

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.504/10

Monday this the 6th day of February 2012

C O R A M :

**HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Ms.K.NOORJEHAN, ADMINISTRATIVE MEMBER**

1. P.F.Yesudassan,
TTA, EIOB Telephone Exchange,
Kunnamkulam, Thrissur.
Residing at Love Dale, Porathur House,
Santhivihar, Pottore PO, Thrissur.
2. V.V.Viswambaran,
TTA, Ayyanthole Telephone Exchange, Thrissur SSA.
Residing at Vellangallukkaran House, Pranavam,
Harisree Nagar, Puthurkara, Ayyanthole PO, Thrissur. ...Applicants

(By Advocate Mr.V.Sajith Kumar)

V e r s u s

1. The Bharath Sanchar Nigam Limited,
represented by its Chairman,
Managing Director, New Delhi.
2. The Chief General Manager,
Bharath Sanchar Nigam Limited, Trivandrum. ...Respondents

(By Advocate Mr.Johnson Gomez)

This application having been heard on 6th February 2012 this
Tribunal on the same day delivered the following :-

O R D E R

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

The 1st applicant joined the services of the respondents in 1994 as
TOA and later appointed as TTA in 1997. The 2nd applicant was recruited
as Technician in 1996 which became the restructured TTA cadre. At the



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time of their initial appointment, provisions existed for further promotional prospects as JTO for persons possessing degree/diploma in Mechanical Engineering. As the applicants have at their credit diploma in Mechanical Engineering they were sanguinely hoping for such promotion as JTO. However, in 2001 when the Recruitment Rules were amended, diploma holders were not made eligible for competing in the competitive examination as JTO. The applicants moved the respondents by way of representations requesting them to apply the amended rules only prospectively stating that the conditions stipulated therein with reference to the educational qualifications would not be applicable to the departmental candidates who were in service prior to the formation of BSNL or issuance of the revised rules. In the alternative, the applicants had requested the respondents for relaxation of educational qualifications by permitting all the Mechanical Engineering Degree/Diploma candidates who were in service prior to the rules to take part in the limited departmental competitive examination for the post of JTO. Annexure A-4 and Annexure A-5 refers. Respondents were in the process of conducting recruitment as JTO under 35% quota. In that the qualifications of Mechanical Engineering were not considered to be eligible qualification. According to the applicants the eligible candidates with the other qualification were far less in number than the vacancies. The applicants have, therefore, approached this Tribunal seeking the following reliefs :-

1. To direct the 1st respondent to consider and pass orders on Annexure A-4 representation with regard to the claim of the applicants to take part in the limited departmental examination against 35% set apart of the TTA's and other departmental

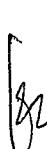
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candidates to be conducted in pursuance of 2001 JTO recruitment rules as expeditiously as possible and to keep in abeyance the limited departmental competitive examinations in pursuance 2001 recruitment rules till such orders are passed by the respondents.

2. To direct the respondent to include the applicants, the Mechanical Engineering Degree/Diploma holders to take part in the limited departmental examination against 35% set apart for the TTA's and other departmental candidates to be conducted in pursuance of 2001 JTO recruitment rules.
3. Grant such other reliefs as may be prayed for and as the Court may deem fit to grant.

2. Respondents have contested the O.A. According to them, qualifications cannot be relaxed as it would have been greatest injustice to similarly situated persons. They have also referred to a decision by a Coordinate Bench that "the law is fairly well settled that the Courts or Tribunals cannot interfere in the matters like prescribing qualifications/standards for appointment to any particular post". They have also referred to the decision of the High Court of Kerala in Radha Vs. State of Kerala [2001 (1) KLT 323] wherein it was held that when a specific qualification is prescribed for a post, the case of persons not possessing that specific qualification need not be considered.

3. Counsel for the applicant after briefly narrating the entire facts of the case invited our attention to a recent order dated 9.12.2011 in O.A.106/10 in which the claim of the applicants was identical to that of the applicants in this O.A. The Tribunal considered the case and passed the following orders :-



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"4. Admittedly, the applicants were all appointed as JTO(O) based on screening test conducted earlier which practice was hitherto stopped and now Limited Departmental Examination is held for promotion to the post of JTO. Further as per qualification prescribed in the year 2001 applicants are not qualified for consideration for promotion to the post of JTO. We feel that the position of the applicants who had been continuing for a long number of years as JTO (Officiating) requires a sympathetic consideration in the hands of the executive. Though they were considered for promotion in the earlier years it is only by virtue of amendment made in the rules that they became disqualified for consideration to the post of JTO by participating in the Departmental Examination held for the purpose. It is also to be noticed that any employee comes to an establishment with hope of some promotion while working. According to the applicants they have no promotional avenues and they will have to retire at the entry level. This causes undue hardship and even it may stem into an ailment of arbitrariness. Therefore, it is only appropriate that those JTOs who are now officiating can be considered for necessary relaxation in the matter of qualification so as to enable them to appear in the Departmental Examination so that their grievance could stand redressed. This is a matter to be considered by the executive when a proper representation is made by the applicants. Annexure A-4 is the representation made by the applicants. Therefore, a decision may be taken on Annexure A-4 at the higher level so as to render justice to the parties. During the pendency of this O.A by virtue of an interim order the applicants were permitted to continue in the present post. In the light of the direction as we have given above it is only appropriate that the applicants may be allowed to continue in the present post till a decision is taken on the representation of the applicants in accordance with law and in accordance with what is stated above.

5. Let the representation be disposed of as expeditiously as possible at any rate within a period of four months. O.A is disposed of as above. No order as to costs."

5. The counsel submitted that the only difference in the case of the applicants in the instant O.A and those in O.A.106/10 is that the applicants in the other O.A were granted officiating promotion to the post of JTO. In all other respects there has been no change.

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6. Counsel for the respondents submitted that with the technological advancement, each time the technology applied in telecommunication wing gets revised. Thus deletion of the qualification of the Mechanical Engineering has been a deliberate decision in the interest of the organization. As regards the decision by this Tribunal, the counsel submitted that the distinct difference in these two cases is that the applicants in the other case were already functioning on officiating basis as JTO.

7. Counsel for the applicant in its oral rejoinder submitted that a perusal of para 4 of order dated 9.12.2011 in O.A.106/10 would go to show that the focal point was as to the situation of a Government employee slogging without any promotion during the entire career. The career prospect of the applicants in the other O.A is better than that of the applicants in the instant case as the applicants in the other O.A at least got their officiating promotion as JTO whereas the applicants in this O.A were not afforded this benefit.

8. Arguments were heard and documents perused. In C.S.I.R. vs K.G.S.Bhatt, (1989) 4 SCC 635 the Apex Court has held as under :-

“ The person is recruited by an organization not just for a job, but for a whole career. One must, therefore, be given an opportunity to advance. This is the oldest and most important feature of the free enterprise system. The opportunity for advancement is a requirement for progress of any organization. It is an incentive for personnel development as well. Every management must provide realistic opportunities for promising employees to move upward. “The organization

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that fails to develop a satisfactory procedure for promotion is bound to pay a severe penalty in terms of administrative costs, misallocation of personnel, low morale, and ineffectual performance, among both non-managerial employees and their supervisors. There cannot be any modern management much less any career planning, manpower development, management development etc. which is not related to a system of promotions."

9. Again in O.Z. Hussain vs Union of India 1990 Supp SCC 688, the Apex Court has held as under :-

"7. This Court, has on more than one occasion, pointed out that provision for promotion increases efficiency of the public service while stagnation reduces efficiency and makes the service ineffective. Promotion is thus a normal incidence of service. There too is no justification why while similarly placed officers in other ministries would have the benefit of promotion, the non-medical 'A' Group scientists in the establishment of Director General of Health Services would be deprived of such advantage. In a welfare State, it is necessary that there should be an efficient public service and, therefore, it should have been the obligation of the Ministry of Health to attend to the representations of the Council and its members and provide promotional avenue for this category of officers. It is, therefore, necessary that on the model of rules framed by the Ministry of Science and Technology with such alterations as may be necessary, appropriate rules should be framed within four months from now providing promotional avenue for the 'A' category scientists in the non-medical wing of the Directorate."

10. Referring to the above decisions of the Apex Court, the Principal Bench of the Tribunal in the case of Debi Mukherjee vs Union of India and others (1992) 19 ATC 540 has held as under :-

"In view of the aforesaid legal position, we are of the view that it is the obligation of the Ministry of Health and family Welfare to provide promotional avenues to the applicant who has functioned in the post of Assistant Secretary for several years and has looked after the work of Assistant Director General as and when occasion had arisen. The respondents



shall do the needful in the matter within a period of three months from the date of receipt of this order. Till then, the respondents shall not proceed with the filling up of the post through direct recruitment. The interim order directing the respondents to maintain the status quo as regards the continuance of the applicant in the post of Assistant Director General be maintained, is made absolute."

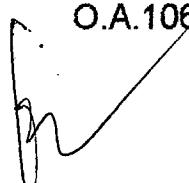
11. When the above order of the Tribunal was challenged before the Apex Court, the appeal was dismissed. The Apex Court has in the case of P.K. Jaiswal (Dr) v. Debi Mukherjee, (1992) 2 SCC 148, held as under :-

6. *For the above reasons, we are of the opinion that the decision reached by the Tribunal does not require any interference at our hands in exercise of the power under Article 136 of the Constitution. Hence, the appeal fails and is accordingly dismissed with no order as to costs.*

12. In Food Corporation of India v. Parashotam Das Bansal, (2008) 5 SCC 100, the Apex Court has held as under :-

"13. If there is no channel of promotion in respect of a particular group of officers resulting in stagnation over the years, the court although may not issue any direction as to in which manner a scheme should be formulated or by reason thereof interfere with the operation of existing channel of promotion to the officers working in different departments and officers of the Government but the jurisdiction to issue direction to make a scheme cannot be denied to a superior court of the country."

13. From the above it is clear that the career prospect is one of the vital matters to be kept in mind by the Government. As rightly pointed out by the counsel for the applicant the focal point in the order dated 9.12.2011 in O.A.106/10 is about the non availability of career prospect. As such, the



distinction between the applicants in that case and the applicants in the present O.A that the former were officiating as JTO whereas the later are only TTAs does not make any intelligible differentia to distinguish the two applicants in respect of their claims.

14. In view of the above, this O.A is disposed of with a direction to the respondents to consider Annexure A-4 and Annexure A-5 representations in the light of the order of this Tribunal referred to above as also keeping in view the dictum laid down by the Apex Court in various decisions as extracted above. The representations be disposed of as expeditiously as possible, at any rate, within a period of four months from the date of receipt of a copy of this order. There shall be no order as to costs.

(Dated this the 6th day of February 2012)


K.NOORJEHAN
ADMINISTRATIVE MEMBER


Dr.K.B.S.RAJAN
JUDICIAL MEMBER

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