
(2009) 12 AHC CK 0177
In the Allahabad High Court

Bharat Sanchar Nigam Ltd.& Ors.

APPELLANT

Vs

Ramit Maurya & Ors.

RESPONDENT

Date of Decision : 24-12-2009

Acts Referred:

Citation : (2009) 12 AHC CK 0177

Hon'ble Judges : Sunil Ambwani, J and Krishna Murari, J

Final Decision : Allowed

Judgement

Krishna Murari, J.—The writ petition was taken up on a mention made by Shri Subodh Kumar appearing for Bharat Sanchar Nigam Limited (BSNL). Today is the last working day before winter holidays. It is submitted by him that the examinations are going to be held on 3rd January, 2010 in the centers all over the country for recruitment on 210 posts of Deputy General Managers in Telecom Management Services (TMS) (150), and Telecom Accounts and Finance Services (TAFS) (60) vide advertisement dated 14th July, 2009. The Central Administrative Tribunal (CAT) by its order, under challenge, has restrained BSNL to hold the examinations. Since the Court will reopen on 4th January, 2010, and thus the matter may be taken up today.

2. We accepted the mention. The Advocates are not appearing in Court on account of resolution of the Bar Association and thus we heard both the parties in chambers.

3. Heard Shri Subodh Kumar assisted by Shri Udit Chandra for the petitioners. Shri Shailendra appears for the respondent Nos.1 to 7. He has been served with copy of the writ petition. He had appeared for respondent Nos.1 to 7 in the Central Administrative Tribunal (CAT), and has addressed us on merits on stay application.

4. Let notice be served on respondent Nos.8 and 9 through the office of the Addl. Solicitor General of India in the High Court.

5. All the respondents are allowed four weeks" time to file counter affidavit. The

petitioner will have one week, thereafter, to file rejoinder affidavit. List on 2nd February, 2010.

6. Shri Subodh Kumar appearing for BSNL submits that the CAT has by its judgment dated 18th December, 2009 issued directions to the BSNL not to give effect to the advertisement dated 14.7.2008 and not to hold examination on the post of Direct Recruitment Rules, 2009 (BSNL TMS and BSNL TAFS). A further direction has been issued to make promotions on the vacant post of DGM, as done in past, till absorption is finalised, as has been done in the past, and not to make appointment by direct recruitment except in exercise of valid authority of law and without affecting/prejudicing the right of officers governed by Rules of 1992.

7. All the 7 respondents are officers of Indian Telecom Service of 1999 batch. They are serving on deputation in BSNL. At present they are working in STS grade and are expecting promotion on the post of DGM. They have not given their options to be absorbed in BSNL. In their option forms submitted by them in the year 2008, they have opted to continue in Government service. A note has been appended to each of the option form as follows:

"In addition to the matter being subjudice, I note that the terms and conditions do not have information on service conditions, career progression including number of vacancies, protection of service, pension etc in PSU and no information on the so called "Government Service" and its redeployment policies etc. In view of this, it is not possible for me to take an informed decision. Under such circumstances, I shall continue in the Indian Telecom Service, Group "A" of Government of India as offered to me at the time of my recruitment."

8. The BSNL published Recruitment Rules BSNL on 14th July, 2009 effective from 11th June, 2009, providing for common management posts. The mode of recruitment for these posts is either by examination or interview or examination and interview or campus selection. Rule 14 of these Rules provide that these rules will also be subject to final terms and conditions of absorption of Group A officers in BSNL in future.

9. The CAT found that prior to these Rules BSNL had published Recruitment Rules (2008), of directly recruited DGM of BSNL Management Service. A corrigendum was issued by which Rules 2008 were corrected as Rules, 2009, issued on 25th June, 2009. The authorised strength of the directly recruited DGM of BSNL Management Service is shown to be 150 for DGMs TMS and 60 DGMs TAFS.

10. The Tribunal found that the Rules of 14th July, 2009 have superseded the Rules of June 25th, 2009, and that no mode is prescribed for direct recruitment for filling up these posts. The BSNL should, therefore, follow old practice of promotions to the post of DGM.

11. Shri Subodh Kumar would submit that there are 650 vacancies on the post of DGM out of which only 210 are proposed to be filled up by direct recruitment, for

providing experts in accounts and information technology. There would still be 440 vacancies on the posts of DGM in the BSNL. He submits that the seven claimantrespondents asserting individual rights to be absorbed and promoted as DGM will have sufficient number of vacancies available for them. They could not have, therefore, prayed to stop the direct recruitment by holding examination to only 210 posts. The direct recruitment is being made under the Rules published on 14th July, 2009 w.e.f. 11th June, 2009 and thus the advertisement dated 14th July, 2009, does not suffer from any illegality.

12. Shri Shailendra submits that the terms and conditions of the absorption are not yet clear. The respondent would like to be absorbed in BSNL, if the terms and conditions of their services after absorption are made clear to exercise the right of option. The BSNL should not be allowed to fill up the vacancies on the post of DGM by direct recruitment as there is no provision of direct recruitment in the Rules published on 14th July, 2009 and which have superseded the Rules published on 25th June, 2009. He submits that chances of ITS officers of 1999 batch as well as other batches are going to be adversely affected by the direct recruitment.

13. The respondents have not yet given their option to be absorbed in BSNL. In their option form dated 15.10.2005, they had clearly mentioned that they want to continue in Government Service. The BSNL is still ready to absorb them on the terms and conditions accepted by many other officers. Until their absorption their appointing authority continues to be the Department of Telecommunication, Government of India.

14. Prima facie we do not find any illegality in the selections to be filled up 210 advertised post by direct recruitment. The seven officers of Indian Telecom Services awaiting absorption, cannot be permitted to hold up the entire selections of 210 advertised posts. At best they have a right to be promoted on the seven posts of DGM. Shri Subodh Kumar has pointed out that there are still 440 vacancies available.

15. The findings recorded by the CAT that Recruitment Rules dated 25th June, 2009 have been made redundant and are superseded in view of the Rules dated 14th July, 2009, require consideration. The Rules made by the competent authority have to be harmoniously construed with the policy of the Corporation and the objects sought to be achieved. The BSNL decided to recruit experts in accounts and IT sectors, for improving their services, leaving sufficient vacancies for promotion. The reading of the two set of rules does not prima facie show that the Rules dated 25th June, 2009 providing for direct recruitment of DGMs have been superseded by the Rules dated 14th July, 2009 to be effective from 11th June, 2009. The Rules dated 14th July, 2009 clearly provided in Rule:

"18. Residuary Matters: that in regard to the matters not specifically covered by or under these rules, the persons appointed will be governed by the Rules, Regulations and orders decided upon by the company."

16. At this stage the question of seniority raised by Shri Shailendra is hypothetical. It cannot be said that by direct recruitment their seniority after their promotion as DGM, on their own turn, in the vacant posts will be adversely affected.

17. The BSNL has made out strong prima facie case to stay the operation of the order of the Tribunal. We, therefore, direct that until further orders, the effect and operation of the judgment of the Central Administrative Tribunal, Allahabad dated 18th December, 2009 in Ramit Maurya & 6 Ors. Vs. Union of India, shall remain stayed.