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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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**Date of Decision: 14.07.2014**

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**W.P.(C) 2424/2012 & C.M. No.5207/2012**

**PAWAN KUMAR GARG AND ORS**

..... Petitioner

Through: Mr. C. Hari Shankar with Mr.  
Pushkar Kumar Singh, Advocates

versus

**BHARAT SANCHAR NIGAM LTD AND ORS**

..... Respondent

Through: Mr. Rajnish Prasad, Adv. for R-1 to  
R-4

**CORAM:**

**HON'BLE MR. JUSTICE S. RAVINDRA BHAT**

**HON'BLE MR. JUSTICE VIPIN SANGHI**

**S. RAVINDRA BHAT, J. (OPEN COURT)**

1. The petitioners are aggrieved by the order of the Central Administrative Tribunal ("CAT/Tribunal") dated 16.01.2012, whereby the applications of the petitioners were dismissed.

2. The short question sought to be agitated before the Tribunal was whether vacancies in the post of Executive Engineer (Civil) – the nomenclature of which was at different points Assistant Engineer or Sub Divisional Engineer – had to be filled only from amongst the in-house degree holder candidates/graduate junior engineers, or the regular diploma holder Assistant Engineers as on 06.08.1994 also had

the right to be considered for the post of Executive Engineer (Civil).

3. The petitioners and the contesting respondents were originally employed by the Department of Telecommunication (DoT) as junior engineers. Subsequently, they were promoted as Assistant Engineers. The petitioners were graduate civil engineers. The contesting respondents are diploma holders. The conditions of service prevalent at the time of their initial entry were regulated by the recruitment rules of 1976 framed under Article 309 of the Constitution. These were amended with effect from 06.08.1994. The rules, inter alia, provided for promotion to the post of Executive Engineer (Civil) in the following manner:

*“(i) 50% from Asstt. Executive Engineer (Civil) who have completed probation and have rendered not less than 4 years regular service in the grade on the basis of seniority-cum-fitness.*

*(ii) 50% from Asstt. Engineer (Civil)/Asstt. Surveyor of Works (Civil)/Engg. Asstt. (Civil) who have completed probations and have rendered not less than 8 years regular service in the grade and possess a degree in engineering or equivalent”.*

*Note: However, the existing incumbent holding the post of Assistant Engineer (Civil) on a regular basis on the date of notification of these rectt. Rules shall continue to be eligible for promotion to the post of Executive Engineer if they possess a Diploma in Civil Engg from a recognised University/Institution or equivalent and 8 years regular service in the grade”.*

4. With the re-organisation of DoT and its functioning being

corporatized in the form a new entity i.e. Bharat Sanchar Nigam Limited (“BSNL”), its activities and employees were transferred to the said BSNL with effect from 01.10.2000.

5. It is not in dispute that till 14.07.2009, the BSNL did not formulate any rules nor modify any prevailing conditions of service. On that date, i.e. 14.07.2009, for the first time, the BSNL published what is known as BSNL Management Services Recruitment Rules, 2009 (hereafter referred to as “2009 Rules”). These, *inter alia*, provided that the post of Executive Engineer would be filled in the following manner:

“Sl No .”	<i>Grade (Equivalent) IDA Pay Scale in Rs.</i>	<i>Method of Recruitment</i>	<i>Whether selection by Merit or Selection cum seniority or non- selection post</i>	<i>Field of selection and the minimum qualifying service for promotion</i>
1	2	3	4	5
1.	<i>Assistant General Manager/EE/Arch (Equivalent to STS i.e. E4)  14,500-350- 18,700 (post based</i>	<i>Promotion from SDE/AE Level executives</i>	<i>Selection -cum- seniority</i>	<i>(a) From JTS grade having 4 years of regular service in the grade.  (b) From regular SDE/AE or equivalent grade of concerned</i>

	<i>promotion)</i>		<i>discipline, who are graduate (as detailed at note 2 below) from an Indian Institute/University recognised under Indian Laws in prescribed discipline, with total qualifying service of 7 years as on 1<sup>st</sup> January of the year.</i>
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*Note:*

1. xxxxx xxxxx xxxxx

2. *Educational qualification for executives to be promoted to the grade of Assistant General Manager/EE/Arch (see serial no.1, column no.5) shall be **degree in engineering or equivalent** in respect of Civil & Electrical Disciplines whereas degree in Architecture or equivalent and valid registration as Architect with the Council of Architects for Architectural Discipline”.*

(Emphasis supplied)

6. The existing diploma holders/Assistant Engineers were therefore sought to be deprived of their promotional avenue. This apparently led to some dissatisfaction within the organisation,

resulting in representations by them. Eventually, on 02.07.2010, the BSNL notified an amendment to the recruitment rules, by which it was clarified that those holding the post of Sub Divisional Engineer or equivalent (such as Assistant Engineer) on regular basis as on 06.08.1994 would continue to be eligible for promotion for the post of Executive Engineer. The amended rule read as follows:

*“However the existing incumbent holding the post of Sub Divisional Engineer or equivalent on a regular basis on the date of notification of P&T BW (Group A) Service Rules 1994 i.e. 06.08.1994 shall continue to be eligible for promotion to the post of Executive Engineer or equivalent STS level post in BSNL, if they possess a Diploma in Engineering in their respective branch from a recognised University/Institution or equivalent”.*

7. BSNL's subsequent move to consider diploma holders for promotion to the post of Executive Engineer was challenged by the petitioner/degree holders before the Tribunal. The petitioners contended that the contesting respondents were ineligible to hold the post of Executive Engineer. It was submitted that the said issue had been decided by the Jaipur Bench of the CAT, which had held that since the norms were formulated by BSNL for the first time in 2009, they were binding upon the parties and that diploma holders were not eligible to hold the post of Executive Engineers due to their lack of qualification. The degree holders further argued that once the BSNL formulated its recruitment rules and made a conscious departure from the pre-existing rules as of 1994, the diploma holders did not have any vested right to contend that the vacancies which arose during the time,

atleast after the transfer of the employees of DoT to BSNL, had to be filled by them.

8. Counsel for BSNL urges that the impugned order should not be interfered with. With respect to the Jaipur Bench ruling, it was submitted that the order was made at a point of time when the 2010 amendment had not been made by the BSNL. Stressing the importance of this event, learned counsel urged that the BSNL was alive and sensitive to the large scale dissatisfaction, which ensued as a consequence of the 2009 Rules. Once the BSNL decided to roll back the 2009 Rules, the petitioner and the other such degree holders could not contend that diploma holders were not eligible to be considered for promotion to the post of Executive Engineers.

9. It was argued that an important aspect which this Court should take note of is that between 2009 and 2010, no vacancies in the post of Executive Engineer were, in fact, filled and that consequently there would be no adverse impact on either section of the employees. Learned counsel submits that, in fact, promotions were made subsequently after the 2010 amendment.

10. It is evident from the above narrative that the 1994 Rules clearly visualised the promotion of not only the existing regular Assistant Engineers who were degree holders, but also those who held diploma qualifications. There could be no getting away from the fact that the DoT functions were handed over to the BSNL when the latter was incorporated in 2000. But the important aspect which this Court

– for that matter any other forum – cannot ignore is that for the period 2000-2009, the BSNL did not frame any rule or regulation contrary to the 1994 Rules. The Tribunal has termed this ‘no rule period’ as an omission. Whatever be the nomenclature, the fact remains that employees and officials who worked with the DoT were placed at the disposal of the BSNL, and they enjoyed such of the terms and conditions that were prevalent till the rule or regulation were formulated to the contrary, or otherwise, by the BSNL. In this regard, it is submitted by BSNL that there was a departure in the pay scales and industrial scale were granted over later. Likewise, the recruitment rules were formulated for the first time in 2009. This leads to conclusion between 2000-2009 i.e. ‘no rule period’, that the terms and conditions which applied when the officials were in the DoT, were applicable..

11. It could not be otherwise considered, as the BSNL is subjected to public control and also bound by Article 14. If the petitioners submission that the 2009 norms were to be impliedly applied, retrospectively from the year 2000 were to be accepted, serious repercussions would follow, in that the BSNL would be invested with the power to frame terms and conditions retrospectively, despite it not being a statutory corporation or possessing power to make any retrospective regulation.

12. It is settled law that regulations or rules cannot operate from a date anterior to their framing and publication (Ref. *Income Tax Officer Vs. M.C. Poonnoose*, AIR 1970 SC 385; *State Bank of India*

*Vs. Yogendrakumar Shrivastava*, 1987 (3) SCC 10). BSNL, in this case is a company and cannot therefore make rules which operate retrospectively.

13. So far as the period of 2009-2010 is concerned, even though the BSNL had made provision barring diploma holders the right to be promoted as Executive Engineers, an important aspect which appears to have persuaded the Tribunal to rule against the petitioner is that no vacancy was, in fact, filled in during that period. The vacancies were filled subsequently after the amendment in 2010. The 2010 amendment, in these circumstances, acquires greater primacy as it sought to extend the protection of a promotional avenue to existing or transferred employees of BSNL, serving as diploma holder Assistant Engineers – which class of employees are virtually a vanishing tribe.

14. In these circumstances, this Court finds no infirmity with the impugned order of the Tribunal. The writ petition is, therefore, dismissed.

**S. RAVINDRA BHAT, J**

**VIPIN SANGHI, J**

**JULY 14, 2014**

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