

**Central Administrative Tribunal
Jaipur Bench, Jaipur**

**O.A. No. 553/2017
O.A. No. 560/2017
O.A. No. 561/2017
O.A. No. 562/2017
O.A. No. 563/2017**

Reserved on: 12.12.2019
Pronounced on: 20.12.2019

**Hon'ble Mr. Suresh Kumar Monga, Member (J)
Hon'ble Mr. A. Mukhopadhyaya, Member (A)**

O.A. No. 553/2017

Raman Singh s/o Shri Digamber Singh, aged 53 years, R/o Plot No.147, Block-A, Mata Vaishnav Puram Colony, Khatipura Railway Station, Jagatpura, Jaipur-22.

...Applicant.
(By Advocate: Shri Kapil Sharma)

Versus

1. Chairman cum Managing Director, Bharat Sanchar Nigam Limited, Corporate Office, New Delhi.
2. The Director (HR), Bharat Sanchar Nigam Limited, Corporate Office, New Delhi-110001.
3. Chief General Manager, Rajasthan Circle, Bharat Sanchar Nigam Limited, Sardar Patel Marg, C-Scheme, Jaipur-302008.

...Respondents.
(By Advocate: Ms. Sweety Mishra)

O.A. No. 560/2017

Prem Prakash Jagrit s/o Shri Roormal, aged 54 years, resident of Ward No.46, Opposite Bhagwati Gas Agency, Fatehpur Road, VPO Sikar-332001 (Raj.).

...Applicant.
(By Advocate: Shri Kapil Sharma)

Versus

1. Chairman cum Managing Director, Bharat Sanchar Nigam Limited, Corporate Office, New Delhi.
2. The Director (HR), Bharat Sanchar Nigam Limited, Corporate Office, New Delhi-110001.
3. Chief General Manager, Rajasthan Circle, Bharat Sanchar Nigam Limited, Sardar Patel Marg, C-Scheme, Jaipur-302008.

...Respondents.

(By Advocate:Ms.Sweety Mishra)

O.A. No. 561/2017

Ram Singh Meena s/o Shri Nathu Ram, aged 54 years, resident of Behind Krishi Upaj Mandi, Ward No.37 Sikar (Raj.)

...Applicant.

(By Advocate: Shri Kapil Sharma)

Versus

1. Chairman cum Managing Director, Bharat Sanchar Nigam Limited, Corporate Office, New Delhi.
2. The Director (HR), Bharat Sanchar Nigam Limited, Corporate Office, New Delhi-110001.
3. Chief General Manager, Rajasthan Circle, Bharat Sanchar Nigam Limited, Sardar Patel Marg, C-Scheme, Jaipur-302008.

...Respondents.

(By Advocate:Ms.Sweety Mishra)

O.A. No. 562/2017

Kishan Lal Meena s/o Shri Ram Phool Meena, aged 40 years, resident of Ward No.18, Nagina Marg, Gandhi Nagar, Hanumangarh Junction, District Hanumangarh 335512 (Raj.)

...Applicant.

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(By Advocate: Shri Kapil Sharma)

Versus

1. Chairman cum Managing Director, Bharat Sanchar Nigam Limited, Corporate Office, New Delhi.
2. The Director (HR), Bharat Sanchar Nigam Limited, Corporate Office, New Delhi-110001.
3. Chief General Manager, Rajasthan Circle, Bharat Sanchar Nigam Limited, Sardar Patel Marg, C-Scheme, Jaipur-302008.

...Respondents.

(By Advocate:Ms.Sweety Mishra)

O.A. No. 563/2017

Laxmi Chand Meena s/o Late Shri Prasadi Lal Meena, aged 53 years, R/o B-418, Jhalatala House, Behind Petrol Pump, Rajgarh Road, Alwar (Raj.) presently working on the post of OS(P) in the office of GMTD, BSNL, Alwar.

...Applicant.

(By Advocate: Shri Kapil Sharma)

Versus

1. Chairman cum Managing Director, Bharat Sanchar Nigam Limited, Corporate Office, New Delhi.
2. The Director (HR), Bharat Sanchar Nigam Limited, Corporate Office, New Delhi-110001.
3. Chief General Manager, Rajasthan Circle, Bharat Sanchar Nigam Limited, Sardar Patel Marg, C-Scheme, Jaipur-302008.

...Respondents.

(By Advocate:Ms.Sweety Mishra)

ORDER

Per: A.Mukhopadhyaya, Member (A):

With the consent of the learned counsels for the parties, these five Original Applications, (OAs), are being decided by a common order in view of the facts and circumstances of the cases and the rules/policy position related to these cases essentially being identical. Other than this, while the applicants are different in these OAs, the respondents, namely BSNL, remain the same.

2. The applicants in these cases appeared in a Limited Internal Competitive Examination, (LICE), for promotion to the post of Junior Accounts Officer, (JAO), before the date of 02.12.2014. Later, vide BSNL letter No.250-22/2013-Estt-III dated 28.07.2016, (Annexure A/5), the respondents took a policy decision to review the results of SC/ST candidates who had failed in the LICE with reference to different Non-Executive cadres as well as the Executive cadre of JTO(T) in the respondent organisation by prescribing minimum percentages/marks for SC/ST candidates to qualify for getting grace marks on review. 02.12.2014, as mentioned earlier, was kept as the cut-off date, in that the review procedure was limited to examinations notified after that date which was also the date of issuance of the existing policy in this regard at the time.

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3. The applicants aver that in the 35th meeting of the National Council of BSNL held on 11.05.2017, (Item No.5 of Minutes of the Meeting conveyed by letter No. BSNL/39-3/SR/2017 dated 16.08.2017 – Annexures A/6 and A/7 refer), it had been stated as follows:

Staff Side expressed its dissatisfaction over the letter dated 28.07.2016 and strongly demanded that the DoT order number 22-5/91-NCG dated 30.11.92 should be implemented, which accepts 20% marks for SC and 15% marks for ST. After detailed discussion on the issue it was agreed to review the matter in the light of DoT letter dated 30.11.92.

4. However, the cases of the applicants were not reviewed in terms of the aforementioned letter despite their making several individual representations to the respondents. Finally, vide letter/order No.52-1/2016-Rectt dated 06.10.2017, (Annexure A/1), the respondents communicated their decision that representations pertaining to LICE notified before the cut-off date of 02.12.2014 would not be dealt with, i.e. that no review would be conducted in such cases. Aggrieved by this decision of the respondents, the applicants seek the following relief:

- A) That the impugned order dated 06.10.2017 be quashed and set aside.**
- B) That the respondents be directed to review the results of the applicants in the light of circular dated 30.11.1992 and declared successful.**
- C) Any other order, direction or relief which is deemed fit, just and proper under the facts and circumstances of**

the case be passed in favour of the applicants.

5. In reply, the respondents aver that the DoT letter dated 30.11.1992, (Annexure A/4), enabling review of the results of SC/ST candidates who had failed in the Departmental Competitive Examinations, was applicable only in respect of Group C & D and also the technical cadre in the respondent organisation; [para (c) of the preliminary objections in reply to OA refers). They aver that the cadre of JAOs is a non-technical cadre and that the post of JAO became an executive Group B cadre in the respondent organisation BSNL and therefore the instructions in DoT letter dated 30.11.1992, (Annexure A/4), are not applicable to the applicants. The respondents aver that in the case of JAO examinations the relevant instructions for review of the cases of failed SC/ST candidates in LICE are governed by DoT letter No.9-14/95-DE, dated 31.01.1995; (Annexure R/3). The respondents further aver that, as admitted by the applicants themselves, (Annexure A/5 refers), the guidelines for review of results of failed SC/ST candidates in the LICE clearly mentioned that the provision for review of results of failed SC/ST candidates would be applicable only to examinations notified after 02.12.2014 i.e. the date of issuance of existing policy; [preliminary objection (h) in reply to OA read with Annexure A/5 refer). They aver that since it is undisputed that the applicants sat for and failed in the examinations notified before the cut-off

date of 02.12.2014, they are not entitled for review of their results in terms of respondents' letter dated 28.08.2017, (Annexure A/7), which *inter alia* states that "**the applicable date for this review of results will be same as mentioned in letter no. 250-22/2013-Estt-III dated 28.07.2016.**" They point out that the letter of 28.07.2016, (Annexure A/5), clearly provides for such review only where the examination in question was notified after 02.12.2014.

6. Finally, the respondents aver that since the applicants have not challenged the basic policy of review as referred to in the departmental letter dated 28.07.2016, (Annexure A/5), read with letter dated 28.08.2017, (Annexure A/7), and had only asked for the cut-off date of 02.12.2014 to be modified/relaxed, such a plea was not maintainable in the light of the Punjab and Haryana High Court's judgment dated 28.08.2007, (Annexure R/9), in CWP No.4624 of 2003 in the case of **Sangita Lakhanpal and Another vs. BSNL and others** in which it was ruled as follows:

"Relaxation of marks is not a right of a candidate but a concession which is granted by the examiners. This concession can be given for a variety of reasons, like the need to induct more officers when the examination results shows that very few officers have made a grade. Relaxation can also be granted where the examiner feels that the standard of the examination was too high and therefore a large number of

candidates were unable to make grade. Whatever may be the reason it is obvious that the fixation of the pass percentage is a subjective matter entirely a question of departmental discretion. It is not a matter of right which the petitioners can claim. Therefore, the petitioners cannot complain of any discrimination."

7. The respondents contend that in view of this established position, the applicants do not have any right to have their cases reviewed or indeed awarded grace marks. They therefore plead that the OA be dismissed.

8. Learned counsels for the applicants and the respondents were heard and the material available on record was perused. Learned counsel for the applicants and the respondents both reiterated the arguments made in the OA and its reply respectively.

9. Learned counsel for the applicants also contended that while the grievance raised by the individual representations made by the applicants had in effect been addressed and rejected vide the respondents' impugned order of 06.10.2017, (Annexure A/1), the representations pertaining to the individual cases of the applicants had not been considered separately as was required to be done in the spirit of the decision taken under Item No.5 in the 35th meeting of the National Council of BSNL, (Annexure A/6

refers), wherein it was clearly "**agreed to review the matter in the light of DoT letter dated 30.11.92**".

10. Per contra, learned counsel for the respondents argued that the deliberations and decisions of the National Council of the respondent organisation BSNL, (Annexure A/6), are purely recommendatory in nature and are not enforceable in law. She argued that in any case, all that was agreed was that the matter would be reviewed in the light of DoT letter dated 30.11.92, which, as the reply to the OA clearly affirms, was not found to be relevant or applicable in the applicants' cases. Learned counsel for the respondents also cited the decision of the Bangalore Bench of this Tribunal in OAs No. 170/627/2017, 170/641/2017 and 170/642/2017 wherein the Tribunal had clearly observed that the DoT letter of 1992 being relied upon by the applicants, i.e. the policy issued vide DoT letter No. 22-5/91-NCG dated 30.11.1992 had already been quashed by this Tribunal in OA No.916/2015 in its order dated 18.07.2016 with the following observations:-

"We therefore, take strong exception to Annexure-A5 issued by the DoT as letter No.22-5/91NCG dated 30.11.1992 wherein it has been prescribed that a review of result of SC/ST candidates with 20% and 15% marks can be allowed. The minimum requirement being 45%, such a reduction for a further review will defeat the constitutional process. The process under 15(4) and 16(4) cannot be utilised to give

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that sort of benefit to particular persons so that their continuance in governance system will impede, diminish and defeat the general public interest. Therefore, Annexure -A5 is against the constitutional process and it is hereby quashed.”

11. In the operative portion of the judgment in each of the above cited three OAs, the Tribunal had also observed that **“there is a logic in adopting 02.12.2014 as the cut-off date for the purpose of adopting a uniform standard in terms of the SC/ST candidates for relaxation in marks in the Limited Departmental/Internal Competitive Examination. The applicant having written the examination before the cut-off date is clearly not entitled for the benefit”**; (para 7 of the judgment refers). Learned counsel for the respondents argued that in view of the unequivocal judgments of this Tribunal in the three OAs referred to above, the issue of the proposed review being applicable only to examinations notified after 02.12.2014 was now established in the form of a final judicial order and cannot be reopened yet again.

12. On consideration of the arguments advanced by the learned counsel for the applicants as well as learned counsel for the respondents, we find that the version advanced by the respondents is confirmed by the documents on record. Not only this, the applicants have not been able to demonstrate how and why, in the face of specific earlier judgments of this Tribunal to

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the contrary, they are still entitled to seek a review of the results which were undisputedly related to examinations notified prior to the cut-off date of 02.12.2014. Even otherwise, it appears that the DoT order of 30.11.1992, (Annexure A/4), which they would like to be a basis for such review has itself been quashed in the judgment dated 18.07.2016 of this Tribunal in OA No.916/2015 as detailed above. The applicants have not been able to demonstrate that this is not the final judicial order in this regard.

13. Given the foregoing position, we find no merit or substance in these OAs which are hereby dismissed.

14. There shall be no order on costs.

(A.Mukhopadhyaya)
Member (A)

(Suresh Kumar Monga)
Member (J)

/kdr/