

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 578 of 2010

Thursday, this the *06th* day of January, 2011

CORAM:

HON'BLE Mr. JUSTICE P.R. RAMAN, JUDICIAL MEMBER
HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER

1. M.N. Nandanan,
S/o. M. Narayanankutty Nair,
Telecom Mechanic, H.R. No. 199413263,
Bharat Sanchar Nigam Limited,
Telephone Exchange, Valacode.
2. Janaky V.K.,
W/o. V.T. Thankappan,
Telecom Mechanic, H.R. No. 199313812,
Bharat Sanchar Nigam Limited,
Telephone Exchange, Ayavana. ... Applicants.

(By Advocate Mr. P.K. Madhusoodhanan)

v e r s u s

1. The Assistant Manager (R&E),
O/o. Principal General Manager Telecom,
Ernakulam, Bharat Sanchar Nigam Limited,
(A Government of India Enterprise),
Ernakulam, Kochi - 16.
2. The Chief General Manager Telecom,
Bharat Sanchar Nigam Limited,
(A Government of India Enterprises),
Kerala Circle, Trivandrum - 33
3. Bharat Sanchar Nigam Limited,
Represented by the Chairman & Managing Director,
Corporate Office, Stateman House,
Bharathamba Road, New Delhi -1
4. Union of India, represented by its
Secretary to Government,
Ministry of Telecommunications, New Delhi-1 ... Respondents

(By Advocate Mr. T.C. Krishna for R1-3 and
Ms. Deepthi Mary Varghese for R-4)



The original application having been heard on 22.12.10, this Tribunal on 06.01.2011 delivered the following :

O R D E R

HON'BLE MR. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER

The applicants are Telephone Mechanics having +2 educational qualification and more than seven years regular service in the BSNL. Their applications in response to notification dated 26.10.2009 (Annexure A/1) for appearing in the Limited Departmental Competitive Examination (LDCE) for promotion against 40% quota of Telecom Technical Assistant (TTA) as per Recruitment Rules of TTA, 2001, were rejected vide Annexures A-7 and A-8 orders on the ground that they acquired +2 qualification only after 01.07.2008, the cut off date for determining eligibility to appear in the said examination. Aggrieved, the applicants filed the present O.A. for the following reliefs :

- (a) Set aside Annexures A-7 and A-8;
- (b) Declare that the stipulation of cut off date of 01.07.2008 in Annexure A-1 is only for the purpose of counting the service of 5 years prescribed in Annexure A-2 Recruitment Rules;
- (c) Set aside the stipulation of cut off date 01.07.2008 in Annexure A-1 only in so far as it insists plus-two or equivalent as on that date;
- (d) Issue necessary directions to the respondents to consider the applicants for promotion to the posts of Telecom Technical Assistants pursuant to Annexure A-1, allowing them to undergo the Limited Departmental Competition Examination to be held on 11.07.2010 untrammelled by the stipulation of cut off date 01.07.2008 in respect of possession of educational qualification of plus-two or its equivalent and grant them promotion as Telecom Technical Assistant on their passing the examination;


b

(e) Award costs of these proceedings, and

(f) Grant such other and further reliefs as this Hon'ble Tribunal deems fit and proper in the interest of justice and fair play.

2. As per interim order dated 07.07.2010, the applicants were permitted to write the examination to be held on 11.07.2010 with a rider that the results of the examination should not be published until further orders from this Tribunal. Vide interim order dated 12.1.2010, the respondents were permitted to declare the results of examination and fill up the posts except 6 posts in Ernakulam SSA and 1 post in Trissur SSA.

3. The applicants contend that Annexure A-1 notification in so far as it insists on +2 certificate as on 01.07.2008 is contrary to Annexure A-2 Recruitment Rules. The cut off date of 01.07.2008 is only to count the length of service rendered by the officials aspiring for LDCE. The applicants possessed the required educational qualification +2 on the date of issue of notification at Annexure A-1. The employees like Shri K. Jose, HR No. 199213717, were allowed to write the LDCE even though they were not educationally qualified at the time of submitting the applications. In the instant case, the 1st applicant passed +2 examination in April, 2009 and the 2nd applicant in March, 2009. There is no nexus or object sought to be achieved by fixing the cut off date of 01.07.2008 in respect of possessing educational qualification. Hence, the O.A. should be allowed.



4. The respondents opposed the O.A. It was submitted on their behalf that for promotion to the 40% quota for the year 2008, they had notified to conduct the LDCE on 31.01.2010 which was deferred until further orders. The deferment was challenged before this Tribunal. As directed by this Tribunal, the said LDCE was to be conducted within three months from 31.03.2010. Accordingly, it was decided to conduct the examination on 11.07.2010. The applicants had acquired +2 qualification subsequent to the cut off date of 01.07.2008 for appearing in the LDCE examination for the recruitment year 2008. Hence they are not eligible to appear in the examination for promotion for the recruitment year 2008. Shri K. Jose was permitted to appear in the examination in 2005 provisionally only. The O.A. being devoid of any merit should be dismissed.


5. In the rejoinder, the applicants reiterated that they are fully eligible and qualified in terms of recruitment rules to appear in the LDCE and that the number of applications received is much less than the number of vacancies notified.

6. We have heard Mr. P.K. Madhusoodhanan, learned counsel for the applicant and Mr.T.C. Krishna, learned counsel for the respondents 1 to 3 and perused the records.

7. As per Annexure A-2 Recruitment Rules of TTA, 2001, the Telephone Mechanics holding 10+2 standard certificate with 5 years regular service is eligible to appear in the LDCE. As per Annexure A-1



notification dated 26.10.2009 for the LDCE for promotion to the cadre of TTA under 40% departmental quota for the recruitment year 2008 as envisaged in the TTA Recruitment Rules, 2001, the cut off date for determining the eligibility of an officer shall be 01.07.2008. Against item No.7 in the application format, an aspiring official is to state the year of passing 10+2 or its equivalent examination. The matters of framing Recruitment Rules, conducting departmental examination and fixing eligibility for appearing in the examination are within the domain of the competent authority, i.e. B.SNL. In the instant case, the competent authority fixed 01.07.2008 as cut off date for determining eligibility of an official to appear in the departmental examination for promotion as TTA in the recruitment year 2008. We do not find any arbitrariness or discrimination in fixing such a cut off date for the recruitment year 2008. 01.07.2008 is the mid point of the year. The cut off date 01.07.2008 is written in bold type in the Annexure A-1 notification dated 26.10.2009. If the LDCE was held in 2008, the applicants who acquired the required educational qualification in 2009, would not have been eligible to appear in the examination. Delay in holding the examination does not confer any right on the applicant. If the respondents decide to restrict the LDCE for the year 2008 to those who were eligible on or before 01.07.2008, there is nothing wrong with it. It is a matter of discretion with the competent authority to decide the cut off date for determining eligibility as 01.07.2008 or the date of notification or the last date of submission of application or any other date whatsoever. Having notified the cut off date, it is not permissible for the respondents to relax the same as it would be illegal to



tinker with the conditions in the notification after publication even if the number of applicants are less than the number of vacancies.

8. It is quite evident that the applicants were not eligible to write the LDCE for the recruitment year 2008 held on 11.07.2010 because they did not possess the required educational qualification on the cut off date of 01.07.2008. Therefore, the O.A. fails and it is dismissed alongwith the M.A. No. 952/2010 which sought a direction to the respondents to consider the applicants for promotion to the post of TTA pursuant to Annexure A-1.

9. There shall be no order as to costs.

(Dated, the 06th January, 2011)



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER



(JUSTICE P.R. RAMAN)
JUDICIAL MEMBER

cvr.