

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION NOS.18958, 19232, 23127,
23135, 23217 AND 25300 OF 2016

COMMON ORDER
(*Per Hon'ble Sri Justice Sanjay Kumar*)

By common order dated 28.03.2016, the Central Administrative Tribunal, Hyderabad Bench, Hyderabad (*hereinafter*, 'the Tribunal'), dismissed O.A.Nos.020/687699, 700, 704, 705 and 708 of 2015. The unsuccessful applicants in these O.A.s are before this Court by way of this batch of writ petitions.

W.P.No.18958 of 2016 arises out of the dismissal of O.A.No.687 of 2015; likewise, W.P.No.19232 of 2016 relates to O.A.No.700 of 2015; W.P.No.23127 of 2016 relates to O.A.No.699 of 2015; W.P.No.23135 of 2016 relates to O.A.No.705 of 2015; W.P.No.23217 of 2016 relates to O.A.No.704 of 2015; and W.P.No.25300 of 2016 relates to O.A.No.708 of 2015. Some of the applicants in these O.A.s did not join the others in filing these writ petitions. They are shown as respondents in W.P.Nos.19232, 23127 and 23217 of 2016 with the endorsement that they are not necessary parties.

All the petitioners-applicants joined service in the Department of Telecommunications, Government of India, as casual Mazdoors. They were made regular Mazdoors thereafter and were also promoted to the posts of Telephone Mechanics. All of them secured graduate degrees either from Dr.B.R.Ambedkar Open University, Hyderabad, or through distance education from Kakatiya University, Warangal; Andhra University, Visakhapatnam; Acharya Nagarjuna University, Guntur; Sri Krishnadevaraya University, Ananthapuramu, Sri Venkateswara University, Tirupati; Dravidian University, Kuppam, Chittoor District; or Tamilnadu University, Chennai. Most of them

had passed 10th class prior to their employment but some had lesser qualification at that point of time. They all secured their degrees during the course of their employment in the Department of Telecommunications.

Hitherto, Telecom Technical Assistants Recruitment Rules, 2001 (*for brevity*, 'the Rules of 2001'), promulgated by the Bharat Sanchar Nigam Limited (BSNL) regulated recruitment to the posts of Telecom Technical Assistants (TTAs) in its service. These rules provided for 50% of the posts to be filled up by direct recruitment, 10% by absorption and 40% by promotion through limited departmental competitive examination. Promotion through limited departmental competitive examination was to be from the following Group 'C' employees:

- (a) (i) Telecom Operating Assistants with five years regular service; or
- (ii) Senior Telecom Operating Assistants with five years regular service (including the service rendered as Telecom Operating Assistants), holding 10+2 standard certificate or equivalent;
- (b) (i) Telecom Mechanics holding 10+2 standard certificate or equivalent; and
- (ii) Technicians, other than Technicians referred to in item 'A' relating to absorption above, with five years regular service in the respective cadres.

On the strength of these rules, some of the petitioners-applicants applied for and appeared in the competitive examination but were unsuccessful in their efforts to gain appointment as TTAs. While so, the Rules of 2001 were substituted by the Telecom Technical Assistant Recruitment Rules, 2014, with effect from 25.08.2014. Columns 5 to 12 of the Schedule annexed thereto prescribed the method of recruitment, age limit, qualification and other matters relating to the posts of TTAs. 50% of the posts were to be filled by direct recruitment and the remaining 50% by promotion through Limited Internal Competitive Examination (LICE). For

direct recruitment, a candidate was required to have the following qualifications:

Three years Engineering Diploma in any of the following disciplines:

1. Telecommunications/
2. Electronic/
3. Electrical/
4. Radio/
5. Computer/
6. Instrumentation/
7. Information Technology from a Central Government/State Government recognized Institution

or

B.Sc. (Electronics)/(Computer Science), from a recognized University or any educational Institution established by an Act of Parliament or declared to be deemed as a University.

As regards promotion as TTAs through the LICE, the Rules of 2014 prescribed that non-executive employees of the BSNL, below the age of 55 years as on 1st July of the vacancy year, were eligible to aspire for the same provided they possessed 10+2 standard qualification or equivalent or two years ITI Certificate/three year Diploma, after matriculation, in the specified disciplines mentioned in the case of direct recruitment candidates.

Notification dated 07.03.2015 was issued by the BSNL calling for applications from eligible internal candidates who wished to participate in the LICE proposed to be held on 07.06.2015 for promotion to the posts of TTAs under the 50% quota reserved for such promotions. The competitive examination was to be by way of a single multiple choice objective paper of 100 marks comprising two Sections - Section-I relating to Electricals and Electronics & Communication for a maximum of 50 marks and Section-II relating to Departmental Practices for a maximum of 50 marks. Wrong answers incurred negative marking at 25% of the marks for that question.

The minimum qualifying marks were 30% in each Section with 37% in aggregate for OC candidates and 20% in each Section with 30% in aggregate for SC/ST candidates. The Notification also stipulated that the eligibility of the candidates to appear in the examination would be strictly according to the provisions of the Rules of 2014, i.e., (i) the non-executives employees of any cadre in the IDA pay scale of 9020-17430 and above with combined five years of residency period in the pay scale as on 1st July of the vacancy year; (ii) Senior Sports Assistants and Sports Inspectors/ Co-ordinators in the IDA pay scale of 9020-17430 and above with five years of residency period in that scale as on 1st July of the vacancy year; and (iii) Non-executives (Industrial & Non-industrial) of Telecom Factories in the IDA pay scale of 9020-17430 and above with five years of residency period in the scale of 9020-17430 or above as on 1st July of the vacancy year, provided they possessed: (1) 10+2 standard qualification or equivalent, or (2) two year ITI Certificate/three year Diploma in Telecommunications/ Electronics/ Electrical/ Radio/ Computer/ Instrumentation/ Information Technology from a Central /State Government recognized Institution, after matriculation.

The petitioners-applicants applied in response to this Notification and their names were initially shown in the list dated 02.05.2015 of eligible candidates. They were also issued hall-tickets. While so, letter dated 18.05.2015 was issued by the BSNL clarifying that candidates possessing higher qualifications, viz., Post Graduate/Graduate Degree/Diploma obtained directly, without 10th and 10+2 standard qualification, from Open Universities or distance education, were not eligible to appear in the competitive examination for TTAs. Pursuant to this clarification, the Chief General Manager, AP Telecom Circle (BSNL), Hyderabad, issued letter dated

22.05.2015 enlisting the names of candidates who possessed higher qualifications without 10+2 standard qualification. The names of the petitioners-applicants figured in this list and they were sought to be disqualified under letter dated 25.05.2015. Aggrieved thereby, they filed the subject O.A.s before the Tribunal. Interim orders were passed therein permitting the petitioners-applicants to appear for the competitive examination but their results were withheld.

At that stage, the Tribunal took up the matters for hearing and by the common order under challenge, all the O.A.s came to be dismissed. Therein, the Tribunal opined that the guiding factor to assess eligibility of the candidates would be the relevant recruitment rules and as the Rules of 2014 postulated a minimum qualification of 10+2 for a promotee and a three year Engineering Diploma in various disciplines or a B.Sc. in Electronics or Computer Science for direct recruits, the petitioners-applicants could not seek any relief as they did not fulfil any of the stipulated qualifications. The Tribunal observed that even if their graduate degrees through distance mode of education or from the Open University were to be considered, they admittedly did not possess a B.Sc. degree either in Electronics or in Computer Science. Therefore, when that was the minimum qualification prescribed for a graduate to aspire for direct recruitment, the Tribunal opined that it would amount to discrimination to allow a departmental candidate with some other degree qualification to aspire for the same post contrary to the spirit of the rules. On the strength of this reasoning, the Tribunal concluded that the action of the BSNL in disqualifying the petitioners-applicants was in accordance with the Rules of 2014 and accordingly dismissed the O.As. Aggrieved thereby, the petitioners-applicants came before this Court.

Interim orders were passed in all these writ petitions directing declaration of the results of the petitioners-applicants in the competitive examination. All of them qualified. Thereafter, the petitioners-applicants filed individual miscellaneous petitions in all these cases seeking directions to the BSNL to consider their cases for promotion to the posts of TTAs as they had qualified in the competitive examination.

Heard Mrs. Bobba Vijayalakshmi, learned counsel for the petitioners-applicants, and Ms. T.Bala Jayasree, learned standing counsel for the BSNL. Comprehensive arguments having been advanced by both sides, the matters are amenable to final disposal at this stage.

Mrs. Bobba Vijayalakshmi, learned counsel, would contend that the Tribunal erred in juxtaposing the graduate degrees secured by the petitioners-applicants with the requisite graduate degrees for direct recruits as they were referable to different feeder categories and were not comparable standards. She would further state that the approach of the BSNL in looking down upon the qualifications secured from the Open University and through distance education is retrograde and arbitrary. She would also point out that the petitioners-applicants are not merely relying upon their graduate degrees from the Open University or through distance education but also upon their performance in the competitive examination, which pertained to technical and departmental issues, and as they had qualified in such examination, it was unfair on the part of the BSNL to harp upon their not possessing 10+2 standard qualification, ignoring their graduate degrees from the Open University and through distance education. She would point out that under the Rules of 2001, candidates who were identically situated with the petitioners-applicants were considered eligible and were appointed as TTAs by way of promotion. She would also point out

that a clarification was issued in this regard on 18.01.2007 that internal candidates who had passed their graduation without obtaining 10+2 standard qualification were eligible to write the Limited Departmental Competitive Examination.

Per contra, Ms. T.Bala Jayasree, learned standing counsel, would assert that once the recruitment rules were put in place in the year 2014, the internal candidates were bound by the same. As it is an admitted fact that the petitioners-applicants did not satisfy the qualification prescribed therein, she would assert that they cannot be brought into the zone of consideration by relying on the old rules or any clarification issued in relation thereto. She would rely upon Para 24 of the counter-affidavit filed by the BSNL in these writ petitions and contend that all non-executive cadres were not eligible to become TTAs and minimum qualifications were stipulated in the Rules of 2014 requiring a certain level of awareness and knowledge in science and mathematics and that is the reason why 10+2 standard qualification was insisted upon as the minimum basic qualification. She would submit that the petitioners-applicants, who did not go through the usual learning methodology of doing 10+2 before securing a graduate degree, would not have minimum knowledge in science and mathematics, which was considered necessary in discharging the functions of a TTA. She would also place reliance on the Notification published by the University Grants Commission in the Gazette of India on 05.07.2014 with regard to graduate degrees, wherein the entry qualification was prescribed as 10+2 and contend that the graduate degrees secured by the petitioners-applicants through distance education mode were not recognized thereunder for them to claim parity with such graduates.

In reply, Mrs. Bobba Vijayalakshmi, learned counsel, would point out that the eligibility criteria prescribed in the Rules of 2001 were not very different from those provided in the Rules of 2014. She would state that the only difference was that the promotions were increased from 40% to 50% and there was no justification in withdrawing the clarification dated 18.01.2007 issued in the context of the Rules of 2001, when even those rules prescribed the minimum 10+2 standard qualification for internal candidates. She would further point out that the petitioners-applicants, who worked in the department from the lower category of Mazdoors upto the stage of Telephone Mechanics, were well-versed with the technical know-how relevant to the BSNL organization, having put in long service and there was no ground to discriminate against them by baldly assuming that they had no awareness of science and mathematics.

Having considered these rival submissions, this Court is of the opinion that there is no necessity to compare the two sets of rules. It is not in dispute that the Rules of 2014 were holding sway at the time of issuance of Notification dated 07.03.2015. Thereunder, as already pointed out, a separate eligibility was prescribed for candidates aspiring to the post of TTA by direct recruitment. Such candidates were required to possess either a three year Engineering Diploma in the named discipline or a B.Sc. degree in Electronics or Computer Science. The eligibility criteria for internal candidates to aspire for the very same post by promotion were however differed. Such candidates were required to possess either 10+2 standard qualification or an equivalent or a two year ITI certificate or a three year Diploma in the same disciplines prescribed for direct recruits. The minimum age requirement for direct recruits was upto 30 years for open category candidates, with a relaxation by five years for SC/ST candidates and three years for OBC

candidates. The age restriction for internal candidates in the promotion category was that they should be below 55 years as on 1st July of the vacancy year. Thus, different parameters were applicable to the two feeder categories and, demonstrably, they were not to be treated on par with each other. That being so, the analogy drawn by the Tribunal that as direct recruits need to possess a graduate degree either in Electronics or in Computer Science, the same should be applied to internal candidates who are graduates, does not hold water. It was not the case of the BSNL that the petitioners-applicants stood disqualified as they did not possess graduate degrees in either Electronics or Computer Science. At the initial stage, the ineligibility attributed to them was only on account of their not possessing 10+2 standard qualification. It was only before the Tribunal that the BSNL came up with this new plea that their graduate degrees were not adequate as they were not on par with those prescribed for direct recruits. This new argument therefore does not merit consideration for reasons more than one.

The issues of relevance are the insistence of the BSNL that internal candidates should possess 10+2 standard qualification and its logic that, as those who secured a degree through distance education, may not have gone through the usual methodology of passing 10+2 before going on to pursue graduate courses, they would not be eligible. The question is whether such insistence is legally tenable and the logic of the BSNL warrants acceptance. It may be noted that in so far as internal candidates are concerned, there is no consistency in the eligibility criteria prescribed. Such a candidate could possess either 10+2 standard qualification or an equivalent thereof or a two year ITI certificate. For undertaking an ITI certificate course, a candidate needs only a pass in 10th class. In so far as the third eligibility of a three year Diploma in the specified disciplines is concerned, the same would also

require a pass in 10th class and not 10+2 standard qualification. In addition thereto, under Rule 8, the BSNL Board reserved to itself the power to relax any of the provisions of the rules with respect to any class or category of persons. It is therefore clear that the rules were not intended to be rigid or absolute in their application.

Education through distance mode or from an Open University is a measure of adult education, whereby those who could not complete their education in the conventional mode can aspire for a higher qualification even during the later years of their lives. Usually, pursuit of a higher qualification through distance education mode is for betterment in career prospects. In the cases on hand, the petitioners-applicants started from the lower posts of Mazdoors and having reached the posts of Telephone Mechanics, they seek further growth in their career graphs on the strength of the degrees secured by them during their employment from the Open University or through distance education. In these circumstances, the hidebound persistence of the BSNL that one must invariably possess 10+2 standard qualification to seek promotion to the post of TTA is unduly pedantic and conservative.

One can validly obtain a graduate degree without passing 10+2 standard qualification as per the University Grants Commission Regulations and a basic degree is a must only to obtain a Post-Graduate degree. (See P.SINGARAVELU V/ s. C.MARY FRANCISCA¹).

In G.RAVI KUMAR V/ s. DISTRICT AND SESSIONS JUDGE, NALGONDA², a Division Bench of this Court considered a similar issue. An Attender in the District Court, Nalgonda, who had passed 10th class, obtained a B.A. degree through distance education. When he sought promotion to the post of Junior Assistant, the fact that he did not pass intermediate (10+2

¹ Order dated 22.07.2015 of Madras High Court passed in W.P.No.21823 of 2015

² 2008 (3) ALD 624 (DB)

standard qualification) was held against him. The B.A. degree secured by him from Dr. B.R.Ambedkar Open University was not taken into account. In this fact scenario, the Division Bench adverted to the earlier judgment of this Court in MUTHYALA ASHOK V/s. SHYAMSUNDER³ and observed as under:

'12. Therefore, there cannot be any doubt that BRAOU is an University established under Andhra Pradesh Open University Act 1982, and as noticed by Division Bench in *Muthyala Ashok's* case (supra), it is recognised by Government of India as well as Government of Andhra Pradesh for the purpose of recruitment in public services. Indeed Division Bench accepted plea that degree awarded by BRAOU is superior to Intermediate qualification prescribed under relevant provision of Ministerial Service Rules. Therefore petitioner herein cannot be said to be disqualified merely because he directly appeared for B.A., examination conducted by BRAOU without basic qualification. Very concept of Open University is to encourage citizens to acquire better qualification ignoring whether or not they were having pre-degree qualification. One should not forget that under Article 51A(j) of Constitution, it shall be duty of every citizen to "strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement". If a citizen acquired higher qualification even though he was denied opportunity to acquire pre-degree qualification by reason of social and economic backwardness, he cannot be turned away on the ground that though he has higher qualification, he lacks basic qualification.'

In MUTHYALA ASHOK³, the Division Bench adverted to the fact that degrees and diplomas awarded by Dr. B.R.Ambedkar Open University were recognised by the Government of Andhra Pradesh and the Government of India for the purpose of recruitment in public services, *vide* Letter

³ 2002 ALD Supp (1) 525

No.1057/admn./760/2000-2001 dated 09.11.2000 addressed by the Registrar of the University to the District Collector, Chittoor.

More recently, in *STATE OF ANDHRA PRADESH V/s. SHAIK MAHI BULLA SHARIEF*⁴, the Supreme Court considered the issue of insistence upon a regular degree over one secured through distance education mode. The question, *per* the Supreme Court, was whether the qualification of B.A. in Telugu Literature as a single subject from Dr.B.R.Ambedkar Open University could be considered as equivalent to a Bachelor's degree with Telugu as the main subject. On facts, the Supreme Court held that when the directions given by the Government clearly showed that the degree issued by Dr. B.R.Ambedkar Open University was considered to be equivalent to any other degree in respect of a selection and such appointments were permitted, there was no reason why a person with a B.A. degree from the Open University should be considered ineligible.

We are also of the considered opinion that holding against a candidate on the ground that he did not follow the traditional methodology of education cannot be countenanced. All the more so, when the State recognises distance education mode as a means of adult education, providing an opportunity for advancement in employment.

No doubt, Ms. T.Bala Jayasree, learned standing counsel, relied upon the Notification published by the University Grants Commission in the Gazette of India on 05.07.2014, but there is no material to support that this was a comprehensive list of degrees from all kinds of Universities and that the University Grants Commission does not recognise degrees from Open Universities. We are inclined to believe otherwise as the Supreme Court, in *SHAIK MAHI BULLA SHARIEF*⁴, specifically noted that there was nothing

⁴ (2017) 5 SCC 237

in the rules which makes a degree issued by Dr. B.R.Ambedkar Open University, which is recognised by the University Grants Commission, from being considered as equivalent to any other degree.

Lastly, there is one more factor which weighs in favour of the petitioners-applicants. Their promotion to the posts of TTAs is not dependent solely upon the basic qualification. They were required to go through a limited competitive examination on issues relating to Electrical and Electronics & Telecommunications, apart from Departmental Practices, and it is not in dispute that all the petitioners-applicants qualified therein. The bald assertion by the BSNL that they would not have basic knowledge of science and mathematics because they did not pass 10+2 is therefore rendered superfluous as they could not have passed the competitive examination without having requisite knowledge. It may also be noted that most of the petitioners-applicants passed 10th class. They would therefore have at least rudimentary knowledge of science and mathematics and their mere failure to pass intermediate (10+2) would not support the presumption that they are lacking in knowledge of science and mathematics.

The petitioners-applicants therefore acquitted themselves adequately on counts more than one and have clearly demonstrated their eligibility to be promoted as TTAs, notwithstanding the fact that they did not go through the conventional mode of education by securing 10+2 standard qualification.

On the above analysis, this Court finds that the BSNL's insistence on this qualification, despite the relaxation extended earlier in relation to the Rules of 2001, is arbitrary and without rationale. The petitioners are entitled to be considered for promotion to the posts of TTAs on the strength of their performance in the limited competitive examination based on their graduate degrees from the Open University and through distance education.

The writ petitions are accordingly allowed setting aside the common order dated 28.03.2016 passed by the Tribunal in O.A.Nos.020/687, 699, 700, 704, 705 and 708 of 2015. The BSNL shall forthwith give full effect to the competitive examination merit list in so far as the petitioners-applicants are concerned and if they are otherwise found to be eligible, they shall be promoted to the posts of TTAs. This exercise shall be completed expeditiously and, in any event, not later than two months from the date of receipt of a copy of this order.

Pending miscellaneous petitions, if any, in all these writ petitions shall stand closed in the light of this final order. No order as to costs.



SANJAY KUMAR, J

M. GANGA RAO, J

8th JUNE, 2018

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