

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

T.A.Nos. 44, 46, 47, 48 of 2008 and O.A No. 100 / 2009

Thursday, this the 8th day of April, 2010.

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HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

HON'BLE MR K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER

T.A.No.44/2008

1. Medini.C,
Presently working as Assistant Director(OL)
on ad hoc basis, O/o Principal General Manger,
BSNL, Thrissur.
 2. B.Geetha Devi,
Presently working as Assistant Director (OL)
on ad hoc basis/ O/o PGMT, BSNL Bhavan,
Uppalam Road, Thiruvananthapuram-1.
 3. Sobhana Kumari,
Presently working as Assistant Director (OL),
on ad hoc basis in the O/o CGMT,
BSNL, Thiruvananthapuram.
 4. Sheela M.C.
Presently working as Assistant Director(OL)
on adhoc basis in the O/o PGMT, BSNL,
Kalathi Parambil Road,
Kochi-16.
- Applicants

(By Advocate Mr S Radhakrishnan)

v.

1. Union of India rep. By the
Secretary to Government of India,
Ministry of Communications,
New Delhi.
 2. Bharat Sanchar Nigam Ltd.,
Corporate Office, Statemans House,
B-148, Barakhamba Road,
New Delhi rep. by its Director General.
 3. Chief General Manager Telecom,
O/o the Chief General Manager,
Telecom (BSNL), Kerala Circle,
Thiruvananthapuram.
- Respondents

[Signature]

(By Advocate Mr Pradeep Krishna)

T.A.No.46/2008

1. Jobi Joseph,
Assistant Director (Official Language) – Officiating,
O/o the General Manager, Telecom,
BSNL, Palakkad.
2. Prasannakumar Amma M,
Assistant Director (Official Language) – Officiating,
O/o the General Manager, Telecom,
BSNL, Kollam.
3. C.Mridula,
Assistant Director (Official Language) – Officiating,
O/o the General Manager, Telecom,
BSNL, Kozhikode.
4. M.P.Sreekumar,
Assistant Director (Official Language) – Officiating,
O/o the General Manager, Telecom,
BSNL, Kannur.Applicants

(By Advocate Mr OV Radhakrishnan Senior with Shri Antony Mukkath)

v.

1. Bharat Sanchar Nigam Limited,
represented byh its Chairman & Managing Director,
Statemans House, B-148, Barakhamba Road,
New Delhi-110 001.
2. Director (Human Resources Development),
BSNL Board, Statesmans House,
B-148, Barakhamba Road,
New Delhi-110 001.
3. Chief General Manager,
Telecommunications,
Bharat Sanchar Nigam Limited,
Kerala Circle, Thiruvananthapuram.
4. Union of India represented by its Secretary,
Ministry of Communication & Information Technology,
Department of Telecommunications,
421 Sanchar Bhavan, 20 Ashoka Road,
New Delhi-110 001.Respondents

(By Advocate Mr Pradeep Krishna for R.1 to 3)

2.

T.A.No.47/2008

1. G.Anjana,
Assistant Director (Official Language) – Officiating,
Office of General Manager Telecom District,
BSNL, Alapuzha.
2. Raja Sree.P.K.
Assistant Director (Official Language)- Officiating,
Office of General Manager (Teleom District),
BSNL, Thiruvalla. - Applicants

(By Advocate Mr P.V.Mohanan)

v.

1. Bharat Sanchar Nigam Limited,
represented by its Chairman & Managing Director,
Statemans House, B-148,
Barakhamba Road, New Delhi-110 001.
2. Director (Human Resources Development),
BSNL Board, Statemans House, B-148,
Barakhamba Road, New Delhi-110 001.
3. General Manager, Telecommunications,
Bharat Sanchar Nigam Limited,
Kerala Circle, Thiruvananthapuram.
4. Union of India represented by its Secretary,
Ministry of Communications & Information Technology,
Department of Telecommunications, 421 Sanchar Bhavan,
20 Ashoka Road, New Delhi-110 001. - Respondents

(Advocate Mr Pradeep Kumar)

T.A.No. 48/2008

B.H.Sheela,
Assistant Director(OL),
O/o the General Manager Telecommunications,
BSNL, Kottayam. - Applicant

(By Advocate Mr S Radhakrishnan)

v.

1. Union of India rep by the
Secretary to Government of India,
Ministry of Communications,
New Delhi.
2. Bharat Sanchar Nigam Ltd.,
Corporate Office, Statesman House,



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B-148, Barakhamba Road,
New Delhi rep. By its Director General.

3. Chief General Manager, Telecom,
O/o the Chief General Manager,
Telecom (BSNL), Kerala Circle,
Thiruvananthapuram.

- Respondents

(Advocate Mr Pradeep Krishna)

O.A.No.100/2009

1. Geetha.G.P,
Senior Hindi Translator,
O/o the Principal General Manager,
Telephones, BSNL, Kottayam.
2. Suma K,
Junior Hindi Translator,
O/o the General Manager,
Telephones, BSNL Bhavan,
South Bazar, Kannur.
3. Vijayan.K.P.,
Junior Hindi Translator,
O/o the General Manger,
Telephones, BSNL Bhavan,
South Bazar, Kannur.
4. S.S.Sindhu Singh,
Junior Hindi Translator,
O/o the Principal General Manager,
Telephones, BSNL Sanchar Bhavan,
Thiruvambadi.P.O., Thrissur.

- Applicants

(By Advocate Mr P Ramakrishnan)

v.

1. Union of India represented by
Secretary to Government,
Ministry of Communication & Information
Technology, 421, Sanchar Bhavan,
20 Ashoka Road, New Delhi.
2. Bharat Sanchar Nigam Limited represented by
its Chairman & Managing Director,
Statemans House, B-148,
Barakhamba Road, New Delhi-110 011.
3. The Chief General Manager,
Telecommunications, BSNL,
Kerala Circle, Thiruvananthapuram.



4. C.Medini,
Assistant Director (Official Language),
O/o Principal General Manager,
Telephones, BSNL Sanchar Bhavan,
Thiruvambadi PO, Thrissur.
 5. B Geetha Devi,
Assistant Director (Official Language),
O/o Principal General Manager,
Thiruvananthapuram.
 6. B.H.Sreela,
Assistant Director (Official Language),
BSNL, O/o GM Telephones(Mobile),
Statue, Thiruvananthapuram.
 7. Sobhanakumari S.S.
Assistant Director (Official Language),
O/o CGM, BSNL, Telephones,
Thiruvananthapuram.
 8. M.C.Sheela,
Assistant Director (Official Language),
O/o PGM, Telephones, BSNL, Ernakulam.
 9. Anjana G,
Assistant Director (Official Language),
O/o General Manager, BSNL Telephones,
Alappuzha.
 10. P.K.Rajasree,
Assistant Director (Official Language),
BSNL, O/o General Manager,
Telephones, Thiruvalla.
 11. Joby Joseph,
Assistant Director (Official Language),
BSNL, O/o General Manager,
Telephones, Pa;akkad.
 12. M.Prasannakumari Amma,
Assistant Director (Official Language),
BSNL, O/o General Manager,
Telephones, Kollam.
 13. C.Mrudula,
Assistant Director (Official Language),
BSNL, O/o General Manager,
Telephones, Kozhikode.
 14. M.P.Sreekumar,
Assistant Director (Official Language),
BSNL, O/o General Manager,
Telephones, Kottayam.
- Respondents



(By Advocate Mr Thomas Mathew Nellimoottil for R.1 to 3)

(By Advocate Mr B Sajeevkumar for R.4 to 8)

(By Advocate Mr OV Radhakrishnan Senior with Mr Antony Mukkath for R.11 & 13)

(By Advocate Mr PV Mohanan for R. 9 & 10)

This application having been finally heard on 23.2.2010, the Tribunal on 8.4.2010 delivered the following:

ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

All these cases have been transferred to this Tribunal by the Hon'ble High court of Kerala after the jurisdiction over Bharat Sanchar Nigam Limited (BSNL for short) was conferred upon this Tribunal. The issue raised in all these T.As is identical and, therefore, they are disposed of by this common order.

T.A.44/2008

1. All the applicants in this T.A are similarly placed. The 1st applicant entered service with the erstwhile Telecom Department as Hindi Translator Gr.I (now re-designated as Senior Hindi Translator) with effect from 15.7.1988. She was confirmed in the post on 17.7.1990. Thereafter, she was appointed as Assistant Director (Official Language) with effect from 27.1.1993 on purely temporary and ad hoc basis. The 2nd applicant entered as Hindi Translator Gr.II on 22.7.1988 as a direct recruit and was promoted as Hindi Translator Gr.I with effect from 12.10.1993. She was promoted as AD(OL) on ad hoc basis 15.5.1994 and worked till 11.11.1994 and after 3 days of artificial break, she was again given officiating promotion as AD(OL) with effect from 15.11.1994 and she is still continuing in the said post without any break. The 3rd petitioner entered service as Junior Hindi Translator by competitive examination (outside quota) on 21.6.1990 and she was promoted as Senior Hindi Translator in the year 1995. She was granted officiating promotion as AD(OL) with effect from 4.9.2005 and

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ever since the said date she has been working in the said post. The 4th applicant entered service as Hindi Translator Gr.I on 4.3.1991. She was promoted as Senior Hindi Translator with effect from 4.3.1998. Thereafter, she was granted officiating promotion as AD(OL) with effect from 22.3.1996 and at present she still continues in that capacity.

2. The applicants have made similar representations for regularisation of their ad hoc service as AD(OL). The respondents vide Exhibit P-5 dated 1/3.4.2002, informed the 1st applicant (Ms Medini C) that Recruitment Rules for the post of AD(OL) has not been finalised so far and that her request for regularisation will be considered as and when they are notified. Meanwhile, a similarly situated person, Smt B.H.Sreela filed O.A.5/1998 before this Tribunal with the grievance that the respondents were continuing her in her officiating capacity without making regular promotion for want of proper Recruitment Rules, even though vacancies were available. Noting the submission of the respondents that they were taking necessary steps for promulgation of the Recruitment Rules, the O.A was closed vide Exhibit P6 order dated 9.3.1998. Thereafter, the respondents have notified Exhibit P7 "Assistant Director (Official Language) Recruitment Rules, 2002", on 24.12.2002. A special provision was included in the said Recruitment Rules to safeguard and protect the interest of the persons like the applicants who were officiating as AD(OL) on ad hoc basis for a fairly long period. The said Special Provision reads as under:

"Special Provision

There are many Sr. Hindi Translators/Jr. Hindi Translators and Group C officials who have been given local officiating promotions to the grade of AD(OL) in the field formations of BSNL. In order to avoid legal and administrative complications, as a one time measure, it is provided that all the vacancies in the grade of AD(OL) in the 1st year of Recruitment, irrespective of vacancies earmarked for promotional quota or DR quota, shall be filled up by promotion on seniority-cum-fitness basis, by following due procedures, amongst those officials

who have been officiating as AD(OL) in BSNL subject to their fulfilling the basic qualifications and experiences as prescribed above."

According to the applicants, they were legitimately expecting that they would be granted promotion on the basis of aforesaid Recruitment Rules. However, the respondents did not take any action for another 3 years and promulgated Exhibit P8 "Rajbhasha Adhikari Recruitment Rules, 2005" totally omitting the Special Provision contained in Exhibit P-7 Recruitment Rules and introducing a new method of Recruitment Rules, namely, Limited Internal Competitive Examination (LICE for short). As a result, the applicants who were put in more than 9 years of service as AD(OL) on ad hoc basis have been forced to compete with those persons who are far juniors including the Senior Translators with 3 years regular service and Junior Hindi Translators with 5 years regular service and who have not worked as ED(OL) even for a day.

Facts in T.A.46/2008

3. Applicants were initially appointed as Hindi Translators Grade II. On completion of satisfactory completion of their probation period, they were confirmed in the aforesaid post on various dates and they were temporarily promoted to the cadre of Assistant Director (OL) against the existing vacancies on local officiating basis, for a period of 179 days. After intermittent breaks, they were re-appointed as Assistant Director (OL) in the same capacity and all of them are continuing in the said posts. Meanwhile, the Department of Telecommunications restructured the cadre of Hindi Translators in their cadre. Accordingly the post of Hindi Translator Gr.III in the scale of Rs.4000-6000 and Hindi Translator Gr.II in the pay scale of Rs.4500-7000 were merged in the scale of Rs.5000-8000. Resultantly, vide Exhibit P-11 dated 5.12.2000, the post of Hindi Translator Gr.I has been re-designated as Senior Hindi Translator and placed in the scale Rs.5500-9000. Necessary modifications in the relevant recruitment rules have also been made. Thereafter, the respondents have

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issued the Exhibit P-12 All India Combined Seniority list of Senior Hindi Translators and Junior Hindi Translators of BSNL. They also have made the Exhibit P-13 Hindi Officer, Post and Telegraphs Department, Recruitment Rules, 1983 and notified it on 16.1.1984. The promotion to that grade was made from among the Hindi Translator Gr.I with 3 years regular service. Later on, the post of Hindi Officers was redesignated as Assistant Director (OL) and in supersession of the previous recruitment rules, the respondents have issued Exhibit P-14 "Assistant Director (Official Language) Recruitment Rules, 2002" on 24.12.2002. The method of recruitment is 50% by promotion and 50% by direct recruitment and the promotion is to be made on the basis of seniority-cum-fitness basis from the Senior Hindi Translator with 3 years regular service in the grade and Junior Hindi Translator with 8 years of regular service in the grade.

4. When the applicants were given local officiating promotions, the respondents has imposed "restriction of pay under FR-35". However, by Exhibit P -15 corrigendum dated 1.10.2003 they have removed the said restriction as per the revised eligibility conditions given in the Exhibit P-14 recruitment rules for the post of Assistant Director (OL) issued on 24.12.2002. The Sanchar Nigam Executive Association (India) submitted Exhibit P-16 representation to the respondents on 22.7.2005 stating that even after the promulgation of the Recruitment Rules dated 24.12.2002, they have not filled up any single post of AD(OL) by promotion, instead they were going ahead with the recruitment through limited competitive examination. They have, therefore, requested the respondents to fill up the existing vacancies as per the provisions of the recruitment rules of 2002 before they make any recruitments through limited competitive examination.

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5. Shri Jobi Joseph the 1st applicant in this case, made a request to the respondents to retain him in the promoted post without any reversion. However, the 3rd respondent did not accept his request stating that he was not empowered to grant any local officiating promotion for more than 179 days or any regular promotions. Further, the regular promotions in the cadre of AD(OL) was to be given by the Corporate Office and the same was awaited. Again, the All India Bharat Sanchar Nigam Limited Executive Association submitted Exhibit P-18 representation dated 29.7.2005 repeating their request to fill up the old vacancies of AD(OL) in accordance with the recruitment rules of 2002. Without taking any action on those representations, the respondents issued the Exhibit P-19 "Rajbhasha Adhikari Recruitment Rules, 2005" in supersession of the Assistant Director (Official Language) Recruitment Rules, 2002. Thereafter, the respondents issued Exhibit P-21 scheme of written test and syllabus for LICE for promotion to the post of Rajbhasha Adhikari in accordance with Recruitment Rules for the post of Rajbhasha Adhikari.

6. The submissions of the applicants are that the cadre strength of Hindi Officer(re-designated as AD(OL)) was 120 and all those 120 posts were to be filled up on the basis of Exhibit P-14 Recruitment Rules. According to them, the officers who have been given local officiating promotion in the grade of AD(OL) in the field formations of BSNL are to be promoted on the basis of seniority-cum-fitness basis from Senior Hindi Translator with 3 years regular service in the grade and Junior Translator with 8 years regular service in the grade. As the Exhibit P-19 Recruitment Rules, 2005 has only the prospective effect i.e. from its date of publication on 5.8.2005, the vacancies existing prior to that date are necessarily to be filled up in accordance with Exhibit P-14 Recruitment Rules, 2002.



7. According to the applicants, certain similarly placed officials had approached the Hon'ble High Court of Calcutta by filing Writ Petition No.23150/2005 seeking absorption in accordance with the special provision contained in Col.12 of Exhibit P-14 Recruitment Rules. The Hon'ble High Court allowed the said petition vide its judgment dated 9.1.2006 directing the respondents to absorb the petitioners therein in terms of Exhibit P-14 Recruitment Rules of 2002 in the promotional post within a period of four weeks from the date of judgment. The respondents filed FMA No.,1395 of 2007 against the aforesaid judgment and the same was also dismissed by the Division Bench of the High Court. The operative part of the said order is as under:

"The relevant provision of the said Recruitment Rules, 2002 is set hereunder:

10. Initial Constitution

i) All officials holding the post of Assistant Director (Official Language) on regular basis in erstwhile DOT/DTS/DTO before commencement of these rules and those who have been absorbed in Bharat Sanchar Nigam Limited shall be deemed to have been appointed as Assistant Director (Official Language) with the same seniority.

ii) The continuous regular service of officials referred to in the sub rule 10(1) above before the commencement of these rules shall count for the purpose of probation, qualifying service for promotion, confirmation and pension.

iii) There are many Sr. Hindi Translators/Jr. Hindi Translators and Group 'C' officials who have been given adhoc promotions to the grade of AD(OL) in field formations of BSNL. In order to avoid legal and administrative complications, as a one time measure, it is provided that all the vacancies in the grade of AD(OL) in the first year of recruitment, irrespective of vacancies earmarked for promotional quota or direct quota, shall be filled up by promotion on seniority-cum-fitness basis, by following due procedures, amongst those officials who have been officiating as AD(OL) in BSNL, subject to their fulfilling the basic qualifications and experiences as prescribed in column 12 of the Schedule annexed to these Rules.

iv) These rules will be subject to review after a period of three recruitment years.

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It is not in dispute that at the relevant time 120 vacancies were available in the grade of Assistant Director (Official Language) and the writ petitioner was placed in the 4th position of the seniority list.

It has also not been alleged on behalf of the appellants that the said writ petitioner did not fulfil the basic qualifications and experiences as prescribed in Column 12 of the Schedule annexed with the Recruitment Rules, 2002.

Since sufficient vacant post were available in the grade of Assistant Director (Official Language) and the writ petitioner fulfilled all the qualifications and the experiences in terms of the said Recruitment Rules, the appellants herein should not have refused to absorb the respondent/writ petitioner herein in the said post of Assistant Director (Official Language) instead of asking the said writ petitioner to continue as officiating Assistant Director (OL).

We are also of the opinion that the provisions of Recruitment Rules of 2005 cannot have any effect on the writ petitioner since the said writ petitioner was entitled to be permanently absorbed in the vacant post of Assistant Director (Official Language) in terms of Recruitment rules, 2002 as mentioned herein before.

The learned counsel of the appellants referred to and relied upon a decision of the Supreme Court in the case of Secretary, State of Karnataka and ors. v. Umadevi (3) and others. Reported in (2006) 4 SCC. We fail to understand how the aforesaid decision can be of any help to the appellants herein since the writ petitioner did not ask for regularisation of service as a temporary, contractual, casual daily wage or ad hoc employee. The petitioner was a permanent employee under the appellants and subsequently claimed absorption in the promotional post of Assistant Director (Official Language) in terms of Rule 10 of the Recruitment Rules of Assistant Director (Official Language) published by the appellants herein in 2002.

Therefore, in the facts and circumstances of the present case, aforesaid decision of the Supreme Court in the case of Secretary, State of Karnataka and ors. (supra) is not at all applicable.

For the reasons discussed herein above and considering the available vacancies and further considering the seniority position of the writ petitioner in the seniority list, we are of the opinion that the learned Single Judge has rightly issued the direction upon the concerned authority for absorption of the writ petitioner in the promotional post of Assistant Director (Official Language) in terms of 2002 Recruitment Rules and we affirm the aforesaid decision of the learned Single Judge.

This appeal therefore, fails being devoid of any merit and same is dismissed accordingly.

The interim order passed earlier also stands vacated.

The appellants herein are directed to take necessary steps for absorption of the writ petitioner in compliance with the order under

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appeal dated 9th January, 2006 passed by the learned Single Judge without any further delay but positively within a period of three weeks from date.

In the facts of the present case, there will be no order as to costs."

8. They have further submitted that the issue involved in this case has been considered by the Hon'ble High Court of Andhra Pradesh also in Writ Petition Nos.20503 of 2005 and 7443 of 2008 and both of them were allowed by the common order dated 2.7.2008. The operative part of the said judgment is as under:

"The petitioners were appointed as Hindi Translators at various points of time, under different grades. It has already been mentioned that the next higher post used to be Hindi Officer. Several vacancies existed in that category and almost all the petitioners are officiating against the superior posts, on being qualified, Administrative Order, dated 28.04.1994, reads as under:

"The post of Hindi officer may be filled up from amongst the cadre of Hindi Translator Grade I/Grade-II/Grade-III with 3/5/8 years service in the respective grades in the Circle/District concerned failing which the posts may be filled up from amongst all Group'C' cadres based on the length of service in the grade possessing the education other qualifications prescribed for direct recruits in 7 of the Recruitment Rules."

It is well recognised that mere existence of a vacancy does not confer a right on the incumbent, to be promoted. Where, however, the rules themselves provide for promotion, on completion of a particular length of service, a valid right accrues to the employee. In the case of time bound promotions, neither one has to wait for the occurrence of the vacancy nor the conducting of any qualifying test. Such of the petitioners, who have completed the requisite length of service, ought to have been promoted, in accordance with the Administrative Order, dated 28.04.1994. The respondents do not appear to have taken the Language Wing, with the required amount of seriousness. Had they paid a fraction of attention on conferring temporary status on qualified persons or effecting promotions on technical side, even beyond the approved strength, the petitioners would not have been subject to such a horrible plight.

The respondents framed 2002 Rules. Normally, the service rules prescribe the relevant guidelines and leave the matter to be operated over the time. 2002 Rules paid special attention to the Hindi Translators and provided the mechanism for promotion also. The post of 'Hindi Officer' was re-designated as 'Assistant Director (Official Language)'. Rule 10(3) of 2002 Rules reads as under:

"There are many Sr. Hindi Translators/Jr. Hindi Translators and Group'C' officials who have been given ad hoc promotions to

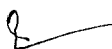
the grade of AD(OL) in field formations of BSNL. In order to avoid legal and administrative complications as a one time measure, it is provided that all the vacancies in the grade of AD(OL) in the first year of recruitment, irrespective of vacancies earmarked for promotional quota or direct quota, shall be filled up by promotion on seniority-cum-fitness basis, by following due procedures, amongst those officials who have been officiating as AD(OL) in BSNL subject to their fulfilling the basic qualifications and experiences as prescribed in column 12 of the Schedule annexed to these Rules."

The Rule making authority recognised the gravity and urgency. However, no sincere attempt to enforce this rule was made. Almost all the petitioners were officiating against the superior posts since several years. A formal order of promotion of the petitioners would have served the purpose. The official apathy continued. Though the rule had recognised the extraordinary situation and even provided for filling up of the vacancies earmarked for direct recruitment by way of promotion, not a single promotion was effected and all the petitioners had no languish in their earlier position. Hardly within three years, Rules of 2005 were brought into existence with effect from 5.8.2005. These Rules virtually dealt a fatal blow to the petitioners in the context of their promotion. The post was renamed as "Rajabhasha Adhikari" and the promotion was subjected to the following conditions:

"Promotions by Limited Internal Competitive Examination (LICE) for Sr. Hindi Translators with 3 years regular service including service rendered as Hindi Translator Grade-I (redesignated as Sr. Hindi Translator), Jr. Hindi Translator with 5 years regular service including service rendered as Hindi Translator Grade-II & III (redesignated as Jr. Hindi Translator): Group-C officials (non-executives) of BSNL who are working/have worked as Assistant Director (OL)/Rajabhasha Adhikari on local officiating/adhoc basis for 5 years."

It is always the prerogative of an employer to frame service rules from time to time. One recognised principle, however, is that the accrued rights of an employee cannot be taken away by enactment of a fresh set of rules. It can safely be observed that a valid right had accrued to the petitioners to be promoted, be it, under the Administrative Order of 1994, or 2002 Rules. It is not as if they were required to undergo any test or to acquire any further qualifications under those Rules. While the promotion under the former was time bound, the one under latter was almost automatic. The fact that the petitioners were already officiating against the superior posts must have made the task of the respondents easy, just to put a seal of approval on existing position. However, on one pretext or the other, the respondents delayed and denied promotions to the petitioners and later on, created such a condition, as to make the chance of their promotion almost a nightmare. This Court does not approve such a conduct on the part of the respondents. The test prescribed under the Rules of 2005, or the consequences of non-availability of candidates for promotion do not apply to the petitioners.

The writ petitioners are, accordingly, allowed and it is directed



that the respondents shall consider the case of the petitioners for promotion, without reference to the test prescribed under 2005 Rules; and on the basis of the rights that accrued to the petitioners, under the Rules that existed earlier thereto, and pass appropriate orders within a period of two(2) months from the date of receipt of a copy of this order. There shall be no order as to costs."

9. Learned counsel for the applicants have also relied upon the judgment of the Apex Court in **Y.V.Rangaiah and others v. J.Sreenivasa Rao** [AIR 1983 SC 852] and **B.L.Gupta and another v. M.C.D.** [(1998) 9 SCC 223].

10. In **Rangaiah's** case the Apex Court has held as under:

"9. Having heard the counsel for the parties, we find no force in either of the two contentions. Under the old rules a panel had to be prepared every year in September. Accordingly, a panel should have been prepared in the year 1976 and transfer or promotion to the post of Sub Registrar Grade II should have been made out of that panel. In that event the petitioners in the two representation petitions who ranked higher than the respondents Nos.3 to 15 would not have been deprived of their right of being considered for promotion. The vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules. It is admitted by counsel for both the parties that henceforth promotion to the post of Sub Registrar Grade II will be according to the new rules on the zonal basis and not on the Statewide basis and therefore, there was no question of challenging the new rules. But the question is of filling the vacancies that occurred prior to the amended rules. We have not the slightest doubt that the posts which fell vacant prior to the amended rules would be governed by the old rules and not by the new rules."

11. In **B.L.Gupta's** case the Apex Court has held as under:

"9. When the statutory rules had been framed in 1978, the vacancies had to be filled only according to the said Rules. The Rules of 1995 have been held to be prospective by the High Court and in our opinion this was the correct conclusion. This being so, the question which arises is whether the vacancies which had arisen earlier than 1995 can be filled as per the 1995 Rules. Our attention has been drawn by Mr Mehta to a decision of this Court in the case of **N.T.Devin Katti v. Karnataka Public Service Commission** [(1990) 3 SCC 157]. In that case after referring to the earlier decisions in the cases of **Y.V.Rangaiah v. J.Sreenivasa Rao** [(1983) 3 SCC 284], **P.Ganeshwar Rao v. State of A.P** [1988 Supp SCC 740] and **A.A.Calton v. Director of Education** [(1983) 3 SCC 33] it was held by this Court that the vacancies which had occurred prior to the amendment of the Rules would be governed by the old Rules and not by the amended Rules. Though the High Court has referred to these judgments, but for the reasons which are not easily decipherable its applicability was only

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restricted to 79 and not 171 vacancies, which admittedly existed. This being the correct legal position, the High Court ought to have directed the respondent to declare the results for 171 posts of Assistant Accountants and not 79 which it had done.

10. We are unable to agree with Shri Sanghi that by virtue of their length of service while holding current duty charge as Assistant Accountants, his clients should be regularised in the said posts. Merely because the same posts have been upgraded from Senior Clerks to Assistant Accountants, it would not mean that persons who were given the current duty charge could be regularised without any selection. The clients of Mr Sanghi presumably hold lien in the posts of Senior Clerks. If they were to be regularised as Assistant Accountants, the effect would be that they would be promoted to the said posts. The Rules of 1978 prescribe the mode in which the promotions can be made. This mode has to be followed before the appointments could be made. If no statutory rules had existed, it may have been possible, though we express no opinion on it, that the existing incumbents may have been regularised. Where, however, statutory rules exist, the appointments and promotions have to be made in accordance with the statutory rules specially where it has not been shown to us that the Rules gave the power to the appointing authority of relaxing the said Rules. In the absence of any such power of relaxation, the appointment as Assistant Accountant could only be made by requiring the candidates to take the examination which was the method which was prescribed by the 1978 Rules.

11. We are informed at the Bar by Dr Singhvi, on the basis of instructions received by him, that now there are about 323 posts of Assistant Accountants. Out of these about 80 have been filled on the basis of the December 1973 examination. The respondents are directed to fill 91 more vacancies on the basis of December 1993 examination which they have already conducted. This will leave a balance of 152 vacancies. The number of persons who are holding these posts on current duty charge appears to be less than the number of vacancies so available. Therefore, there will be no immediate danger of Mr Sanghi's clients being reverted to the post of Senior Clerks. The respondents will be at liberty to continue to retain them in the higher post, but it is made clear that the vacancies which had arisen prior to amendment of the Rules in 1995 can only be filled in accordance with the 1978 Rules, which means that if Mr Sanghi's clients want to be regularly appointed as Assistant Accountants, they will have to compete with and take the examination under the 1978 Rules. This is with regard to the vacancies which remain and are required to be filled under the 1978 Rules. Any vacancies which arise after 1995 will have to be filled as per the amended Rules. It is but obvious that the seniority in all these cases will have to be fixed according to the seniority rules which are applicable."

12. The applicants have, therefore, submitted that 11 sanctioned post of AD (OL) in Kerala Circle which were existing at the time of coming into force of

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Exhibit P-14 Recruitment Rules of 2002 are to be filled up in accordance with Exhibit P-14 Recruitment Rules and not Exhibit P-19 Recruitment Rules of 2005. The respondents' reply is in T.A.44/2008, 46/2008, 47/2008 and 48/2008.

Facts in T.A.48/2008

13. In this case, the applicant was selected by the Staff Selection Commission in the year 1989 and joined as Hindi Translator Gr.I in Madras Telephones with effect from 26.2.1990. She was transferred to Kerala Circle on 13.5.1994 and was posted to the Regional Telecom Training Centre, Trivandrum as Senior Hindi Translator. She was promoted as AD(OL) against the regular post in Kottayam SSA on 5.8.1996 vide Exhibit P-1 letter dated 16.10.1996. She was also submitted that similarly placed persons in other departments have been promoted in terms of the said Exhibit P-4 Recruitment Rules, 2002. She has also produced a copy of Exhibit P-5 order in favour of one Shri KK Ramachandran in the Income Tax Department who joined service along with her and promoted as AD(OL). However, though she was holding the post of AD(OL) for these years, she has now been served with Exhibit P-6 letter dated 5.10.2005. She has, therefore, sought a declaration that she was regularly promoted as AD(OL) re-designated as Rajbhasha Adhikari applying the Special Provision below column 12 of the Schedule to the Recruitment Rules, 2002 notwithstanding the supersession of those Rules by the Recruitment Rules, 2005.

14. The respondents' reply is in these T.As are also identical. According to them, the applicants have been ordered to be promoted locally in the post of AD (OL) in temporary vacancies on ad hoc basis owing to the workload,. This was done without going through the normal channel of selection process stipulated by the company and they are presently continuing in the said post on the strength of the interim directions dated 21.10.2005 passed by the Hon'ble High

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Court. They have further submitted that the post of AD(OL) has since been re-designated as Rajabhasha Adhikari and it is a promotional post in the executive cadre regulated by the Recruitment Rules. They have also submitted that no legal right is created in favour of the applicants to claim regular appointment to the detriment of the claim of other eligible aspirants to the post. The regularisation of post can be done only, in accordance with the rules in force and that too only if there is a vacancy exist. According to them, as per the settled law, one does not have any right or regularisation but only has a right to be considered for regularisation. As regards the Assistant Director (Official Language) Recruitment Rules of 2002 is concerned, they have submitted that owing to difficulties in its implementation, they have formulated Rajabhasha Adhikari Recruitment Rules, 2005 in supersession of of all the earlier Recruitment Rules in the cadre with full approval of BSNL. Hence the claim of the applicants for regulation as AD(OL) with effect from the date of initial appointment as per the special provision made in the earlier Recruitment Rules cannot be accepted. They have further submitted that at present there are only temporary vacancies of AD(OL) and they have been reported to the Corporate Office for regularisation with the approval of competent authority. However, there are no sanctioned regular posts in existence to which the applicants can be regularised. Their continuation in the posts as officiating/adhoc basis does not import any right for regularization. Therefore, they were required to appear in the LICE based on Exhibit P-19 RR scheduled on 30.12.2005 which has been postponed sine die, due to compelling administrative reasons.

Facts in O.A. 100/2009

15. The 1st applicant in this O.A commenced service as Telegraphist in the erstwhile Department of Telecommunication. Later on, she was appointed as Hindi Translator Gr.II in the scale Rs.4500-7000 with effect from 24.8.1998. After

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the restructuring of the cadre in the Department of Telecommunication with effect from 5.2.2000, the post of Hindi Translator Gr.III and Gr.II were merged to form the newly designated post of Junior Hindi Translator and the Hindi Translator Gr.I was re-designated as Senior Hindi Translator. Accordingly she was placed in the scale of pay of Rs.5000-8000 and re-designated as Junior Hindi Translator with effect from 5.12.2000. Later on she was promoted to officiate as Senior Hindi Translator on 22.2.2002.

16. The 2nd applicant was working as Junior Hindi Translator in the office of the General Manager, Telecommunication, BSNL, Kannur. She was appointed as Hindi Translator Gr.II on 16.10.1998 and after restructuring she was re-designated as Junior Hindi Translator with effect from 5.12.2000 and she is still working in that post.

17. The 3rd applicant was working as Junior Hindi Translator in the office of General Manager, Telecommunication, BSNL, Kannur. He had been appointed as Hindi Translator Gr.II on 22.10.1998 and after re-structuring she was re-designated as Junior Hindi Translator with effect from 5.12.2000.

18. The 4th applicant was working as Junior Hindi Translator in the office of the Principal General Manager, Telecommunication, BSNL, Thrissur with effect from 14.10.1998 and later re-designated as Junior Hindi Translator with effect from 5.12.2000.

19. After the formation of BSNL, the post of Hindi Officer was re-designated as AD(OL) and the "Assistant Director (Official Language) Recruitment Rule 2002 was notified on 24.12.2002. However, no recruitment were carried out by



the 1st respondent in terms of the Recruitment Rule. In the year 2008, the 1st respondent re-designated the post of Assistant Director (Official Language) as Rajbhasha Adhikari and brought into force "Rajbhasha Adhikari Recruitment Rules 2005" in supersession of 2002 Recruitment Rules. The Recruitment Rules 2005 envisages recruitment to the post of Rajbhasha Adhikari by promotion through LICE failing which by direct recruitment through an examination. As per the Recruitment Rule, those who are qualified for promotion through LICE are Senior Hindi Translator with 3 year regular service including service rendered as Hindi Translator Gr.I, Junior Hindi Translator with 5 years regular service including service rendered as Hindi Translator Gr.II and III and Group C officials of BSNL who are working as AD(OL) on local officiating/ad hoc basis for 5 years having the educational qualifications specified in Col.8 of the Schedule. The applicants who are having requisite qualification, participated in the selection and had been declared as successful. In the Annexure A-6 result of the LICE held on 10.1.2008 the applicants 1 to 4 are at rank Nos. 5, 1, 2 and 4 respectively. Though the rank list has come into force, no appointments have been made by respondents 1 to 3 since the same could be carried out only after reverting respondents 4 to 14 who are holding the post of AD(OL) either on ad hoc basis or in an officiating capacity. Respondents 4 to 8 who are in the cadre of Senior Hindi Translators, are working as AD(OL) on ad hoc basis. Respondents 9 and 10 are also in the cadre of Senior Hindi Translator but are officiating as AD(OL). As far as respondents 11 to 14 are concerned, they are in the cadre of Junior Hindi Translators but are officiating as AD(OL). As a matter of fact, respondents 12, 14 and 8 are at Sl.Nos. 3, 10 and 11 respectively in the merit list. The applicants have made Annexure A-8 to A-11 representations. However, respondents have acted on those representations. They have, therefore, filed this O.A seeking a direction to the respondents to



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appoint them as Rajbhasha Adhikari in accordance with the rank in Annexure A-6 list, if necessary after reverting respondents 4 to 14.

20. The respondents 2 & 3 have in their reply submitted that the appointment to the post of Hindi Translators in the then Post and Telegraphs Department was governed by Recruitment Rules 1983 and the rules were superceded by the Recruitment Rules 1996. In view of the difficulties faced by the Telecom Circles in filling up of posts as per the existing provisions, it was decided to fill up the posts on local officiating basis under powers delegated to the Heads of Telecom Circles. Outside recruitments/departmental examinations are being conducted by the Chief General Manager of the respective circles of the organization strictly in accordance with the rules and regulations framed and issued from time to time by the DG, Telecommunications, New Delhi till existence of Department of Telecom and thereafter by the BSNL, new recruitment rules of its own were framed and issued by the competent authority, the BSNL Corporate Office, New Delhi. In supersession of above, the Corporate Office re-designated the post of AD(OL) as Rajbhasha Adhikari and issued new Recruitment Rules 2005 for the post of Rajbhasha Adhikari in BSNL. They have further submitted that these recruitment rules supersede all the instructions issued from time to time including the instructions contained in DoT letter No.312-1/94-STG-III dated 28.4.1994 regarding the filling up of the post of Hindi Officers/AD(OL) in filed units on local officiating basis. The local officiating arrangements/promotion on ad hoc that have already been made may not be disturbed till the regular incumbents to such posts become available in accordance with Recruitment Rules. Based on the new recruitment rules, BSNL Corporate Office had issued instructions vide their letter dated 13.9.2005 to all Telecom Circles to conduct the LICE for promotion to the post of Rajbhasha Adhikarai during the month of



December 2005. They have submitted that the officials who are officiating as AD(OL) approached the Hon'ble High Court of Kerala in W.P.(C)No.28185 of 2005 and got stay against their reversion from the post of AD(OL), even though some of the petitioners had attended the exam. In view of the intervention of the High Court, reversion of the respondents 4 to 14 from the post they now hold and filling up of the vacancies of Rajabhasha Adhikari could not be done even though the results were declared.

21. The respondents 4 to 8 have in their reply submitted that they were appointed as AD(OL) on ad hoc basis even before the commencement of 2002 Recruitment Rules. The 4th respondent was directly recruited as Senior Hindi Translator on 15.7.1988 through All Kerala Competitive Examination and on 30.11.1992 she was appointed as Hindi Officer/AD(OL) on adhoc basis. She is still continuing as AD(OL) from 30.11.1992 onwards. The 5th respondent was appointed as Junior Hindi translator on 22.7.2008 and is officiating as Hindi Officer/AD(OL) from 15.11.1994 without break or reversion. The 6th respondent was directly recruited through Staff Selection Commission as Senior Hindi Translator from 26.2.1990 and promoted as Hindi Officer/AD(OL) from 15.8.1996. The 7th respondent was appointed as Telecom Office Assistant on 7.2.1989 and later promoted as Hindi Officer/AD(OL) on ad hoc basis. The 8th respondent was appointed as Junior Hindi Translator on 4.3.1991 and later appointed as Hindi Officer/AD(OL) from 22.3.2006. On 5.1.2005 the BSNL published an All India Combined Seniority List of Senior Hindi Translators and in the said list it was clearly stated that these respondents are officiating as AD(OL). They have further submitted that the respondents 4 to 8 are governed by the AD(OL) Recruitment Rules 2002 according to which the method of appointment is 50% is by promotion on seniority-cum-fitness basis from Senior Hindi Translator with 3



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years regular service in the grade and Junior Hindi Translator within 8 years of service in the grade and 50% by direct recruitment through examination. There was also a special provision under Col.12 which provides that all the vacancies in the grade of AD(OL) in the first year of recruitment, irrespective of vacancies earmarked for promotional quota or direct recruitment quota shall be filled up by promotion on seniority-cum-fitness basis by following due procedure amongst those official who have been officiating as AD(OL) in BSNL subject to their fulfilling the basic qualifications and experience as prescribed in the Rules. They have been promoted to the cadre of AD(OL) on ad hoc basis from 27.1.1993, 16.10.1996, 16.5.1994, 4.9.1995 and 22.3.1996 respectively. According to them, they are entitled to be promoted on regular basis to the cadre of AD(OL) in accordance with the special provision below Col.12 of the Schedule to Recruitment Rules, 2002. In Annexure A-2 letter dated 24.12.2002 forwarding the Recruitment Rules for the post of AD(OL) it was instructed that local officiating arrangement/promotions on ad hoc basis that have already been made may not be disturbed till further orders. Annexure A-3 Recruitment Rules have been superseeded by Annexure A-5 Recruitment Rules 2005. They have submitted that merely because the applicants have passed in the LICE, that by itself would not entitle them for promotion to the post of Rajbhasha Adhikari and they can be considered for promotion as and when vacancies occur in the post. Their right to be considered is restricted to vacancies arose subsequent to 2005 Recruitment Rules. The 13 sanctioned posts mentioned in the O.A are those posts which arose long prior to the coming into force of Annexure A-5 Recruitment Rules and those posts are being held by persons like respondents 4 to 8 on ad hoc basis and who are awaiting the regular promotions on implementation of the special provision below Col.12 of the Schedule to Recruitment Rules, 2002.



22. The respondents 11 and 13 have also filed a separate reply statement following the contentions of respondents 4 to 8. They have submitted that they are governed by the Recruitment Rules of 2002. They have promoted to the cadre of AD(OL) on officiating basis with effect from 16.12.1996 and 5.1.2000 respectively. As on the date of coming into force of Annexure A-3 Recruitment Rules there existed 11 posts of AD(OL) in Kerala Circle and all these 11 posts are to be filled up in accordance with the Special Provision contained in Col.12 of Annexure A-3 Recruitment Rules. The applicants have no right to claim appointment to those vacancies which are held by persons like respondents 11 and 13 on ad hoc basis.

23. We have heard the counsel for the parties. From the facts of the case, it is clear that T.A.44, 46, 47 and 48 of 2008 are identical. All the applicants in these T.As were governed by the "Assistant Director (Official Language) Recruitment Rules, 2002" promulgated on 24.12.2002. A special provision was incorporated in the former Recruitment Rules taking into consideration of the peculiar facts and circumstances of the persons like the applicants. The said Recruitment Rules remained in force for more than 3 years till the "Rajbhasha Adhikari Recruitment rules, 2005" was issued in supersession of all the relevant Recruitment Rules in force. It is a well settled principle that the appointment/promotion of the employees are to be based on the existing Recruitment Rules as held by the Apex Court in **Y.V.Rangaiah's** case (supra) and **B.L.Gupta's** case (supra). Both the Calcutta High Court and the Andhra Pradesh High Court also have decided the cases of the similarly placed employees and directed the respondents to promote them in accordance with the 2002 Rules. We, therefore, allow these T.As with the direction to the official



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respondents to promote the eligible applicants in these T.As as Assistant Director (OL) against the vacancies which have arisen before the promulgation of the "Rajabhasha Adhikari Recruitment Rules, 2005". They may also be redesignated as Rajabhasha Adhikari from 2005. As regards the applicants in O.A.100/2009 are concerned, it is declared that they have their rightful claim only to those vacancies of Rajabhasha Adhikari which have arisen after the promulgation of the "Rajabhasha Adhikari Recruitment Rules, 2005". They shall be promoted accordingly on the basis of their merit in the Limited Internal Competitive Examination in which they have qualified.

24. There shall be no order as to costs.

K GERORGE JOSEPH
ADMINISTRATIVE MEMBER

GEORGE PARACKEN
JUDICIAL MEMBER

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