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## **CENTRAL ADMINISTRATIVE TRIBUNAL**

## JODHPUR BENCH.

O.A.No. 175 of 2003

Date of order: July 28, 2004

**CORAM : HON'BLE MR.J.K.KAUSHIK, MEMBER (JUDL.)  
HON'BLE MR.M.K.MISRA, MEMBER (ADM.)**

- (1) Raj Singh Manohar S/o Late Sh. Jeewan Singh Ji, Aged about 51 Years R/o Qtr. No. II/41 Telecommunication colony Nagour, (Rajasthan).
- (2) Nath Mal Soni S/o Late Sh Sagar Mal Soni Ji, Aged about 45 Years R/o Qtr. No. III/14 Telecommunication Colony Nagour, (Rajasthan).

Both the applicants are presently working on the post of Junior Accounts Officer (J A O) in the office of the General Manager Telecom. District (GMTD), BSNL, Nagour, (Rajasthan).

### .... Applicants

Mr. S. K. Malik, Counsel for the applicants.



## Versus

1. Union of India through the Secretary, Ministry of Communications, Sanchar Bhawan, 20, Ashok Road, New Delhi - 110001
2. Chairman & Managing Director, Bharat Sanchar Nigam Limited (BSNL) Room No. 901, Statesman House, Barakhambha Road Cannaut Place, New Delhi - 110001.
3. Assistant Director General (DE) Bharat Sanchar Nigam Limited (BSNL) Department of Exam, Section, Dak Bhawan Sansad Marg, New Delhi - 110001.
4. General Manager Telecom. District (GMTD) BSNL, Nagour, (Rajasthan).

### .... Respondents

Mr. B.L. Bisnoi : Counsel for the respondents.

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**ORDER (ORAL)**  
**[by M.K.Misra, Member (A)]**

The applicants, Shri Raj Singh Manohar & Shri Nath Mal Soni filed this Original Application No. 175 of 2003 under Section 19 of the Administrative Tribunals Act, 1985 against the impugned order/declared result dated 29.08.2002 (Annexure A/1) thereby praying for the following reliefs:

- (a) By an appropriate order, writ or direction, respondents may be directed to include the names of the applicants in the list of successful candidates at annex. A/1 for absorbing on the post of Junior Accounts Officer ( J A O ) in the department of the respondents.
- (b) By an appropriate order, writ or direction, respondents may be directed to absorb the applicants on the posts of Junior Accounts Officer ( J A O ) along with other successful candidates as per terms and conditions laid down in O. M. dated 24 Jan 2003 at Annex. A/11.
- (c) Exemplary cost be imposed on the respondents for causing undue harassment to the applicants.
- (d) Any other relief, which is found just and proper, may be passed in favour of the applicants in the interest of justice by the Hon'ble Tribunal.”



2. Briefly the facts of the case are that the applicant No. 1 Shri Raj Singh Manohar and applicant No. 2 Shri Nath Mal Soni, who are the employees of the Department of Posts, Govt. of India, qualified part II examination of JAO in the year 1992-1993 and in 1990, respectively. Both the applicants were on deputation in the Department of Telecommunication (DoT for brevity) Govt. Of India during the period from October 1994 to October 1999 and September 1991 to September 1996, respectively. Vide Notification No. 8-11/2000-SEA II dated 30.09.2000 of DoT (Annexure A/2) deputationist working as JAO in the DoT or the

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deputationist who were repatriated to the parent department were allowed to opt for permanent absorption in the DoT as one time measure. For the purpose of absorption in the DoT etc. the deputationists were required to fulfill certain terms and conditions as laid down therein including the passing of the prescribed examination. The same are reproduced below, for the shake of convenience:

"Sub.: Permanent absorption in DoT/DTS/DTO of deputationists working as Junior Accounts Officers in the Department of Telecom as a one time measure – Reg.

Due to acute shortage in the grade of Junior Accounts Officers in Department of Telecommunications, this Department had taken certain officials from other Departments, including the Department of Posts, on deputation, to work as Junior Accounts Officers and posted them to various Telecom Circles/Units. In order to have the services of these officials on long term basis, in view of large number of vacancies existing in the Department of Telecom in the grade of JAO as on date, it has now been decided, with the approval of competent authority, to absorb these deputationists as Junior Accounts Officers in DoT/DTS/DTO, as one time measure, after conducting an examination. The examination will be conducted on certain terms and conditions set out separately in respect of those officials who will be working on deputation in DoT/ proposed BSNL as on 18.10.2000 and for all those who have earlier worked in DoT on deputation basis but have since been repatriated to their parent cadre. Any official holding any post higher than JAO in his parent Department as on 30.9.2000 will not be eligible to appear in the said examination.

2. The said examination will be conducted simultaneously with JAO Telecom Part-II examination and will be only for Paper-VII and Paper-VIII for these deputationists, as contained in syllabus for JAO, Telecom Part-II Examination. The details of eligibility conditions and also terms and conditions (ANNEXURE-D) for regulating their pay and seniority etc., for the said examination, along with proforma of declaration/undertaking (ANNEXURE-II) required to be given by all the applicants at the time of applying for the examination are enclosed herewith. The application form is also

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enclosed. Photo copy of the same can be used by the officials for submitting the application."

3. All the present deputationists who are willing to be absorbed in DoT/DTS/DTO as JAOs are requested to go through the terms and conditions and submit their application {as in proforma enclosed-Annexure-III} to the Head of the Circle concerned where they are working, alongwith the declaration/undertaking, in the prescribed proforma, latest by 27.10.2000. On receipt of the applications from the deputationists, the Heads of Circles will scrutinize the appliations so as to see whether application is complete in all respect, the declaration/undertaking given by the deputationists is duly filled in and signed by the deputationist. All those officials who are working in DoT Headquarters on deputation will, however, submit their applications to SEA Branch, DoT Headquarters, who in turn will send these applications to CGM NTR New Delhi after necessary verification etc.
4. Those deputationists who have already been repatriated and are willing to appear in the said examination after going through the terms and conditions, will have to submit their applications {as in proforma enclosed – Annexure-IV } alongwith their declaration/undertaking, through proper channel, indicating the Circle Headquarter where they intend to appear int he said examination, to their parent office latest by 27.10.2000. After verifying the eligibility etc., including the undertaking of the applicant, the parent office will consolidate all such applications and send them to SEA Branch of DoT Head quarters latest by 10.11.2000. Applications received after 10.11.2000 in SEA Branch will not be entertained. The SEA Branch, after scrutinizing the applications, will send the applications to the Circle opted for examination by the applicant latest by 17.11.2000. The applications received without the declaratins/undertaking shall not be entertainined.
5. The Cirlces will consolidate all the applications ie., applications received from present deputationists as also from SEA Branch in respect of those deputationists who have been repatriated and send the relevant details viz., Roll No. Allotted etc., to the DE Branch of DoT Head quarters latest by 30.11.2000, as would be done by them in respect of DoT officials who are appearing in JAO Part-II Examination. While allotting the Roll Nos., all the concened Circles will distinguish the Roll Nos. By writing (D) against the roll numbers denoting that the application belongs to a deputationist appearing in Paper-VII and Paper-VIII only.

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6. The candidate before filling the application should clearly understand that the candidature for appearing in the aforesaid examination is purely provisional and subject to approval of absorption by the Department of Personnel and Training and other concerned agencies. Department shall hold the right to cancel the examination or withhold the result.
7. The DE Branch, DoT/DTS/DTO will separately announce the examination schedule.
8. xxx xxx xxx
9. xxx xxx xxx

The learned counsel for the applicants submitted that it is understood from the above contents of the notification Annexure (A/2) that there are three types of candidates who were allowed to appear in the examination i.e. (i) Deputationists still working in DoT etc. (ii) Deputationists who were repatriated to their parent department and (iii) Officials of the DoT etc. It is further noted that the deputationists at category No. (i) and (ii) above, were required to appear in paper VII and paper VIII, only. And the officials of the DoT etc. were required to appear in JAO part-II examination. The learned counsel for the applicants averred that since the deputationists in category no. (i) and (ii) had already cleared the JAO part-II examination which were the pre-condition for getting into deputation in DoT etc. they were only required to appear in paper VII and paper VIII, only.



3. The learned counsel for the applicants submitted that Annexure-I of the notification (Annexure A/2) details the terms and conditions very clearly for absorption of the deputationists in me

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DoT etc. For the shake of convenience, they are also reproduced below to appreciate the facts of this case:

#### ANNEXURE-I

##### Terms and conditins for absorbtion of personnel taken from other Department/Ministries on deputation to work as Junior Accounts Officers in Department of Telecommunications.

It is proposed to conduct an examination of all officials who are/or who were on deputation in DoT, in Paper VII and VIII as contained in syllabus for JAO, Telecom Examination. The eligibility conditions, details of terms and conditions of the said examination, the syllabus of the exam, training schedule, their pay fixation and seniority both in relation to DoT regular JAOs as also inter-se-seniority amonst JAOs (deputationists) etc., are given below:

While applying for appearing in the said examination in response to the Circular No. 18-11/2000-SEA.II dated 30.9.2000, all concerned are requested to go through the terms and conditions set out below. Along with their application they have also to submit an undertaking, a copy of which is attached. The candidate before filling the application should clearly understand that the candidature for appearing in the aforesaid examination is purely provisional and subject to approval of absorption by the Department of Personnel and Training and other concerned agencies. Department shall hold the right to withhold the result. Or to cancel the examination.



##### (A) Eligibility for appearing in the examination:

- (i) All the officials who have worked as JAO on deputation, in DoT, on earlier occasion and have since been repatriated to his/her parent Department/Ministry, and
- (ii) All the officials who are on deputation as JAO in DoT/proposed BSNL as on 18.10.2000, are eligible to apply for appearing in the proposed examination in TR paper.

Officials holding a post in pay scale higher than that of JAO (ie., higher than Rs. 5500-175-9000) in parent Department or at present working on deputation in DoT in such higher pay scale will NOT be allowed to appear in the said examination.

##### (B) Examination in TR Paper:

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(1) The deputationists will have to appear in Paper-VII and VIII of JAO (Telecom) Part-II syllabus, which, inter-alia, consists of theory and practical portion relating to Telecom Revenue Accounts. These appers will be conducted simultaneously with other appers of JAO Part-II exam which will be held for those DOT officials who have already qualified DOT JAO Part-I examination. The examination schedule will be announced by DE Branch of DOT. It is, however, expected that the said exam will be conducted during 2nd fortnight of December 2000 subject to convenience of DE Branch.

(2) The syllabus for TR paper set for deputationists will be same as that for JAO (Part-II) examinees of Department of Telecommunications.

(C) to (F) xxx                    xxx                    xxx

**(G) Other Points:**

(v) Option from present/past deputationist for permanent absorption, once exercised shall be final. However, it will be effective only when the official qualifies in the said examination and completes the Basic Training of JAO.

(vi) The examination will be conducted by DE Branch. The application will be consolidated at Circle level and the Roll Nos. will also be given by the said Telecom Circle. The Circle will suitably liaize with DE Branch.

(vii) Date, time and venue of the said examination will be announced by DE Branch, DOT Headquarters.

(viii) All those officials who qualify written test will be repatriated to their parent cadre and from there, they will be sent for training and on successful completion of basic training they will be absorbed as regular JAO in DOT and posted anywhere in India, subject to availability of vacancies.

(ix) (a) No TA/DA will, however, be admissible for appearing in the examination.

(b) On qualifying the examination (both papers) the services of all those officials who are on



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deputation will be terminated to facilitate their absorption.

(c) All ex-deputationists including the present deputationists who qualify the written test will be sent for JAO training in RTTCs from their parent offices. The period of training will be treated as duty for all purposes as on deputation.

It was averred that as per the above notification they appeared in such examination in paper VII and VIII and secured the following marks (Annexure A/6) in response to their representations (Annexure A/5):

S No.	Roll No: RT /JAO-II/Dec 2K	Name of Candidate	Marks obtained	
			PAPER- VII	PAPER- VIII
1.	RT-37	Sh. Nath Mal Soni	32 Thirty two	50 Fifty
2.	RT-47	Sh. Raj Singh Manohar	40 Forty	46 Forty Six

From the above details of the marks, it is noticed that the applicant No. 1 obtained 86 marks in both the papers out of 200 marks which gives 43% and the applicant No. 2 obtained 82 marks in both the papers out of 200 marks which gives 41%.

4. The learned counsel for the applicants also drawn our attention to Annexure A/4 which is a circular dated 23.07.2002 issued by the Bharat Sanchar Nigam Ltd. containing the instructions with regard to JAO part-II examination held in December 2000, it also contained the manner in which the result of such examination would be declared. The relevant extract of the same is reproduced, for the shake of reference, as under:

"General Candidates: (1) 33% in each subject and 35% in aggregate

(2) 6 grace marks in any one subject.

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SC/ST candidates: (1) 25% in each subject and 27% in Aggregate  
(2) 6 grace marks in any one subject

2. The candidates names are not arranged in order of merit.

3. The candidates mentioned in Annexure II have secured 60% or more marks in the papers mentioned against their names. They have not qualified in the examination but will be exempted from appearing in those papers again for three subsequent consecutive examination conducted irrespective of whether they appear in them or not.

4. The results of those candidates who have been allowed to appear in this examination provisionally in compliance of various CAT/Court orders on the basis of their performance in five (5) papers ( i.e. papers 1 to 5) of part I have been withheld. The results of these candidates would be subject to their passing paper VI in the re-examination held on 11.12.2001 and thereby becoming eligible to appear in part II.

6. The results in the case of candidates on deputation from other Departments who were allowed to appear in this examination will be declared separately."

5. The learned counsel for the applicants further submitted that the qualifying marks fixed for eligibility was 33% in each subject and 35<sup>o</sup>/marks in aggregate and 6 (six) grace marks in any one subject as per the above circular (Annexure A/4). Since both the applicants secured more marks than the minimum qualified marks in one subject (papers VII & VIII) above, therefore, their names ought to have been appeared in the declared list (Anneuxre A/1). It was also contended that the circular (Annexure A/4) is fully applicable in the case of the deputationists of category (i) and (ii) (supra) as is evident from the circular dated 23.07.2002 (Annexure A/4) read with letter dated 29.08.2002 (Annexure A/1) which contained list of candidates who were declared to have passed the required



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examination and which is under challenge in this Original Application.

6. It was brought to our notice by the learned counsel for the applicants that the earlier circular dated 24.06.2002 (Annexure R/1) of DoT prescribing the qualifying marks for JAO part-II examination for deputationists, stands superseded in view of the circular dated 23.07.2002 (Annexure A/4) which was issued later on and the deputationists are fully covered by that circular. In other words, the circular dated 23.7.2002 of relaxation in marks is also totally applicable to both deputationists <sup>etc</sup> as well as officials of the DoT etc.

The circular dated 24.06.2002 (Annexure R/1) of DoT contains the following conditions for becoming eligible for absorption on the basis of the result of the examination of JAO part-II in case of deputationists.

I am directed to refer to your letter under reference and convey that the qualifying marks in respect of the papers in the JAO part-II exam taken by the deputationists will continue to the same as that of the departmental candidates i.e. the deputationists have to secure 40% in with subject and 45% in the aggregate provided a minimum of 40% also secured separately in the practical paper with books. 45% in the aggregate for this purpose would mean 90% marks out of 200 marks (200 Marks are the maximum marks of paper VII and VIII).

To be precise, as (i) both papers VII and VIII appeared in by the deputationists fall under one subject, (ii) Paper VII and VIII constitute the aggregate papers in the Exam for the deputationists and (iii) Paper VIII is the practical paper with the aid of books, the following marks should be secured by the deputationist to declare him as qualified.

(i) 45% Aggregate marks i.e. a total of 90 marks in both paper VII and VIII put together.

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- (ii) A Minimum marks of 40% in paper VIII (Practical Paper with aid of books).
- (iii) No Minimum marks is required in paper VII.

7. The learned counsel for the respondents in their reply vociferously challenged, in all humility, firstly that the Central Administrative Tribunal as such as a matter of policy has no jurisdiction over the Bharat Sanchar Nigam Ltd. (BSNL, for short). In support of the contention, the learned counsel for the respondents cited the decision of the Jaipur Bench of the Tribunal in O.A. No. 250/2002 (**Lalchand Saini vs. UOI & Ors.**) order dated 31.05.2002 wherein it was held that this Tribunal did not have jurisdiction over BSNL because the applicant Shri Lalchand Saini was absorbed on permanent basis in the BSNL. Similarly, the learned counsel for the respondents took the support of the decision of the Jaipur Bench of CAT in the case of **Bhanwar Lal Makwana vs. UOI & Ors.** (O.A. No. 516/2002) order dated 05.06.2003 wherein it was decided that on the date of filing of the O.A. by the applicant, Shri Bhanwar Lal Makwana was not the employee of the Govt. Of India and was not holding a civil post, therefore, the matter could not be entertained<sup>onward</sup> keeping inview the provision of Section 14 of the Administrative Tribunals Act, 1985. Further another case of **Laxman Singh Asnani vs. Shri Prithpal Singh, CMD, BSNL and Ors.** ( C.P. No. 05/2003 in O.A. No. 03/2001) order dated 11.05.2004 was quoted by the learned counsel for the respondents in support of his contention on the issue of jurisdiction, the Hon'ble Tribunal of the Jaipur Bench held that the Tribunal did not have jurisdiction over BSNL

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because the contempt petition was filed against the corporate body.

8. The learned counsel for the respondents further submitted emphatically that BSNL is a corporate body and there is no notification issued by the Competent Authority under Section 14 (2) of the Administrative Tribunals Act, 1985, therefore, the Central Administrative Tribunal has no jurisdiction over the corporate body i.e. B.S.N.L., hence, the O.A. of the applicants is not maintainable at all. The learned counsel for the respondents also submitted that all the necessary orders were issued by the B.S.N.L. and since B.S.N.L. has not been notified under Section 14 (2) of the Administrative Tribunals Act, 1985, this Tribunal is not competent to adjudicate on any service matters pertaining to them.

9. We have heard the learned counsel for both the parties and have gone through the averments made by them during the course of hearing of the case and also perused the material available on record. It has been observed that the learned counsel for the respondents raised an objection that this Tribunal has no jurisdiction to entertain the OA of the applicants as there has been no notification to this effect under Section 14 (2) of the Administrative Tribunal Act, 1985. In support of his contention the learned counsel for the respondent quoted the decision of a full Bench of C.A.T at Jaipur in the case of B.N. Sharma etc. versus Union of India and others [2004(2), ATJ 11] wherein

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the following questions were framed for consideration of the Full Bench.

"1. Whether the Tribunal has jurisdiction on all service matter in respect of service matters of central government employees who are on deemed deputation of BSNL or only in respect of cause of action relating to their parent department e.g. disciplinary proceedings, retiral benefits, promotions, in their department etc. and not for the cause of action wholly arisen from BSNL e.g. transfer, promotion etc by BSNL."

"2. Whether the Tribunal has jurisdiction on all service matter in respect of service matter of central government employees, the cause of action for which related to a period prior to the absorption of such employees in BSNL."



As regards questions 1 & 2 above the Full Bench opined as under:

"We do not dispute the importance of the above-said question, but keeping in view the nature of the controversy, we are not answering the dispute as to the jurisdiction of this Tribunal which a Government employee is on deemed deputation with the BSNL because it did not arise during the course of submissions and we had made ourselves clear

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to the Members of the Bar that this question can be gone into whenever it arises. We are also, therefore, not inclined to go into the other questions which are co-related has thereto and are confining ourselves to the controversy as to if this Tribunal has the jurisdiction on service matters with respect to the Central Government employees, who have been absorbed in the BSNL."

However, the Full Bench observed in end as under: -

"1. Resultantly, we answer the controversy, as already referred to above, holding that in cases in which the employees had been absorbed permanently with the BSNL, the Central Administrative Tribunal has no jurisdiction to adjudicate upon their service matters till a notification under sub-section(2) to Section 14 is issued."

"2. In fact of the findings we have recorded above, it becomes unnecessary for us to remit the matter back to the relevant Bench. Since this Tribunal has no jurisdiction to entertain the applications, the same are dismissed. No costs."

We have carefully gone through the above decision. From the above findings, it is observed that this Tribunal has no jurisdiction over employees who had been absorbed permanently with the BSNL. At the same time as regards question No. 2 the employees who are on deputation with the DOT/BSNL, the C.A.T. has jurisdiction as held by the Chandigarh Bench of the C.A.T in the case of **Phulshwar Prasad Singh versus Union of India and others** [2003(2) ATJ 297,] The Tribunal held in the

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above case that as per the provision of Section 14(1) of the Act, the jurisdiction is determined with reference to a particular class or categories of employees and subject matter of grievance and not with reference to the employer /parties against whom the grievance is raised or the relief is claimed. In this case the two applicants are employees of the Postal Department of Government of India and are on deputation with the Department of Tele-Communication later on a part of which became the BSNL and they have not yet been absorbed in the BSNL hence this Tribunal has got, in all aspects, the jurisdiction over such employees because it is the status and the character of the employee which determines the jurisdiction of the appropriate forum. The jurisdiction of the Tribunal does not depend upon the character of the party against which a relief is claimed once it is established that the person is holding a public post and that the relief claimed is in respect of service conditions then the question whether he is seeking remedy against the Government or against any other party or both is immaterial. The provisions of Section 14(1) of the Act have no reference to the body organization or establishment where the employees of the categories specified therein have been posted, deputed or detailed to work. Once it is determined that an employee is a Central Government employee or falls within the categories specified in Clauses (b) & (c) of sub-section (1) of Section 14, he can straightaway approach this Tribunal for the redressal of his grievances in relation to his service matters. It may also be noticed that as per notification dated 30.09.2000 (Annexure  
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A/2), the deputationists were to be absorbed as JAO in DoT/DTS/DTO as one time measure. Their transfer/absorption in BSNL might be subsequent exercise. The D.O.T. is definitely a Central Government Department and the employees of it are Central Government employees, therefore, this Tribunal has jurisdiction to entertain their case relating to service matters.

10. We would like to mention here that the learned counsel for the respondents referred to three judgements of the Jaipur Bench of the Tribunal with regard to the jurisdiction of this Tribunal on the BSNL. We would like to hold that all the three decisions quoted by the respondents as Annexures R/2, R/3 and R/4 are not applicable because in two cases, the applicants were not the employees of the Union Govt. and were not holding a civil post and in the third case, the C.P. was filed against the BSNL therefore, the decision taken in that C.P. is also not applicable in this case because the CAT has no jurisdiction on BSNL.



In the present case, the applicants are still the employees of the Department of Posts, Govt. of India, they have yet not been absorbed in the BSNL, their grievance is that they should get absorb in the DoT which is a department of Govt. of India, on the basis of the examination held for paper VII and VIII of JAO part-II examination which they cleared as per communication/circular/notification dated 23.07.2002 (Annexure A/4) and they are legally entitled to be included in the impugned

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declared result as a candidate becoming eligible for absorption in the DoT.

11. We have, therefore, of the ~~fair~~<sup>view</sup> that this Tribunal has jurisdiction over the applicants hence we proceed to decide this O.A. on its merits.

12. Learned Counsel for the applicants submitted that the basic order dated 30/9/2000(Annex. A/2) was issued by the Government of India, Department of Telecommunication and the applicants have not yet been absorbed in the BSNL. They have qualified in the examination to become eligible for absorption in the DOT/BSNL. Both the applicants have passed the JAO Part II examination and they have secured more marks than the minimum prescribed marks in paper VII & VIII as per criteria given in the letter dated 23.7.2002. The impugned order dated 29.8.03 refers to the letter of even number dated 23.7.2002 which indicates that the concessions were meant for deputationists also therefore, both the applicants are legally entitled to get their names included in the impugned declared results enclosed with letter dated 29.8.02(Annex A/1).

13. The learned counsel for the respondents contended vociferously that the relaxation as per letter dated 23.7.02(Annex. A/4) was given by the Cadre Controlling Authority (DoT) in respect of the officials of DoT only who have cleared the JAO Part-I examination ( i.e. six papers, four



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subjects) in DOT syllabus and those who appeared in 5 papers (3 subjects) in the JAO Part II examination of DOT. The impugned result list contained the names of these officials who cleared JAO part-II examination after the relaxation was applied to them. This relaxation is not applicable to deputationists because they were exempted to appear in JAO part-I examination. It was also submitted that since the deputationists are not the departmental candidates and they did not appear in the JAO Part-I examinations of the DOT in 6 papers (4 subjects) therefore, they are not competent to avail the above relaxation. Since, they did not secure marks in paper VII & VIII as per Annexure R/1 above (i.e. 40% in each paper and 45% in aggregate) their names were not included in the impugned result.

14. We have anxiously considered the submissions of both the parties. In nut-shell, the dispute is whether or not the relaxation circular dated 23.07.2002 (Annexure A/4) is applicable to the deputationists, or it is meant only for non-deputationists i.e. officials of the DoT etc. As per the respondents, the circular dated 24.6.2002 (Annexure R/1) is applicable to the deputationists and since both the applicants could not obtain marks at 45% in aggregate (i.e. a total of 90% marks in both the papers VII & VIII put together), they were not included in the impugned result. We observe while going through the various communications/circulars/notifications issued by the competent authority from time to time that the basic bible for absorption of the deputationists in DoT is notification dated 30.09.2000

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(Annexure A/2). We find that nowhere it has been mentioned that for the purpose of eligibility for absorption in DoT, the deputationists are required to clear JAO part-I examination. We also find that the relaxation given in the letter dated 23.07.2002 (Annexure A/4) does not prohibit the deputationists to avail the above relaxation as is available to the officials of the DoT etc. We also observe that the communication dated 24.06.2002 (Annexure R/1) had been issued by the DoT wherein the minimum marks obtained in paper VII & VIII of JAO part II examination should be 45% in aggregate and 40% in each paper. This minimum prescribed percentage of marks were relaxed by issuing of another communication/notification dated 23.07.2002 (Annexure A/4) which is also applicable in the case of deputationists. We also anxiously noticed that the deputationists were required to pass only in JAO part-II examination in paper VII & VIII only. As per the circular dated 30.09.2000 (Annexure A/2) wherein the terms and conditions have been laid down in the main body of the notification as well as in Annexure I to IV thereof, stand satisfied & fulfilled. Since both the applicants had already cleared the JAO part II examination before deputation in DoT therefore only requirement for both the deputationists in DoT for absorption was to pass in paper VII & VIII only.

15. We further observe that both the applicants secured marks more than prescribed marks as per circular dated 23.07.2002 (Annexure A/4) i.e. 43% and 41%, therefore, their names ought  
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to have been included in the impugned result declared (Annexure A/1).

16. We have extensively considered the various averments made by the learned counsel for both the parties. The inescapable conclusion is that both the applicants have fulfilled the conditions as mentioned in letter dated 30.9.2000 (Annex. A/2), letter dated 23.07.2002 (Annex.A/4); they have also secured more than the minimum prescribed marks in aggregate in both the papers VII and VIII as per communication dated 24/27.09.2002 (Annex. A/6). The respondents are therefore, directed to include the names of both the applicants in list of successful candidates at Annexure A/1, as per their merit position and consider their candidature for absorption on the post of J.A.O. accordingly, within a period of three months from the receipt of a copy of this order of the Tribunal and intimate accordingly to both the applicants in this respect. They shall be also entitled to the benefit of seniority as per their merits.

17. Consequently, the Original Application is hereby allowed accordingly. No costs.

  
(M.K. MISRA)  
Member (A)

  
(J.K. KAUSHIK)  
Member (J)

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Adv.  
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