

(2008) 04 AP CK 0053

In the Andhra Pradesh High Court

Case No : Writ Petition No. 18870 of 2007

M. Shanti and Others

APPELLANT

Vs

Bharat Sanchar Nigam Limited and Others

RESPONDENT

Date of Decision : 30-04-2008

Acts Referred:

Recruitment of Personal Assistants in the Field Units of Bharat Sanchal Nigam Limited
Rules, 2004 — Rule 4

Citation : (2008) 4 ALT 564

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : Venkateswarlu Posani, Gabgadgar Chamarty and A. Raghu Kumar,
for the Appellant; T. Bala Jayasri, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—A common question arises for consideration in all these writ petitions. Hence, they are disposed of through a common order.

2. The petitioners are working as Stenographers in A.P. Circle of Bharat Sanchar Nigam Limited. All of them have been initially working in other Circles, but were transferred to A.P. Circle on various dates. The post superior to that of Stenographer is the Personal Assistant. The appointment to that post is made on the basis of performance of the candidates in the written test (Part-A) and skill test (Part-B). While 50% of the vacancies of that post are earmarked exclusively for the category of Stenographers in the Circle, the balance are for the other categories of the employees in the Circle.

3. The third respondent issued a notification, dated 17.05.2007, proposing to conduct the written test for the post of Personal Assistants. On the basis of the relevant rules, it was mentioned that the Stenographers with five years of regular service in the Grade as on 01.07.2007 will be permitted to appear in the test. This was preceded by clarification, dated 02.08.2007, wherein it was mentioned that the cut-off date for calculating the vacancies would be

01.01.2004 and the cut-off date of deciding the eligibility with reference to five years regular service would be 01.01.2006. Another clarification was about the computation of service of the candidates, who were transferred from other Circles under Rule 38 of P & T Manual, Volume-IV. It was mentioned that the regular service must be in the new Circle to which the candidates are transferred and that the service rendered by them in other Circles cannot be reckoned. The petitioners feel aggrieved by the action of the respondents in stipulating the dates as mentioned above with reference to the determination of their eligibility. They contend that though an employee may forego his seniority when he is transferred to another Circle on request, he cannot be denied the benefit of the past service in the context of reckoning the eligibility. It is also stated that the clarification given vide proceedings, dated 02.08.2007, is opposed to the Recruitment Rules of Personal Assistants in the Field Units of B.S.N.L, published in February, 2004 (for short "the Recruitment Rules").

4. The respondents filed a counter-affidavit stating that the Recruitment Rules are silent as to the date, with reference to which the eligibility of Stenographers must be reckoned and the departmental circulars have clarified the same. It is urged that the petitioners themselves have agreed to forego the benefit of seniority in the previous Circles even with reference to the eligibility to appear in the competitive examinations.

5. Heard, Sri Venkateswarlu Posani, Sri Sai Gangadhar Chamarty and Sri Dr. A. Raghu Kumar, the learned Counsel for the petitioners and Ms.T.Bala Jayasri, the learned Standing Counsel for the respondents.

6. According to the schedule appended to the Recruitment Rules, the appointment to the post of Personal Assistant is non-selection in nature and holding of written test and skill test appear to be to assess the eligibility of the candidates. That having been done, the appointment would be guided by the seniority of the candidates in the feeder cadre.

7. Two questions arise for consideration on the basis of the submissions made by the petitioners. The first is about the date with reference to which the eligibility of five years standing in the feeder category must be reckoned; and the second is about the insistence on the length of service, being rendered in the Circle at which they are working at present.

8. As regards the first, the Recruitment Rules and its schedule are, no doubt, silent. However, column No. 6 of the schedule with reference to the post of Personal Assistant provides ample guidance. It relates to the age limit for the direct recruits. Having stipulated 28 years as the age limit, and relaxing to the extent of five years, in accordance with the instructions, the column reads as under:

The crucial date for determining the age limit shall be the closing date of receipt of application from candidates in India.

9. The Rule does not put any embargo on the candidates for the purpose of calculating their eligibility. When the Rule is silent as to any specific date for reckoning the five years service, obviously, the date of notification, if not the last date of receipt of applications, must be taken into account. The various clarifications issued by the Department or the Corporate Office cannot defeat the very spirit of the Recruitment Rules. Therefore, whatever may be the justification for the respondents in stipulating a date for reckoning the vacancies, they cannot disable the candidates by stipulating any date anterior to the one on which the notification was published or the one fixed as last date of receipt of the applications.

10. Now, it remains to be seen as to how the insistence on the service being rendered in the same Circle is correct or in accordance with the relevant Rules. Column 12 of the schedule referred to above reads as under:

50% by promotion by Limited Internal Competitive Examination (LICE) from amongst Steno of the respective field cadre with five years regular service in the grade and 50% by separate LICE (Open for internal candidates only) from amongst regular Group "C and Group "D" employees in the pay scale below the pay scale of 6500-10500 and having required qualifications as prescribed for direct recruitment in column 8 of the schedule, failing which by direct recruitment through examination.

11. The Rule is clear to the effect that five years of regular service is to be in the "Grade" and it has no reference or relevance to the place at which the individual is working.

12. It is no doubt true that whenever an employee is transferred from one unit to another, he had to forego the benefit of seniority in the previous unit. That, however, is different from indicating that he must forego the benefit of his entire service. It hardly needs any emphasis that the seniority of the employee, in a unit, is totally different from the length of service, which is to his credit. While the former depends upon the place, which they take after transfer, the latter remains constant irrespective of the place where he works. Therefore, the respondents cannot deny to the petitioners, the benefit of service and the insistence of five years of service must be in the Circle, where they are working at present, is not supported by the Recruitment Rules. This view is supported by the judgment of the Hon''ble Supreme Court in Renu Mullick v. Union of India. It was held as under:

The transferee is to be treated as a new entrant in the collectorate to which he is transferred for the purpose of seniority. It means that the appellant would come up for consideration for promotion as per her turn in the seniority list in the transferee unit and only if she has put in two years service in the category of UDC. But when she is so considered, her past service in the previous collectorate cannot be ignored for the purpose of determining her eligibility as per Rule 4 aforesaid. Her seniority in the previous collectorate is taken away for the purpose

of counting her seniority in the new charge but that has no relevance for judging her eligibility for promotion under Rule 4, which is a statutory rule. The eligibility for promotion has to be determined with reference to Rule 4 alone, which prescribes the criteria for eligibility. There is no other way or reading the instructions aforementioned.

13. Therefore, the petitioners shall be entitled to reckon their services in the "Grade" of Stenographer as opposed to the service in the Circle with reference to the date of notification. The writ petition is accordingly allowed, directing that the respondents shall reckon the eligibility of the petitioners i.e. 5 years of service in the "Grade" and not in the "Circle", with reference to the date of notification, dated 17.05.2007. There shall be no order as to costs.