

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH
Original Application No.432/2013

Wednesday, this the 14th day of December, 2016

CORAM:

Hon'ble Mr. Justice N.K.Balakrishnan, Judicial Member
Hon'ble Mrs.P.Gopinath , Administrative Member

1. Poulose c.V
 S/o.C.P.Varghese
 Officiating Junior Telecom Officer
 Telephone Exchange
 Bharat Sanchar Nigam Limited (BSNL),
 Mulavukad, Ernakulam Dt.
 Residing at: Chinaparamban House, Koovappadi P.O
 Permbavoor, Ernakulam District – 683 544
2. Babu K.A, S/o.Ayyappan.K
 Officiating Junior Telecom Officer, Telephone Exchange
 Bharat Sanchar Nigam Limited (BSNL), Peruvanthanam
 Residing at: Kallarkudi House, House No.VII/169
 Koovappadi P.O, Ernakulam District 683 544
3. P.J.Nelson
 S/o.P.J.Joseph
 Officiating Junior Telecom Officer,
 Bharat Sanchar Nigam Limited
 (BSNL), Office of the Divisional Engineer
 Transmission Project, CTSD Buildings
 Ernakulam, Residing at: Panakkathara
 Ponnurunni East, Vytila, Kochi – 19
4. Peter P.P
 S/o.Pavu P.P
 Officiating Junior Telecom Officer
 Bharat Sanchar Nigam Limited (BSNL)
 Office of the Divisional Engineer, Survey and Access
 Netweork Transmission Project, Ernakulam
 Residing at : Puthenkudi House
 Koovappadi P.O, Permbavoor
 Ernakulam District – 683 544
5. Leena Joseph, W/o T.C.Joseph
 Officiating Junior Telecom Officer, CSC
 Bharat Sanchar Nigam Limited (BSNL), Angamali
 Residing at: Thaliyan House



Mookkannur P.O
Ernakulam District – 683 577

6. Antony K.J
S/o.Joseph K.V
Office of the Junior Telecom Officer, Telephone Exchange
Bharat Sanchar Nigam Limited (BSNL), Fort Kochi
Ernakulam Dt., Residing at: Kattikkatt House
Maruvakkad, Challanam P.O
Kochi – 682 008

7 Xavier A.A
s/o.Esthappan
Officiating Junior Telecom Officer
Second Line MTCE, Office of the SDE Installation
Telephone Exchange Building
Palarivattom, Residing at: Attupuram House
Asamannoor P.O, Cherukunnam
Ernakulam District – 683 549

8 Baby P.J, S/o.P.V.Joseph
Officiating Junior Telecom Officer, WLL
Bharat Sanchar Nigam Limited (BSNL), Boat Jetty
Ernakulam Dt. Residing at: Padayathil House
Thattuva P.O, Ernakulam District – 683 544

..... **Applicants**

(By Advocate –**Mr.T.C.G Swamy**)

V e r s u s

1. The Chariman and Managing Director
Bharat Sanchar Nigam Ltd. (BSNL)
Corporate Office, New Delhi
2. The Chief General Manager (Telecom)
Bharat Sanchar Nigam Ltd, Kerala Circle
Trivandrum
3. The General Manager (Telecom)
Bharat Sanchar Nigam Ltd., Telecom District
Ernakulam

..... **Respondents**

(By Advocate – **Mr.George Kuruvilla**)

14/12/2016 This Original Application having been heard on 18.11.2016, the Tribunal on 14/12/2016 delivered the following:

ORDERBy Hon'ble Mrs.P.Gopinath, Administrative Member

The applicants are presently working as Junior Telecom Officers on Officiating basis, under the respondents falling within the Ernakulam Telecom Division. In this application, the applicants are aggrieved by the denial of consideration for regular promotion to the post of Junior Telecom Officer, the post against which the applicants had been officiating for the last about five years.

2 Applicants herein, who were officiating Junior Telecom Officers, challenge the assessment of vacancies against 35% quota for regular promotion to the post of Junior Telecom Officers. The year wise vacancies mentioned in paragraph 6 of Annexure A-1 notification are the one in question. According to the Annexure A-2 recruitment rules 50% of the vacancies are filled by direct recruitment and the remaining 50% are to be filled as follows:-

“ (i) 35% by promotion through Limited Internal Competitive Examination (LICE) from amongst certain Group 'C' categories of employees mentioned in the rules and,

(ii) the remaining 15% by promotion through LICE for certain other group of Group C employees. The applicants who were substantive holders of the post of Telecom Technical Assistants were eligible to be considered against the above 35% quota. “

3 The respondents by Annexure A-4 direction dated 21.12.2009 followed by Annexure A-5 dated 20.2.2010 initiated steps for filling up the 35% quota but did not disclose the year wise vacancies. The said notification was challenged in O.A No.226/2010 by some of the applicants herein and others which was allowed by Annexure A-7 dated 15.3.2011. Annexure A-7 was slightly modified by Annexure A-8. The respondents are

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bound to publish the year wise vacancies and to consider the candidates who are eligible as on 1st July of the respective year. It was in this back ground that Annexure A-1 notification came to be issued by the respondents indicating the year wise vacancies for promotion against the 35% quota.

4 In support of justifying the error in calculation of the year wise vacancies, the applicants have relied upon Annexure A-10 information received under the RTI Act. The respondents argue that as per the guide lines, vacancies are to be calculated based on rosters only. BSNL Corporate Office letters at R1 and R2 notifying the LDCE for JTO 35% and 15% quota, vacancies are calculated as per the guidelines issued vide Annexure R(1)(e) DoPT O.M.AB.14017/2/1997-Estt.(RR)/Pt. dated 19.1.2007. As per this order, vacancy is to be calculated based on vacancy based roster from the date of issue of order. Before 2007, it was post based roster. From 2007 onwards vacancy is calculated based on total vacancy.

5 Applicant challenges the adoption of the post based roster up to 2007. The decision of Apex Court in (a) 1999 (2) SCC 330 – **State of Punjab & Ors v. Dr.R.N.Bhatnagar & Anr.** (b) 1999 (3) SCC 384 – **All India Federation of Central Excise v. UOI & Ors** hold that the post based roster is to be applied. Unless the quota-rota principle as mentioned above is applied, the determination of inter-se seniority in terms of the decision of the Apex Court in Parmar's case would become unworkable. Applicants argue that the assessment of vacancies in Annexure A-1 for promotion to the post of JTO against 35% quota for the period from 2001 to 2007 is to be assessed and the panels recast based on the year wise vacancies. The applicants of ofcourse have no plausible explanation for filling in 2013 a matter which relates to 2001.

6 Applicant submits that in terms of Annexure A-2 Recruitment Rules, the applicants are entitled to be considered for promotion as JTO against

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35% of the annual vacancies. 35% of the annual vacancies for the period from 31.3.2001 to 31.3.2009 would be 3088. The number of vacancies shown against 35% quota in Annexure A-1 for the period upto 31.3.2009 is only 443. Thus, the total number of vacancies that have not been included in Annexure A-1 against the 35% quota for the period upto 31.3.2009 would be $3088 - 443 = 2645$. The applicants submit that they have a right to be considered against these 2645 vacancies also for the period from 31.3.2001 to 31.3.2009. Applicant challenges denial of consideration against these vacancies by a wrong and erroneous assessment of vacancies. Annexure A1 to the extent it does not calculate the annual vacancies for the period from 31.3.2001 to 31.3.2009 against the 35% quota, is therefore, liable to be set aside by this Tribunal.

7 Relief sought by the applicants are as follows

“(i) to call for the records leading to the issue of Annexures A-1 and declare that the vacancies for Limited Internal Competitive Examination from 2001 for promotion to the post of Junior Telecom Officers against the 35% quota of 2001 Recruitment Rules is ultra vires the recruitment rules and quash the same to the extent the vacancies have been wrongly assessed against the 35% quota for the vacancy years from 31.3.2001 to 31.3.2009

(ii) to direct the respondents to fill up the 3088 vacancies against the 35% quota for the period from 31.3.2001 to 31.3.2009 as indicated in Para 5(B) with break up for each of the years as indicated in para 4(k). “

8 Respondents argue that the Junior Telecom Officers (JTO) Examination



which is an All India Examination was notified vide Annexure A1 and A2 notifications was conducted on 2.6.2013 as scheduled. The examination was conducted in compliance of the directions of the Hon'ble High Court of Kerala in its judgment dated 14.9.2012 in O.P(CAT) No.3714 of 2011, preferred against this Tribunal's order in O.A No.203 of 2010 and connected cases. The said examination is for filling up the vacancies of JTOs from the year 2000, under the 35% and 15% departmental quota.

9 Though a single exam has been conducted for the entire vacancies, the eligibility for qualifying service will be determined as on the 1st July of the respective vacancy year and the result will be declared accordingly year wise for each quota separately. Also, by letter dated 5.4.2013 it was clarified that the cut off date for reckoning age of the candidate would be 1st July of the respective vacancy year (recruitment year). A candidate who is below 50 years of age as on the 1st July of a particular vacancy year could write the examination for the said vacancy year. Thus the examination has been conducted without scope for any grievance especially in the matter of prescribing the age and also year wise selection.

10 The applicants, who are presently working as JTOs on temporary basis, were originally qualified in the screening test conducted on 30.4.2000 as per the JTO Recruitment Rules 1996, as per which eligible TTAs will have to qualify a screening test and will have to undergo phase – I training before being promoted as regular JTO followed by phase II training. In Annexure R1(b) it has been categorically stated that no vacancy exists under OC

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category prior to 1.9.1999 at present and that the claim of the qualified candidates in the test will be only to the extent of vacancies available under 35% quota as eligible to be filled up as per JTO RR 1996. Annexure R1(b) Test was earlier proposed to be conducted on 8.1.2000 by the respondents, vide notification dated 30.11.1999, wherein also it was specifically stated that the Test was being conducted for filling up the vacancies only to the extent of vacancies up to 31st Aug 1999. In Annexure – R(c) also it was stated that there are no vacancies for unreserved category and hence no candidate other than those belonging to SC/ST category will be permitted to appear for the Test.

11 Thereafter, on the persistent demand of the Staff Unions, Annexure – R1(b) Test was conducted permitting OC candidates also to appear and that too at a time when Recruitment Rules 1999 had already come into existence which provided for LDCE instead of screening test. Annexure R1(b) screening test was conducted, assuming that some vacancies of JTOs may arise during the period from 1.1.1996 to 31.8.1999 and the qualified OC candidates could be accommodated against such vacancies. However, no vacancies arose during that period and therefore the persons like the applicants could not be granted regular promotions in the JTO cadre, inspite of qualifying the screening test. Though they were also sent for Phase -I training, they did not complete Phase-II and field training for want of vacancies which fact was known to them when they appeared for the exam. Phase II training is mandatory for appointment as regular JTOs as per the Recruitment Rules, 1996.

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12 While issuing orders for sending these officials for JTO Phase-I training it was also clearly stated, that they will not have any claim for local officiating or regular promotion after training and that the regular promotion will continue to be governed by the standing provisions. Endorsement to that effect was obtained from all such officials also. Thus the applicants who qualified in Annexure R1(b) screening test conducted as per the 1996 Recruitment Rules for being promoted as JTOs, appeared in the said screening test with eyes open and knowing fully well that there existed no vacancy for the OC category for the notified period 1996-99. Applicants who were privy to the information and could not subsequently make a claim to be promoted for want of vacancies, cannot claim regularization against the subsequent vacancies for the period 2000-2012, which is regulated by a different and subsequent set of Recruitment Rules, i.e, Recruitment Rules 2001. Further applicants themselves had given an undertaking to the effect that they will not put up any claim on the vacancies arising after 31.8.1999. Therefore the claim of the applicants for regularization in the post of JTO against the vacancies after 31.8.1999 cannot be legally granted in view of their commitment/ not to stake a claim for it. It is also the settled law that getting qualified for promotion does not confer any indefeasible or vested right to promotion. In this case applicants were made fully aware of their status and they have decided to take a chance in the departmental examination, despite the lack of vacancies.

13 The question of regularization of persons like the applicants was also



earlier considered by this Tribunal in O.A No.161 of 2012 and connected case. This Tribunal by order dated 13.12.2012 held that "getting qualified for promotion does not confer any indefeasible right to promotion. The applicants who qualified on the basis of conditions stipulated in pre-para, could not be promoted to the post of JTO for want of vacancies. Matter relating to conditions in Recruitment Rules, their amendment and conduct of departmental examinations as per conditions stipulated in Recruitment Rules are within the domain of executive. Such matters have to serve the needs of the service organisation. The Tribunal had held that the promotion to the post of JTO is now regulated by RR's of 2001. The applicants have to satisfy the conditions as per RR 2001 and will have to appear for the JTO exam. The applicants cannot be regularised as per existing RRs." Departmental Competitive Examination for promotion to the cadre of JTO comes under Deptl. 35% quota and 15% quota and accordingly notification to conduct the exam in 2010, to fill up 177 vacancies under 15% quota and 423 vacancies under 35% quota notification was issued by respondent office vide letter no.Rectt/30-4/2009 dated 20.2.2010. But in the mean time some of the candidates challenged the said notification before this Tribunal by filing OAs 297/2010, 202/2010, 203/2010, 207/2010, 224/2010, 225/2010, 226/2010, 227/2010, 242/1010 and 248/2010 and this Tribunal vide order dated 7.4.2010 in O.A No.297/2010 and order dated 22.3.2010 in the other O.As stayed the entire further proceedings in pursuance of the said notification. In compliance of the above order the examination was deferred by respondent vide BSNL corporate office, New Delhi letter No.:12-3/2009-DE dated 9.4.2010. There after this Tribunal disposed of the said O.A by a common

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order dated 15.3.2011.

14 We note that against the said order a review petition was filed which was disposed of by this Tribunal by order dated 30.9.2011 modifying the common order dated 15.3.2011 clarifying that "Annexure A4 corrigendum dated 27.2.2010 to Annexure A-8 notification dated 22.2.2010 is not retrospective in character and has no application in respect of vacancies which had already arisen prior to 12.10.2009 and Annexure A-2 amendment with regard to qualifying service reducing the same from 10 years to 7 years is retrospective in character and the same has application from the date of issue of Annexure A-1 Recruitment Rule."

15 It is further submitted that some candidates preferred OP(CAT) 3714/2011 before the Hon'ble High Court of Kerala challenging the said order of this Tribunal upholding the amendment to the qualifying service and the same was dismissed by the Hon'ble High Court vide its judgment dated 14.9.2012.

16 The respondent resists the applicants' plea regarding vacancy numbers quoted at Para 4(j) of the O.A. Total sanctioned strength of JTOs in Kerala is 2364 only and 35% of annual vacancies cannot be 3088, i.e more than the sanctioned strength. Hence, the premise of vacancies in the Original Application is faulty and not acceptable. The vacancies in each quota are calculated based on vacancy based roster. The respondent stands by the vacancy published in Annexure A-4 as being correct. There were about 6000



officials qualified in the screening test from all over India and since no vacancy has arisen between 1996 to 2000 to accommodate them, the BSNL Board took a decision on 30.3.2001 to divert 500 vacancies from the Direct Recruitment 35% quota on year to year basis to adjust the 'screening test qualified officials'. The diversion continued from 2001 to 2007 i.e, 3500 vacancies were diverted from the direct recruitment quota in the country. This decision was challenged before the Punjab and Haryana High Court by way of a CWP No.5608/2007, which ordered on 30.5.2008 for re-diversion of the posts to the DR quota and this decision of the High Court was upheld by the Hon'ble Apex Court. Due to this development, the BSNL Management in its 104th meeting on 4.11.2008 decided to re-divert the 3500 posts to the DR quota with immediate effect. Thus the waiting list of 35% departmental quota was deemed and declared as cancelled. The senior officials who had already been adjusted against the diverted vacancies from 2001 to 2008 were ordered to be treated as working on supernumerary posts. Even after restoring the DR quota posts, the Hon'ble High Court of Punjab and Haryana in a Contempt Petition made the following observation:

"By creating supernumerary posts, the respondents have already created the manpower. In this manner, the petitioner who might have become eligible between 1999 to 2000 and thereafter, have been deprived of their consideration or to participate in the screening test. The entire exercise seems to have been made to circumvent the judgment of this Court. The respondents seems to have deliberately committed the contempt of the Court. In this view of the matter, *prima facie* the charge of contempt is made out. Both the respondents are directed to appear in person to enable this Court to frame a formal charge of contempt against them."

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17 Though the said Contempt Petition has been now closed as infructuous for the time being in view of the conduct of the present examination on 2.6.2013, the petitioner therein is given liberty to revive the same in case the vacancies notified were not filled up pursuant to the examination. Respondent argues that any attempt to fill up the vacancies other than through relevant recruitment rules, will be faced with contempt and in view of the above factual situation also, the question of regularisation of the applicants would also cause contempt of court.

18 It is submitted that competitive examination for promotions to the cadre of JTOs were earlier conducted in the years 1994, 1996, 1999. Applicants were eligible for appearing in some of these examinations. They had an opportunity and participated in the examination that was conducted in the 1999. Hence, it is not a case that applicants were not afforded a chance. The applicants can expect promotions only based on the relevant service rules/recruitment rules. The representations filed by the applicants earlier on the regularisation issue, were considered by the Chief General Manager, Kerala Circle in obedience of the directions of this Tribunal in O.A 207/2010 and disposed of by its order dated 25.5.2012 taking note of the settled legal position in the matter. The applicants' claim for regularisation was also rejected on the ground that no vacancies were available during the period from 1996-2000.

19 Applicants' contention regarding vacancy calculation is contested. As

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per the guidelines, vacancies are to be calculated based on rosters only. As per DoP&T O.M dated 19.1.2007, vacancy is to be calculated based on vacancy based roster from the date of issue of order. There were no orders or instruction prior to O.M of 19.01.2007. Applicants also did not challenge the vacancy calculation for the period 2000-2007 at the appropriate time. Having slept over the matter, they cannot now seek a belated relief. Before 2007, it was post based roster. On counting the points in the post based roster, vacancy in promotion quota for OC category will arise in 2003 only. From 2007 onwards vacancy can be calculated based on total vacancy. Total sanctioned strength of JTO in Kerala Circle is 2364 and hence applicants' contention of 2645 vacancy is not supported by facts or data.

20 JTO Recruitment Rules 2001 came into effect on 26.4.2001 and screening test was replaced by LICE, i.e, the only channel for promotion as JTO is LICE. Here, the respondents who passed the screening test as per earlier Recruitment Rules well before the implementation of new Recruitment Rules 2001, cannot be considered for regularisation as per Recruitment Rules 2001.

21 The main grievance highlighted in the Original Application by the applicants is that the year wise vacancies notified in Annexure A1 is erroneous and there are more vacancies liable to be notified in Annexure A1. Hence, they sought for a direction to fill up about 3088 vacancies as against the 35% quota for the period from 2001 to 2009 based on a calculation made by them. During final arguments it was fairly conceded that the above

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calculation of vacancies made by them is wrong as it was made on a misconception, and that the total vacancies notified in Annexure A-1 cannot be held to be wrong.

22 But on the other hand it was contended by them that in view of the judgment of the Hon'ble Supreme Court in **State of Punjab & Othrs v. Dr.R.N.Bhatnagar & another (1999) 2 SCC 330**, the vacancies notified in Annexure A-1 notification ought to have been calculated based on vacancy based roster. But admittedly as per the reply statement of the respondents only from 2007 onwards vacancy based roster has been followed and before that it was post based roster. Hence, the applicants sought for a rearrangement of the vacancies in the light of the said Supreme Court judgment. However, there were no pleadings to that effect in the O.A or reliefs sought.

23 It is submitted by respondents that referring to both **Dr.Bhatnagar's** decision and also the previous decision of the Supreme Court in **RK Sabharwal v. State of Punjab (1995) 2 SCC 745** (which ruled in favour of post based roster), Annexure R1(e) O.M dated 19.1.2007 has been issued by the Department of Personnel & Training, Ministry of Personnel, Public Grievances and Pensions, Govt. of India, making it clear that vacancy based roster should be followed from the date of issue of Annexure R1 (e) and also made it clear that past cases should not be reopened. This O.M has not been challenged by the applicants herein. It was also brought to our notice that applicants 2,3 & 8 became regular JTOs through absorption provided under



JTO RR 2014. Applicants 1,4,5,6 & 7, became regular JTOs through the LICE conducted in the year 2013. As per Judgment of Apex Court in **N.R Parmar v Union of India (2012) 13 SCC 340** dated 27.11.2012, Recruitment Year would be the year of initiating the recruitment process against a vacancy year. Hence the applicants are not entitled to get their recruitment year antedated to any previous vacancy years.

24. The Original Application is dismissed. No costs.


(MRS.P.GOPINATH)
ADMINISTRATIVE MEMBER

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(N.K.BALAKRISHNAN)
JUDICIAL MEMBER