

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

O.A. Nos. 340/2012, 351/2012, 352/2012 & 353/2012

Jodhpur, this the 26th day of March, 2015

CORAM

Hon'ble Justice Mr K.C. Joshi, Judicial Member

Hon'ble Ms. Meenakshi Hooja, Administrative Member

1. Dinesh Meghwal S/o Shri Bhagwan Lal, aged about 38 years, resident of 5, Roop Sagar Road, Pahada, Udaipur, at present employed; on the post of Junior Telecom Officer (DR), in the office of GMTD, BSNL, Udaipur.

.....Applicant in OA No. 340/2012

2. Heman Mittal S/o Shri Mohan Lal Mittal, aged about 34 years, resident of 1-M-28, Mahaveer Nagar Extension, Kota, at present employed on the post of Junior Telecom officer (DR), In Transmission, under GMTD, BSNL, Kota.

.....Applicant in OA No. 351/2012

3. Rakesh Nawal S/o Shri Bhanwal Lal, aged about 33 years, resident of Village and Post Office-Miyala via -Barar Tehsil Deogarh, Distt - Rajsamand, at present employed on the post of Junior Telecom Officer (DR), in Deogarh, under GMTD, BSNL, Udaipur.

.....Applicant in OA No. 352/2012

4. Devendra Kumar Ameta S/o Shri Baboo Shankar Ameta, aged about 33 years, resident of 47, Vishva Karma Nagar, Gariawas, Udaipur, at present employed on the post of Junior Telecom Officer (DR), in the office Gogunda under GMTD, BSNL, Udaipur.

.....Applicant in OA No. 353/2012

By Advocate: Mr. A.K. Kaushik.

Versus

1. Bharat Sanchar Nigam Ltd., through its Chairman & Managing Director, Corporate Office, Bharat Sanchar

Bhawan, Harish Chandra Mathur Lane, Janpath, New Delhi - 110001.

2. Assistant General Manager (Pers-V), Corporate Office, Bharat Sanchar Bhawan, Harish Chandra Mathur Lane, Janpath, New Delhi-110001.
3. Assistant General Manager (Admn/HR), O/O GMTD, BSNL, Udaipur-313002.

.....Respondents

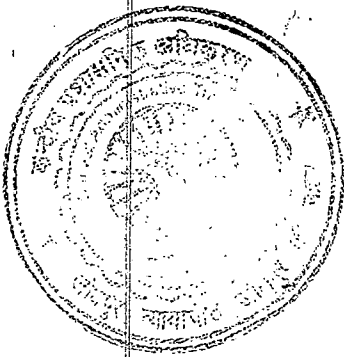
By Advocate : Mr Lalit Vyas.

ORDER

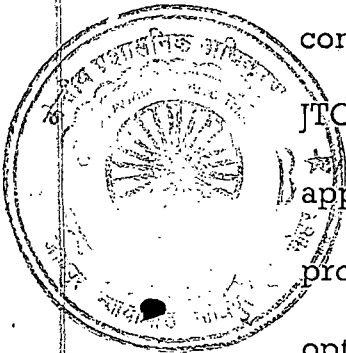
Per Justice K.C. Joshi

Since the issue involved in OA Nos. 340/2012, 351/2012, 52/2012 & 353/2012 is identical, facts involved are similar and also the relief(s) sought are more or less common, therefore, we decide these OAs by a common order.

2. The necessary facts, in brief, to adjudicate the matter are that the applicants in these OAs were appointed to the post of Telecom Technical Assistant (TTA) in the pay scale of Rs 7100-10100 (pre-revised) in the respondent-department on different dates of the years 2002 and 2003 and thereafter they were appointed as Junior Telecom Officer (JTO) in the BSNL, by Direct Recruitment, on different dates of the year 2009 after going through requisite selection process. The applicants in these OAs had opted for the revised pay scale from the date of their appointment as JTO and were allowed due pay fixation as per their option exercised and paid the difference of pay and allowances. Thereafter, the respondent-department vide memo dated 28.03.2012 (Annex. A/2)

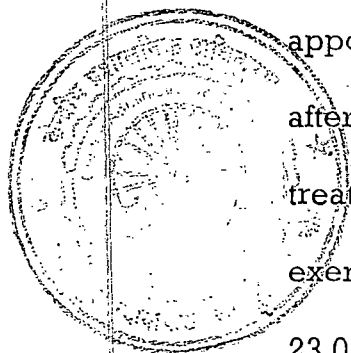


under the subject of 'Revision of pay of Non-executive Employees in BSNL w.e.f. 01.01.2007 – clarification reg.' has clarified that the appointment given, under direct recruitment of outside quota, after tendering technical resignation by the employee cannot be treated as promotion. Therefore, such employees are not entitled for exercising the option for fixation of pay in terms of the para 3.8 of this office order dated 07.05.2010. In pursuance of this clarification, the authorities of the respondent-department informed the applicants that their pay is to be re-fixed in the light of aforesaid clarification. Therefore, the applicants have filed these OAs seeking common relief(s) of declaring illegal as well as quashing of order Annex. A/1 dated 16.04.2010 to the extent of confining the pay fixation benefit at Rs 21620/- to the 2005 batch of JTOs and clarification Annex. A/2 dated 28.03.2012 by which appointment given under DR quota is not being treated as promotion resulting into denying the applicants to exercise their option for fixation of pay in terms of para 3.6 of the office order dated 07.05.2010.

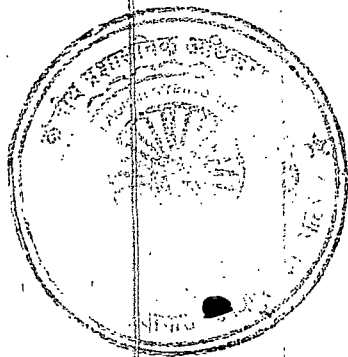


3. By way of reply the respondents have averred that that applicants in all these OAs were TTA in the respondent-department and they applied for the post of JTO, outside cadre post, as Direct Recruit and after selection on the said post tendered technical resignation from the post of TTA and joined as direct recruit JTO, therefore, there appointments can only be termed as fresh recruitment. The respondents have further averred that due to

wrong interpretation of para No. 3.6 of office order No. 10/2010 dated 07.05.2010 (Annex. R/3) past services of the applicants have been counted although aforesaid circular is applicable to the employees who have been provided promotion to the post of JTO from the cadre of TTA. The communication dated 23.06.2010 (Annex. R/4) was issued in clarification of the office order dated 07.05.2010 and Corporate Office of the respondent-department again considered the matter in pursuance of several queries raised and after thorough consideration of the same clarification dated 18.05.2011 and 28.03.2011 (Annex. A/2) have been issued wherein it is clarified that non-executive employees can exercise their option for fixation of pay in the revised pay from the date of their promotion/financial upgradation under ACP Scheme. The appointment given under direct recruitment quota, outside cadre, after tendering technical resignation by the employee, cannot be treated as promotion, therefore, direct recruits are not entitled to exercise their option as per the order dated 07.05.2010 or 23.06.2010. In such circumstances, the order dated 28.03.2012 (Annex. A/2) specifically clarifying the position regarding recruitment of JTO's, and other orders issued in furtherance to that cannot be said to be illegal in any manner. The respondents have also averred that the applicant challenged the office order dated 16.04.2010 (Annex. A/1) on baseless and frivolous grounds as the aforesaid order is with regard to the JTO's of 2005 batch and has no concern to the batch of 2007. The applicants are not entitled



6. Accordingly, OA Nos. 340/2012, 351/2012, 352/2012 & 353/2012 are disposed of with the direction to the competent authority in the respondent-department to decide the representations Annex. A/11 dated 19.05.2012, filed by the applicant of each OA, by a detailed speaking order after taking into account all aspects of the matter, within 3 months from the date of receipt of this order. Interim order in all these OAs shall remain effective till final disposal of representation of the applicants by competent authority of the respondent-department. There shall be no order as to costs.



COMPARED &
CHECKED

CERTIFIED TRUE COPY
Dated: 10/4/2015

[Meenakshi Hooja]
Administrative Member

[Justice K.C. Joshi
Judicial Member

पञ्चमः अध्यायः (Cont.)
 Section 20 (Jud.)
 जिला न्यायाधीश वरिष्ठ
 Federal Administrative Tribunal
 दोषपूर्ण व्यवहार, जोषपुर
 जिला न्यायाधीश वरिष्ठ

Recd. Com
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Dec.
10/4/15