

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH
HYDERABAD**

OA/21/1135/2013

**Reserved on: 28.08.2020
Pronounced on: 02.09.2020**



**Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr. B.V. Sudhakar, Admn. Member**

Sri M. Ramulu, S/o. M. Chinna Narasimulu,
Aged 40 years, Working as Section Supervisor (O),
O/o. Customer Service Centre, Hyderabad BSNL,
Central University, Hyderabad – 500 046.

... **Applicant**

(By Advocate: Mr. Krishna Devan)

Vs.

1. Union of India rep. by
The Secretary,
Ministry of Communication and information Technology,
Ashoka Road, 20, Government of India, New Delhi.
2. The Chief Managing Director,
Bharat Sanchar Nigam Ltd, Corporate Office,
Ashoka Road, New Delhi – 110001.
3. The Chief General Manager, BSNL,
AP Circle, Door Sanchar Bhavan,
Nampally Station Road, Hyderabad.
4. The Principal General Manager, BSNL,
BSNL Bhavan, Adarshnagar, Hyderabad.
5. The General Manager (Central & West) BSNL,
Telephone Bhavan, Saifabad, Hyderabad.

... **Respondents**

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

O R D E R**Hon'ble Mr. B.V. Sudhakar, Admn. Member**

2. OA is filed challenging the decision of the respondents to review the cases of failed candidates of 'SC' community in the examination held for the promotion to the cadre of Junior Telecom Officer only if they fulfil the terms laid down in the DGP&T letter dated 30.11.1992.

3. Brief facts of the case are that the applicant while working as Sr. Telecom Operating Asst. in the respondents organisation, appeared in the exam held on 16/17.9.2000 for the post of Junior Technical Officer (15% quota) for vacancies declared up to 31.8.1999 and failed in the same as per results declared on 24.11.2000, for having secured 71 marks working out to 18% against 33% required for SC candidates. DOPT decided on 23.12.1970 to extend the relaxation in regard to the marks to be secured to any extent if there are insufficient SC/ST candidates available to fill up the posts reserved for them. Consequently DGP&T decided accordingly to award grace marks on 4.5.1981. Thereon, Dept of Telecom (DOT), formed after bifurcation of the Dept. of Posts & Telegraph, vide lr. dtd 14.2.1992 stipulated the maximum grace marks to be awarded for fit candidates. Besides, on 30.11.1992 DOT decided to fix 20%/15% as the qualifying percentage in respect of SC/ST candidates in each paper. However, on 22.7.1997, DOPT withdrew all the concessions extended to SC/ST candidates in regard to promotion, which were later restored on 3.10.2000. Consequently, applicant represented seeking review on 25.8.2001 to BSNL, which was formed in 2000, but with no favourable outcome coming forth, OA 1099/2002 was filed, which stood dismissed for reasons of jurisdiction on 29.4.2004. Thereafter, respondents appointed 117 candidates based on the exam held on 16/17.9.2000, as JTOs on

25.2.2003 after relaxing the qualifying marks as 33% for SC/ST candidates. Again on 10.3.2003, respondents decided to relax the qualifying marks as 20% in aggregate and launched a special drive to fill up backlog SC/ST vacancies vide lr. dtd 25.8.2004. As a follow up, respondents decided on 9.3.2005 to review the results of failed SC/ST candidates who secured 20% /15% respectively in each paper coupled with reckoning the ACR as per letter dated 30.11.1992. This relaxation was applicable only to those who wrote the examination and results declared on or after 3.10.2000 as per respondents letter dated 18.8.2005. Respondents decided to hold LDCE for JTO 35% and 15% quota on 30.5.2010 but was decided to postpone it till further orders as per their memo dated 13.4.2010. However, they came up with a fresh notification for filling up JTO under 35% and 15 % quota through LDCE for filling up vacancies declared up to 31.3.2012. Exam was accordingly held on 2.6.2013 and results are awaited. Thereon applicant filed OA 859/2011, which was dismissed as withdrawn on 26.8.2013 with liberty to file a fresh OA. Hence, availing the opportunity to file fresh OA and based on the circulars issued by DOPT /DOT referred to, applicant has to be promoted by relaxing the qualifying standards appropriately but since the respondents did not do so, the instant OA has been filed.

4. The contentions of the applicant are that the respondents deliberately taking a hard stance in lowering the relaxation standard is against the spirit of the DOPT letter dated 3.10.2000 and Art. 335 of the Constitution of India. Even after extending relaxation provided for in letter dated 10.3.2003 vacancies were available, which should have been filled up as per DOPT letter dated 25.8.2004. In the very same letter of 10.3.2003 respondents have made it clear that the condition of obtaining minimum qualifying standards in each paper has been done away

with. Therefore, letter issued by the erstwhile P&T Department prior to 10.3.2003 cannot be invoked to reject the request of the applicant. The respondent BSNL fixed the qualifying mark as 33% in each subject in 2000, relaxed it to 20% in aggregate in 2003 and thereafter to 20% in each subject in the year 2005.

However, on 9.3.2005 BSNL has adopted the criteria fixed in circular dated 30.11.1992 instead of taking its own decision in accordance with the memo dated 10.3.2003 issued by itself thereby defeating the very purpose of DOT circulars and relevant Articles of the Constitution. In fact, the memo of 2003 of BSNL supersedes the one issued in 1992 by DOT. The purpose of relaxing the qualifying standards or not having any qualifying marks, is to achieve the desired objective of selection of SC/ST candidates against vacancies available and therefore fixing qualifying marks in each paper vide order dated 9.3.2005 is irrational. The provisions for relaxation of qualifying marks and lowering of standards in evaluation in matters of promotion has been provided for in the constitution, different laws and in the instructions of DOPT contained in letters issued on 23.12.1970, 3.10.2000 and in 25.8.2004. Fixing a relaxation standard of 20% to SC candidate and 15 % for ST candidates, though they are similarly situated vide memo dated 9.3.2005 is discriminative. Treating equals as un-equals is unfair. Promoting Mr M. Surya, an ST employee as JTO under 15% quota after review by applying 15 % relaxation discriminates the applicant. Articles 14, 16, 21 and 335 of the Constitution have been violated. Consequently, in view of the above, the impugned order dated 9.3.2005 has to be quashed and the applicant case for promotion to JTO has to be reviewed by adopting the relaxation standard of 15% as was adopted in the case of Mr.Surya.

5. Respondents in the reply statement state that the applicant appeared in the Limited Departmental Competitive exam (LDCE) with 4 papers of 100 marks each under 15 % quota held on 16/17.9.2000 for promotion to fill up of 242 JTO posts and as per results announced on 24.11.2000 applicant obtained 71 marks in aggregate against a maximum marks of 400 marks in 4 papers put together, which in percentage terms works out to 17.75%. Applicant was disqualified in the said exam for not securing the minimum of 33% prescribed. Based on the results appointment orders were issued to successful candidates on 25.2.2013 after undergoing prescribed training. Respondents state that they have acted as per relevant rules and in accordance with the Articles of the Constitution. There is no illegality in the impugned order of 9.3.2005. Challenging non selection applicant filed OA 1009/2002, which was dismissed for lack of jurisdiction but it was not challenged in the Hon'ble High Court. After waiting for 7 years applicant filed OA 859/2011 wherein objection was taken on grounds of limitation but the OA was dismissed as withdrawn on 26.8.2013 giving liberty to file fresh OA. Consequently, present OA has been filed and as an interim measure Tribunal directed on 13.9.2013 to keep one post of JTO vacant till the next date of hearing. The OA is filed after 13 years of the exam and hence, liable to be dismissed on grounds of delay and latches. The selected candidates against the examination under reference are working in the promoted post since a decade. The impugned proceedings in the earlier OA have been filed in the present OA and hence, feigning ignorance of the same by the applicant is incorrect. Writ petitions filed before the Hon'ble High Court in similar issues have been dismissed on the ground that no individual can claim relaxation as a matter of right nor can courts compel an employer to relax its rules. Besides, Hon'ble High Court has dismissed writ petitions filed by Junior Accounts Officers to extend the relaxation benefit on par

with JTO and the Tribunal too dismissed similar relief in OA 651/2011. Limitation clause of Administrative Tribunals Act applies to the present OA since the impugned order is dated 9.3.2005.



6. Applicant filed a rejoinder wherein it was submitted that the relaxation standards as prescribed in letter dated 10.3.2003 should be followed and not those prescribed in 9.3.2005. R-2 has recommended to Sr. Dy. Director General of BSNL, New Delhi to apply the yardsticks laid down in letter dated 10.3.2003 vide his letter dated 30.3.2005. All India SC/ST Association of Telecom Employees has made a similar plea on 2.6.2005, which has not been rejected till date. Circulars issued by DOT and GOI did not indicate that efficiency would suffer if standards of selection are relaxed. Once the respondents decided to follow G.O.I instructions issuing order dated 9.3.2005 is incorrect and that too, against the provisions of the Constitution. Applicant waited till the cases in the High Court were decided and thereafter, filed the OA. Besides, instructions were being issued on 30.3.2005, 31.1.2009 and 18.3.2010 on the subject and hence, the question of delay/limitation in filing the OA does not arise.

7. Heard both the counsel and perused the pleadings on record in detail, particularly all the memos issued by DOT and DOPT, which have dealt with the issue under dispute.

8. I. The initial objection raised by the respondents on grounds of limitation is not sustainable as the OA has been admitted and further hearings held over the years. Besides, it is also to be noted that as submitted by the applicant the issue was under challenge in the Hon'ble High Court and therefore he awaited the

decision of the Hon'ble High Court to file the instant OA. Even the respondents were continuously reviewing the relaxed standards even up to 2010 and hence there is not much substance in the objection.



II. Coming to dispute *per se*, it is about relaxing qualifying standards for selection to the post of JTO on promotion. The contention of the applicant is that he secured 17.75% in aggregate and that it is more than 15% prescribed as the minimum to be secured by the ST candidate as per memo dated 30.11.1992/ 9.3.2005. Respondents have discriminated the applicant who belongs to SC community by fixing 20% minimum qualifying standard which is against the provisions of the Constitution.

III. In regard to relaxation of qualifying standards for selection to the post of JTO on promotion, respondents have been continuously reviewing the guidelines with the aim of filling the posts reserved for SC/ST candidates based on certain norms. Respondents vide letter dated 10.3.2003 relaxed the qualifying standards by fixing the minimum aggregate marks in all the papers as 30% for OC and 20% for SC candidates in order to fill up the unfilled vacancies. Applicant appeared in the JTO examination held on 16/17.9.2000 and secured 17.75% in aggregate against the minimum requirement of 20% for getting selected as per memo dated 10.3.2003, vide results announced on 24.11.2000 as per details extracted hereunder.

Paper	Maximum Marks	Marks of the applicant
Paper I	100	37
Paper II	100	07
Paper III	100	18
Paper IV	100	09
Total	400	71(17.75%)

According to the relaxed standard for SC employees the qualifying mark is 80 (20% of 400) whereas the applicant obtained 71 marks (17.75%) and hence the applicant could not be selected even after review based on relaxed standards.



IV. Subsequently in accordance with letter dated 9.3.2005 review of results of failed SC/ST candidates after 3.10.2000 was ordered to be taken up keeping in view instructions contained in letters dated 4.5.1981, 14.2.1992 and 30.11.1992 with a further direction to de-reserve the reserved vacancies if sufficient SC/ST candidates are not available even after review. Such of the vacancies which could not be filled up by SC/ST candidates on review or by OC candidates after deserving the posts, are to be treated as backlog vacancies. The letter dated 4.5.1981 of DG P&T stipulates review of results of SC/ST candidates based on confidential reports, overall performance in the exam and also by adding grace marks if not found unfit for promotion, provided sufficient number of candidates are not available to fill up the reserved posts. DOT vide letter dated 14.2.1992 directed to follow the procedure laid down in letter dated 4.5.1981 for review of results. Thereafter, DOT once again reconsidered the matter vide letter dated 30.11.1992, which is reproduced hereunder:

*"Subject: Review of result of failed SC/ST candidates in Departmental Competitive Examinations – Reg.
DOT No. 22-5/91-NSG dt. 30.11.92*

I am directed to say that in accordance with this office letter No. 26/2/81-SPB-1, Dt. 4/5/81 failed SC/ST candidates can be awarded grace marks without any limit after conducting a review of all such candidates, while processing such cases in the Directorate, it has been noticed that cases of even those SC/ST candidates who have secured zero marks have been recommended for declaring them successful. It is now been decided that results of only those failed Scheduled Castes candidates who have secured atleast 20% marks and Scheduled Tribes candidates who have secured atleast 15% marks in each paper should be reviewed.

The procedure outlined in this office letter No. 22/5/92-NSG (which may be corrected 22-5/91-NSG dated 14/2/92) is modified only to the extent mentioned above and the rest remains unchanged.

These orders come into force w.e.f. the examinations conducted on or after 1.12.92.”



As seen from the above, it is evident that the directions contained in letters dated 4.5.1981 & 14.2.1992 have been considered and decided only to review the results of SC candidates who secured a minimum of 20% and ST candidates with 15% in each of the paper. The said decision was made applicable for the examination held on or after 1.12.1992. Applicant could not be selected even as per the latest relaxation standards since he got 17.75% in aggregate (71/400 marks) and in particular has not secured the minimum of 20% in paper II, III and IV.

V. Relaxing the qualifying standards is the discretion vested with the authorities and Courts cannot issue directions in this regard as observed by the Hon'ble Supreme Court of India in Chairman and Managing Director ... vs Central Bank Of India SC/ST ... on 8 January, 2016 in Review Petition (Civil) No. 891 of 2015 in C.A. No. 209 of 2015 as under:

“Thus, no doubt, power lies with the State to make a provision, but, at the same time, courts cannot issue any mandamus to the State to necessarily make such a provision. It is for the State to act, in a given situation, and to take such an affirmative action. Of course, whenever there exists such a provision for reservation in the matters of recruitment or the promotion, it would bestow an enforceable right in favour of persons belonging to SC/ST category and on failure on the part of any authority to reserve the posts, while making selections/promotions, the beneficiaries of these provisions can approach the Court to get their rights enforced. What is to be highlighted is that existence of provision for reservation in the matter of selection or promotion, as the case may be, is the sine qua non for seeking mandamus as it is only when such a provision is made by the State, a right shall accrue in favour of SC/ST candidates and not otherwise.”

Respondents did provide for reservations of posts to the SC/ST candidates in JTO cadre. However, they reviewed the relaxation of qualifying standards over the years and decided to allow a relaxation of 20% for SC and 15% to ST candidates

vide memo 30.11.1992/9.3.2005 in each of 4 papers wherein the candidates are tested for promotion to JTO cadre. This decision of the respondents is in accordance of the observation of Hon'ble Apex court cited above.



VI. Moreover, respondents have taken a conscious decision of fixing the cited standards in order not to compromise on efficiency. Selecting candidates who got zero marks under relaxed standards does adversely affect the efficiency of the organisation particularly in the cadre of JTO which is supervisory in nature. In tune with articles 16 (4) and 335 of the constitution the decision to fix the relaxed standards of 20% for SC and 15% for ST candidates was taken by the respondents. JTO cadre is indeed a crucial supervisory cadre entrusted with the responsibilities which are intrinsic to the interests of the respondent's organisation. In fact, Article 335 of the constitution speaks about efficiency while providing reservation to SC/ST candidates as under:

Article 335 "The claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with • the affairs of the Union or of a State."

Therefore, reckoning efficiency while deciding the qualifying standards for SC/ST candidates on promotion to the posts of JTO, is in accordance with the Article 335 of the Constitution. In this regard we take support of the observations of the Hon'ble Apex Court in *Ajit Singh And Ors vs State Of Punjab And Ors* on 16 September, 1999 in Appeal (Civil) 3792 of 1989, as under:

Learned senior counsel for the reserved candidates, Sri K.Parasaran however contended that Article 16(4) and Article 16(4A) confer a power coupled with a duty and that it would be permissible to enforce such a duty by issuing a writ of mandamus. Reliance for that purpose was placed upon Comptroller and Auditor General of India, Gian Prakash



vs. K.S.Jagannathan [1986 (2) SCC 679] and also on *Julius vs. Lord Bishop* (1880) 5 AC 214 which case was followed by this Court in Commissioner of Police vs. Gordhandas Bhanji [1952 SCR 135]. We are unable to agree with the above contention. As pointed out earlier, the Constitution Bench of this Court in C.A. Rajendran Vs. Union of India (1968(1) SCR 721) held that Article 16(4) conferred a discretion and did not create any constitutional duty or obligation. In fact, in that case, a mandamus was sought to direct the Government of India to provide for reservation under Article 16(4) in certain Class I and Class II services. The Government stated that in the context of Article 335 and in the interests of efficiency of administration at those levels, it was of the view that there should be no reservation. The said opinion of the Government was accepted by this Court as reasonable and mandamus was refused. Even in M.R. Balaji's case, the Constitution Bench declared that Article 16(4) conferred only a discretion. It is true that in Jagannathan's case, the three Judge Bench issued a mandamus, after referring to Article 142, that the Government must add 25 marks to SC/ST candidates who had taken the S.A.S. Examination for promotion as Sections Officers and also that, in future, a reduced minimum marks must be provided and announced before the examination. The Court also observed that the Department had not passed orders as per a general O.M. of the Government dated 21.9.1977. But the attention of the Court was not drawn to the judgment of the Constitution Bench in C.A. Rajendran's case and other cases to which we have referred earlier. Further, if the State is of the opinion that in the interests of efficiency of administration, reservation or relaxation in marks is not appropriate, then it will not be permissible for the Court to issue a mandamus to provide for reservation or relaxation. We also note that in *Superintending Engineer, Public Health Vs. Kuldeep Singh* (1997(9) SCC 199), Jagannathan's case was followed and reference was made to Article 16(4) and Article 16(4A) and to the principle that where a power is coupled with a duty as in *Julius Vs. Lord Bishop* and *Commissioner of Police Vs. Gordhandas Bhanji*, the same could be enforced by the Court. But we may point out that even in Kuldeep Singh's case, no reference was made to C.A. Rajendran and other cases. We, accordingly, hold that the view in Jagannathan and Kuldeep Singh's cases that a mandamus can be issued either to provide for reservation or for relaxation is not correct and runs counter to judgments of earlier Constitution Benches and, therefore, these two judgments cannot be said to be laying down the correct law.

Efficiency has to be considered while considering appointments/promotions to crucial positions in an organisation as per the above verdict. The position of JTO is a crucial for the respondents organisation and hence the decision of the respondents to relax qualifying standards duly considering efficiency is in accordance of the Hon'ble Apex Court cited supra.

VII. Further, applicant has been frequently harping on the aspect that there are unfilled vacancies even after review and therefore he has a case to be considered. However, the impugned order does provide a proviso to fill up the unfilled vacancies by de-reserving them and throwing them open to the other communities. Incidentally, in the exam held as late as 2.6.2013 the minimum percentage to be secured is 40% for OC and 33% for SC/ST candidates. Thus the respondents have been exercising the power to review relaxation standards depending on the need and circumstances in which the respondent's organisation is placed. The applicant cannot dictate to the respondents as to which memo they should follow in regard to relaxation of qualifying standards. It is for the respondents to decide depending on organisational requirements as per legal principles enunciated by Hon'ble Supreme Court in paras supra.

VIII. One another contention made by the applicant is that the relaxation standard fixed for ST candidates is 15% and that for the SC candidates a higher standard of 20% has been fixed vide Memo dated 30.11.1992. SC and ST candidates are similarly situated and therefore SC candidates have been discriminated by not fixing a lower qualifying standard of 15%. Selection of ST candidate Sri M.Surya referred to by the applicant based on the norm of 15% is not discriminative as claimed by the applicant, since SC and ST candidates belong to different class and that the State can prescribe different standards in accordance with the legal principles laid by the Hon'ble Apex Court cited supra. Relaxed standards are applied uniformly to all the SC/ST candidates and hence applicant seeking selective relaxation to suit his needs is not in order. Respondent BSNL in 2005 adopting the criteria fixed in circular dated 30.11.1992 issued by respondent DOT instead of taking its own decision in accordance with the memo dated

10.3.2003 issued by itself cannot be found fault with in view of the observations of the Hon'ble Apex Court cited supra. For similar reasons the DOPT memos of 23.12.1970, 3.10.2010 and 25.8.2004 are of no assistance to the applicant.

Selection of SC/ST candidates is provided for under the constitution but within the purview of rules and law as discussed above. Applicant claiming that he has to be selected as long as vacancies exist referring to the OM 10.3.2003 lacks required reasoning and more so when the respondents have reviewed the aspects of relaxation of standards in the previous years and have come up with the latest memo on the subject in 9.3. 2005 which cannot be questioned under law for reasons elaborated above. Moreover, respondent submitted that the Hon'ble High Court has dismissed writ petitions filed by Junior Accounts officers to extend the relaxation benefit on par with JTO and the Tribunal too dismissed similar relief in OA 651/2011. Also writ petitions filed seeking similar relief in the Hon'ble High Court have been dismissed, as stated by the respondents. Applicant did not refute the same in rejoinder filed.

IX. In view of the aforesaid, the respondents have acted as per rules and law. There is no violation of Constitutional provisions, as alleged by the applicant. We do not, therefore, find any merit in the OA. Hence, the same is dismissed, with no order as to costs.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

(ASHISH KALIA)
MEMBER (JUDL.)

/evr/