
(2013) 04 SHI CK 0040

In the High Court Of Himachal Pradesh

Case No : LPA No. 65 of 2008 and CWP No. 8360 of 2010

Chief Managing Director and Others

APPELLANT

Vs

Smt. Bhadra Sheela
 Bharat Sanchar Nigam Limited
and Others Vs Sh. Naresh Kumar

RESPONDENT

Date of Decision : 29-04-2013

Acts Referred:

Citation : (2013) 04 SHI CK 0040

Hon'ble Judges : Kuldip Singh, J;Dev Darshan Sood, J

Bench : Division Bench

Advocate : Ashok Sharma in LPA No. 65 of 2008 and Mr. Ashok Kumar in CWP No. 8360 of 2010, for the Appellant; Archana Dutt, Advocate in LPA No. 65 of 2008 and Mr. Vikas Bhardwaj, Advocate in CWP No. 8360 of 2010, for the Respondent

Final Decision : Dismissed

Judgement

Dev Darshan Sood, J.—Both these petitions are being disposed of by this judgment as they involve common points as urged. Adverting to CWP No. 8360 of 2010, the petitioners have challenged the judgment passed by the learned Central Administrative Tribunal, Chandigarh Bench at Shimla allowing the application preferred by applicant-Naresh Kumar directing the petitioners herein to consider the case of the applicant as per his eligibility for promotion to the post of J.T.O. on the basis of examination held in 2000. The relief was granted w.e.f. June, 2003 with all consequential benefits including arrears of pay and allowances and seniority etc. However, it was made clear that the actual benefits shall be restricted to 18 months from the date of filing of the Original Application which was filed on 4.11.2009. Further direction was issued that these directions be complied within a period of three months from the date of receipt of copy of the order. The judgment then proceeds that the orders would be subject to the final outcome of Letters Patent Appeal pending in the High Court only with respect to the issue of abolition of the 5th post.

2. Respondent-Naresh Kumar approached the petitioners pleading that he was promoted as Senior Telecom Officer Assistant in 1995 and is working in such capacity with the Bharat Sanchar Nigam Limited. Under the rules applicable for promotion to Junior Telecom Officers in 1996, the post of Junior Telecom Officer (JTO) was to be filled in by 50% by way of direct recruitment and 50% by promotion from amongst the Senior Telecom Officer Assistants. Out of this 50% quota, 15% of the post were to be filled up by Departmental Competitive Examinations, which examination was in fact held on 14th/15th September, 2000 for the vacancies available upto 31.8.1999. Applicant pleaded that he appeared in the examination and result was declared on 16.3.2001. The vacancy position was revised by letter dated 8.1.2002 in which the number of vacancies were mentioned as four. On 24.1.2002, three candidates were appointed. Subsequently on 10.3.2003 vide Annexure: A6, the criteria for filling up the post of J.T.Os was revised and relaxed. The result was declared in which the applicant was placed at serial No. 5 of the merit list. The case set out by the applicant was that the vacancy position was not correctly assessed. The applicant was informed that he was placed at 5th place and he could not be promoted. Reliance was placed on behalf of the applicant on the judgment in Civil Writ Petition No. 780 of 2004 titled Bhadra Sheela Vs. BSNL that vacancies existing as on 31.8.1999 were five and not four. Learned Tribunal notes that this information was conveyed in the form of an affidavit filed by Sh. Amar Singh, AGM (HRD) which has been filed as Annexure: A with the petition. On learning about this fact, a representation was made by the applicant for promotion against the 5th vacancy but the applicant was not granted any relief. On the basis of the affidavit filed in this Court, the Tribunal held that there were five vacancies and in this eventuality the applicant was required to be promoted. In these circumstances the petition was allowed and a direction was issued to the respondent-BSNL to fill up the post.

L.P.A. No. 65 of 2008.

3. The appellants herein challenge the judgment of the Hon"ble Single Judge considering the case of the respondent herein for promotion to the post of Junior Telecom Officer from the due date against the 19 vacancies available till the year 1999.

4. The facts as pleaded are that the recruitment to the post of Junior Telecom Officer was regulated by the Recruitment Rules, 1996. 50% vacancies of the posts of Junior Telecom Officers were to be filled up by way of direct recruitment and remaining 50% by way of departmental promotion/transfer of vacancies. Out of this 50% quota, 15% posts are to be filled in by promotion of departmental candidates by competitive examination.

5. The case proceeds that respondent-Smt. Bhadra Sheela appeared in the competitive departmental examination conducted in the year 1996 for 24 vacancies in 15% quota. None of the candidates qualified from any category and subsequently the norms were relaxed and thereafter only 11 candidates qualified for promotion to the post of Junior Telecom Officer. 13 vacancies remained

unfilled for which examination was held on 15th/16th May, 1999. No vacancy was filled up and subsequently on 14th/15th September, 2000, another examination was conducted. She appeared in this examination and secured 30% marks. By communication dated 10th March, 2003, the department relaxed the condition for obtaining minimum qualifying standard in each subject and the minimum aggregate marks in all four subjects were revised to 30% for OC candidates and 20% to SC/ST candidates. On learning about the relaxation made by the department, the respondent represented for being appointed against one of these vacancies available. This representation was rejected on 26th May, 2004 when she was informed that only one vacancy was available. She issued notice through her Advocate to the appellants on 30th July, 2004. In reply it was admitted by the appellants that 13 vacancies of the year 1994 remained unfilled. She was also informed by communication dated 2.7.1997 that the department has introduced post based roster but this letter was not supplied to her. She represented to the Chief General Manager asking for this communication which has now been filed with the writ petition.

6. The Hon"ble Single Judge on the material placed on record with the pleadings holds that by communication dated 22.4.2004, there were 24 vacancies (OC-18, SC-4, ST-2) under 15% quota for promotion to the post of Junior Telecom Officer for which examinations were held in the year 1996. No candidates from any category qualified the examination which norms were later on relaxed and even after that only 11 candidates qualified the examination. As a result 13 vacancies (OC-11, SC-1 and ST-1) remained unfilled even after applying relaxed standards. She appeared in the departmental examination for the 15% quota in the year 2000 where she was declared successful. She represented that her case be considered against 19 unfilled vacancies up to the year 1999.

7. The appellants had urged before the Hon"ble Single Judge that by communication Annexure: R1 dated 1.6.1982, the vacancies which remained unfilled were required to be diverted. But this document was not considered by the Hon"ble Single Judge since by another communication Annexure: R4 dated 29th September, 2004, it was stated that except for the vacancy reserved for SC/ST held in abeyance and remaining unfilled for a period of one year or more would be deemed to be abolished. The Hon"ble Single Judge holds that the communication dated 1.6.1982 was confined to the Junior Engineer Recruitment Rules, 1980 only and in subsequent notification there was no provision of diversion to fill up the vacancies. The communication reads:

...The letter No. DGP&T 1-53/78-NCE (Pt. III) dated 1.6.1982 is related to JEs recruitment rules 1980 only. Subsequent notification of JTOs recruitment rule 1990, 1996 etc. no provision of diversion of unfilled vacancies of one quota to another quota was made. As such above mentioned letter dated 1.6.82 does not hold any ground now. The position clarified vide Jt. DDG (DE) letter No. 12-15/2002-DE dated 26-6-2003 stands.

Regarding carrying forward of the unfilled vacancies of the examination held in

the year 1999 to the examination held in the year 2000 is concerned, it is intimated that as per MOF OM No. 7(7)-E(Co-ord)/93 dated 3.5.1993, the post (except those reserved for SCs & STs) held in abeyance or remaining unfilled for a period of one year or more, it would be deemed to be abolished. The order for abolition of these posts should have been issued within one month from the date of abeyance or remaining unfilled for the period of one year. However, the CGM may recreate the JTO posts within his power on workload basis in consultation with the IFA.

8. The subsequent communication Annexure: R5 issued by the Assistant General Manager, H.R.D. states:

...7. BSNL Corporate office, New Delhi has not clarified whether the unfilled vacancies of 15% quota can be carried forward to 15% quota of the next year. JE RR of 1990, 1996 are also silent on this issue. In this connection it is submitted that the MOF OM No. 7(7)-E(Co-ord.)/93 dated 3.5.1993 stipulates deemed abolition/holding in abeyance of the posts lying vacant for more than one year. Such orders are to be issued within one month. However, no posts have been abolished by this office in this case.

9. Subsequently, again on 25th May, 2007 the department clarifies:

The position w.r.t. DGP&T letter No. 1-53/78-NCG (Pt. III) dated 1.6.1982 has already been clarified vide this office letter of even No. dated 29.9.2004. It is reiterated that instruction dated 1.6.1982 is related to JEs recruitment rules 1980 only. Subsequent to notification of JTOs recruitment rules 1990, 1996 etc., the letter dated 1.6.1982 has no relevance.

2. As regards carrying forward of the unfilled vacancies of 15% quota of an year to the 15% quota of the next year, it is clarified that any recruitment in a cadre is done keeping in view the provisions of relevant R/Rs. applicable for the concerned recruitment. Presuming that JTO posts are available, in the light of instructions contained in MoF OM No. 7(7)-E(Co-ord)/93 dated 3.5.1993, since the examination under reference held on 14/15.9.2000 was conducted under JTO R/Rs of 1996, the vacancies for recruitment under 15% quota are to be worked out in accordance with Col. 11 and Col. 12 of the said R/Rs, whereby, the method for recruitment whether by direct recruitment or by promotion of deputation/transfer and percentage of vacancies to be filled by various methods has been elaborated.

10. Taking into consideration this communication, the Hon'ble Single Judge concludes that the Instructions of 1982 was not applicable and 15% quota which was the subject matter for adjudication before this Court, the vacancies were to be filled up as per the Recruitment and Promotions Rules. It is the combined reading of this communication that the stand of the appellants was negated by the Hon'ble Single Judge.

11. A number of grounds have been urged by the appellants primarily that the

vacancy position has not been correctly considered and in these circumstances, the appeal deserves to be allowed.

12. We have heard learned counsel appearing for the parties and have gone through the judgment of Hon''ble Single Judge. We are not inclined to accept the submission made on behalf of the appellants. We find that the appellants itself has confused the position with respect to the available vacancies. At one time it was urged that the vacancies are to be diverted but from the clarification of the department we find that these instructions were applicable to the Recruitment Rules, 1980 and not of the subsequent rules under which the respondent(s) had appeared in the qualifying examination. We also find from the clarification of the department that no posts have been abolished. In this factual scenario, it becomes difficult to hold that the Hon''ble Single Judge was not aware about the factual situation and that it was not taken into consideration while adjudicating the case. We, thus, find no merit in both these petitions which are accordingly dismissed. No order as to costs.