

**CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH, JODHPUR**

**Original Application No.450/2011**

Jodhpur this the 02<sup>nd</sup> day of December, 2013

**CORAM**

**Hon'ble Mr. Justice Kailash Chandra Joshi, Member (J),  
Hon'ble Ms. Meenakshi Hooja, Member (A)**

Nemichand Singaria S/o Shri Kunaramji, aged about 39 years, by caste Singaria (SC), R/o 1A11, New Housing Board Colony, Pali. At present working as Sub Divisional Engineer (Vigilance), O/o GMTD, BSNL, Pali.

.....Applicant

**Mr. Mahesh Bora, Sr. Advocate, assisted by  
Smt. Sushma Dhara, Advocate, present for applicant.**

**Versus**

1. Union of India through Secretary, Department of Telecommunication, Ministry of Communication & Information Technology, Government of India, 421, Sanchar Bhawan 20, Ashoka Road, New Delhi-100 001.
2. Chairman-cum-Managing Director, Bharat Sanchar Nigam Limited, Corporate Office, 102 B, Statesman House, 148, Barakhamba Road, New Delhi-1.
3. The General Manager (Personnel), Bharat Sanchar Nigam Limited, Corporate Office, 4<sup>th</sup> Floor, Bharat Sanchar Bhawan, Janpath, New Delhi-1.
4. The General Manager (Recruitment), Bharat Sanchar Nigam Limited, Corporate Office, 2<sup>nd</sup> Floor Eastern Court, Janpath, New Delhi-1.
5. Chief General Manager Telecom, Telecom Circle Rajasthan, Bharat Sanchar Nigam Limited, Sardar Patel Marg, C-Scheme, Jaipur.
6. Director (HR), Bharat Sanchar Nigam Limited HQRS, New Delhi.

.....Respondents

**Smt. K. Parveen, Advocate, present, for respondent No.1.  
Mr. Kamal Dave, Advocate, present, for respondents No.2 to 6.**

ORDER (Oral)Per Justice K.C. Joshi, Member (J)

By way of this application, the applicant has challenged the legality of the order at Annexure-A/1 by which the representation of the applicant for providing the grace marks in the Limited Departmental Competitive Examination held on 15.07.2007 for the post of Sub Divisional Engineer (Telecommunication) was denied to him.

2. The short facts of the case as averred by the applicant are that the applicant was declared unsuccessful in the Limited Departmental Competitive Examination (LDCE) held on 15.07.2007 under the Sub Divisional Engineer (Telecom) Recruitment Rules-2002, for giving promotion to the rank of Sub Divisional Engineer (Telecommunication). It has been averred that the notice of the examination was published on 09.02.2007 by the Assistant Director General (DE), BSNL, New Delhi and the examination was held for the vacancies from the year 2001-2002 to 2005-2006 in which the applicant was declared failed. The applicant under Right to Information Act got the documents regarding marks obtained by him in both the subjects, in the first paper the applicant got 58/100 marks and in the second paper he got 44/100 marks. It has been averred that though there is a provision of awarding grace marks but the applicant has not been awarded any grace marks while declaring the result. It has been further averred that the respondents issued a letter dated 08.01.2007 for providing certain relaxation for the candidates belonging to SC

and ST category, and as per that letter it has been provided that in the departmental examinations if the successful candidates are not in adequate number to fulfill the vacancies then to fill the vacancies by awarding grace marks. It has been further averred that the BSNL has adopted this rule and after awarding 5 to 10 grace marks to the candidates belonging to SC & ST category they have been declared as passed. But, in the applicant's case, no grace marks have been provided by the respondents. Being aggrieved of that the applicant made a representation dated 28.04.2011 to the Director (HR), BSNL H/Q, New Delhi, which was rejected by the competent authority. The applicant submitted another representation dated 01.09.2011 before the Senior General (Personnel) and General Manager (Recruitment), but no heed has been paid to decide the representation and still the same is pending before the competent authority. Therefore, the applicant by way of this application has sought the following reliefs:-

- “(i) The order dated 09.06.2011 (Annexure-A/1) passed by the Chief General Manager Telecom, Rajasthan Telecom Circle, Jaipur may be quashed and set aside.*
- (ii) That the respondents may be directed to give one grace mark to the applicant in paper-II of Limited Departmental Competitive Examinations 2007 and after awarding one grace mark, the applicant should be declared successful in the Limited Departmental Competitive Examination-2007.*
- (iii) That the respondents may be directed to give promotion to the applicant on the post of Sub Divisional Engineer after declaring him successful in the Limited Departmental Competitive Examinations-2007 with all consequential benefits from the date when the other similarly situated employees were given promotion.*
- (iv) Any other appropriate order or direction, which may be deemed just and proper in the facts and circumstances of the case, may kindly be passed in favour of the applicant.”*

The applicant in support of his application annexed 10 documents as Annexure-A/1 to A/10.

*J*

3. The respondent No.1 is a formal party and during the course of arguments, the counsel for the respondent No.1 adopted the reply filed by the respondents No.2 to 6.

4. By way of reply, the respondents No.2 to 6 averred that the SC/ST category candidates, who have already been given the facilities of relaxation in minimum passing marks, have not been allowed further grace marks for promotion to the post of Sub Divisional Engineer (Telecommunication), and applicant cannot claim the relief for grant of grace marks as a mandate. It has been further averred that in no case, the grace marks have been awarded by the department to any candidate who appeared in the LDCE examination for the post of Sub Divisional Engineer (Telecommunication). It has been further averred that vide letter dated 08.01.2007 (Annexure-A/7), the grace marks were awarded by the competent authority for the post of JAO, which is a different post. It has been further averred that the Annexure-A/8 communication dated 23.07.2010 is also regarding the JAO post and it is not applicable for the post of Sub Divisional Engineer (Telecommunication), Group 'B' in which the grace marks have been awarded by the competent authority. The respondents No.2 to 6 in their reply further averred that awarding of grace marks is not a right of the candidates and it cannot be claimed as a mandate, and they further averred that the Courts or Tribunals would not interfere in matters of evaluation of standards prescribed by the appointing authority. It has also been averred that the Courts or Tribunals cannot compel the respondent department to issue direction to them

to declare a candidate pass by lowering the standards of excellence for him. Thus, by way of reply, the respondent department prayed to reject the application.

5. Heard both the parties. Counsel for the applicant contended that in a similar matter, the Central Administrative Tribunal, Madras Bench, in OA No.185/2010, directed the respondent department to consider the representation of the applicants in the light of different circulars issued by the Department. He further contended that as per circular dated 20<sup>th</sup> June, 1994 (Annexure-A/6), the applicant is entitled to get the grace marks as this circular is still in force.

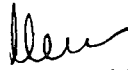
6. Per contra, counsel for the respondents No.2 to 6 contended that Annexure-A/6 is applicable only to the candidates appearing in departmental examination and he further contended that this circular was issued in year 1994 and was applicable only to the cases in which the process of declaration of the examination was in force or in cases in which the results have been declared. He further contended that the judgment of the CAT Madras Bench is not regarding the grace marks but was regarding consideration of provisions of Article 335 of the Constitution of India and to prescribe less marks for the SC/ ST category candidates in the light of the efficiency of the administration as provided in the provision of Article 335 of the Constitution of India. Counsel for the respondents further contended that the Rules for the Sub Divisional Engineer (T) were framed in the year 2002 and no one is entitled to

have the grace marks as a mandate, and it is the discretion of the competent authority. He further contended that no case is made out by the applicant regarding discrimination of awarding any grace marks to any of the candidates. Therefore, the applicant is not entitled to have any grace marks as per the policy or even under circular Annexure-A/6.

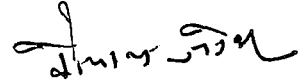
7. We have considered the rival contentions of both the parties and perused the record. So far as Annexure-A/6 is concerned, it is applicable only in the cases of departmental qualifying examination whereas in the impugned examination which have been challenged under this OA were Limited Departmental Competitive Examination and further Annexure-A/6 was applicable only to the examinations where results were in the process of declaration or in which the results had been declared; whereas the present examination conducted in the year 2007 as per Rules of 2002 and at the time of the issuance of the Annexure-A/6 i.e. to the year 1994 these rules were not in force. Therefore, in our considered view the Annexure-A/6 is not applicable in the present case. The applicant also pointed out the Annexures-A/7 & A/8, which are also not applicable in the present case because this was the case of JAO and those posts are being governed by the different rules.

8. Coming to the judgment of the Hon'ble Madras Bench of Central Administrative Tribunal, passed in OA No.285/2010, we are of the considered view that the issue was different from the present case because in that case the applicability of Article 335 of

the Constitution of India was considered while considering the minimum marks for the competitive examination, whereas in the present case, the issue is with regard to awarding of the grace marks and in our considered view grace marks cannot be claimed as matter of right and particularly when no such grace marks have been awarded to any other candidates and therefore no case for discrimination is made out. Moreover, the examination was held in the year 2007 and after that examination, the further examination might have been held in pursuance to the Rules of 2002 and at this stage we do not want to unsettle the situation which has been settled way back in the year 2007- 2008. Thus, the OA lacks merit and accordingly the same is dismissed with no order as to costs.



(Meenakshi Hooja)  
Administrative Member



(Justice K.C. Joshi)  
Judicial Member