

(2010) 03 CAL CK 0051

Calcutta High Court

Case No: F.M.A. No. 832 of 2007 and C.A.N. No. 6872 of 2006

Bharat Sanchar Nigam
Ltd. and others

APPELLANT

Vs

Arindam Das

RESPONDENT

Date of Decision: March 11, 2010

Citation: (2010) 125 FLR 548

Hon'ble Judges: Mohit S. Shah, C.J; Pinaki Chandra Ghose, J

Bench: Division Bench

Advocate: Tarakeswar Pal and Subir Kumar Saha, for the Appellant; D. Saha Roy and Pingal Bhattacharyya, for the Respondent

Final Decision: Dismissed

Judgement

Pinaki Chandra Ghose, J.

This appeal is directed against an order and/or judgment dated 3rd August, 2006 passed by the learned Single Judge.

2. On 13th February, 1998 the petitioner joined as a Group-D employee in the Calcutta Telephones. The Department of Telecommunications was, amalgamated/merged into BSNL with effect from 1st October, 2000. The writ petitioner was absorbed in BSNL on 1st October, 2000. Applications were invited, to promote eligible Group-D employees in the cadre of Telecom Mechanic (Group-C) by the respondents (the appellant herein) on 18th March, 1999.

3. The case of the writ petitioner in the writ petition being W.P. No. 16252 (W) of 2005 that he was qualified on 1st May, 1999 in the screening test for recruitment to the cadre of a Telecom Mechanic from his original Group-D post. Thereafter, on 1st February, 2000, the Government of India, Ministry of Communications, Department of Telecommunications, Office of the Chief General Manager, Calcutta Telephones published "eligible" list of "selected Telecom Mechanics" who had qualified from Group-D. The name of the petitioner was included in the said list. It further appears

that the writ petitioner specifically pleaded in the writ petition which reads as follows:

9. That thereafter, qualifying screening test has been conducted amongst the Group-D employees who have applied for promotion to the post of Telecom Mechanic on 1.5.1999. Your petitioner successfully came out from the said selection test and thereafter, Assistant General Manager (R&E), Calcutta Telephones under his memo dated 1.2.2000, published the names of successful candidates. In the said panel, your petitioner's name has been placed against serial No. 711.

4. Affidavit-in-opposition was also filed and it appears that the appellant did not deny the said fact that contents of Annexure P-6 to the writ petition being a document on record has been admitted and no denial has been made by the appellant. Therefore, it is admitted that the petitioner had qualified in the screening test held on 1st May, 1991 for recruitment to the cadre of Telecom mechanic and his position stood at Sl. No. 711 of the list.

5. By a subsequent communication dated 3rd November, 2000 of the appellant herein, a release order was issued by M/s. Bharat Sanchar Nigam limited, Calcutta Telephones wherein it is stated that "On successful completion of 8 (Eight) weeks training of "Telecom Mechanic (Extv)" w.e.f. 11.9.2000 to 31.1.2000 conducted by DTTC/Bally gunge Place, the following trainees are thereby released from this Training Centre w.e.f. 3.11.2000 (A/N) with the instruction to report back to their parent cadre and parent sections."

Therefore, the said release of 29 (twenty-nine) Telecom Mechanics was on Completion of their being subjected to 8 (eight) weeks successful training during the period 11th September, 2000 to 2nd November, 2000. Therefore, the petitioner's status, after having successfully qualified in the Screening Test, was already that of a Telecom Mechanic because had it not been so, he would not have been subjected to 8 (eight) weeks training along with the remaining 28 (twenty-eight) Telecom Mechanic Trainees as it would be evident from Annexure P-7 itself.

7. On 27th May, 2005, the appellant caused a memo issued from the Office of the Chief General Manager, Calcutta Telephones, widely circulating its Intention of holding a limited Departmental Competitive Examination for appointment/promotion to the post of a Telecom Technical Assistant. The Syllabus for limited Departmental Competitive Examination for Telecom Technical Assistant is set out hereunder:--

SYLLABUS FOR LIMITED DEPARTMENTAL COMPETITIVE EXAMINATION FOR TELECOM TECHNICAL ASSISTANT

Qualification and the cadres eligible to appear for Limited Departmental Competitive Examination--

(a)(i) Telecom Operating Assistant (TOA) with five years regular service; or

(ii) Senior Telecom Operating Assistant (Sr. TOA) with five years regular service (including the service rendered as Telecom Operative Assistant), holding 10+2 standard certificate or equivalent.

(b)(i) Telecom Mechanic holding 10+2 standard certificate or equivalent, and (ii) Technicians, other than Technicians eligible for promotion through absorption, with 5 year's regular service in the respective cadres.

8. The learned Counsel appearing on behalf of the appellant in support of this appeal contended before us that it would be evident from the said syllabus that under "(B)(i)" Telecom Mechanic holding 10+2 standard certificate or equivalent are eligible for the said limited departmental examination and, furthermore, they must have five years regular service in their respective cadre. He specifically drew our attention in "(B)(ii)" and submitted that the said five years regular service in Technicians, other than Technicians are eligible through Absorption in their respective cadres. According to him, it has to be read that the qualification mentioned in "(B)(i)" would also include five years regular service in the said cadres.

9. He further submitted that five years experience is nothing but a mandatory criteria. He further drew our attention to the Rules deals with the promotion which reads as follows:--

(B) Promotion:

Through limited Departmental competitive examination from amongst the following Group "C" employees of Telecom Engineering--

(a)(i) Telecom Operating Assistant (TOA) with five years regular service; or (ii) Senior Telecom Operating Assistant (Sr. TOA) with five years regular service (including the service holding 10+2 standard certificate or equivalent.

(b)(i) Telecom Mechanic holding 10+2 standard certificate or equivalent, and (ii) Technicians, other than Technicians referred to in item "A" relating to absorption above with 5 years regular service in the respective cadres.

10. He further submitted that the five years regular service in the cadre is a mandatory one for promotion also.

11. On the contrary, it is submitted on behalf of the respondent that from the perusal of the said Rules it would be evident that the criteria of five years regular service is not required for Telecom Mechanics as specifically mentioned in "(B)(i)".

12. The learned Counsel appearing on behalf of the respondent submitted that five years experience was never a mandatory criteria and it cannot take away the rights of the writ petitioner the respondent herein and he supported the decision of the Hon"ble First Court.

13. Having heard the learned Counsel for the parties and after considering the materials on record, in our considered opinion, the Hon"ble First Court duly considered the facts of the case and came to the conclusion with the reasons and we do not intend to join issues with the reasoning given by His Lordship.

14. Accordingly, we find that the reasoning given in the order was absolutely justified and cannot call for any interference.

Hence, we do not find any merit in the appeal and the appeal is dismissed. Xerox certified copy of this order, if applied for, be given to the learned Counsel for the parties on usual undertaking.

Mohit S. Shah, C.J.

15. I agree.