

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

W.P.No.1972 OF 2019

ORDER

This writ petition is filed seeking the following relief:

“...to issue a Writ, Order or Orders more particularly one in the nature Writ of Mandamus declaring the impugned proceedings Rc.No.46/E7/SDEH/2019/057 dated 23.01.2019 issued by the 1st respondent as illegal, unconstitutional, null and void and consequently direct the respondents to retain and continue the petitioner in the promotional post of Telephone Operator with all consequential benefits by holding the action of respondents in reverting the petitioner from post of Telephone Operator to that of Watchman by impugned proceeding dated 23.1.2019 after lapse of two (2) years without conducting any enquiry under CCA Rules and further without issuing any notice and opportunity to the petitioner is as illegal, arbitrary, discriminatory and subversive of Articles 14, 16 of the Constitution of India and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.”

Heard Sri Ch.Jagannatha Rao, learned counsel appearing for the petitioner and learned Government Pleader for Services-II appearing for the respondents.

It is the case of the petitioner that he is a physically challenged person. He passed SSC and completed Telephone Operation-cum-Reception Training Course in the year 1991 from Vocational Rehabilitation Training Center, Ludhiana, Punjab, which is recognized by Ministry of Welfare, Government of India, and affiliated to the Indian Council of

Social Welfare and Rehabilitation Co-ordination. After due selection, he was selected and appointed as Watchman on 28.4.2006. While so, the respondents have promoted the petitioner to the post of Telephone Operator *vide* proceedings dated 09.11.2016 subject to condition that he should obtain Telephone Operator Training Certificate from BSNL/Setwin within two years. In pursuance of the said promotion order, the petitioner made an attempt to secure a certificate from BSNL Office in respect of Telephone Operator Training Course, but he was informed by the BSNL that they discontinued the said course long back. He informed the said information to the respondents. The 1st respondent addressed a letter dated 2.3.2017 to the District Manager, BSNL, to furnish the information whether the petitioner is eligible for promotion to the post of Telephone Operator, as he was promoted from Watchman, subject to condition of completing Telephone Operator Training Course. The District Manager has accordingly furnished the information that they are not providing the Telephone Operator Training Course and it is for the 1st respondent to consider the case of the petitioner for promotion. Since the petitioner has not completed Telephone Operator Training Course from BSNL, the 1st respondent has issued the impugned proceedings dated 23.1.2019 reverting

him to the post of Watchman by referring Circular Memo dated 8.10.2018. Challenging the same, the present writ petition is filed.

Learned counsel appearing for the petitioner submits that insisting for Telephone Operator Training Certificate from BSNL is impossible as BSNL has discontinued the said course long back and that appropriate orders be passed directing the respondents to continue the petitioner as Telephone Operator since he has completed Telephone Operation-cum-Reception Training Course from Vocational Rehabilitation Training Center, Ludhiana, Punjab, which is recognized by the Government of India.

Learned Government Pleader appearing for the respondents submits that as per Rule 61 of Ministerial Service Rules, for a candidate to hold the post of Telephone Operator, he must acquire the certificate from BSNL in Telephone Operator Training Course, which is one of the pre-requisite condition and that since the petitioner is not having the requisite qualification, he is not entitled to continue as Telephone Operator and the respondents have rightly reverted him to the post of Watchman.

Having considered the rival submissions made by the learned counsel on either side, this Court is of the view that

though the recruitment rules stipulate that a candidate must possess Telephone Operator Training certificate from BSNL for promotion to the post of Telephone Operator, but the same is impossible as BSNL is not conducting any course as such.

Accordingly, the Writ Petition is allowed and the impugned proceedings dated 23.1.2019 are set aside. Since the respondents are insisting for a qualification, which is not in existence, the respondents are directed to re-examine the case of the petitioner by duly taking into consideration the fact that he has acquired identical qualification from Vocational Rehabilitation Training Center, Ludhiana, Punjab, which is recognized by Ministry of Welfare, Government of India. No costs.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE ABHINAND KUMAR SHAVILI

19th February, 2019
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