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**(2012) 08 RAJ CK 0110**  
**In the Rajasthan High Court**  
**Case No : Civil Writ Petition No. 7074 of 2012**

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| Bharat Sanchar Nigam Ltd. and Others | APPELLANT  |
| Vs                                   |            |
| Inder Mal and Another                | RESPONDENT |

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**Date of Decision :** 03-08-2012

**Acts Referred:**

**Citation :** (2012) 08 RAJ CK 0110

**Hon'ble Judges :** Narendra Kumar Jain, J; Dinesh Maheshwari, J

**Bench :** Division Bench

**Advocate :** Jagdish Vyas, for the Appellant; D.S. Sodha, for the respondent No. 1, for the Respondent

**Final Decision :** Partly Allowed

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## Judgement

1. By way of this writ petition, the petitioners (employers) seek to question the order dated 09.03.2012 as passed in OA No. 348/2010 whereby, the Central Administrative Tribunal, Jodhpur Bench, Jodhpur ("the CAT") has allowed the claim made by the applicant (respondent No. 1 herein) for appointment on the post of Telecom Technical Assistant ("TTA") on the ground that the post as advertised was still available with the petitioners for one of the selected candidates in Scheduled Caste ("SC") category having left during the course of training and before appointment; and for the applicant being placed in the waiting list pertaining to the SC candidates. The relevant facts and background aspects of the matter had been that the applicant-respondent No. 1 applied for the said post of TTA in response to an advertisement dated 06.10.2008; and ultimately secured 3rd position in the merit standing of SC candidates but was kept in the waiting list at serial number 1 as there were only 2 vacancies earmarked for the SC candidates. The applicant, while asserting that the present petitioners got an agreement bond executed from him and he was also asked to submit a demand draft in the sum of Rs. 5,000/- towards security, pointed out that under a communication dated 30.07.2009, it was informed that he would be called in case any of the selected person leaving the training. The applicant

submitted that at the later stage, upon coming to know of the fact that one of the trainees Shri Lalit Kumar, an SC candidate selected against the reserved vacancy, left the training half way through, he made the request to the petitioners to consider his case for appointment. Upon failing to get a favourable response, the applicant filed the OA leading to this petition.

2. The stand of the present petitioners before the CAT in opposition of the said OA was that all the selected candidates were called for 10 weeks" TTA training from 22.06.2009; and the said Shri Lalit Kumar also joined the training but after 5 weeks, submitted his resignation on 27.07.2009. The petitioners submitted that after receiving the resignation, the said Shri Lalit Kumar was asked to deposit the amount of Rs. 13,938/- paid to him during the training period and after his depositing the requisite amount on 04.12.2009, his recruitment was cancelled w.e.f. 13.01.2010. It was contended that there was no vacant post of TTA available until 13.01.2010, the date on which the recruitment of Shri Lalit Kumar was cancelled. The petitioners asserted before the CAT that once all the candidates joined, the vacancies stood filled up and the wait list was having no purpose because once the notified vacancies were consumed, in the event of any vacancy arising later, on account of resignation or otherwise, the same could not have been filled up from the wait list.

3. The CAT referred to clause No. 14 of the advertisement inviting applications essentially to the effect that prior to the appointment as TTA, the selected candidates were to successfully complete the training; and the seniority was to be assigned on the basis of the merit position obtained in the training. It was also noticed that even in the communication as made to the said Shri Lalit Kumar, the present petitioners had stated that after successful completion of training, he would be appointed by the GMTD, Sirohi after ensuring the receipt of police verification. The CAT also referred to the communication dated 30.07.2009 whereby it was clearly given out that the applicant had been kept in the reserve list and would be considered in the event of any one of the selected candidates withdrawing from the training. After consideration of the material on record and the overall circumstances, the CAT found that a case was made out in favour of the applicant and, while allowing the OA, directed the respondents to accommodate him in the next available training with further directions that subject to successful completion of training, he would be treated as if having undergone the training in the 2009 batch itself; and his seniority would be above the subsequent batch. The CAT also directed that in case there was no schedule for the training in the near future, the applicant be imparted the training as a special case. The relevant observations and directions by the CAT in its impugned order dated 09.03.2012 read as under: -

11. All the above would go to prove that when Lalit Kumar had left the Training course he was only a TTA Trainee and not a TTA. He would have crystallized his appointment as TTA only on completion of full ten weeks" training course and after successful completion of the training. And his seniority would be based on

the merit position in the Training. In view of the fact that the said Lalit Kumar had not completed the Training, he cannot be said to have been appointed to the SC reserved post of TTA. Thus, the said vacancy cannot be said to have been consumed or utilized, to make the wait list to be ceased to exist. The wait list is thus alive and since the applicant is first in the waiting list and since he had already furnished necessary bond, he has to be imparted the training and on successful completion of the same he would be appointed to the post of TTA. The decisions cited by the counsel for the applicant do not apply to the facts of this case, as the vacancy in question is not one that had arisen subsequently.

12. Respondents' counsel argued that the training period of ten weeks has already been over. Be that as it may, the applicant could well be accommodated in the next available training and he would be subject to successful completion of the training he would be treated as if he had undergone the training in the 2009 batch itself and his seniority would be above the subsequent batch.

13. Thus, the OA fully succeeds. It is declared that the applicant is entitled to be sent for training and followed by appointment to the post of TTA. Respondents are directed to act accordingly. If in the near future, there is no scheduled training, then the applicant be imparted training as a special case.

4. Assailing the order aforesaid, the Learned Counsel for the petitioners has strenuously argued that the order passed by the CAT runs contrary to the fundamental principles that merely for occurrence of a subsequent vacancy after filling up of the advertised posts, the person standing in the so-called wait list acquires no right; and rather, the appointment to the vacancies arising subsequently has to be made after advertisement and after giving opportunity to the other eligible candidates in the open market. The Learned Counsel has particularly referred to the decisions of the Hon'ble Supreme Court in *State of Punjab Vs. Ragbir Chand Sharma and Another*, *Mukul Saikia and Others Vs. State of Assam and Others*, *Ashok Kumar and Others Vs. Chairman, Banking Service Recruitment Board and Others*, and *Sanjoy Bhattacharjee Vs. Union of India and others*,

5. Per contra, the Learned Counsel for the applicant (respondent herein) has duly supported the order impugned and submitted that the principles as referred by the Learned Counsel for the petitioners do not apply to the fact situation of the present case because, in view of the stipulation in the advertisement and the procedure as adopted by the petitioners, consumption or filling up of the posts was to occur only upon successful completion of the training by the candidates; and, in fact, the seniority was also to be settled as per the result of the training. The Learned Counsel submitted that the petitioners were aware of the requirements of the procedure adopted by them and hence, under the communication dated 30.07.2009, assured the applicant of invitation in case of any person leaving the training. The Learned Counsel submitted that the petitioners indeed got completed all the basic formalities including execution of the bond and taking of security money from the applicant so as to invite him to

training soon on any person leaving; and there was no reason that the applicant was not invited immediately upon resignation by one of the candidates during the training.

6. After having given a thoughtful consideration to the rival submissions and having examined the record, we are unable to find any jurisdictional error on the part of the CAT insofar it has pronounced on the entitlement of the applicant to be taken in the training and then, for being appointed upon successful completion of the training.

7. The principles emanating from the decisions cited by the Learned Counsel for the petitioners are neither of any doubt nor of any dispute. In the ordinary course, there exists no legal right in a person to be appointed only for the reason of being placed in the wait list; and appointment to the vacancies arising subsequently has to be by way of selection from the open market. However, these principles apply upon existence of a basic and fundamental fact that the vacancies have been filled up from the select list. In the present case, however, the very method and mode of recruitment as adopted by the petitioners had been different and, in the contextual meaning, "consumption of vacancy" was not to occur before appointment of the person concerned; and such appointment was to be made only after successful completion of training. As per the procedure envisaged and adopted by the petitioners, the persons on the select list were, before the appointment, required to undergo successfully the training; and the seniority was to be settled on the basis of the marks obtained after such training. This aspect is distinctly available in clause No. 14 of the advertisement in question, that reads as under:

8. In the face of the above stipulation, in our opinion, the CAT has rightly observed that for the reason of the said Shri Lalit Kumar not completing the training, he cannot be said to have been appointed on the post of TTA in the SC category; and the said vacancy cannot be said to have been consumed or utilized so as to annul the wait list.

9. In view of the above, we find no reason to consider interference in that part of the order impugned where a right has been declared existing in the applicant for being called to the training upon the said Shri Lalit Kumar aborting the same half way through. It appears that the petitioners themselves were very much aware and conscious of the right existing in the applicant for being called to the training in case of any selected person not completing the training and that is why, the communication to that effect was made to the applicant on 30.07.2009. Noticeable further it is that as per the petitioners themselves, the said Shri Lalit Kumar submitted his resignation on 27.07.2009. When on the date of issuance of the communication dated 30.07.2009, the said Shri Lalit Kumar had already resigned, the petitioners, in all fairness, could have called the applicant immediately. Merely because the petitioners chose to accept the resignation only in the month of January 2010 after completion of certain formalities, they cannot suggest that vacancy was not available as on 30.07.2009.

10. Thus, in an overall view of the matter, no case for interference in the principal part of the order passed by the CAT is made out.

11. However, so far the other part of the order impugned and the directions as issued by the CAT are concerned, we have reservations on the proposition that the applicant is to be treated as if having undergone the training in the year 2009. During the course of submissions, we have inquired from the Learned Counsel for the petitioners if any selections have taken place subsequent to the one in question to which, the Learned Counsel for the petitioners, after obtaining instructions, submitted that no such selections have been made. In the given fact situation, when no selections have taken place after the one in question, there shall not be any dispute about the applicant's seniority over the subsequent batch but, there appears no warrant for the proposition that he be treated having undergone the training in 2009 batch itself. The applicant had filed the OA in the year 2010 and was granted the relief by the CAT on 09.03.2012. In the given set of facts and circumstances, settlement and adjustment of his claim vis-a-vis the administrative requirements can only be made from the date of his joining for training and not before.

12. In the impugned order dated 09.03.2012, the CAT granted 4 months' time for compliance of its direction and that period has already expired. In the totality of the circumstances, we are of the view that interest of justice shall be served with modification of the directions as issued by the CAT in paragraphs 12 & 13 of the order impugned to the limited extent and in the manner that the applicant shall report for joining on or before 31.08.2012 in the office of General Manager Telecom, District Sirohi; and for all practical purposes, this date of joining by the applicant shall be the reckoning date in relation to all the matters for and after the training. Ordered accordingly.

13. We would, however, reiterate the requirement as stated by the CAT in paragraph 13 of the impugned order that if there is no schedule of training in the near future, the applicant shall be imparted training while treating it a special case. This writ petition is partly allowed only to the limited extent as indicated above. No costs.