

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH LUCKNOW

Original Application No.332/00412/2022

Order Reserved On: 05.03.2024

Order Pronounced On: 12.03.2024

Hon'ble Mr. Justice Anil Kumar Ojha, Member-Judicial

Hon'ble Mr. Pankaj Kumar, Member-Administrative

Rajeev Kumar, (HRMS No. 200202798), aged about 42 years, Son of Shri Latoori Singh, Resident of 5/233 Gomti Nagar Extension, Lucknow.

.....Applicant

By Advocate: Shri Raj Singh

VERSUS

1. Bharat Sanchar Nigam Ltd.,
Through its Chairman-Cum-Managing Director
Bharat Sanchar Bhawan, Harish Chandra Mathur Lane,
Janpath, New Delhi-11001.
2. The Director (HR),
Bharat Sanchar Bhawan, Harish Chandra Mathur Lane,
Janpath, New Delhi-11001.
3. The Chief General Manager, UP East Circle,
Bharat Sanchar Nigam Ltd., Hazratganj,
Lucknow-226001.
4. The Principal General Manager (Personnel.)
Bharat Sanchar Nigam Ltd. Bharat Sanchar Bhawan,
Janpath, New Delhi.
5. The Deputy General Manager (Personnel)
Bharat Sanchar Nigam Ltd. Bharat Sanchar Bhawan,
Janpath, New Delhi.

.....Respondents

By Advocate: Shri G. S. Sikarwar

ORDER

Per Hon'bleMr.Pankaj Kumar, Member-Administrative

In this case relating to seniority and reversion after promotion, the applicant has sought the following reliefs:

- “(i) This Hon’ble Tribunal may kindly be pleased to quash the order dated 31.12.2019, so far it relates to the applicant(Annexure No. A-1 to this OA).
- 8 (i) A. This Hon’ble Tribunal may further be pleased to quash the order dated 25.03.2023, filed by the respondents as Annexure No. 1 to the supplementary reply.
- (ii) To direct the respondents to restore the name of the applicant in the final seniority list of SDE (T) and consider his case for promotion to the post of Assistant General Manager (ADM) in the ensuing DPC.
- (iii) To pass such other orders which are found just fit and proper under the circumstances of the case.”

2. The facts of the case are that the applicant was appointed as Junior Telecom Officer (JTO) vide letter dated 12.07.2002. Under the recruitment rules notified on 28.02.2002 by the respondents (SDE RRs 2002, hereinafter), the posts of next level, viz., Sub Divisional Engineer (SDE) are required to be filled through promotion from amongst JTOs by two methods: 75% on the basis of seniority-cum-fitness and 25% on the basis of Limited Departmental Competitive Examination (LDCE). The applicant appeared in LDCE on 15.07.2007 and was promoted to SDE vide order dated 03.11.2008. However, his name was removed from the final seniority list of SDEs and placed in the disputed list of 97 executives vide order dated 31.12.2019 for issuing show cause notice to them as to why they should not be reverted. The applicant submitted two representations dated 03.01.2020 and 22.06.2022 for rectifying the order dated 31.12.2019 and consideration for promotion to the post of Divisional Engineer (T)/Assistant General Manager (T). Having received no response, the applicant has preferred this OA.

3.1 It is stated by the applicant that SDE RRs 2002 require a JTO to have rendered not less than 3 years of regular service in the grade on 1st July of the year of LDCE. Note 2 in column 12 of these RRs provides

that promotion of JTOs shall be made on the basis of an All India eligibility list. Note 3 stipulates that *'the crucial date for determining eligibility list shall be 1st of July of year to which vacancies pertain'*. Further, note 5 stipulates that *'where juniors who have completed their qualifying eligibility service are being considered for promotion, their seniors would also be considered provided they are not short of requisite qualifying eligibility service by more than one year'*. As per the applicant, LDCE 2007, in which he appeared, pertained to the vacancy years 2001-02 to 2005-06. The applicant was short of 3 years' regular service by 28 days as on 01.07.2005 while one junior (Shri Kamlesh), who was recruited in the same year as the applicant, was eligible as he had joined as JTO before 01.07.2002. It is the contention of the applicant that his joining got delayed till 11.07.2002 as the respondents could not send him for training for no fault of his. A clarification was sought by the competent authority from respondent no. 2 whether the applicant was eligible for LDCE 2007 in view of Note 5 in column 12 of SDE RRs 2002. The clarification dated 16.04.2007 stated that the case of applicant be decided as per column 12 and Note thereunder. Following this clarification, the applicant was allowed to appear in LDCE 2007 on 15.07.2007 and was promoted vide order dated 03.11.2008.

3.2 It is further stated by the applicant that following a court case filed by Shri M Devi Dayal before Hyderabad Bench of this Tribunal, the respondents have issued a clarification dated 30.07.2010 to the effect that Note 5 of column 12 of SDE RRs 2002 shall be applicable for seniority-cum-fitness quota only. It is the applicant's contention that this clarification is impermissible under law and it cannot be issued without amending SDE RRs 2002 and further, in any case, such clarification cannot have retrospective effect.

4.1 The respondents, on the other hand, contend that the applicant was allowed to appear in LDCE 2007 by wrongly interpreting Note 5 of column 12 of SDE RRs 2002 and that the clarification dated 30.07.2010 was issued to dispel the confusion. It is further stated that the Circle gradation list is not relevant for reckoning requisite 3 years of regular service in the grade of JTO (T) as a condition for appearing in LDCE. Comparison of senior to junior in a particular gradation list for implying senior – junior is fundamentally wrong, which has happened in this case.

4.2 The respondents state that the eligibility criteria specified in SDE RRs 2002 has been upheld by the Principal Bench of this Tribunal in OA 1562/2010. Further, the show cause notice is a consequential action of the respondents towards implementation of order of Hon'ble High Court of Madras in W.P. No. 7863 of 2015 and order dated 06.02.2019 of the Mumbai Bench of this Tribunal in RA 48/2014 in OA 790/2009. It is stated that the issue of ineligibility of officers in LDCE 2007 was noticed in BSNL Corporate Office in the wake of OA 238/2009 filed before Hyderabad Bench of this Tribunal after issuance of promotion order to the ineligible officers on 03.11.2008. The applicant was served show cause notice in 2010 itself. There were a number of court cases filed against the show cause notices before Chennai and Mumbai Benches of this Tribunal. The order in W.P. Nos. 7683, 12615 to 12617 and 18205 of 2015 was passed on 21.02.2017 and has attained finality as it has not been challenged. Even though the show cause notice was issued to the applicant in 2010, due to litigation challenging the show cause notices, the reversion order could be issued only in 2019.

5. We have heard both the parties. The learned counsel for the applicant stated that the respondents have misconstrued judgment of

Hon'ble High Court by issuing the clarification in regard to Note 5 which was not the subject matter of adjudication therein. The learned counsel for the respondents opposed this vehemently and highlighted various averments in the counter affidavit in support of the respondents' position.

6.1 First, we examine the respondents' contention that the issue of eligibility has attained finality in view of judgment of Hon'ble High Court of Madras in W.P. No. 7683 of 2015, and of Principal Bench of this Tribunal in OA 1562/2010. A perusal of the judgment of Hon'ble High Court of Madras shows that the issue adjudicated was the eligibility criterion of completion of 3 years of regular service as JTO as on 1st July of the year of examination mentioned in the main rule in column 12 and the criterion of completion of 3 years of regular service as JTO as on 1st July of the year to which the vacancies pertain mentioned in Note 3 under column 12. The impact of provision contained in Note 5 on eligibility was not discussed. The relevant part of the judgment highlighting the issue considered is reproduced below:

*"20. As rightly contended by Shri K.M. Vijayan, learned senior counsel appearing on behalf of the official respondents, the Tribunal has given detailed reasons for reversing its original order passed in the Original Application 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 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.”

(emphasis supplied)

Next, we turn to the judgment of Hon’ble Principal Bench of this Tribunal in OA 1562/2010 and extract the relevant parts thereof throwing light on the issues discussed therein:

“10. During the hearing two sets of issues emerged. First set of issue is on two clauses in respect of crucial date for eligibility to write LDCE. Whereas first July of the year of examination or first July of the year of vacancy or both 1st July of examination and vacancy to be considered to find the eligibility of JTOs to write LDCE. The second issue relates to the impact/effect of the presence or absence of the word List in Note 3 to the Schedule.

...

19. Thus we accept the grounds raised by the Counsel for the Respondents that eligibility criteria of 3 years of regular service in JTO on the 1st July of the vacancy year and LDCE examination year is legally right approach. We accordingly give the constructive interpretation that Note – 2 and Note – 3 are to be read harmoniously to come to the considered conclusion of the JTOs to become eligible for LDCE.**Resultantly, 3 years of regular service in the grade of JTO as on 1st July of the vacancy year would be the eligibility criteria, in addition to the condition of 3 years of regular service on the 1st July of the year of LDCE.**

20. With regard to the 2nd issue, we find that the redundant word list having been deleted from the Note 3 of the Column 12 of the Schedule, the Note has become crystal clear. No ambiguity exists. Deletion of List, in our opinion, is legally sustainable.”

(emphasis supplied)

Here also we see that the main issue discussed is the eligibility criteria of 3 years of regular service as JTO in the year of examination and in the year of vacancy. Note 5, which deals with the specific situation of a junior becoming eligible ahead of a senior, has not been adjudicated.

6.2 The main argument canvassed by the applicant is that it is not his fault that the commencement of his regular service as JTO began late and after his junior. The point made by the applicant and response

thereto are covered in the speaking order dated 25.03.2023 issued by the respondents in compliance to this Tribunal's direction dated 15.03.2023 in this OA and are reproduced below:

Point raised	Response
<p>14. Sir, it is not my fault that I have been called for training late. If management could have called me in earlier batch of training, I would have completed my 3 years' service as on 01.07.2005, along with my other batch mates (of recruitment year 2001) to whom I am senior as per Circle gradation list of JTOs. I cannot be penalized for none of my fault. Also I was declared eligible for LDCE-2007 as per SDE RR 2002 and clarification vide 2-29/2005-pers II dated 16.04.2007 by management after checking/verification my eligibility number of times.</p>	<p>The pre-appointment training is not given to all the candidates selected/promoted as JTOs of a particular recruitment year, under direct recruitment quota and under promotion quota, at the same time because of the limitations of the training centers. Rather it was given in batches in a phased manner as per the availability of seats in the Training Centers. Moreover, since JTO is a Circle cadre, the persons who got selected/promoted as JTO cadre for a recruiting Circle, will get the training according to the accommodation made available in the training center to the respective Circles.</p> <p>Further, as explained in reply at S. No. 1(i), the case is squarely covered with the other ineligible executives who were wrongly allowed to appear for LDCE 2007.</p>

(emphasis supplied)

It is evident from the statement of the respondents that the training is arranged as per availability of facilities and in a phased manner. It has been admitted by the respondents that, from a particular recruitment year, some JTOs get pre-appointment training earlier than others. It has not been refuted by the respondents that Shri Kamlesh was at S. No. 57 in the Circle gradation list and the applicant was placed higher at S. No. 15. It is noted that the Column 12 of SDE RRs 2002 starts with the heading 'Promotion' and below this heading the two methods of recruitment are mentioned followed by Note 1 to 5. It appears to us that the provision under Note 5 applies to senior – junior situations and

nothing needs to be read into, or clarified, other than what is mentioned therein. Given this position, we fail to appreciate how the applicant, who ranks higher in the Circle gradation list than Shri Kamlesh, can be denied the benefit of relaxation in qualifying eligibility service available under Note 5. The provision under Note 5, in our view, applies to the applicant's case.

7.1 In view of the foregoing, the order dated 31.12.2019 is quashed and set aside to the extent it relates to the applicant along with order dated 25.03.2021 disposing of the applicant's representation dated 26.10.2022 against the show cause notice dated 14.10.2022. Further, the respondents are directed to restore the name of the applicant in the seniority list of SDEs within a period of two months from the date of receipt of certified copy of this order. This OA is disposed of in theaforementioned terms.

7.2 Pending MAs, if any, are also disposed of.

7.3 The parties shall bear their own costs.

(Pankaj Kumar)
Member (A)

(Justice Anil Kumar Ojha)
Member (J)

vidya