

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.
NEW DELHI, THIS THE 13th MARCH, 2003.

OA No.890/2002 & OA No.1306/2002

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE SHRI A.P. NAGRATH, MEMBER (A)

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1. U.Sanjeeva Rao, S/o.Hanumantha Rao, aged 55 years, working as DE(Ext), BSNL, Musheerabad,
- 2.P.Lakshminarayana, S/Subba Rao, aged 53 years, working as DE(Inst), BSNL, Hyderabad.
- 3.K.Durga Prasad, S/o.Rajashekaram, aged 56 years, working as AGM (TP), BSNL, Hyderabad.
- 4.K.Suryanarayana Murthy, S/o.Papaiah Sastry, aged 54 years, working as DE (RTTC), BSNL, Hyderabad.
- 5.Ilyas Ahmed, S/o.Sultan Mohinuddin, aged 55 years, working as DE(RTTC), BSNL, Hyderabad.
- 6.V.Ganga Rao, S/o.Subba Rao, aged 57 years, working as V.O, BSNL, Hyderabad.
- 7.C.V.Subba Redy, S/o.Gangi Reddy, aged 54 years, working as DE CC, BSNL, Hyderabad.
- 8.B.Kotilin Geswara Rao, S/o.Nagendran, aged 56 years, working as DE(Int), BSNL, Hyderabad.
- 9.P.Krishna Murthy, S/o.Satyam, aged 54 years, working as AGM(HRD), BSNL, Hyderabad.
- 10.N.Lakshmi Narayana, S/o.Mallikarjunudu, aged 56 years, working as AGM(Plg), BSNL, Hyderabad.
- 11.G.Ramakrishna, S/o.Subbaiah, aged 54 years, working as AGM(OP), BSNL, Hyderabad.
- 12.M.Madhusudana Raju, S/o.M.B.Raju, aged 50 years, working as DE(In), BSNL, Hyderabad.
- 13.U.Kumara Ro, S/o.U.Venkanna, aged 51 years, working as AGM(TP), BSNL, Hyderabad.
- 14.J.Gopala Krishnaiah, S/o.Adinarayanaiah, aged 57 years, working as AGM(MM), BSNL, Hyderabad.
- 15.G.Venkateswarlu, S/o.Venkata Subbaiah, aged 56 years, working as AGM(Adm), BSNL, Hyderabad.
- 16.V.V.Rao, S/o.V.S.N.Moorty, aged 56 years, working as DE(Mis), BSNL, Hyderabad.
- 17.J.Samson, S/o.Daniel, aged 51 years, working as DE(Inst), BSNL, Hyderabad.
- 18.A.Raghava rao, S/o.A.L.Rao, aged 54 years, working as DE(Ext), BSNL, Hyderabad.

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19. B.L.N.Somayajulu, S/o.Suryanarayana Murthy, aged 50 years, working as DE(Int), BSNL, Hyderabad.
20. P.Mallikarjuna Rao, S/o.P.V.Chalapathi Rao, aged 56 years, working as AGM(MM), BSNL, Hyderabad.
21. K.Gangjal Rao, S/o.Venkaiah, aged 51 years, working as DE(Inst), BSNL, Hyderabad.
22. T.S.R.Anjaneyulu, S/o.Laxminarayana, aged 43 years, working as AGM(Mkg), BSNL, Hyderabad.
23. P.Panduranga Rao, S/o.Narasimhulu, aged 55 years, working as DE(NRC), BSNL, Secunderabad.
24. D.M.Ramacharyulu, S/o.Gopalacharyulu, aged 57 years, working as DE(TI), BSNL, Hyderabad.
25. G.Sambasiva Rao, S/p/Satyanarayana, aged 50 years, working as DE(Plg), BSNL, Nizamabad.
26. B.Nagesh Rao, S/o.Prahlada Rao, aged 57 years, working as AGM(Adm), BSNL, Hyderabad.
27. A.M.K.Rao, S/o.Sanyasi Rao, aged 55 years, working as DE(Ext), BSNL, Hyderabad.
28. M.Sambasiva Rao, S/o.M.Kotaiah, aged 55 years, working as V.O HTD, BSNL, Hyderabad.
29. S.Vijaya Kumar, S/o.Joseph, aged 59 years, working as AGM(PR), BSNL, Hyderabad.
30. D.Ganga Satyam, S/o.Brahmayya, aged 54 years, working as DE OFC, BSNL, Secunderabad.
31. K.Nancharaiah, S/o.Venkaiah, aged 54 years, working as DE(Ext), BSNL, Secunderabad.
32. K.Gannayya Raj, S/o.Gannayya, aged 52 years, working as DE(PCM), BSNL, Hyderabad.

BY ADVOCATES :SHRI S.N.ANAND)

And:

1. Union of India, rep. By ^{its Secretary} Ministry of Communications, New Delhi.
2. Bharat Sanchar Nigam Ltd., rep. By its Chairman and Managing Director, No.20 Ashokā Road, New Delhi 110 001.
3. Dy. Director General(SR), Bharat Sanchar Nigam Ltd., Indraprastha Hotel, New Delhi 110 001.

(BY SHRI K.N.BHAT, SR. COUNSEL WITH SHRI RAJESH ROSHAN, ADVOCATE)

Respondents

(ii) O.A. No.1306/2002.

1. Rakesh Srivastava (Staff no.05336)
ADG(C-II), Sanchar Bhavan, New Delhi-110001
2. J.Subramanian (Staff no.04298)
ADG(ESY), Dak Bhavan, New Delhi-110001
3. K.C.P. Srivastava (Staff no.05201)
DE(Estimate), O/O PGMTD, Bangalore
4. S.S.Grover (Staff no.05158)
ADG(NSE-II), Sanchar Bhavan, New Delhi-110001
5. Vijay Rajpal (Staff no.05189)
ADG(MST-II), Sanchar Bhavan, New Delhi-110001
6. S.S.Arora (Staff no.05241)
ADG(ESL-I), Dak Bhavan, New Delhi-110001
7. Gajor Singh (Staff no.05491)
DE(Legal), O/O G.M.T.D., Jalandhar
8. Harcharan Jit Singh (Staff no.05934)
ADG(ESM-I), Dak Bhavan, New Delhi-110001
9. Hardas Singh (Staff no.6021)
ADG(SNG), Sanchar Bhavan, New Delhi-110001
10. J.R.Malhotra (Staff no.06087)
DEP(E-10B), MTS Nagar, Jalandhar
11. V.P.Saigal (Staff no.06118)
ADG(SL), Sanchar Bhavan, New Delhi-110001
12. Akhilesh Kumar (Staff no.06227)
ADG(Pers-V), Sanchar Bhavan, New Delhi-110001
13. R.C.Huria (Staff no.06384)
ADG(RD), BSNL HQ, Statesman Building, New Delhi-110001

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14. Nem Chand Jain (Staff no.06397)
ADG(MIS-II), Dak Bhavan, New Delhi-110001
15. Jarnail Singh Mal (Staff no.6627)
ADG(C-III), Dak Bhavan, New Delhi-110001
16. Keshav Prasad (Staff no.6634)
ADG(BGI), Chandralok Building, New Delhi-110001
17. Kishan Singh (Staff no.06754)
ADG(TE), Sanchar Bhavan, New Delhi-110001
18. S.C.Chaudhary (Staff no.06888)
ADG(VAS-II), Sanchar Bhavan, New Delhi-110001
19. J.B.Jain (Staff no.07135)
ADG(Pers-I), Sanchar Bhavan, New Delhi-110001
20. J.P.Dhyani (Staff no.07108)
ADG(ESL-III), Dak Bhavan, New Delhi-110001
21. Paramjit Singh (Staff no.09076)
DE(OCB), D/TAX, MTS Nagar, Jalandhar
22. Ashok Kumar (Staff no.09889)
ADG(CS-III), Sanchar Bhavan, New Delhi-110001

(BY ADVOCATES: SHRI DAYAN KRISHNAN WITH SHRI GAUTAM NARAYAN) Applicants
Through the Secretary, Versus

Department of Telecommunications,
Sanchar Bhawan,
20, Ashok Road, New Delhi-110 001

2. Chairman, Telecom Commission
Sanchar Bhawan,
20, Ashoka Road, New Delhi-110 001

3. Member (Services), Telecom Commission,
Sanchar Bhawan, 20 Ashoka Road, New Delhi-1.

4. Chairman & Managing Director,
Bharat Sanchar Nigam Limited, Statesman Building,
Barakhamba Road, New Delhi-1.

(BY ADVOCATE SHRI K.N.BHAT WITH SHRI RAJESH ROSHAN) Respondents.

JUSTICE V.S .AGGARWAL:

By this common order, we propose to dispose of Original Applications No.890/2002 (U.Sanjeeva Rao v.Union of India & ors.) and 1306/2002 (Rakesh Srivastava & ors. v. Union of India & Ors.). The question involved is identical. However, for the sake of convenience, we are taking the facts from OA No.1306/2002.

2. The applicants seek to declare the circular of 14.1.2002 as unconstitutional and arbitrary and to direct the respondents to determine and notify the terms and conditions including pay scales, fixation formula, promotion policy etc. for the executive cadres in Bharat Sanchar Nigam Limited, (for short, "the BSNL") before the options for permanent absorption of TES Group 'B' cadre officers are called for. They also seek a direction to absorb them in BSNL in executive grade in which the applicants are working on ad hoc basis and also to declare the inaction on the part of the Union of India in not holding the Departmental Promotion Committee meetings for promotion from 1996-97 onwards upto 2000-01 as illegal, arbitrary and contrary to the instructions of the Government of India.

3. Some of the ground facts giving rise to the abovesaid are that BSNL has been set up by the Government of India with effect from 1.10.2000. While setting up BSNL, the Government of India transferred the business of providing telecom,

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services and running telecom factories to the newly set up company and therein an order of 30.9.2000 had been passed, relevant extract of which is:-

"4. Since it will take some time for the new Company to finalise the terms and conditions for staff and to give an opportunity to Officers, staff, employees and industrial workers working in various circles/offices/ units for exercising their options to join the newly created Company, it has been decided to make the following interim arrangements for smooth transition of administration and operations to the new company:-

(i) The establishment (officers, staff, employees and industrial workers) sanctioned for exchanges/offices, in various telecom circles metro districts of Calcutta and Chennai, project circles, civil, electrical and architectural wings, maintenance regions, specialised telecom units namely Data Networks, National Centre for Electronic Switching Technical and Development circle, Quality Assurance circle (except TEC), training institutions, other units like telecom factories, stores and electrification projects of DoT/DTS/DTO (belonging to various organised services and cadres given in Annexure A to this letter) and posted in these circles/offices/units will stand transferred to Bharat Sanchar Nigam Limited alongwith their posts on existing terms and conditions, on as is where is basis, on deemed deputation, without deputation allowance, with effect from 1st October 2000 i.e., the date of taking over of telecom operations by the Company from DTS & DTO. Bharat Sanchar Nigam Ltd. will exercise control and supervision of staff working against these posts."

The BSNL was required to finalise the terms and conditions for executives and non-executives opting for absorption in BSNL which have not yet been formalized. The Department of Telecommunications

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while inviting options for permanent absorption of Group 'A' and Group 'B' officers in the Mahanagar Telecom Nigam Limited (for short, "the MTNL") provided the pay scales, fixation formula and other terms and conditions. The options for permanent absorption of TES Group 'B' in BSNL have been invited by the BSNL.

4. The applicants contend that they were recruited as Engineering Supervisors in the erstwhile Post and Telegraphs Department. At the time of the recruitment, the designation of the cadre was Engineering Supervisor which has subsequently been changed as Junior Engineer and then as Junior Telecom Officer. The next promotion from Junior Telecom Officer cadre is in the TES Group 'B' cadre. The Junior Telecom Officers have to appear for a departmental examination after five years of service and they get promoted as S.D.Es after 10-16 years of service. SDEs with pay scale of Rs.7500-12000/- are promoted as Sr.SDE after 12 years. It is asserted that Departmental Promotion Committee meetings were not held for promotion to the Junior Time Scale group 'A' from among the TES Group 'B' officers for the vacancies pertaining to 1996, 1997, 1998, 1999 and 2000 while the department had gone ahead with the direct recruitment. The action of the respondents without fixing the pay scales has been challenged along with other reliefs referred to above already.

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5. In the reply filed, the application has been contested. It has been pointed that the order has simply been issued calling the options for absorption of Group 'B' officers in BSNL. It is only an option to the employees of Department of Telecommunication to opt for absorption in BSNL. The option may or may not be exercised by the individual employees of Department of Telecommunication according to their personal discretion and does not impose any administrative decision on the employees. The options as yet have not been finalised and, therefore, the application is not maintainable. It has also been contended that distinct and separate remedies have been claimed and the application must fail on this short ground. Furthermore, it has been pointed that the applicants had been posted on purely temporary and ad hoc basis to the Senior Time Scale of ITS Group 'A' to meet the administrative exigencies. The ad hoc posting does not confer any right to the applicants to be absorbed into such posts directly from their substantive posts. So far as delay in holding the Departmental Promotion Committee meetings is concerned, it has been pointed that promotion of eligible TES Group 'B' officers could not be effected due to pending litigation relating to seniority in TES Group 'B' cadre. As a result, the Department of Telecommunication was constrained from proceeding with the promotion. The matter has

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since been decided. The Departmental Promotion Committee has been convened for regular promotion from TES Group 'B' cadre to Junior Time Scale. In view of the ongoing Departmental Promotion Committee evaluation, the officers in Group 'B' have been required to exercise their option for absorption in the BSNL. The other contentions of the applicants have been controverted.

6. Before proceeding further, we deem it necessary to mention that some similarly situated persons had earlier filed OA No.298/2002 in the case of **Umakanta Bhattacharjee v. Union of India & ors.** and batch which was decided by this Tribunal on 6.8.2002. This Tribunal while disposing of the said applications had already directed that the respondents 1 & 2 should clarify the conditions on absorption of employees in BSNL if they exercise the option to do so. In particular the pay scales, fitment formula and promotional avenues should be indicated.

7. However, the learned counsel for the applicants at the outset contended that the applicants are being discriminated because certain other persons are being asked to give option for absorption in the MTNL. There are different conditions for absorption therein and, therefore,

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in view of Article 14 of the Constitution, the applicants are being dealt with in a partial manner.

8. On careful consideration of the same, it is obvious that the contention is totally devoid of any merit. Article 14 of the Constitutional in unambiguous terms prescribes equality and they should be similarly situated. Herein, options have been called from different employees. It is the choice of the employee to remain in the department where he is presently serving or seek to be absorbed in BSNL. There is no conversion of the department. Once the applicants have exercised such an option, they cannot make a grievance that they have been discriminated.

9. Confronted with that position, it was contended that the applicants are working on ad hoc basis and their services rendered on ad hoc basis should also be counted for purposes of seniority. In support of his argument, the learned counsel for the applicant relied upon a decision of the Supreme Court in the case of **N.S.K.Nayar and Others v. Union of India and Others**, 1992 Supp (2) SCC 508. Therein the Telegraphs Engineering Service provide for direct promotion to Senior Time Scale by passing the initial grade of Junior Time Scale. There were promotions made to Senior Time Scale on

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officiating/ad hoc basis which continued for 10 to 15 years without regularisation. Some direct recruits had also been inducted. The Supreme Court held that they would be entitled to count their seniority in the Senior Time Scale from the date of completing the period of five years which was the minimum service prescribed. The findings of the Supreme Court are:-

"7. We have given our thoughtful consideration to the question as to what relief under the circumstances can be given to the petitioners and other officers similarly situated. While doing justice to the petitioners we do not wish to cause any prejudice to the direct recruits. Rule 27(a) of the Rules provide that a direct recruit to JTS shall not ordinarily be promoted to STS unless he has put in five years service in JTS. Taking cue from the said rule we hold that the promotee-officers who have worked in STS for a continuous period of five years and are holding the posts to date shall be deemed to be regular members of Group 'A' Service in STS. They shall be entitled to count their seniority in the STS from the date of completing the said period of five years and shall be entitled to be considered for further promotion to JAG and SAG on the basis of the said seniority."

10. Similar reliance was also being placed on a decision of the Supreme Court (Constitution Bench) in the case of **Rudra Kumar Sain and Others v. Union of India and Others**, (2000) 8 SCC 25. Once again, the Supreme Court was concerned with the seniority of direct recruits vis-a-vis promotees. The Supreme Court held that once the promotees have been appointed in accordance with

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the rules then as per the service jurisprudence, they are entitled to count the total length of service even when rendered as stopgap arrangement.

The findings of the Supreme Court are:-

"19. The meaning to be assigned to these terms while interpreting provisions of a service rule will depend on the provisions of that rule and the context in and the purpose for which the expressions are used. The meaning of any of these terms in the context of computation of inter se seniority of officers holding cadre post will depend on the facts and circumstances in which the appointment came to be made. For that purpose it will be necessary to look into the purpose for which the post was created and the nature of the appointment of the officer as stated in the appointment order. If the appointment order itself indicates that the post is created to meet a particular temporary contingency and for a period specified in the order, then the appointment to such a post can be aptly described as "ad hoc" or "stopgap". If a post is created to meet a situation which has suddenly arisen on account of happening of some event of a temporary nature then the appointment of such a post can aptly be described as "fortuitous" in nature. If an appointment is made to meet the contingency arising on account of delay in completing the process of regular recruitment to the post due to any reason and it is not possible to leave the post vacant till then, and to meet this contingency an appointment is made then it can appropriately be called as a "stopgap" arrangement and appointment in the post as "ad hoc" appointment. It is not possible to lay down any strait-jacket formula nor give an exhaustive list of circumstances and situation in which such an appointment (ad hoc, fortuitous or stopgap) can be made. As such, this discussion is not intended to enumerate the circumstances or situations in which appointments of officers can be said to come within the scope of any of these terms. It is only to indicate how the matter should be approached while dealing with the questions of inter se seniority of officers in the cadre.

20. In service jurisprudence, a person who possesses the requisite qualification for

being appointed to a particular post and than he is appointed with the approval and consultation of the appropriate authority and continues in the post for a fairly long period, then such an appointment cannot be held to be "stopgap or fortuitous or purely ad hoc". In this view of the matter, the reasoning and basis on which the appointment of the promotees in the Delhi Higher Judicial Service in the case in hand was held by the High Court to be "fortuitous/ ad hoc/stopgap" are wholly erroneous and, therefore, exclusion of those appointees to have their continuous length of service for seniority is erroneous."

11. There indeed is no dispute with the proposition of law but can the applicants take advantage of it? The answer would be in the negative. Reasons are obvious. The decisions referred to above were confined to the controversies where there was seniority problem vis-a-vis direct recruits and promotees. In the present case before us that is not the controversy. There is no direct recruitment before us against which such an order could be claimed. There is no person who is scoring march over the applicants in this regard. Therefore, the applicants indeed cannot take the advantage of the decisions in the case of N.S.K. Nayar and others and Rudra Kumar Sain (supra).

12. So far as MTNL is concerned, it was brought to our notice that it is a small organisation as compared to the BSNL and, therefore, all the employees could not be absorbed

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therein. In the face of the aforesaid indeed once it is so, the applicants cannot insist in any event that they will have to be similarly treated.

13. Yet another grievance of the applicants highlighted was that for about 6 years, no Departmental Promotion Committee meeting was held and the applicants are being asked to opt while they are still working on ad hoc basis and they would be absorbed with respect to the posts on which they are holding a lien. The respondents have explained that because of the pending litigation, the Departmental Promotion Committee meetings could not held. Once it is so, the right being only for consideration and no junior having been so appointed, the argument so much thought of loses its significance. We deem it necessary to mention that for the options being called, no employee has a right to insist that he must be firstly promoted and then options can be called.

14. Resultantly, the OA No.1306/2002 and OA No.890/2002 being without any merit in the peculiar facts must fail and are dismissed. No costs.

Chp
(A.P.Nagrath)
Member (A)

/sns/

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(V.S. Aggarwal)
Chairman