

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA/020/00142/2015

HYDERABAD, this the 10th day of March, 2021

Hon'ble Mr. Ashish Kalia, Judl. Member

Hon'ble Mr. B.V. Sudhakar, Admn. Member



V.Sateesh Kumar S/o V.Appala Naidu,
Aged 31 years, JTO,
R/o Plot No.26, Nurses Colony,
Besides A.P. Fisheries Office,
Srikakulam – 532001.

...Applicant

(By Advocate : Mr. P. Venkata Rama Sarma)

Vs.

1. The Union of India, rep. by its Secretary,
Ministry of Communication and Information
Technology, Sanchalan Bhavan, Parliament
Street, New Delhi – 1100011.
2. Bharat Sanchar Nigam Limited, rep., by its
Chairman and Managing Director, BSNL Bhavan,
Harischandra Mathur Lane, Janpath,
New Delhi – 110001.
3. The Chief General Manager,
Bharat Sanchar Nigam Limited,
A.P.Telecom Circle, Doordarshan Bhavan,
Nampally Station Road, Nampally,
Hyderabad – 500001.
4. The General Manager, Telecom District,
BSNL, Srikakulam SSA, Srikakulam-532001.Respondents

(By Advocate : Mrs.K.Rajitha, Sr. CGSC & Mr. M. C. Jacob,
SC for BSNL)

ORAL ORDER
(As per Hon'ble Mr. B.V.Sudhakar, Administrative Member)

Through Video Conferencing:



2. The OA is filed seeking regularization of the services of the applicant from 28.06.2010 to 23.03.2011 in the post of Junior Telecom Officer (JTO) in the respondent organization with all consequential benefits.

3. Brief facts of the case are that the applicant was selected as JTO by the respondents on 28.6.2010 and after training of 14 weeks he was posted as JTO Narsannapet. Applicant was paid stipend instead of regular salary after training period w.e.f. 31.5.2010. After working for the period from 28.6.2010 to 23.3.2011, applicant was given appointment order w.e.f. 24.3.2011 vide letter dated 4.7.2011. Respondents issued notification dated 13.11.2014 for selection to the post of Sub Divisional Engineer (SDE) through LDCE with last date as 13.12.2014. As per Recruitment Rules of SDE(T) and clarification dated 30.7.2010, those employees who have rendered 3 years regular service as JTOs which includes the training period will be eligible to appear in the exam. Applicant represented to issue appointment order with effect from 28.6.2010 instead of 24.3.2011 and allow him to appear in the exam for SDE (T) and as they were not considered the OA is filed.

4. The contentions of the applicant are that the appointment order issued on 28.6.2010 is correct. The delay in obtaining Police verification report for issuing the later appointment order w.e.f. 24.3.2011 is because of lack of timely action by the respondents and hence the applicant cannot be

held responsible for the same. Other circles like Haryana on 28.6.2010, have allowed those selected to work subject to police verification. Respondents have directed to refund the salary paid during the training period which is grossly irregular. The Hon'ble Chandigarh Bench (Circuit Bench at Jammu) has held that the appointment date would be date of sending the selected candidates for training. Applicant is similarly placed and hence is eligible. Respondents can relax the eligibility criteria to allow him to appear in the exam. Applicant though eligible is not permitted to appear in the exam.



5. Respondents in turn submit that those selected for training have been sent for 10 weeks training at their Hyderabad training institute from 22.3.2010 to 28.5.2010 and thereafter, relieved for field training on 28.5.2010 for 4 weeks. The relieving order of the Principal of the institute has specified that the applicant has to await the police verification report to get regular appointment order. Besides, it was also made clear that the applicant should not been taken on duty till R-3, the appointing authority issues the appointment letter. By mistake, R-4 posted the applicant to Narsannapet as JTO on 8.7.2010 w.e.f. 28.6.2010 with stipend till the appointment order is issued by the 3rd respondent. After PVR was received, applicant was issued appointment order as JTO on 4.7.2011 w.e.f. 24.3.2011. To appear in the SDE (T) exam, the minimum service to be rendered as JTO is 3 years whereas the applicant had only 2 years 6 months including the training period and hence, he was not allowed to appear the exam. Respondents pursued with the revenue authorities for early completion of PVR. The period of training was considered but the period

after the training has not been counted. In the case before the Chandigarh Bench cited by the applicant, appointment order was issued, whereas it is not so in the instant case. Earlier to 2009, Circles were allowed to appoint candidates subject to PVR. However, on 20.2.2009, R-2 issued instructions that from 2007 onwards appointment orders have to be issued after the PVR is received and after due verification of educational qualifications as well as the caste certificate. Applicant accepting the terms and conditions set out in the appointment letter and now raising a dispute in regard to the same is incorrect.



When the case came up for hearing at the admission, the respondents were directed on 3.2.2015 to allow the applicant to appear in the exam as an interim measure and the result be withheld till the OA is finalised. According to the reply statement filed on 17.11.2015, the exam was yet to be conducted.

The applicant filed a rejoinder, more or less, reiterating the averments made in the OA.

6. Heard both the counsel and perused the pleadings on record.
7. I. The dispute is about regularisation of the period from 28.6.2010 to 23.3.2011 and recovery of stipend paid for the period as well as not allowing the applicant to appear in the SDE (T) examination. The relief sought by the applicant is as under:

“...to declare the inaction on the part of the respondents to regularize the services of the applicant for the period from 28.06.2010 to 23.03.2011 in the post of Junior Telecom Officer (JTO) in the respondent Corporation as illegal, arbitrary, bad in law, violative of Articles 14 and 21 of the Constitution of India and consequently direct the respondents to regularize the period from 28.06.2010 till 23.03.2011 in the post of Junior Telecom

Officer in the Respondent corporation with all consequential and attendant benefits..”

II. We have carefully gone through the facts which reveal that the applicant was selected as JTO against notification of 2008. The applicant underwent training at the respondents Hyderabad Training institute for 10 weeks from 22.3.2010 till 28.5.2010 and relieved for field training of 4 weeks on 28.5.2010. The relieving order issued by the Principal of the Training institute reads as under:



“On successful completion of JTO Phase-I Induction training for a period of 10 weeks from 22/03/2010 to 28/05/2010, the following JTO trainees of “JTO DIRECT RECRUITEES (DR-2008 SY)”, Batch No. 02 as shown in the Annexure are hereby relieved on the A/N of 28/05/2010 with instructions to report to the De (Admn.) of the concerned SSAs indicated against their names for undergoing 4 weeks field training from 31/05/2010. The place of field training will be decided by the concerned SSA Heads. The date of joining of these JTO trainees in the posted SSA may be intimated to the CGMT Office immediately.

After successful completion of 4 weeks Field training, the trainees will be appointed as JTOs subject to the receipt of PVR and other reports by CGMT, AP. The trainees after completion of 4 weeks field training, have to wait for posting/ appointment orders from CGMT, Hyderabad. They should not be taken on duty as JTOs unless orders are received from CGMT, AP, Hyderabad. The Competent authority has directed that these JTO trainees may be trained in installation of New Technology areas including Broadband/ WLL/ Transmission etc.

Date of completion of Field training may be intimated to the CGMT office for issuing appointment orders. The trainees other than departmental outsiders are eligible for Stipend of (Rs.6895+3448)+IDA per month during Field training. All the trainees are eligible for one-day leave during the field training. If the trainee is absent for more than one day his/her training period may be extended accordingly.

“They have to undergo 6 weeks Phase-II training within 2 years in order to be eligible for second increment as per the revised syllabus of JTO training for the recruitment year 2002 onwards.

Hostel facility is offered to/ availed by the trainees. Stay at Hostel room is compulsory. Hence claim for higher DA for staying at Hotel is not to be allowed. Seat rent is being collected from the Hostellers as per the Departmental rules. However, the Mess is being run by a Contractor and the Mess charges are being collected from the trainees by the Contractor.

All the trainees are passed in first attempt except Roll No. 218 in the annexure.

NOTE: Stipend is paid up to 28/05/2010 for DIRECT RECRUITEES.”

It is made clear that the applicant has to await the Police verification report (PVR) to be issued for receiving the regular appointment. It was also mentioned that without the appointment order issued by the 3rd respondents, the trainee candidates should not be taken on duty as JTOs. However, the 4th respondent who is not the competent appointing authority has posted the applicant as JTO Narsannapet w.e.f. 28.6.2010 as JTO with stipend till the regular appointment order is received from the 3rd respondent. Issue of posting/appointment order by an incompetent authority is liable to be cancelled. In **State Of Bihar vs Kirti Narayan Prasad on 30 November, 2018** in CIVIL APPEAL NO. 8649 OF 2018 (Arising out of S.L.P. (Civil) No.24742 of 2012), Hon'ble Apex Court has held as under:



It was also clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules.

On applying the aforesaid legal principle to the case of the applicant, we observe that the applicant as a trainee was not eligible to be appointed as JTO by none other than the 3rd respondent, who is the regular appointing authority. The respondents admit that the 4th respondent has by mistake issued the order posting the applicant as JTO as Narsannapet. Thus, the appointment order issued by the 4th respondent is not envisaged in the due process of selection of the JTO and hence, illegal. Any illegal appointment cannot be regularised.

III. The claim of the applicant to regularise the period of his employment as JTO Narasanapet as per R-4 letter is litigious employment.

When an authority ie R-4 who is not competent to issue the appointment order has issued it, respondents not upholding the said decision is a bonafide decision as observed by the Hon'ble Apex Court in **State of Manipur & ors v Y. Token Singh & Ors in (2007) 5 SCC 65** as under:



If the offers of appointments issued in favour of the respondents herein were forged documents, the State could not have been compelled to pay salaries to them from the State exchequer. Any action, which had not been taken by an authority competent therefor and in complete violation of the constitutional and legal framework, would not be binding on the State. In any event, having regard to the fact that the said authority himself had denied to have issued a letter, there was no reason for the State not to act pursuant thereto or in furtherance thereof. The action of the State did not, thus, lack bona fide.

In the instant case, it was R-3 who was competent to issue the appointment order and order issued by R-4, though not fake, but definitely invalid as it was not within the competence of R-4 to issue the order. R-4 order is thus against the legal framework instituted in the respondents organisation for offering appointments to the JTO cadre.

IV, Applicant's claim is to regularise the period for which he has worked as JTO from 28.6.2010 till 23.3.2011 based on R-4 order. Though the illegality was committed by the 4th respondent, the respondents cannot be forced to perpetuate the illegality as observed by the Hon'ble Apex Court in *Pankjeshwar Sharma v. State of J&K*, [**2020 SCC OnLine SC 984**](#), decided on 3-12-2020.

The Honble apex Court was of the opinion that the appellant in the cited case cannot be extended the same benefit. Reliance was placed on Union of India v. Kartick Chandra Mondal, [\(2010\) 2 SCC 422](#) wherein it was observed that if something is being done or acted upon erroneously, that cannot become the foundation for perpetuating further illegality. If an appointment is made illegally or irregularly, the same cannot be made the basis of further appointment and erroneous decision cannot be permitted to perpetuate further error to the detriment of the general welfare of the public or a considerable section. Reference was also made to Arup Das v. State of Assam, [\(2012\) 4 SCC 559](#).

V. Applicant relied on the judgment of the Hon'ble Chandigarh Bench, Circuit Bench at Jammu, in OA No. 172-JK-2012 dt. 21.11.2012 to press for the relief sought. In the cited case, appointment was issued by the competent authority, which is not the case in the instant case. The relevant portion of the judgment is hereunder extracted:



"4. The subsisting controversy, which has surfaced during the course of hearing, is that the applicants claim their date of appointment to be 6.11.2007; while the respondents would aver that they would be deemed to have been appointed only on completion of the training and the obtaining of the police verification report.

Xxx

8. *A perusal of Annexure R-5 would indicate that all that the applicants had undertaken was that their being deputed to undergo training was provisional and that the appointment order will be "subject to the receipt of satisfactory Police verification Report/ verification report of caste (if applicable) and Educational Certificates".*

9. *A perusal of the undertaking aforementioned would, in fact, negate the validity of the plea raised on behalf of the respondents. The appointment order, Annexure 'É', came to be issued on 6.11.2006, subject to the clearance in the Police Verification and the successful completion of the Phase II training. The outcome of both the above items, it is common ground during the course of hearing, is favourable to the applicants. There is nothing which can impede the grant of a favourable consideration to the claim raised by the applicants herein for treating 16.06.2007, as the date of appointment.*

10. *The nature of documentation issued in favour of the applicants does not admit of any doubt that it was an appointment. The riders imposed did not divest the character of the documentation. The situation could be entirely different if anything adverse had appeared in the police verification report or if the applicant was not able to satisfactorily complete the Phase II training. Even in that eventually, the nature of documentation issued would have retained a similar hue but an adverse police verification report and/ or the non-completion of the Phase II training would have authorized termination of employment.*

11. *The relied upon undertaking (Annexure R-5) does not, in any manner, detract from the view and the reasoning indicated in support thereof.*

xxxx

19. *We, accordingly, this OA and declare that the applicants would be deemed to have been appointed w.e.f. 18.06.2006.*

20. *It is to state the obvious that the applicants shall also be entitled to all consequential and permissible monetary benefits of the declaration afore-mentioned. "*

Besides, the 2nd respondent has made it clear that recruitment orders from the year 2007 are to be issued after the PVR is received and that the concerned Circles have to issue the appointment orders. The order dt.20.02.2009 is extracted here under:



“I am directed to convey the approval of the competent authority for deputing the candidates selected on the basis of Direct Recruitment of DR-JTO-2007 for training pending PVR, as was conveyed vide this office letter Nos.5-31/2001-Pers.IV dated 11.10.2001 & 5-32/2006-Pers-IV dated 01.12.2006. However, appointments will be given to the candidates only after receipt of PVR. Necessary undertaking to this effect may be taken from the candidates before deputing them for training. However, in case anything reported otherwise in PVR by the Police authorities/ district administration, the entire expenditure incurred in training will be recovered from the candidates as per the bond agreement.”

The same instructions were reiterated by the Principal of the Hyderabad Training institute in his letter dated 28.5.2010 wherein he has made it categorical that the trainees have to await the PVR for issuing appointment orders. Besides, they should not be engaged as JTOs till the R-3 issues the appointment orders. The relevant portion of the letter is extracted hereunder:

“After successful completion of 4 weeks Field training, the trainees will be appointed as JTOs subject to the receipt of PVR and other reports by CGMT, AP. The trainees after completion of 4 weeks field training, have to wait for posting/ appointment orders from CGMT, Hyderabad. They should not be taken on duty as JTOs unless orders are received from CGMT, AP, Hyderabad.”

After accepting the conditions laid in the said letter, the Principle of estoppel operates against the claim of the applicant to regularise the period in question, contrary to his acceptance of the terms and conditions laid down in the letter cited above.

VI. Further, the rules in the respondents organisation are to be followed and they cannot be violated, as directed by the Hon'ble Apex Court in a series of judgments as under;



*The Hon'ble Supreme Court observation in **T.Kannan and ors vs S.K. Nayyar** (1991) 1 SCC 544 held that "Action in respect of matters covered by rules should be regulated by rules". Again in **Seighal's case** (1992) (1) supp 1 SCC 304 the Hon'ble Supreme Court has stated that "Wanton or deliberate deviation in implementation of rules should be curbed and snubbed." In another judgment reported in (2007) 7 SCJ 353 the Hon'ble Apex court held " the court cannot de hors rules*

The applicant is thus seeking an order which is violative of Respondent No.2 instructions issued on 20.2.2009. The same cannot be acceded to in view of the above observations of the Hon'ble Apex Court. Therefore, the Chandigarh Bench (Circuit Bench at Jammu) judgment relied upon by the applicant would not come to the rescue of the applicant as the aforesaid Hon'ble Supreme Court judgments have not been discussed in the said order and also for the reason that the competent authority in the cited case issued the order.

VII. However, respondents directing the applicant to refund the stipend for the period from which he has joined as JTO as per R-4 order till he was regularly appointed by R-3 w.e.f. 24.3.2011, is beyond the realm of reason. Having made the applicant to work as JTO, it is not proper to direct him to refund the stipend paid to him.

VIII. In respect of allowing the applicant to appear in the LDCE for SDE (T) against notification dated 13.11.2014, the service rendered by the applicant is less than 3 years including the training period and hence, ineligible to appear in the exam. In view of the Hon'ble Apex Court judgments cited supra, the period for which the applicant worked as JTO

based on an invalid order of the R-4 cannot be taken into consideration to work out the length of the service of the applicant to appear in the LDCE for SDE post against the notification cited above.



IX. The other contention made by the applicant is that the Haryana circle has issued appointment orders subject to PVR on 28.6.2010. This order is against the policy decision of the respondents dated 20.2.2009, to not to issue appointment order without PVR and verification of caste certificate as well as educational certificates. Here again, since the Haryana circle has committed an illegality, the same cannot be forced to be perpetuated by the respondents. It is for the respondents to take a view on the matter in regard to Haryana circle decision. However, the Tribunal cannot infringe the settled law to uphold the contention of the applicant. Any illegal order cannot be a benchmark to seek favourable order on the basis of similarity. The police verification of the antecedents of the selected candidates is mandatory for public employment before they are allowed to join the selected post. The same yardstick was applied to all those selected by R-3 and hence, the applicant cannot be an exception. Police verification is an investigative process and it does take some time and has to be done by an external agency and not by the respondents. The respondents did pursue with the revenue authorities for early submission of PVR because they would also be eager to get the posts filled up in administrative interest. However, it took some time and the respondents cannot be blamed for the same, as urged by the applicant.

X. Therefore, in the circumstances cited, the respondents are directed not to recover the stipend for the period for which the applicant

worked as JTO as per the order of R-4, as contended by the applicant. Coming to the claim of the applicant for regularisation of the services of the applicant for the period 28.6.2010 to 23.3.2011 and to allow him to appear in the exam for SDE (T), the same is rejected since they are not in accordance with rules and law.



XI. The OA is thus disposed with the above direction. No order as to costs.

(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

/evr/