

(2020) 01 PAT CK 0267

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 14740 Of 2018

**Bharat Sanchar Nigam Limited And Ors @APPELLANT@Hash Sudhir
Kumar Jha And Ors**

Date of Decision : 17-01-2020

Acts Referred:

Bsnl Conduct, Discipline And Appeal Rules 2006 — Rule 36

Citation : (2020) 01 PAT CK 0267

Hon'ble Judges : Ashwani Kumar Singh, J;Partha Sarthy, J

Bench : Division Bench

Advocate : Ashok Kumar Dubey

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the petitioners and learned counsel for the respondents.

2. The reliefs sought for by the petitioners in para-1 of the writ petition are as under:

"I. For issuance of an appropriate writ/writs, order/orders and/or direction/directions in the nature of certiorari for setting aside the order dated 02.01.2018 passed in O.A.No.050/00473 of 2017 by Hon'ble Central Administrative Tribunal, Patna Bench, Patna by which O.A. was disposed of with a direction upon the respondent authorities to hold supplementary Limited Departmental Competitive Examination (LDCE) for the present applicants on the same standard as held on 20.08.2017, within two months from the date of communication of this order and pass appropriate orders on the same, without appreciating the facts and policy decisions in this regard.

II. For any other relief/reliefs for which the petitioner is entitled in the eye of law."

3. The facts of the case in brief are that the respondents were initially engaged as Daily Rated Mazdoors and were granted temporary status. While working under the temporary status, they were granted status of Regular Mazdoor vide

order dated 18.07.2002. While working under the regular status they received chargesheet dated 04.02.2011 and were proceeded against departmentally. The proceedings against them concluded with order dated 05.03.2016 imposing penalty of lower stage in the existing time scale of pay by two stages for six months. During pendency of the disciplinary proceedings, a notification for Limited Departmental Competitive Examination (for short 'LDCE') for the post of Telephone Mechanic was notified but the respondents were not allowed to appear in examination going to be held on 28.09.2014 as they were not fulfilling the mandatory condition as stated in para 6(4) of the notification dated 01.08.2014. Feeling aggrieved by the decision of the petitioners, the respondents approached the Central Administrative Tribunal, Patna Bench, Patna (for short 'Tribunal') vide O.A/050/00684/2014. In the said case, the Tribunal vide order dated 25.09.2014 directed the petitioners to allow the respondents to appear in LDCE provisionally and keep their result in sealed cover. The respondents appeared in the examination but they did not qualify. Hence, vide order dated 05.12.2017, the original application was dismissed by the Tribunal as the same had become infructuous. Subsequently, notification dated 03.06.2017 was issued for conducting LDCE examination 2017 and the date of examination was fixed on 20.08.2017 in order to fill up the vacancies for the post of Telecom Technician up to 31.3.2017. As per the provision in the recruitment rules of Telecom Technician circulated vide BSNL Corporate office letter dated 250-3/2012-PERS-III dated 19th September, 2012, the eligible employees were directed to submit their application form latest by 19.07.2017. The respondents submitted their application form in time, but the petitioners did not issue admit card to the respondents.

4. Being aggrieved by the non issuance of admit card, the respondents filed Original Application no.050/00473 of 2017 before the Tribunal.

5. The petitioners filed their written statement before the Tribunal in the said Original Application wherein it was pleaded that the respondents were engaged as daily wagers for some project as and when required and on completion of the project work they were disengaged along with several labourers. Being aggrieved with their disengagement they filed O.A.No.404 of 1998 which was heard together with batch of cases and were disposed of in 1999 with certain direction about maintaining seniority with liberty to the Department to make necessary enquiry as per law into the allegations regarding their initial engagement on the basis of forged records mentioned in their labour cards. As per the order of the Tribunal, a High Power Committee was constituted to verify the genuineness of their claim of initial engagement. On enquiry, the High Power Committee came to the conclusion that the labour cards of the respondents contained forged and false signature of SDE/JJO and on enquiry from the authorized SDE/JJO of that period they denied about their signature in writing and submitted that the signature was not done by them. On the basis of enquiry a proceeding was initiated against the respondents under Rule 36 of BSNL CDA Rules, 2006 vide memo dated 19.6.2010. Meanwhile, as per the order of Tribunal, all the

respondents, who were working as labourers in the Department were granted adhoc temporary status of labour and subsequently adhoc status of Regular Mazdoor. It was further pleaded that during pendency of departmental proceeding against them, a notification was issued for conducting LDCE but the respondents were not allowed to appear in the examination as they were not fulfilling the mandatory condition as stated in para 6(4) of notification dated 1.8.2014. It was further pleaded that the departmental proceedings initiated against the respondents have been concluded and vide order dated 5.3.2016 penalties have been imposed upon them.

6. Having heard the parties, the Tribunal vide impugned order dated 2.1.2018 disposed of the Original Application directing the respondent authorities to hold supplementary examination for the respondents on the same standard as held on 20.8.2017 within two months from the date of communication of the order.

7. Feeling aggrieved by the aforesaid order dated 2.1.2018 passed by the Tribunal, the petitioners have filed the present writ petition.

8. Learned counsel for the petitioners submitted that since respondents are neither adhoc regular mazdoor or adhoc temporary mazdoor, they could not have been allowed to appear in the LDCE for the post of Telecom Technician. He submitted that the forged appointees have no legal right to participate in the departmental examination to create further rights. He has further contended that the direction in the order under challenge to hold special examination for the respondents on the same standard as held on 20.8.2017 is not sustainable in the eye of law in view of the fact that the respondents had not attained the required eligibility to appear in the LDCE for the post of Telecom Technician as per mandatory condition no.6(4) prescribed in Notification dated 1.8.2014.

9. Per contra, learned counsel for the respondents submitted that there is no error in the order impugned passed by the Tribunal. He contended that as far as the proceedings against the respondents are concerned, it has already been concluded. Thus, the petitioners cannot argue that the person facing disciplinary proceedings cannot be allowed to appear in limited competitive examination to be held by the department for promotion to the next stage. He has further contended that the punishment awarded to the respondents is not such which affects their right to appear in the limited competitive examination. The effect of the punishment itself has come to an end after the period of six months. He has further contended that documents annexed by the petitioners before the Tribunal as also before this Court would clearly demonstrate that respondents were TSM and not adhoc TSM and he contended that Clause 6(4) of the notification dated 1.8.2014 does not debar the respondents from appearing in the LDCE for the post of Telecom Technician. He has contended that since the respondents were illegally denied the opportunity to appear in the examination to be held by the petitioners the Tribunal has rightly directed the petitioners to arrange a supplementary examination for them.

10. Having heard learned counsel for the parties and carefully perused the record, we find that clause 6(4) of the notification dated 01.08.2014 provides that casual mazdoors working in SSA units possessing 10th standard qualification and having granted TSM status by the Department would be eligible to appear in the LDCE.

11. The provisional gradation list prepared by the office of the General Manager Telecom District - Darbhanga dated 01.05.2001 as contained in Annexure 3 to the writ petition would show that the respondents were granted temporary status on provisional basis with effect from 01.08.1998.

12. Similarly, vide office order dated 18.07.2007, as contained in Annexure 4 to the writ petition, it would appear that the competent authority had conveyed the Office of the General Manager Telecom District Darbhanga his approval to grant Regular Mazdoor status to the respondents who were working as TSM on temporary or ad-hoc basis.

13. Thus, the records of the petitioners itself suggest that the respondents were earlier TSM on adhoc and temporary basis and were approved to be conferred with RM status on 18.07.2002.

14. The recruitment rules to the erstwhile Telephone Mechanic now Telephone Technician prescribes that LDCE has to be held amongst the following:-

"(1) Telegraph Man/Telegraph Overseer possessing 10th Standard Qualification.

(2) Group-D officials of the Circle/SSA Units possessing 10th Standard qualification.

(3) RMs working in SSA units possessing 10th standard qualification.

(4) Casual Mazdoors working in SSA units possessing 10th standard qualification and having been granted TSM status by the Department.

(5) Junior Sports/Assistant possessing 10th standard qualification."

15. The respondents were granted TSM and the competent authority had given his approval to grant them Regular Mazdoor status. However, the said RM status was purely temporary and on ad hoc basis: The Tribunal passed the impugned order taking into consideration that on ad hoc status TSM can not ensure higher rank without regularization at lower stage and further they, the competent authority had conferred RM status to them referring them as "TSM".

16. The view taken by the Tribunal is based on sound reasoning and on the basis of materials brought on record by the petitioners themselves.

17. The petitioners have not been able to show any illegality or perversity in the order impugned.

18. In that view of the matter, we are not inclined to interfere with the same.

19. The writ petition being devoid of any merit is dismissed.