

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 495 of 2009

Friday, this the 8th day of July, 2011

CORAM:

Hon'ble Mr. Justice P.R. Raman, Judicial Member
Hon'ble Mr. K. George Joseph, Administrative Member

1. Circle Secretary, National Federation of Telecom Employees, BSNL, Telephone Exchange, Ernakulam, Represented by Sri P.V. Dharmadas.
2. P.V. Dharmadas, S/o. P.K. Velayudhan, Senior Telephone Supervisor (Operative), Special Services, Boat Jetty Telephone Exchange, Ernakulam, Residing at VI/912 A, Sivapriya, Temple Road, Thrikkakara, Cochin-682 021.
3. Jesson K.A., S/o. Anthony K.L., JTO (Internal), Telephone Exchange, Kandasankadavu, Trichur, Residing at Kannampuzha House, Chemmada, Karalam P.O., Trichur – 680 711.
4. Devi P.K., D/o. Kesavan E., JTO (Back End CSR), Chalakkudi (BSNL) Telephone Exchange Building, Chalakkudi, Trichur, Residing at Edakkadu Illam, Kusuma Giri, Kakkanad, Ernakulam.

Applicants

(By Advocate – Mr. T.C. Govindaswamy)

V e r s u s

1. The Chairman & Managing Director, Bharat Sanchar Nigam Limited, New Delhi.
2. The Chief General Manager, Bharat Sanchar Nigam Limited, Thiruvananthapuram.
3. The Assistant General Manager (Personnel-IV Section), Bharat Sanchar Nigam Limited, Corporate Office, 6th Floor, Bharat Sanchar Bhavan, Janpath, New Delhi.

Respondents

(By Advocate – Mr. Thomas Mathew Nellimoottil)



This application having been heard on 8.7.2011, the Tribunal on the same day delivered the following:

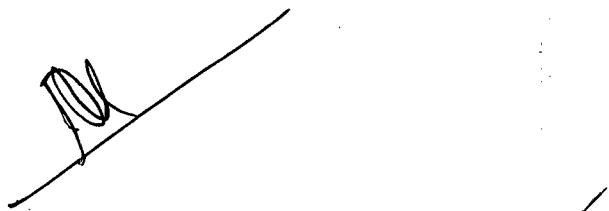
ORDER

By Hon'ble Mr. Justice P.R. Raman, Judicial Member -

The applicants who are four in numbers, the first of whom is a Trade Union and applicants Nos. 2 to 4 are Telecom Technical Assistants (hereinafter to be referred to as TTAs). Their next promotion is to the post of Junior Telecom Officer (hereinafter to be referred to as JTO). Based on the screening test held in 2000 they were provisionally promoted as officiating JTOs and were continuing since 2005. But they have not been given regular promotion. This application is filed seeking the following relief:-

- “1. Declare that the recruitment/promotions made by the management by violating the standing undertaking on seniority both between management and federation and also between management and newly recruited candidates is illegal.
2. Issue a direction to the respondents for taking action to regularize the applicants as JTOs immediately.
3. Issue a direction to declare that the applicants are entitled to have the due seniority in appointment based on the undertaking already made in this respect as well as based on the Recruitment Rule 1996 under which the applicants are given avenue for promotion and standing qualified as JTO.
4. Call for the records leading to Annexure A7 and quash the same.”

2. According to the applicants the respondent Bharat Sanchar Nigam Limited (hereinafter to be referred to as BSNL) had at the time of its formation made an agreement with the Trade Union vide letter No. BSNL/4/SR/200, dated 2nd January, 2001 and contrary to the terms contained therein 17,256 JTOs have been appointed by direct recruitment.



The agreement referred to is produced as Annexure A-5. The action on the part of the respondents has caused irreparable injury and loss. It is their further contention that they were recruited as Technicians in the Department of Telecom and later restructured and re-designated as TTAs. That they were eligible to be considered for promotion as JTOs as per the recruitment rules of the year 1990 and the executive instructions thereunder. As per the recruitment rules, their promotion will be subject to a departmental screening test. The first screening test was conducted in 1995. A copy of the recruitment rules of the year 1990 is produced as Annexure A-1. As per Annexure A-1 rules 65% of the employees are to be recruited by direct recruitment and 35% by promotion of the departmental candidates through competitive/qualifying examination. This 35% is further bifurcated into 15%, 10% and 10% between employees under different cadres. The applicant falls under the group entitled for promotion in the 15% vacancies. These 1990 rules were superseded by the subsequent 1996 rules. A copy of which is produced as Annexure A-2. As per the revised rules Annexure A-2, the ratio for filling up the post of JTOs was fixed as 50:50 between direct recruits and promotees. Out of the 50% earmarked for promotion, 15% should be by way of promotion of some of the departmental cadres through competitive departmental examination and 35% by promotion/transfer of some other cadres like Transmission Assistant/Wireless Operators etc. etc. Against the 35% quota referred to above TTAs having six years regular service alone were entitled to be considered for promotion through a qualifying screening test. They will not be considered for promotion under other channel of 15% to be filled up by competitive examination. The

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applicants herein are stated to be qualified for promotion as JTO passing the qualifying screening test conducted in the year 2000 which according to them is the only screening test conducted after 1996 rules came into force. The 1996 rules was again superseded by the JTO Rules, 1999 a copy of which is marked as Annexure A-3 and as per Annexure A-3 rules of 1999, 50% were to be filled up by direct recruitment and remaining 50% by promotion through the limited departmental competitive examination. Out of these 50% promotion quota, 35% quota are to be filled up from among the group of persons possessing qualification of Degree in Engineering in Telecom/Electronics/Computer Engineering/Radio Engineering/Electrical Engineering or equivalent or Bachelor of Science with Physics and Chemistry or three years Diploma in Electronics/Radio/Computer Engineering Instrumental Technology/Telecom and experience of 10 years of regular service. Thus, the qualification prescribed in the 1996 i.e. a degree or diploma in Mechanical Engineering and some other qualification as prescribed as the basic qualification for appointment as Technicians/TTAs as also eligible qualification for promotion as JTO, were not enlisted as the qualification in the year 1999. As a result some of the candidates who were earlier eligible to be considered stood excluded from the purview of being considered for promotion as JTO in the JTO recruitment rules of 1999. In the remaining 15% for promotion, TTAs are not eligible to be considered as already mentioned earlier. As a result the applicants loose their chances for promotion as per the 1999 recruitment rules. Subsequently the BSNL was formed with effect from 1.10.2000 and on being formed the erstwhile employees of the Telecom Department were

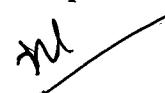
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absorbed based on their option exercised. Subsequently, the BSNL issued new recruitment rules in 2001 a copy of which is produced as Annexure A-4. According to the applicants this 2001 rules framed by the BSNL was only a replica of the 1999 rules. Thus, their position as affected by the 1999 rules did not improve by the subsequent rules of 2001 issued by the BSNL. It may be mentioned here that the applicants and similarly situated persons appeared and passed in the screening test conducted in the year 2000 under the JTO recruitment rules of 1996. It was the specific contention of the applicants that the agreement between the staff federation and the management evidenced by Annexure A-5 provides that Group-C and D employees who appear in any promotional examination whether in direct or departmental and qualify in such examination would be treated as juniors to employees in the promotional cadre who had earlier qualified in the examination though such employees were subsequently absorbed in the BSNL. Further by a subsequent order of the BSNL, Annexure A-6 dated 10.6.2001 it was proposed that approximately 500 TTAs who qualified in the screening test could be sent for training every year by diverting the posts from the Direct Recruitment JTO quota. Notwithstanding the above arrangement, in the light of the subsequent decision rendered by the Chandigarh Bench of the Hon'ble Punjab & Harayana High Court, "diverted direct recruitment" vacancies were ordered to be restored. The applicants' contend that they were not parties to the said judgement and therefore, they will not be bound by the directions as contained in the judgement of the Hon'ble High Court of Punjab & Harayana. It is their case that BSNL being an autonomous body, the rules framed by them in 2001 are not statutory in

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character and therefore any agreement between the parties even if it violates any of the provisions of the said rule cannot be held to be ultra vires as the principle that an agreement cannot run contrary to the statutory rules has no application. Thus, it is prayed that in so far as the applicants having passed the screening test held in 2000 and holding the post of JTO on officiating basis must be regularized notwithstanding the decision rendered by the Hon'ble Punjab & Harayana High Court. Learned counsel also placed reliance on the decision of the Hon'ble Supreme Court in K.A. Nagamani Vs. Indian Airlines & Ors. - AIR 2009 SC 3240 to support their contention that any agreement would become vitiated as one arrived at contrary to the rules only if these rules are statutory in character.

3. The respondents on the other hand would contend that Annexure A-7 decision taken by the BSNL under dated 11.11.2008 is a policy decision not to make any further diversion to 35% of the direct recruitment quota. They are not only justified in deciding not to divert the direct recruitment posts to 35% quota but also bound by the decision of the Hon'ble Punjab and Harayana High Court as they were parties to the said decision. Further since a diversion was done based on the decision of the BSNL which had been set aside by the Hon'ble Punjab & Harayana High Court, now they have to correct their decision by issuing appropriate orders and accordingly they have issued Annexure A-7. It is also their contention that a similar matter came up for consideration before this Tribunal in OA No. 712 of 2008 which was finally disposed of on 4th March, 2010 and as per the said judgement the prayer to quash Annexure A-7 which was produced as



Annexure A-8 therein seeking a direction to the respondents to continue to grant the benefit of promotion as JTO was turned down and the OA was dismissed. As such the issue is no longer res integra and because of the binding precedents, it is contended that the OA is devoid of any merit.

4. We have heard the learned counsel appearing for the applicant Mr. T.C. Govindaswamy and Mr. Varghese John representing Mr. Thomas Mathew Nellimoottil for respondents.

5. We may at first consider as to whether the agreement based on which the whole contention is set up is in any way meritorious. Annexure A-5 is an agreement and it is contended that because of the agreement between the parties the non-statutory rule will have no superseding effect and dehors 2001 rules, the agreement will still be in force. The relevant portion of the agreement from Annexure A-5 may be extracted as under:-

“11. The Group C & D employees who appear for any promotional examination whether direct or departmental and qualify in such examinations / outsiders coming through direct recruitment process, would rank junior to all the other employees in the promotional cadre who had already been qualified in earlier examinations even though they get absorbed in BSNL subsequently.”

6. We cannot see anything in Annexure A-5 conferring any right on the applicants for promotion contrary to the rules made in 2001. Annexure A-5 is only a recorded discussion and the relevant clause according to the applicant is clause 11 which only provides that Group-C and D employees who appeared in any promotional examination whether direct or departmental and qualify in such examinations/outsiders coming through direct recruitment process would rank junior to all other employees in the

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promotional cadre. In other words officer otherwise found fit for promotion by appearing in examinations and have already been qualified will get seniority over others who qualify subsequently, despite the fact that all these employees are absorbed subsequently by the BSNL. Thus there is no merit in the contention that any right was conferred by the agreement contrary to any rule made by the BSNL to consider as to which of the two will precede the other. In other words there is no scope for any such contention. The contention of the applicants that no screening test was held between 1996 to 1999 even assuming to be true, admittedly an examination was held in 2000 and applicants also applied and passed the same but as could be seen from Annexure A-6 itself there were no vacancies to be filled up from the departmental quota and the methodology adopted by the Corporation was to divert the 500 direct recruitment posts to be filled up through departmental promotion. Had there been vacancies, there was no necessity for an exercise of diversion that was done in Annexure A-6. Whether or not such diversion is permissible dehors the 2001 rules framed by the BSNL had been considered by the Hon'ble Punjab & Harayana High Court in CWP (C) No. 5608 of 2007. A Co-ordinate bench of this Tribunal following the said decision has rejected the contention that despite the decision of the Hon'ble Punjab & Harayana High Court any right would flow in favour of the applicants to contend that they are entitled to be promoted to the vacancy diverted by the BSNL as per their decision in Annexure A-6. Because of the binding precedents the question as to whether diversion is still possible or not is not to be separately considered by us. We are in respectful agreement with the decision rendered by the Co-



ordinate Bench and bound by the decision of the Hon'ble Punjab & Harayana High Court referred to above. It is submitted by the learned counsel appearing for the applicants that as per Annexure R-1 produced along with the reply they were officiating in the post of JTO and that their right under Annexure R-1 may be protected. In so far as this OA is concerned it is not based on any right flowing from Annexure R-1. Therefore, we are not considering any such request.

7. In the result we find no merit in the contentions raised by the applicants. Accordingly, the Original Application is dismissed. No order as to costs.



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER



(JUSTICE P.R. RAMAN)
JUDICIAL MEMBER

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