

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 11 of 2010

WEDNESDAY, this the 31st day of March, 2010

C O R A M

**HON'BLE MR. JUSTICE K. THANKAPPAN, JUDICIAL MEMBER
HON'BLE MR. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

1. Vivekanandan. M,
S/o. M. Damodaran,
Telecom Mechanic,
Office of the Divisional Engineer, Installation,
Bharat Sanchar Nigam Limited, (BSNL, forhsot),
Telephone Bhavan, Payyannur.
2. Pramod Kumar. K,
S/o. Kunhikannan,
Telecom Mechanic,
Office of the Sub Divisional Engineer,
BSNL, Peravoor, Thondiyl (P.O.),
Kannur District.
3. Vinodan T.P.,
S/o. T.P. Kunhappa,
Telecom Mechanic, BSNL,
Telephone Exchange, Post Mambram,
Via. Pinarayi.
4. Valsalan. T,
S/o. T. Kumaran,
Telecom Mechanic, BSNL,
City Telephone Exchange,
Kannur City.
5. Dharmarajan T.,
S/o. Kunhiraman T,
Telecom Mechanic, BSNL,
Uppala Telephone Exchange,
Uppala P.O., Kasargode District.
6. Sajeevan K,
S/o. Late N. Anandan,
Telecom Mechanic, BSNL,
Office of the Sub Divisional Engineer (Installation),
Kanhangad.



7. Jyothi Jawahar K.K.,
S/o. Late K.K. Gopalan,
Telecom Mechanic, BSNL,
Telephone Exchange, Kacherikkadavu,
P.O. Kacherikkadavu, Via. Kiliyanthara. ... Applicants.

(By Advocate Mr. P.K. Madhusoodhanan)

v e r s u s

1. General Manager, Telecom,
BSNL (A Government of India Enterprises),
Kannur.
2. The Chief General Manager Telecom,
BSNL (A Government of India Enterprises),
Office of the Chief General Manager Telecom,
Kerala Circle, Trivandrum – 695 033
3. The Assistant Director General (PERS-III),
BSNL (A Government of India Enterprises),
Registered & Corporate Office, Bharat Sanchar Bhavan,
Harish Chandra Mathur Lane,
Janpath, New Delhi – 110 001
4. Bharat Sanchar Nigam Limited,
Represented by the Chairman and Managing Director,
Corporate Office, Statesman House,
Bharathamba Road, New Delhi – 1
5. Union of India, represented by its
Secretary to Government,
Ministry of Telecommunications, New Delhi-1 ... Respondents

(By Advocate Mr. Thomas Mathew Nellimoottil)

The Original Application having been heard on 23.03.10, this Tribunal on 31.03.10 delivered the following :

O R D E R


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

This O.A. is filed mainly for a direction to the respondents to conduct the Limited Departmental Competitive Examination (LDCE, for short) for

granting promotion to the post of Telecom Technical Assistant (TTA, for short) under 40% of quota for the recruitment year, 2008, in accordance with law, which was scheduled to be held in time, but postponed vide orders at Annexures A-4 and A-5, within a fixed time limit.

2. The brief facts of the case are that the applicants are Telecom Mechanics eligible to be considered for promotion to the post of TTA under 40% LDCE quota of the Recruitment Rules in force. The respondents had set the selection process in motion by scheduling the examination on 31.01.2010. But they postponed the examination with a view to examine the demand of the Union to help the ineligible employees who do not possess the educational qualification of 10+2 by holding a pre-qualifying test so as to make them eligible to appear in the LDCE for TTA. As the applicants are eligible to appear in the examination straight away, the postponement of the scheduled examination would cause irreparable injury, prejudice and loss to them. Hence this O.A.

3. The applicants submit that the postponement of the scheduled examination to examine the demand of the Union is not at all justified or sufficient reason to unreasonably delay the examination. It would adversely affect the rights of the applicants who are eligible and qualified Telecom Mechanics to be considered for promotion to the post of TTA under the 40% LDCE quota for the recruitment year 2008. The postponement of the examination is to help the ineligible employees who do not possess 10+2 or its equivalent qualification. The educational qualification prescribed in the Recruitment Rules has not been relaxed till



date. Therefore, no purpose will be served by keeping in abeyance until further orders the LDCE causing irreparable loss to the applicants who are due for promotion since years back. Relaxation of educational qualification after issuing the notification is without any justification. The eligible candidates have a right to be considered for promotion in accordance with law. In support, they relied upon the decisions of Apex Court reported in (1979) 3 SCC 165, **Smt. Swaran Lata vs. Union of India and Others** and 2008 (3) SCC 724, **Madan Mohan Sharma and Another vs. State of Rajasthan and Others**.

4. The respondents contested the O.A. It was submitted that the the recruitments for the 50% direct recruitment quota and 10% absorption quota for the recruitment year 2008 were already conducted. The BSNL Corporate Office, New Delhi, which is the competent authority to frame rules and regulations for conducting the examination, took a decision to hold a pre-qualifying test at entry level in order to give opportunities to those employees who are not possessing 10+2 qualification. Such a pre-qualifying test at entry level was conducted on an earlier occasion in 2004. Therefore, the scheduled examination was postponed which is within its powers and also to give opportunities to a larger sections of the left out employees. Therefore, the O.A. is liable to be dismissed as devoid of any merit.

5. We have heard learned counsel for the parties and perused the documents.

6. The issue for consideration is whether it is proper and legal to postpone the scheduled examination for the purpose of relaxing the prescribed qualification. The respondents had scheduled to hold the LDCE on 31.01.2010. The prescribed educational qualification was 10+2. Already the direct recruitment quota and absorption quota have been filled up. The process of holding the examination was put in motion by Annexure A/3 order dated 26.10.2009 by which the applications were invited. The last date for submission of application was 28.11.2009. By orders dated 27.11.2009 and 30.11.2009, the LDCE scheduled to be held on 31.01.2010 was kept in abeyance until further orders for the purpose of holding a pre-qualifying test at entry level in order to make those employees who do not possess the educational qualification of 10+2, eligible ^{for} ~~in~~ the LDCE. Two things have become clear. Firstly, the postponement is indefinite. Secondly, it is for the purpose of relaxing the prescribed educational qualification. There is a catena of decisions from the Apex Court, viz. **(1991) Suppl. (1) SCC 199, (1994) 2 Suppl. SCC 591** etc., to the effect that the right to be considered cannot be postponed except on reasonable grounds. Under pressure from the Union, the respondents indefinitely postponed considering the right of the eligible employees in the zone of consideration to the post of TTAs under 40% LDCE quota for the recruitment year, 2008. This postponement is in the interest of ineligible employees. The right of of the eligible employees cannot be sacrificed in the interest of the ineligible employees.

7. It is settled law that the Recruitment Rules to be considered are as on the date of occurrence of the vacancies. The relaxation of educational

qualification prescribed in the Recruitment Rules after setting in motion the process of selection by notifying the vacancies and inviting applications, is without jurisdiction. It has been held by the Apex Court in the case of Swaran lata cited above that "where a post has been advertised with prescribed qualifications, these qualifications cannot be relaxed in any particular case without fresh advertisement or without changing the rules which are statutory. The same view is reiterated in the case of Madan Mohan Sharma and Another vs. State of Rajasthan and Others, (2008) 3 SCC 724. Therefore, it is not justified on the part of the respondents to postpone the examination once the process of LDCE was set in motion for the purpose of relaxing the educational qualification prescribed in the Recruitment Rules for the benefit of those who are not eligible to appear in the examination. That such a relaxation was done in the year 2004 does not justify the indefinite postponement of the examination in the year 2010. The respondents are perfectly within their right to relax the prescribed educational qualification if they so wish; but that has to be done either before the process of selection is set in motion or after the process is over. Once the process is initiated, the sanctity of the selection should not be interfered with by diluting the prescribed qualification in any way. Therefore, the postponement of the examination scheduled on 31.01.2010 is not in accordance with the rules.

8. In the result, the O.A. succeeds. But it is not possible to set the clock back to hold the examination scheduled on 31.01.2010. The least that can be done is to hold the examination within the shortest time possible without relaxing the educational qualification prescribed. The

respondents may modify the Recruitment Rules for the purpose of giving opportunities to large sections of left out employees after the process of selection already set in motion is completed and after granting promotion to those who pass in the LDCE under 40% quota for the recruitment year 2008. It can only be done for the vacancies that may arise later than 2008.

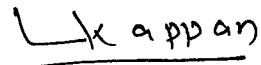
9. In the light of the above discussion, Annexures A-4 and A-5 orders are hereby quashed and set aside. The respondents are directed to hold the Limited Departmental Competitive Examination which should have been held on 31.01.2010 as early as possible, at any rate, within three months from the date of receipt of a copy of this order.

10. No order as to costs.

(Dated, the 31st March, 2010)



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER



(JUSTICE K. THANKAPPAN)
JUDICIAL MEMBER

CVT.