

CENTRAL ADMINISTRATIVE TRIBUNAL
MADRAS BENCH

Friday the 25th day of February Two Thousand Eleven

P R E S E N T

The Hon'ble Mr.K.Elango Judicial Member
AND
The Hon'ble Mrs.O.P.Sosamma, Administrative Member

Original Application No 983/2010.

All India Graduate Engineer Telecom
Officers Association through
its Circle President
A.Kannan, SDE Circle President
Chennai Circle
AIGETOA
No.9,Sivasankaran Street
Kamrajarpuram
Ambattur
Chennai -53.

2.Thirumurugan
SDE, HRMS No.200200369
26,Bharathi Dasan Street
Muthialpet
Pondicherry - 605 003.

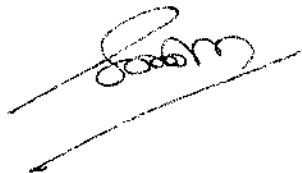
Applicants

Vs.

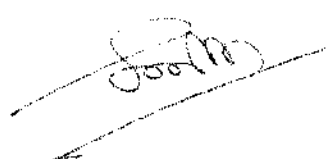
1. Bharat Sanchar Nigam Limited
Through Chairman-cum-Managing
Director
Bharat Sanchar Nigam Limited, Janpath
New Delhi - 110 001.

2. Bharat Sanchar Nigam Limited
Through Director(HR)
Bharat Sanchar Nigam Limited, Janpath
New Delhi - 110 001.

3. Bharat Sanchar Nigam Limited
General Manager- Personnel
Bharat Sanchar Nigam Limited, Janpath
New Delhi - 110 001.



4. Bharat Sanchar Nigam Limited
Chief General Manager
Chennai Telephone District
Purasawalkam
Chennai 600 010.
5. Bharat Sanchar Nigam Limited
Chief General Manager
Tamil Nadu Circle
No.80, Anna Salai
Chennai - 600 002.
6. All India BSNL Officers Association
(AIBSNLOA) rep. by its
Circle Secretary K.Rajasekaran
S/o.Palat Sankaran Street
Ashok Vignesh Apartments II Floor
Mahalingapuram
Chennai 34.
7. V.Kannan
S/o.Vaidyanatha Swamy
HF 3, Hansa Vandana
Naidu Shop Road
Radha Nagar Chrompet
Chennai 600 044.
8. All India BSNL Executives Association
Rep. by its Circle Secretary
N.Veerapandian
48, Head Post Office Street
Pattukottai.
9. Sanchar Nigam Executives Association (India)
Tamil Nadu Circle rep. by R.Asokan
P-27,6th Floor, SENA Bhavan
P.A.Towers
869, Poonamallee High Road
Chennai 600 010.
10. S.Sundarakrishnan
Assistant General Manager (CFA)
Bharat Sanchar Nigam Limited
O/o.Principal General Manager
(Development)
60, Ethiraj Salai
Chennai 600 008.



11.C.Durairasan
Senior Accounts Officer
O/o. Chief General Manager
Southern Telecom Region
No.11, Link Road
Ganapathi Colony
Guindy
Chennai 600 032.

Respondents

Counsel for the applicants

M/s.V.P.Raman

Counsel for the respondents

Mr.K.V.Shanmughanathan
(R1 to R5)

Mr.L.Chandrakumar (R 6& R7)

Mr.Aiyer and Dolia (R8 to 11)



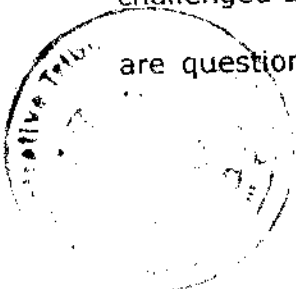
(Order pronounced by Hon'ble Mrs.O.P.Sosamma,
Administrative Member)

This O.A. has been filed challenging the Foot Note No.2 of Schedule 1A dealing with promotion to the post of DE/AGM/CAO of B.S.N.L. Management Services Recruitment Rules, 2009 bearing No.400-106/2007 dated 14th July, 2009

2. The applicants are all Graduate Engineers whose contention is that the Foot Note No.2 to Schedule 1(A) enables all the existing incumbents holding the post of Executives in the feeder cadre on regular basis on the date of Notification of the rules, eligible for promotion by dispensing with the basic educational qualifications of Engineering degree or degree of Indian Institute/University with total qualifying service of 7 years as on 1st January of the year and therefore, this Note is in violation of the mandatory requirements of minimum educational qualifications for recruitment to posts equivalent to STS and above which are technical and professional in nature and therefore seeks the following relief:

" to declare Foot Note.2 of Schedule 1A of the BSNL Management Services Recruitment Rules, 2009 framed by the first respondent dated 14.7.2009-Pers I in so far as the relaxation of the Minimum Educational Qualifications for the Executives to be promoted to the grade of DE/AGM/CAO i.e Group 'A' for the existing incumbents holding the posts of executives on regular basis on the date of notification of the rules as illegal, arbitrary unreasonable discriminatory and ultra vires."

3. The respondents 6 and 7 in their reply points out that this Foot Note is also part of the Rule and therefore the same cannot be challenged unless the authority and constitutionality of making the rule are questioned in relation to its vires. They cite the findings of the



Sosamma

Hon'ble Supreme Court in Tara Singh etc. Vs. State of Rajasthan and Others (AIR 1975 SC 1487) in support of this contention.

4. In this case the Hon'ble Supreme Court has held that when the Notes are made contemporaneously with the Rules, the function of the Note is to provide procedure and control discretion and the real purpose of the Note is that when rules are silent, the Notes will fill up the gap.

5. The Rule and the Note under challenge are quoted below:

<i>Grade (Equivalent) IDA Pay Scale in Rs.</i>	<i>Method of Recruitment</i>	<i>Whether selection by merit or selection cum seniority of non-selection posts</i>	<i>Field of selection/minimum qualifying service for promotion inter- se-seniority</i>
DE/CAO/AGM (Equivalent of STS i.e (E-4) promotion Rs.14500-350-18700	a) From directly recruited MTs, to the extent of vacancies decided by BSNL every year subject to maximum of 50% of the posts.	As per Management Trainee Recruitment Rule (MTRR)	
	b. 50% of posts by promotion from SDE/AO level executives	Selection-cum-seniority	From regular SDE/AO or equivalent grade of concerned stream, who are engineersgraduate/graduate (as detailed at note 2 below) from an Indian Institute/University recognised under Indian Laws, with total qualifying service of 7 years as on 1 st January of the year.

Note 2.

"Educational qualification for executives to be promoted to the grade of DE/AGM/CAO(see Sl.No.1b column No.5), shall be

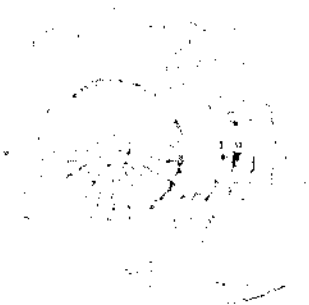
[Handwritten signature]

[Circular stamp]

engineering degree or equivalent in Telecommunications, Electronics & Computers/IT/Electrical for Telecom Operations and Graduate or equivalent in respect for Finance of BSNLMS. However, existing incumbents holding the posts of Executives on regular basis on the date of notification of these RRs shall continue to be eligible for promotion to the grade of DE/AGM/CAO."

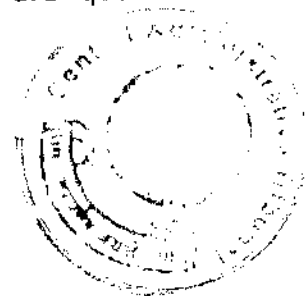
6. The Rule quoted above shows that in this case the Rule itself indicates that the selection will be from those fulfilling the qualifications as detailed at "Note 2". Therefore, the note has to be considered as part of the Rule only and hence the question to be considered is whether the applicants have made out a case for declaring the Foot Note No. 2 which is an integral part of the Rule as ultravires?

7. The main ground raised by the applicants in the O.A. is that Foot Note No.2 of Schedule 1A of the BSNL Management Services Recruitment Rules, 2009 gives relaxation to the provisions in the Rule prescribing minimum educational qualification for promotion and thus defeats the whole purpose of the Rule and hence this Note has to be ordered to be deleted. They point out that Recruitment for the post indicated at Sl.No.1 in Schedule 1A of BSNL MSRR 2009 is equivalent to the STS Group 'A' post in erstwhile Department of Telecommunications/Department of Telecom Services and the recruitments to these Group 'A' posts in Telecom Services were governed by the provisions of Indian Telecom Services Recruitment Rules. These rules were framed in 1992, and ever since its formulation till 2000, the year of corporatisation of the Telecom Services into BSNL, these rules were in vogue and these Rules prescribes the minimum educational qualifications for Group 'A' Officers to be an Engineering



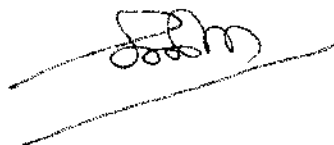
[Handwritten signature]

graduate. After corporatisation of Telecom into BSNL in 2000, the BSNL formulated the BSNL Management Services Recruitment Rules in 2009. As per these Rules, Recruitment to the post of SDE/AGM/CAO which is equivalent to the Group 'A' posts in the erstwhile Indian Telecom Services are governed by Schedule 1A which prescribes that 50% of the posts is filled by way of direct recruitment and the balance 50% by promotion from among SDE/AGM level executives based on selection-cum-seniority. In respect of direct recruitment the educational qualification for external candidates is B.E./B.Tech with MBA in regular stream and for internal candidates B.E./B.Tech with four years executive experience in BSNL and for promotees also the basic educational qualifications prescribed is Engineering degree. But the Foot Note No.2 relaxes this provision in the Rule, prescribing the minimum educational qualification of Engineering Degree, for existing incumbents holding the post on a regular basis, which according to the applicants is a relaxation of the eligibility condition prescribed in the Rules. The applicants further argue that such relaxation of qualification will deprive the legitimate claims of the qualified candidates. They cite the findings of the Hon'ble Supreme Court in K.S. Mathew and Others Vs. Govt. of NCT Delhi and Others and the findings of the Principal Bench of the CAT in OA No.2487/1998 dt.4.11.1999 in the case of Delhi Diagnostic Scientists Association and Another Vs. Govt. of NCT and Others to argue that authority should not resort to provisions of relaxation of essential conditions prescribed in the Recruitment Rules so as to promote unqualified candidates when there are qualified candidates available.



8. The official respondents 1 to 5 and the private respondents 6 to 11 have filed their reply. The official respondents in their reply point out that even as per ITS Group 'A' Recruitment Rules, 1992, 50% of Junior Time Scale level posts were filled up by direct recruitment through engineering services examination as per Rule 8 (1)(a). The remaining 50% JTS levels posts were filled up by promotion from Assistant Engineers belonging to Telecom Engineering Services Group 'B' cadre with three years regular service in that grade. They further submit that a degree in Engineering or its equivalent in Electrical or Electronics and Electrical Communication etc. is required for direct recruitment only and there was no qualification restriction for promotion to Group 'A' services for TES Group 'B' cadre in the said rules. A perusal of the ITS Group 'A' Recruitment Rules 1992 also confirms this point. Therefore, the contention of the applicants that till the corporatisation of Telecom Services into BSNL, the Recruitment Rules 1992 in the erstwhile Indian Telecom Services which were followed till then prescribed the minimum educational qualification of an Engineering Degree for promotion to Group 'A' Officers is not correct.

9. A reading of the Rule and Foot Note No.2 of Schedule 1A dealing with promotion to the post of DE/CAO/AGM of B.S.N.L. Management Services Recruitment Rules, 2009 as quoted in page No.5 of this order shows that Foot No.2 is only a protection to the existing incumbents who were eligible for promotion to Group 'A' posts even as per 1992 Rules. Therefore, this could not be considered as a relaxation to the existing Rules and this argument of the applicants is also not

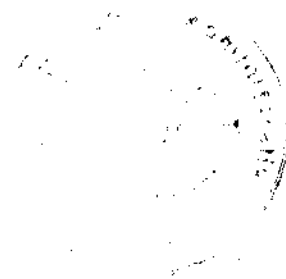


acceptable.

10. Another point raised by the applicants is that the impugned note is in violation of the guidelines issued by the DOP&T in OM No.AB14017/12/87-Estt(RR) dated 18.3.1988 wherein it is mentioned that for scientific and technical posts the educational qualification prescribed for direct recruitment should be insisted upon for promotees also in the interest of administrative efficiency atleast in the case of the Senior Group 'A' posts. The respondents in their reply point out that these instructions are only in the nature of guidelines and they are not binding and BSNL Management has got the right to formulate its own Rules. They also point out that these guidelines itself provides for protection for existing incumbents in para 3.1.3 wherein it is mentioned that when the existing eligibility criteria is enhanced it will adversely affect the persons holding the feeder grade posts on regular basis a *note* to the effect that the eligibility criteria shall continue to be the same for the persons holding the feeder posts on regular basis on the date of notification of the revised rules could be included in the revised rules.

11. This argument of the respondents seems to be reasonable and therefore, Foot Note No.2 of Schedule 1A of the BSNL Management Services Recruitment Rules, 2009 cannot be considered to be arbitrary or illegal on this ground.

12. The other grounds raised by the applicants that the relaxation is contrary to the interest of the BSNL is purely a matter of concern for the executive. Therefore, we are not going into the merits of this contention of the applicants. The Hon'ble Supreme Court in its findings



in State of Andhra Pradesh Vs. V.Sadananda and Others 1989 Supp SCC 574 has also emphasised the point that prescribing qualifications and mode of recruitment etc. are matters which comes under the domain of executive. The relevant findings which is cited by the respondents are quoted below:

"The mode of recruitment and a category from which a recruitment to a service is made are all matters which are exclusively within the domain of the executive. It is not for judicial bodies to sit in judgement over the wisdom of the executive in choosing the mode of recruitment or the categories from which the recruitment should be made as they are matters of policy decision falling exclusively within the purview of the executive."

13. In view of the above discussion and the findings of the Hon'ble Supreme Court quoted above, we consider that Foot Note 2 to Schedule 1A of the BSNL Management Services Recruitment Rules, 2009 which extends a right to be considered for promotion to the existing incumbents which was available to them in the earlier Rules also, cannot be considered as arbitrary or illegal. The applicants have not made out a case for granting the relief sought for.

14. Therefore, the O.A. is dismissed.

15. No costs.

28/2/11
 J. S. R.

