

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NOs. 584 OF 2010 & 598 OF 2010

Wednesday, this the 22nd day of December, 2010

CORAM:

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

1. OA 584/10:

M.Muralidharan
Telecom Mechanic
Office of the SDEOCB (Maintenance)
Central Telephone Exchange
Pattalam Road, Thrissur
Residing at Rayirath House PO
Puthur, Thrissur – 680 014

Applicant

(By Advocate Mr.M.R.Harish)

versus

1. Union of India represented by the Secretary to
Government of India
Department of Communications
New Delhi

2. Bharath Sanchar Nigam Limited
represented by its Chairman and Managing Director
Sanchar Bhawan
New Delhi

3. Chief General Manager
Telecom, BSNL
Kerala Circle,
Trivandrum

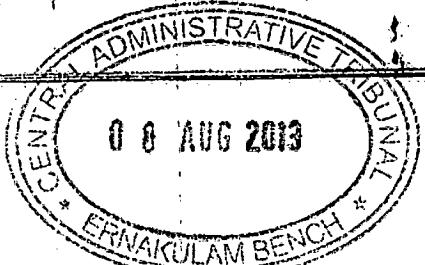
Respondents

(By Advocate Mr. George Joseph, ACGSC (R-1)
Advocate Mr. T.C.Krishna (R2&3))

2. OA 598/10 :

1. Asokan T.U
Telecom Mechanic
Office of the SDE, Pampakkuda
Muvattupuzha
Residing Thekkethundiyl, Narayananagar Road
Ponnurunni, Kochi – 19

Premkumar
Telecom Mechanic



Office of SDE, Panampilly Nagar
Residing at Karippampally House
AKG Road, Thalukudam, Kochi - 19

3. M.J. George
Telecom Mechanic
Telephone Exchange, Vengoor
Residgn at MIG '84
Ground Road, Gandhi Nagar
Kochi - 682 020

Applicants

(By Advocate Mr.M.R.Harraj)

versus

1. Union of India represented by the Secretary to
Government of India
Department of Communications
New Delhi
2. Bharath Sanchar Nigam Limited
represented by its Chairman and Managing Director
Sanchar Bhawan
New Delhi
3. Chief General Manager
Telecom, BSNL
Kerala Circle, Trivandrum
4. Principal General Manager
Telecom, BSNL, BSNL Bhavan
Kochi - 16

Respondents

(By Advocate Mr.T.C.Krishna (R2-4))

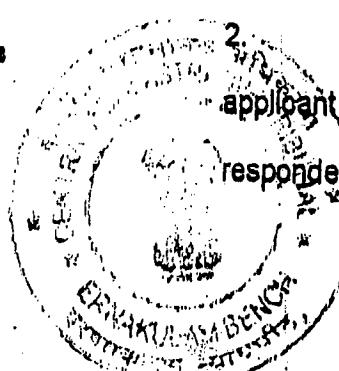
The applications having been heard on 22.12.2010, the Tribunal
on the same day delivered the following:

ORDER

HON'BLE Mr.JUSTICE P.R.RAMAN, JUDICIAL MEMBER

The two OAs raises common question of law and we dispose of
the same with a common order.

2. We refer to the facts in OA 584/10 as a leading case. The applicant commenced his service as Casual Mazdoor under the respondents in January, 1982. Subsequently, he was regularized with



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effect from 03.02.1993 and later promoted in 1998 as Telecom Mechanic. After he qualified in the Departmental test for promotion, the respondents introduced Recruitment Rules for Telecom Technical Assistants (herein after referred as TTAs) in 2001 a copy of which is produced as Annexure A-1. As per the aforesaid rules, for promotion to the post of TTAs, the method of recruitment is by direct recruitment or by promotion or by departmental absorption at prescribed percentage. 40% of the posts are to be filled up by promotion through Limited Departmental Competitive Examination (hereinafter referred to as LDCE). For the purpose of promotion the following qualifications is prescribed.

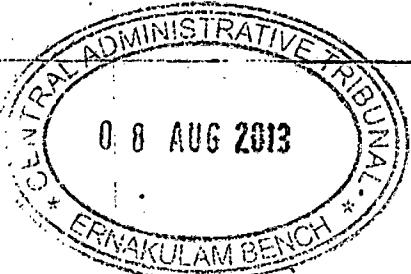
(B) Promotion:

Through limited Departmental competitive Examination from amongst the following Group C employees of Telecom Engineering

- a) (i) *Telecom Operating Assistant (TOA) with five years regular service or*
(ii) *Senior Telecom Operating Assistant (Sr.TOA) with 5 years regular service (including the service rendered as Telecom Operating Assistant, holding 10+2 standard certificate equivalent)*
- (b) (i) *Telecom Mechanic holding 10+2 standard certificate or equivalent, and*
(ii) *Technicians, other than Technicians referred to in item 'A' relating to absorption above, with 5 years regular service in the respective cadres.*

3. The applicant, however, did not possess 10+2 certificate but had appeared for pre-qualifying examination conducted by the respondents on 24.10.2004 and certificate to that effect was also issued as evidenced by Annexure A-4. This examination was conducted as per the order dated 18.11.2003 (Annexure A-2) produced in the OA. The relevant portion of which reads that Recruitment Rules for TTAs circulated by letter No. 250.

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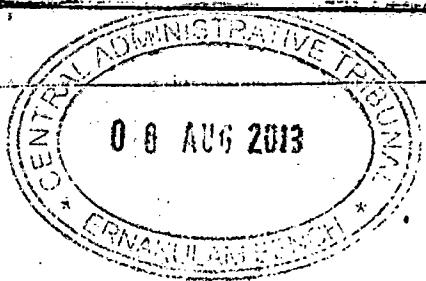
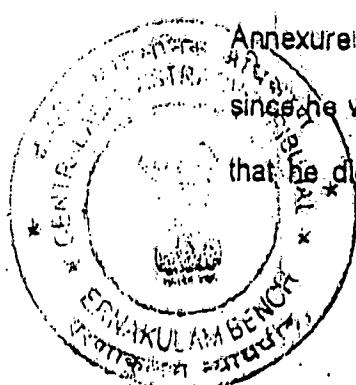
A handwritten signature in black ink, appearing to be "K. S. S. S." followed by a stylized signature.

41/2001-Pers.III dated 27.07.2001, prescribe 10+2 or equivalent as the minimum educational qualification for filling up the vacancies through LCDE. The matter of higher entry level educational qualification for internal candidates was raised in the 2nd meeting of National Council held on 28.05.2003 and in the light of agreement reached in Council meeting and subsequent discussions with recognized Unions, it has emerged that concept of pre-qualifying test for internal candidates, possessing a pre-revised entry-level education qualification, be applied to ensuing LDCE of TTAs. Accordingly, approval of the BSNE Board is conveyed for the following:-

" Sr.TTAs/TOAs/Telecom Mechanics and Technicians (other than those entitled for promotion under 10% absorption quota), with requisite service conditions, may be permitted to sit in a pre-qualification test of entry level i.e. 10+2 or equivalent. The select panel of this test may be drawn up on merit basis amongst the qualified candidates to the tune of 10 times the vacancies earmarked for the Departmental Quota in each category i.e. OC/SC/ST."

4. Subsequent to the above pre-qualifying test conducted in 2005, there were 23 vacancies to be filled up in Trichur Branch but the applicant was not successful in the competitive examination. Subsequently a supplementary departmental examination for 40% departmental quota was notified vide Annexure A-8 dated 19.06.2006 and examinations was held on 07.10.2007. The applicant appeared for the same and secured 82 marks in the aggregate. But however, he was declared as having failed as he got only 27 marks as against 30 marks in Paper 1. Subsequently, respondents notified a fresh LDCE for the existing 22 vacancies as per

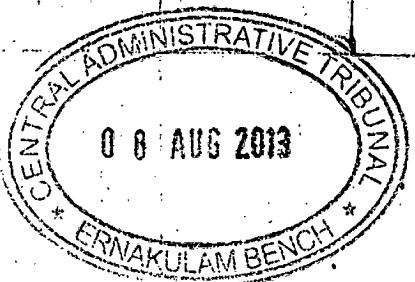
Annexure A-8 notification dated 26.10.2009. According to the applicant, since he was not issued with a hall ticket, he made enquiry which reveals that he did not possess the requisite qualification of 10+2 and the stand-



taken by the respondents is that examination held as per Annexure A-5 and A-6 were only as part of one time chance given to the employees who did not possess 10+2. It is contended that the stand taken by the respondents that the pre qualifying test conducted is only a one time measure has been repelled by the Hon'ble High Court of Kerala in W.P(C) No.7391/07 and has held that the minutes of the meeting of the National Council of BSNL dated 28.05.2003 did not envisage that pre qualification test of entry level will be conducted for the departmental candidates only as one time measure. A copy of the judgment in the writ petition is produced as Annexure A-9. It is further contended that the action of the respondents to deny the applicant entry to appear for the test for LDCE on the grounds that he does not possess 10+2 qualification and the pre-qualifying test written by him was successfully declared as passed will not hold good for the present promotional exercise in so far as the pre-qualifying test was conducted as only a one time measure was contrary to the judgment.

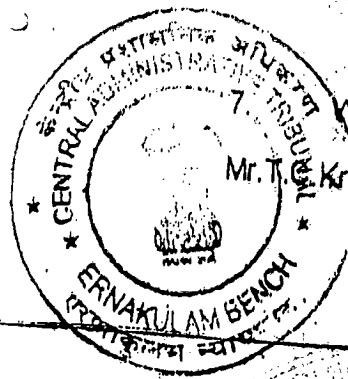
5. As per the interim order passed by this Tribunal, the applicant appeared for the LDCE and successfully passed and obtained 10th rank in the examination. Thus, if the stand taken by the respondents is held to be not correct in law, then necessarily the applicant is entitled to be sent for training as he has passed in the examination for promotion to TTA.

6. The respondents have contended that the pre-qualifying test conducted is only a one time measure and will not hold valid all time to come. They have placed reliance on Annexure R - 3 (e) & (f) issued by the Assistant Director General (Pers,III) addressed to the Chief General Manager wherein it is clarified that the LDCE for TTA under 40% quota for



the recruitment year 2008 shall be strictly done in accordance with the provisions laid in the Recruitment Rules of TTA, 2001. The dispensation of pre-qualifying test for the recruitment year 2004 was given as a one time measure and the same cannot be extended again. In view of the foregoing, such candidates who had already qualified in the pre-qualifying test conducted during 2004 but could not qualify in the competitive examination for TTA under 40% quota held during 2005 shall not be eligible to appear for the proposed examination as per Recruitment Rules. The crux of the above letter has been conveyed subsequently by the Assistant General Manager (Pers-II) in his letter dated 22.10.2010. They have placed reliance on Annexure B-3 that the pre-qualifying test is only a one time measure and merely because the applicants have passed in the pre-qualifying test is not eligible to participate in the LDCE along with other 10+2 candidates. They have also placed reliance on the order in OA 1993/2010 of the Central Administrative Tribunal, Principal Bench. Besides they also contended that this Tribunal by its decision in OA 11/2010 on 31.03.2010 had declared that no fresh pre-qualifying test is legally permissible to equate with 10+2 qualifications. When the respondents proposed such a test in 2010 in relaxation to 2008 recruitment year some of the 10+2 candidates, questioned the proposal by approaching this Tribunal inter-alia contending that the earlier test was only a one time measure and therefore a fresh test should not be conducted and this Tribunal has quashed the relevant order proposing to conduct pre qualifying examination afresh.

We have heard Mr. M. R. Hariraj, counsel for applicant and Mr. T. G. Krishna, counsel for respondents. Perused the pleadings and the



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relevant judgments cited. It is not disputed that 10+2 qualification was introduced for the first time in the year 2001 as a requisite qualification for the post of TTA. Therefore, with a view to enable those employees in service who did not possess 10+2 qualification also to qualify themselves for the post the respondents introduced a pre-qualifying examination and a pass in the same was treated equivalent to 10+2 thereby enabling the successful candidates to appear the LDCE. The question as to whether this pre qualifying test was introduced as a one time measure is no longer res integra. Since the question has already been decided by the Hon'ble High Court in W.P(C) No.7391 of 2007. It was held in A-9 Judgment (after referring to Clause 3(4) of the minutes of the meeting of the National Council of BSNL) as follows:-

"On a perusal of the above notes and on hearing Counsel on both sides, I am of the view that there is nothing on the minutes which will clearly demonstrate a decision to confine the benefit of enabling persons like the petitioner to appear in the LDCE for the 40% quota in the post of TTAs, to only one examination notified as per Exhibit P-2. In my view since a pass in the pre-qualifying test has, in principle, been accepted as a qualification which is equivalent to 10+2 at least for the purpose of enabling the candidates to appear for the LDCE, it may not be fair and reasonable to restrict the benefit, unless the intention was manifest and is otherwise justified."

For all these reasons, the writ petition is allowed in part. Exhibit P-8 is set aside. The respondents are directed to permit the petitioner to participate in the next LDCE of the 40% quota in the post of TTAs, as and when the same is held. But I make it clear that judgment will not stand in the way of respondents deciding not to extend the benefit to future examinations, viz., any LDCE which is held subsequent to the examination to be next conducted as such."

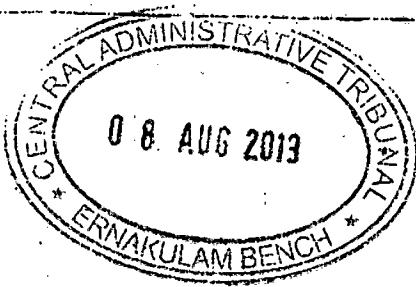
Admittedly, after the judgment of the Hon'ble High Court and prior to the LDCE now in question, no decision is taken in the form of



any order not to extend the benefit to take the advantage of the observation made in judgment as above. But we have seen that Annexure R-3(f) was issued on 22.10.2010 only which is much after the present examination and as such will be applicable to future examinations.

9. In view of the binding decision, we have to accept the position that the examination the applicants have passed viz., the pre-qualifying test held in 2004 should be held as equivalent to 10+2 pass and they are entitled to compete in the LDCE. We may now refer to Principal Bench's decision of the CAT rendered in OA 1993/2010. It is seen that the decision rendered by the Hon'ble High Court of Kerala was not brought to the notice of Principal Bench while deciding the above case.

10. Even if the Tribunal had occasion to consider in OA 11/2010 whether a fresh examination should be conducted as pre-qualifying test, the point that was canvassed before us viz., as to whether the applicants who have prequalified by passing the examination in 2004 could be benefited thereby to claim equivalence as 10+2 qualification and could appear for the LDCE did not arise for consideration in the said case. In the present case before us the question is not whether any new test can be held or not but whether the candidates who passed the pre-qualifying test in 2004 and certificate obtained can be treated as equivalent to 10+2 qualification and thereby enabling them to participate in LDCE. We are of the opinion that once they have passed the test as introduced by the respondents themselves in 2004, they have acquired the qualification equivalent to 10+2. In the result, we declare that the applicants in both the OAs are entitled to participate in the examination held for LDCE and to



compete with the other candidates who possess 10+2 qualification. By an interim order they appeared in the test and have secured high percentage of marks. Thus, they are entitled to be promoted subject to fulfilling other conditions as applicable to successful candidates. Accordingly OAs are allowed. No costs.

Dated, the 22nd December, 2010.

sd/-
K GEORGE JOSEPH
ADMINISTRATIVE MEMBER

sd/-
JUSTICE P.R.RAMAN
JUDICIAL MEMBER



CERTIFIED TRUE COPY

Date 05.1.2011

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Section Officer (Judl)

This Annexure MA-1 is the true copy
of the original document

Advocate *M.R. Haniffy*
M. R. Haniffy

