner	:	Shri Sunil Pillai, Advocate
For Respondents – BSNL	:	Shri Sandeep Dubey, Advocate

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice

Hon'ble Shri Parth Prateem Sahu, Judge

Order on Board

Per, Ajay Kumar Tripathi, Chief Justice

22.10.2018

1. Heard counsel for the Petitioner and learned counsel for the Respondents- BSNL.
2. This writ application is directed against the order dated 04.03.2016 passed in OA No.974 of 2013 by the Central Administrative Tribunal, Jabalpur Bench, Circuit Sitting at Bilaspur; hereinafter referred to as 'the Tribunal'.
3. The Petitioner was the applicant before the Tribunal and he wanted a direction upon the Respondent authorities for grant of promotion to the post of Private Secretary under 75% quota on the basis of Seniority-Cum-Fitness. That was the quota fixed under the Recruitment Rules, 2004. Earlier, when the case of the Petitioner was considered, he did not have the requisite three years experience to claim benefit of promotion in the post of Private

Secretary under the 75% quota.

4. It may also be noticed that 25% quota was to be filled up through Limited Internal Competitive Examination which was also open to the Petitioner in addition to his claim for promotion on Seniority-Cum-Fitness. He never took a chance at the Limited Internal Competitive Examination.
5. In the year 2012, the DPC was held. When the DPC met, the Rule had undergone a change in the year 2011 and the 75% which was earlier fixed, was reduced to 67% for Seniority and 25% meant for Limited Internal Competitive Examination, was enhanced to 33%.
6. The Tribunal considered the claim of the Petitioner and having found that the necessary post not being available after due consideration of the claim of the Petitioner, his benefit of promotion could not accrue to him in absence of vacancy.
7. The Tribunal had taken note of the rival claim and stated the position in paragraphs 11 and 12 which reads as under :-

11. The above position is crystal clear from the correspondence dated 13.12.2013 (Annexure R-1) between Assistant General Manager (Personnel – II) office of the CMD, BSNL, New Delhi and addressed to the respondent No.3, Chief General Manager, BSNL, Chhattisgarh, Telecom Circle, Raipur. It is obvious from perusal of the said communication that the applicant's case for promotion to the grade of Private Secretary against seniority-cum-fitness quota was considered and the following decision was taken. The relevant portion of the said letter is reproduced here for ready reference :-

"I am directed to refer to your Office letter No.AGM(A)/X-40/49 dated 15.11.2012 on the above cited subject. In this regard, the case has been re-examined in light of your letter cited above and the following is stated :

1. Clarification of BSNL C.O. Issued vide letter no.20-39/2004-Pers.II dated 16.02.2005 clearly states that case only one vacancy exists after restructuring of the cadre of PS as on 1.1.2004, this vacancy has to be earmarked for filling on the basis of seniority-cum-fitness against the 75% quota. There were 3 vacancies the PS grade as on 1.1.2004 in Chhattisgarh Circle and all of them have been diverted to Seniority-cum-fitness quota and also filling two of them under seniority quota.

In this regard, it is stated that as the cadre was restructured and new RR came into existence w.e.f. 1.1.2004, the Circle should have distributed the sanctioned post as per the RR and then should have adjusted the posts of PS which were absorbed as per initial constitution under the Seniority Quota and the remaining vacant posts should have been filled under seniority quota as well as LICE quota depending upon their sanctioned strength.

2. After restructuring of the Stenographer's Cadre, there were 8 sanctioned posts of PS in the Chhattisgarh Circle as on 1.1.2004. As per RR 2004 of PS field units, 75% of the posts are to be filled by Seniority Quota and 25% by LICE i.e., 75% of 8 = 6 under Seniority quota (5 posts has already been filled as absorption of 8) under LICE quota. 2 vacancies under LICE quota should have been kept frozen as LICE has never been held by the Circle for promotion to the grade of PS upto the Circle diverted all the vacant posts under seniority quota citing illustration at point number 6 of General Principle of Swamy's Establishment and Administration which refers to placement of candidates under seniority quota and direct recruitment in the seniority list.

Therefore, request of the Chhattisgarh Circle for reconsideration of the promotion case of Shri Kokje, PA may not be exceeded to as there is no vacancy under the seniority quota.

(emphasis supplied)

Yours faithfully,

Sd/-

(V.K. Sinha)

Asstt. General Manager (Pers-II)

Tel. No. 011-23037191"

12. The earlier communication dated 06.08.2013 between the respondents No.1 and 3 vide Annexure R-2 is also filed on record and it shows that the applicant's case was considered and rejected for want of vacancy in 75% quota for being filled up on the ground that it was subsequently reduced to 67% in reply to issue No.2. The relevant paragraph from the said letter is quoted hereinbelow :-

2. Issue Raised :- Each Circle has its own unique vacancy position and has to prepare & maintain its own vacancy roster for accurate distribution of vacancies between Seniority & LICE quotas of promotion. Vacancy Roster of Chhattisgarh Circle is based on "Rota Quota Method" for rotating vacancies between Seniority & LICE quota.

Reply :- It this regard, it is stated that as per recent clarification received from DOP&T, the carry forward vacancies have to be treated separately from the current vacancies (i.e. vacancy arising in a particular vacancy year). The unfilled vacancy including backlog vacancies of Sts/SCs from LICE or promotee quota streams are to be carried forward to succeeding year in respective quota and would not be added to the current year vacancies. The current year vacancies are to be distributed in the ratio prescribed in the RRs as illustrated in DOP&T OM dated 19.1.2007. Further, this office vide Lr. No.20-08/2013-Pers.II dated 25.06.2013 has amended column 11 of the Schedule of RR-2004 of PS of BSNL filed units whereby the word "posts" has been replaced by "vacancies". Thus, the vacancy arising during the year 2012-13 in both the streams i.e. Seniority-cum-fitness and LICE has to be merged and distributed as per RR. The earlier unfilled 3 posts under LICE quota in Chhattisgarh Circle are to be carried forward to succeeding year in respective quota and would not be added to the current year vacancies. Thus, 3 vacancies still exists in LICE quota in Chhattisgarh Circle."

8. The Tribunal, therefore, has rightly come to a conclusion that non grant of promotion to the Petitioner was not a case of violation of Article 14

and 16 of the Constitution, but because of the prevalent Rule and the position which emerged in relation to availability of vacancy in relation to the post.

9. Writ petition has no merit. It is dismissed.

Sd/-
(Ajay Kumar Tripathi)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge