

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 161 of 2012

Original Application No. 177 of 2012

Thursday, this the 13th day of December, 2012

CORAM:

Hon'ble Mr. Justice P.R. Raman, Judicial Member

Hon'ble Mr. K. George Joseph, Administrative Member

1. Original Application No. 161 of 2012 :

Pushaparajan K., S/o. Krishna Panicker T., aged 47 years,
 Junior Telecom Officer, O/o. AGM, (EP), Kaithmukku,
 BSNL, Trivandrum-23, residing at Ambady, Thundathil PO,
 Trivandrum-695 581.

..... **Applicant**

(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-110 001.
2. The Chief General Manager, Bharath Sanchar
 Nigam Limited, Trivandrum-695 030.
3. C.V. Sudhakaran, aged 54 years, S/o. P.K. Vasu,
 Sub Division Engineer (Systems), O/o Divisional Engineer (Systems),
 Digital Carrier Station Building, Kaloor, Ernakulam, residing at
 Chalappillil House, Kaippattoor PO, Arakkunnam,
 Ernakulam-682 313.
4. V. Anilkumar, aged 49 years, S/o. K. Vikraman Nair,
 SDE (Officiating), Franchise Manager, Project Vijay,
 O/o Area Manager Telecom, Muvattupuzha residing at V/477,
 Revathy, Koothattukulam, Ernakulam District.
5. M.B. Sajitha, aged 35 years, D/o. M. Bhaskaran,
 Junior Telecom Officer, BSNL, Telephone Exchange,
 Mazhuvannur, residing at Maroottikkattuthadathil,
 Nellad PO, Ernakulam, Pin-686 669.
6. P.R. Krishna Kumar, aged 35 years, S/o. P.G. Rajappan,
 Junior Telecom Officer, (WiMAX), WiMAX Networking Operating



Center, Mobile Services, IIIrd Floor, Telephone Exchange,
Boat Jetty, Ernakulam, residing at Placheril, Andoor,
Palackattumala PO, Marangattupilly,
Kottayam, Pin-686 635.

..... Respondents

[By Advocates – Mr. George Kuruvilla (R1&2) &
Mr. Shafik M.A. (R3-6)]

2. **Original Application No. 177 of 2012 :**

1. P.M. Michael, S/o. Mathew P.T., aged 40 years,
JTO (O), Telephone Exchange, Poovathur,
Pavaratty Post, Trichur-680 507, residing at Puthoor
House, Anedath Road, Pavaratty Post, Trichur-680 507.
2. Subramanian G., S/o. Gopalan, aged 41 years, JTO(O),
OCB Telephone Exchange, Mattancherry, Kochin-682 002,
residing at H. No. 8/678 A, Murukkinthara Parambu,
Kochi-682 002.
3. Sebi Louis M., S/o. M.I. Liou, aged 42 years,
JTO(O), O/o. SED Central-1, BSNL CTO Buildings,
Palakkad-678 001 residing at 16/219, Nehru Colony,
Kunnathurmedu Post, Palakkad-678 013.
4. Rahamathullah Kottah, S/o. Late K. Aboobacker, aged 42 years,
JTO (O), Telephone Exchange, Areacode, Malppuram-673 639,
residing at Kinavu House, Puttalam, Areacode Post,
Malappuram-673 639.

..... 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-110 001.
2. The Chief General Manager, Bharath Sanchar
Nigam Limited, Trivandrum-695 030.

..... Respondents

(By Advocate – Mr. George Kuruvilla)

These applications having been heard on 21.11.2012, the Tribunal on

13-12-12 delivered the following:



ORDER

By Hon'ble Mr. K. George Joseph, Administrative Member-

As common facts and issues are involved in these two cases they were heard together and are disposed of by this common order.

2. The applicants are Telecom Technical Assistants (TTA) officiating as Junior Technical Officers (JTO) for many years. They are aggrieved that respondents have decided to hold Limited Departmental Competitive Examination (LDCE) to the grade of Sub Divisional Engineer (SDE) (Telecom) under 33% quota on 4.3.2012 as per Annexure A7 without conducting regular promotion to the cadre of JTO from 2001 to 2010 thereby denying them the chance for competing for the post of SDE. If regular promotions to JTO were given with effect from the date of occurrence of vacancies notionally, they would fall within the zone of consideration. The applicants are qualified for promotion to the post of JTO as per 1996 Recruitment Rules. Out of 5500 qualified candidates, around 3500 were promoted by creating supernumerary posts as per Annexure A6 who are now eligible to appear for SDE exam. The applicants have been left out. The requirement for eligibility to compete for selection to SDE is only three years regular service as JTO. Hence, these Original Applications are filed for the following reliefs:-

- (i) To quash Annexure A7 and Annexure A8.
- (ii) To direct the respondents to conduct promotions of TTA's as JTO's against the vacancies pending from the year 2000-2010 based on the eligibility as on the date of occurrence of vacancies and to conduct further promotion as SDE, permitting those with 3 years notional service as on the date of occurrence of vacancies;



(iii) Alternatively direct the 1st respondent to extend the benefit ordered in Annexure A6 to the applicants and similarly situated and permit him write SDE examinations conducted by the BSNL.

(iv) Grant such other reliefs as may be prayed for and as the Court may deem fit to grant."

3. The applicants contended that notional service can be counted for the purpose of regular service for promotion. If the direction given in OA No. 203 of 2010 and connected cases to conduct year wise selection is complied with, the applicants will be in a position to compete for the post of SDE. As per Annexure A10 settlement, those who passed departmental exam will en-bloc be placed as senior to the direct recruits. Since promotions from TTA to JTO for the last ten years were not given, majority of SDE posts will go to direct recruit JTOs. As majority of TTAs who have qualified against 35% departmental quota in the screening test could not be sent for training are permitted to write the exam for SDE, the same benefit should not be denied to the applicants.

4. Per contra, the respondents contended that the applicants who are TTAs merely officiating as JTOs, are not eligible to appear for the exam for SDE as they do not have three years regular service in the JTO cadre as per SDE (Telecom) Recruitment Rules, 2002. The applicants who are qualified in the screening test and empanelled for promotion as JTO in 2000, as per Recruitment Rules, 1996 for vacancies upto 31.8.1999 could not be given promotion for want of vacancies. The new JTO Recruitment Rules came into

existence on 26.9.2001. If the applicants are eligible as per Recruitment Rules 2001 they can appear for future exams for promotion to the cadre of JTO. Out of 6000 persons who qualified in the screening test only 3500 persons were given promotion against vacancies diverted from the direct recruitment quota up to 2008. As the diversions were cancelled based on the order of the Hon'ble High Court of Punjab & Haryana that quota diversion is illegal, they were protected by creating 3500 supernumerary posts of JTO which were to be abolished on vacation of the posts by the incumbents. Owing to various court cases the LDCE for promotion to JTO as per Recruitment Rule of 2001, on 30.5.2010 was postponed. The Annexure A7 exam for SDE was held on 4.3.2012 itself wherein nearly 7000 JTOs appeared. The Annexure A10 settlement benefits only those who were selected against vacancies up to 31.8.1999 and does not cover the applicants who were not selected against vacancies up to 31.8.1999. The respondents further submitted that as per Recruitment Rules, 2001, 50% of JTOs are to be filled up by direct recruitment and the remaining 50% by promotion which is bifurcated into 35% for TTAs and Senior TOAs etc. and 15% for other Group-C staff, based on the relative merit in the competitive examination. The applicants have not cleared the competitive examination for promotion to the post of JTO. The direction given by this Tribunal in OA No. 224 of 2010 is stayed by the Hon'ble High Court of Kerala. The applicants have not completed the field training and second phase of training and as such not covered by Annexure A6. The claim of the applicants for regularization was dismissed by this Tribunal as per order dated 9.3.2010 in OA No. 712 of 2008.



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

6. Getting qualified for promotion does not confer an indefeasible right to promotion. The applicants who qualified could not be promoted to the post of JTO for want of vacancies. Matters of recruitment rules and departmental examinations are absolutely within the domain of the executive. Such matters have to serve the needs of the organization. The promotion to the post of JTO is now regulated by Recruitment Rules of 2001. The applicants will have to satisfy the conditions as per the Recruitment Rules, 2001 to appear for the JTO exams. The applicants cannot be regularized as per the existing recruitment rules. As of now they have to get through the JTO exam first and on becoming eligible as per SDE Recruitment Rules, they can appear in the exam for SDE. Right now they are ineligible as per Recruitment Rules for appearing in the examination notified at Annexure A7. Annexure A7 examination scheduled on 4.3.2012 was originally notified as per Annexure A8 on 18.3.2010 which got postponed more than once. The applicants, should have challenged Annexure A8 in time. It is now barred by limitation. The OA is bad for non-joinder of parties who are affected by the reliefs sought by the applicants. Annexure R7 exam was held in compliance of the directions of the Chandigarh Bench of this Tribunal and the Hon'ble High Court of Shimla. The said judgments are not challenged. Therefore the challenge against Annexure A7 is not sustainable.



7. As all the grounds raised by the applicants are not tenable in the eyes of law, the OAs are dismissed with no order as to costs.



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER



(JUSTICE P.R. RAMAN)
JUDICIAL MEMBER

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