



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

% Date of decision: 31st October, 2023

+ W.P.(C) 4977/2019 & CM APPL. 52230/2022

(13) HEMENDRA KUMAR TIWARI Petitioner
Through: Mr. V. S. R. Krishna and Mr. V.
Shashank Kumar, Advs. with petition
in person

versus

BHARAT SANCHAR NIGAM LIMITED AND ANR. Respondent
Through: Mr. Suryakant Singla, Adv. for R-1

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

V. KAMESWAR RAO, J. (ORAL)

1. The challenge in this petition is to an order dated March 08, 2019, passed by the Central Administrative Tribunal in O.A. 3514/2014, whereby the Tribunal has dismissed the O.A. filed by the petitioner by stating the paragraphs 4 and 5 as under:-

“4. The counsel for the respondents vehemently and strenuously contended that the recruitment process is long over. As per the retention schedule relating to the said recruitment, the answer books are to be preserved only for one year and the results are to be preserved only for five years and that the examination related work like paper setting, evaluation of Optical Mark Reader (OMR), answer sheets and preparation of results were entrusted to a renowned Government agency and that around 3.57 lakhs applications were received and 2.90 lakhs candidates had appeared and that whatever rectification was



carried out had been applied to all the candidates uniformly and that the applicant had secured 69.25 marks in both the results declared earlier on 26.10.2009 and later on January, 2010 whereas the cut off marks of the last successful candidate was 69.75, as such in view of these facts and in view of long delay, the relief prayed for by the applicant shall not be granted. We have perused the averments made by the respondents in their counter affidavit. He was declared unsuccessful way back in 2009 but, however, he approached the Tribunal by this OA in 2014.

*5. In view of the facts of this case, the applicant is a fence-sitter and is not entitled to relief prayed for. The law laid down by the Hon'ble Supreme Court in the case of **State of Uttar Pradesh and Others Vs. Arvind Kumar Srivastava and Others** (2015) 1 SCC 347) at para 22.2. and 22.3 is squarely applicable to the facts of this case. Para 22.2 and 22.3 of the judgment are extracted below:*

“22.2. However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

22.3. However, this exception may not apply in those cases where the judgment pronounced by the Court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the Court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated person. Such a situation



can occur when the subject matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see K.C. Sharma & Ors. v. Union of India (supra). On the other hand, if the judgment of the Court was in personam holding that benefit of the said judgment shall accrue to the parties before the Court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence.”

2. The facts as noted from the petition are that the petitioner had applied for recruitment to the post of Junior Telecom Officers (Telecom.), Junior Telecom Officers (Civil) and Junior Telecom Officers (Electrical) in the year 2008. The examination was held on June 21, 2009. The result was declared on October 26, 2009 but the petitioner was not selected. It was the case of the petitioner that after the declaration of the result, some candidates brought to the notice of the respondents that there was a mistake with respect to answer key of question no. 16 in Section-C of Telecom paper which was investigated and rectified. As a result of the said exercise, it was found that 53 candidates who were declared provisionally successful earlier were subsequently declared as unsuccessful and 86 new candidates were found to be qualified and declared successful. The said 53 candidates filed OAs before the Tribunal. The OAs were dismissed by the Tribunal vide order dated May 09, 2011, which was upheld by the Supreme Court vide order dated July 20, 2013, in SLP (C) No(s) 16372-16374/2012.



3. O.A. 3514/2014 was filed by the petitioner herein with the following prayers:-

“8.1. To direct the respondents to produce all the records of "RECRUITMENT OF JUNIOR TELECOM OFFICERS (Telecom), JUNIOR TELECOM OFFICERS (Civil) and JUNIOR TELECOM OFFICERS (Electrical) (1-11/2008-Rectt)" relating to the selection of the applicant to the post of JTO (Telecom) including entire records of proceeding along with Rules for Selection and ANSWER SHEET (OMR) of the applicant.

8.2. To allow the O.A and direct the respondents to show the ANSWER SHEET (CRM) to the applicant,

8.3. To direct the Respondents to declare a fresh Result of "COMBINED RECRUITMENT FOR THE POSTS OF ENGINEERING ASSISTANT AND TECHNICIAN IN PRASAR BHARTI, EXAM, 2013" on all India basis on behalf of the marks scored by the candidates.

8.4. To direct the Respondents No.1 to declare the Result of "RECRUITMENT OF JUNIOR TELECOM OFFICERS (Telecom), JUNIOR TELECOM OFFICERS (Civil) and JUNIOR TELECOM OFFICERS (Electrical) (1-11/2008-Rectt)" after placing the applicant according to his rectified-marks,

8.5. To direct the Respondents to place the applicant as selected candidates on the post of JTO (Telecom), in accordance with the marks obtained by him after rectification of the result,

8.6. To pass such other order/orders as this Hon'ble Tribunal may deem just and proper in the facts and circumstances of the case.”

4. From a perusal of the same, it is clear that the petitioner in his O.A. has in effect prayed for disclosing his answer sheet and declaring the result after rectifying his marks.

5. Today, Mr. V. S. R. Krishna by drawing our attention to page 79 of the paper book would contend that as against 1858 vacancies notified, only



1473 have been filled. In other words, the balance having not been filled, according to him, the petitioner's marks are such that he would qualify, and needs to be appointed against the unfilled vacancies.

6. We are not impressed by the submission made by Mr. Krishna for the simple reason, no such plea was advanced before the Tribunal and as such there was no occasion for the Tribunal to look into this aspect.

7. In any case, we note the reply filed by the respondents in this petition, to paragraphs 13 and 17, is the following:-

"8. That the contents of para 13 are misconceived, misleading, wrong and denied. The petitioner has concocted the story of meeting his friend in the year 2013 and coming to know about the changes in the result. The make-believe story was merely to cover up his delay/ulterior motive in filing the petition before the Tribunal that was later rightly dismissed also on account of delay and being devoid of any merit. It is further submitted that the petitioner had secured 69.25 marks in both the results declared earlier on 26.10.2009 and later on January, 2010 whereas the cut-off mark (marks obtained by last successful candidate) was 69.75. As the marks secured by him were less than the marks secured by the last successful candidate, hence his name did not find place in the list of successful candidates for the purpose of appointment.

xxxx

xxxx

xxxx

11. In reply to para 17, it is stated that the contentions of the petitioner are misleading and unfounded. It is submitted that the number of vacancies notified were modified as under:

OC: 1473 OBC: 783 SC:367 ST: 189

All the vacancies in the OC category as modified were duly filled and the last selected candidate secured 69.75 marks which was rightly communicated as cut-off marks. The number of vacancies were decreased in other categories as well. The modification in the number of vacancies, is well within the competence and jurisdiction of answering respondents."



8. From the above, it is clear that the petitioner has not met the cut-off marks required for getting selected. That apart, on a specific query to Mr. Krishna, whether the petitioner had challenged the selection against 1473 vacancies and not against 1853 vacancies, the answer is in the negative. If that be so, the recruitment insofar as open category candidates is concerned, has been made against 1473 vacancies that too in the year 2009-2010, which is almost 13-14 years back and the challenge in the year 2014, was clearly beyond limitation.

9. Mr. Krishna has relied upon the judgment in the case of *Sandeep Kaushik v. Government of NCT of Delhi, W.P.(C) 3510/2012* decided on *September 13, 2013* and *Neelima Shangla v. State of Haryana & Ors., AIR 1987 SC 169*, in support of his contention that delay cannot be a ground for the Tribunal to reject the O.A. Suffice it to state even on merit the petitioner is not entitled to any relief, as can be seen from the reply filed by the respondents.

10. We are of the view that the Tribunal has rightly dismissed the petition inasmuch as the petitioner has never challenged his non appointment in 2009-2010 till 2014, when he filed the O.A.

11. We do not see any merit in the petition, the same is dismissed.

CM APPL. 52230/2022

In view of the above, this application is also dismissed.

V. KAMESWAR RAO, J

ANOOP KUMAR MENDIRATTA, J

OCTOBER 31, 2023/ds