

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.178/2000

Thursday this the 12th day of September, 2002

C O R A M

HON'BLE MR G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR K.V.SACHIDANANDAN, JUDICIAL MEMBER

1. S.R.Nair,
Assistant Engineer(Electrical),
Postal Electrical Sub Division,
Trivandrum.
Residing at Puliyarakkal Veedu,
Amaravila.
2. N.Surendran,
Junior Engineer,
Telecom Civil Sub Division,
Chettikulangara,
Trivandrum.
Residing at 'Ashtami', TC 30/1779,
Trivandrum.
3. Babu Kamath,
Assistant Engineer(Electrical),
Telecom Electrical Sub Division,
Manjeri.
Residing at Thekkedath House,
Cochin - 8.
4. R.Chandrababu,
Assistant Surveyor of Works (Electrical),
Office of Chief Engineer (Electrical) Telecom,
Trivandrum.
Residing at Kunjuveettil Thekkethil, Kollam.
5. Bharat Sanchar Nigam Limited,
represented by the Chief General Manager,
Telecom, Kerala Circle,
Trivandrum

Applicant

[By Advocate Mr.M.R.Rajendran Nair]

Vs.

1. The Union of India represented by
the Secretary to Government of India,
Ministry of Personnel and Training,
New Delhi.
2. Secretary,
Ministry of Communications,
New Delhi.
3. The Chairman,
Telecommunications,
Sanchar Bhawan,
New Delhi.

..2/-



4. Chief General Manager,
Telecommunications,
Kerala Circle,
Trivandrum.

Respondents

[By Advocate Mr.M.R.Suresh, ACGSC]

The application having been heard on 21.06.2002 the Tribunal on 12.09.2002 delivered the following:

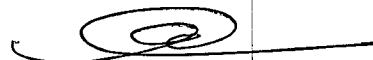
O R D E R

HON'BLE SHRI K.V.SACHIDANANDAN, JUDICIAL MEMBER.

The applicants aggrieved by Order dated 2.07.1999 issued by the second respondent rejecting the claim for parity of service conditions with Junior Telecom Officers (JTO for short) and refusing to grant higher scale to Junior Engineers (JE for short) as recommended by the internal committee of the Telecom, this Original Application is filed seeking the following reliefs:-

- i. Quash Annexures A1
- ii. To declare that the cadres of JTOs and JE(C/E) are liable to be treated equally and direct the respondents to grant the applicants parity in service conditions including the following:-
 - a) Fixing of pay scale in the grade of 1640-2900 from 1.1.1986
 - b) Granting of higher grade of 200-3500 on completion of 12 years service.
 - c) Granting of two advance increments for acquiring higher qualification with effect from 1.5.1990 as per order No.15-1/89 PAT dated 11.7.1990 of D.O.T.
 - d) Implementation of pay scale of 6500-10,500 as per internal committee recovered this from 01.01.1996.
- iii. To direct the respondents to draw and disburse all the arrears flowing from relief No.(ii) above to the applicants with interest @ 18% per annum
- iv. Grant such other reliefs as may be prayed for and the Court may deem fit to grant, and
- v. Grant the cost of this Original Application.

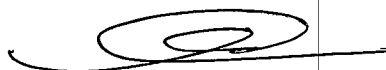
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2. The applicants are working in Department of Telecom as Junior Engineers (Civil/Electrical) (JE(C/E) for short) and some of them were promoted to the grade of Assistant Engineer (Electrical) and entered into service having the prescribed qualification in Civil/Electrical Engineering and acquired qualification of Engineering Degree while in service. In the Telecom Department there are two wings of Engineers in Civil/Electrical Wing and Engines in the Telecom Wing. The cadre of Junior Engineers (Telecom) are now redesignated as Junior Telecom Officers (JTO for short) who are handling installation and maintenance of Telecom equipments in the Telephone Exchanges, where as, JEs(Civil) are responsible for construction and maintenance of Telecom buildings. JEs(Electrical) are handling electrical installation and maintenance works in the Department. The main issue in this Original Application is the parity in service conditions including pay between JE(C/E)s and JTOs.

3. The averments in the Original Application are originally the qualification prescribed for appointment is Diploma/Degree in the respective disciplines and for JE(Telecom) the prescribed entry qualification was Graduation in Science/Maths/Engineering and both the posts were carrying very same scale of pay and incumbents, were discharging similar nature of duties and responsibilities and the only difference existed was in the trade. Till 1986 they were treated alike and the pay structure was fixed equally until IVth Pay Commission. It is averred that in Pay Commission's opinion that both wings were doing similar duties and holding equal responsibilities. After IVth Pay Commission the Department redesignated the post of JE(T) as JTO

..4/-



and revised the pay scale from 1400-2300 to 1640-2900. But no revision was made in the JE(C/E) and higher grade of 2000-3500 was also offered to JTOs after completion of 12 years. Besides two advance increments were offered to JTOs on passing B.E degree while in service. The incentives were obtained by the JTOs after their week long agitation which paralysed the entire Telecom service in the country. The promotion avenue of both cadres contained the same pay scale.

4. Pointing out the disparity in pay scale and granting advance increments, the Association of Junior Engineers submitted a representation which has no effect. They filed Original Application NO.2032/93 where this Tribunal directed the respondents to consider their case as per Annexure A-5. But the representation was rejected by Annexure A-6 on the following grounds :-

- a) Entry qualifications of JE's and JTO's are different.
- b) Nature of job handled by JE's and JTO's are not comparable.
- c) The duties and responsibilities of Junior Engineers were comparable with these JE's of CPWD. As no higher pay scale is fixed for Junior Engineers in CPWD.
- d) Advance increments were granted to JTO's to keep them abreast with the fast changing Technologies in the Telecom sector and this will not be extended to JE(C/E). Department also mentioned that the scheme will be discontinued and a committee is set up to study the case and recommended one time lump sum incentive and the case of providing incentives for acquiring higher qualifications will be considered as soon as the revised scheme is finalised.


..5/-



5. Then again the applicants approached this Tribunal in O.A 1397/95 and on the final hearing it was submitted by the respondents that an Internal Committee constituted to study the report of the Vth Pay Commission recommendations had submitted a report recommending that a higher scale of pay be granted JEs. This Tribunal directed the respondents to consider the same and take appropriate decision, the copies of which are Annexure A-7. When this was not complied with, the applicants moved the Tribunal with a Contempt Petition in CP(C) No.17/99 and the impugned order Annexure A-8 was passed. After the impugned order was passed the CP(C) was closed, which is produced as Annexure A-8.

6. The Department has adopted double standards in dealing with the recommendations of the Internal Committee regarding two different wings. The JEs were ignored because they have opted for judicial remedy instead of agitation. The Department has shown discrimination between the two wings. It is said that the matter was referred to the Anomalies Committee. They agreed for the hike, but the DOPT sent the matter for reference only to deprive the legitimate grievances of the applicants. The applicants further contented that the JEs(C/E) are also moving with the technological developments of the country and the department meets the requirement of Telecom building, such as introduction of computer in Electro Mechanical services, Microprocessor based packaged type Ac units, Advance design of engine alternator sets, automatic fire detection and Alarm systems, high tension and sub station installations, cleaning of power system from harmonics, life installations, judicious use of floor space etc. The electrical engineers supplement the role of

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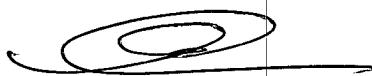
Telecom Engineers of the department in contributing for the Telecom Network as follows:-

- a Adoption of high tech global standards technical specifications for false flooring and false ceiling, wall panelling, anti-static etc.
- b Cable duct system for laying of sensitive cables.
- c, Erection of microwave tower.
- d, Induction of new technology and its adaptability in the infrastructure development.
- e, The DOPT has been the first to use trenchless technology for cable duct construction.

7. It is further submitted that the educational qualifications of the JTOs and JE(C/E) are the same initially and subsequently changes were made in the JTO cadre and not in the JE Cadre and 15% quota in the JTO cadre can become JTOs with only SSLC qualification. As far as JEs are concerned, diploma in Engineering is mandatory even now. Equal pay for equal work is a constitutional mandate to be achieved classification among equals on unreasonable basis is unjust, arbitrary and discriminatory and is violative of Article 14 and 16 of the Constitution of India and this discrimination is not based on any intelligible differentia or reasonable nexus and the applicants are entitled to get parity in employment to the two cadres.

8. Respondents had filed a detailed Reply statement contenting that both cadres were in identical scales of pay of Rs.425-700 but it was revised on the recommendations of the Vth Pay Commission and no specific mention was made in respect of JEs but adopted a higher scale of pay of Rs.1640-2900 for some

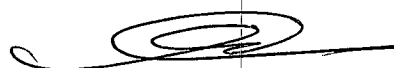
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percentage of JEs (Telecom) and JEs (CPWD). Therefore, the JEs of Civil Wing were given the revised scale of pay of Rs.1640-2900 with effect from 1.1.1986 corresponding to the pre-revised scale of Rs.425-700. Subsequently JE(Telecom) were placed in the scale of pay of Rs.1640-2900 and their designation was changed to JTOs.

9.. The IV Pay Commission determined the said scale mainly depending on the duties and responsibilities, job analysis and job evaluation in the respective cadres. The nature of duties and responsibilities of JEs are similar to those of JEs of CPWD. The entry qualification though it was similar in both the cadres, now it has been upgraded in the case of JTOs as Degree in Engineering whereas the entry qualification of JEs of P&T continues to be Diploma in Engineering. The duties of JEs are more of a supervisory nature like supervising the work done by contractors and the JTOs are actually performing the jobs departmentally. In tune with the rapid changing technology in the field of Telecommunications and keeping themselves abreast with the latest technology, higher incentives were granted to them to attract the better talent. The Vth Pay Commission also carefully considered the grievances of the applicants and they have been replaced with the scale of Rs.5000-8000. But considering the technological upgradation the Vth Pay Commission recommended the scale of pay of JTOs as Rs.6500-10500. The representations made in furtherance of the orders in OA 2032/93 and 1397/95 of this Tribunal were disposed of after considering all these aspects. The recommendation of the Internal Committee was also examined in great detail and the matter was placed before the Departmental Anomaly Committee. The Union persons was

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actually involved in the discussion of the Anomaly Committee and the said Committee has revised the pay scales of JEs to Rs.2000-3500 (pre-revised) and raising the basic qualification for direct recruitment to Degree level. The Government examined the recommendations but not accepted on the ground that the JE(C/E) are common category posts corresponding to CPWD and have been equated with that of CPWD. The job requirement of these two cadres are different and bears no similarity. The relevant Recruitment Rules Annexure R-II(b) and R-III(c) of the respective cadres produced by the respondents will show that the qualification, job requirement, duties and responsibilities are different. The respondents submitted that the applicants cadre is comparable with that of JEs in CPWD in all respect. It cannot be equated with that of JTOs. In the circumstances, the respondents submitted that there is no merit in the Original Application and it has to be dismissed.

10. The applicants have filed rejoinder contenting that the higher pay scale were granted with effect from 1.1.96 whereas higher qualification were implemented with effect from 1999. The higher benefits to JTOs was only for fear of the brutal organisational force of JTOs set to motion and the recommendations of the Anomaly Committee should be accepted and benefit given to them.

11. The respondents have filed a statement and an additional document, a copy of the letter issued by the BSNL dated 8.8.2001 is produced. We have heard Mr.M.R Rajendran Nair, the counsel for the applicants and Mr.M.R.Suresh, the learned counsel for the

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respondents and advanced, elaborate arguments taking various factual and legal aspects of the case and reiterated the points advanced in the O.A and reply statement respectively. The learned counsel for the applicants submitted that there is no discrimination in giving higher benefit to the JTOs which is similar to that of JE(C/E). He has also submitted that they are holding similar duties and equal responsibilities and emphasised for grant of the relief on the basis of equal pay for equal work.

12. Learned counsel for respondents submitted that the contention of the applicants cannot hold good since the two cadres are different and different Committees have analysed the same and found to be so. Therefore no parity could be given to the applicants to that of JTOs.

13. We have given due consideration for the documents and arguments advanced by the respective parties and their Counsel. We could find that this is the 3rd round of litigation that the applicants are seeking through. The applicants have filed OA 2032/93 in this Tribunal to consider the grievances of the applicants and dispose of Annexure A-7 representation which was done by order dated 1.3.96 which is Annexure A-6. The consideration for rejecting their claim in Annexure A-6 is on the basis of the following reasons.

- (1) The entry qualifications prescribed for recruitment of Junior Telecom Officers are not at all comparable with the qualifications prescribed for recruitment of Junior Engineers (Civil/Elect.). While the recruitment qualification for JE(C/E) is Diploma in Engineering, the qualification prescribed for recruitment of Junior Telecom Officers is B.E or B.Tech. Degree in Engineering or B.Sc (Honours) in Physics or Mathematics with 60% aggregate marks in the Degree examination.

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- (2) The natures of job handled by Junior Telecom Officers and JE(C/E) are also not comparable as both the categories perform different functions/different jobs.
- (3) The P&T Civil Wing was formed from the CPWD and the duties and responsibilities and the educational qualifications of the JEs of P&T Civil Wing are identical to the JEs of CPWD. Though the IV Pay Commission has not recommended the same pay scales as given to the CPWD JEs to the JEs of P&T Civil Wing, the Department has ultimately extended the CPWD pay scales of JEs(C/E) to the JEs of the P&T Civil Wing.

and the pay parity was rejected. Then again applicants approached this Tribunal in OA 1397/95. This Tribunal has given a direction to the respondents " to consider the recommendation of the Internal Committee referred to above and take a decision as expeditiously as possible and to consider the various grievances of the applicants, revised scale, higher scale, additional increment for higher qualification etc". The Department has disposed of the representation in furtherance of the orders of the Tribunal in the above O.A which is reproduced as under, which is also impugned.

GOVERNMENT OF INDIA
MINISTRY OF COMMUNICATION
DEPARTMENT OF TELECOMMUNICATIONS
SANCHAR BHAVAN, 20 ASHOKA ROAD, NEW DELHI.

No.15-22/95-CSE

Dated:2.7.1999

Subject: CAT Ernakulam Judgement dated 26.5.98 in O.A.No.1397/95 filed by Sh.S.R.Nair & Others
Compliance of directions contained therein.

Reference is invited to judgement of Hon'ble CAT Ernakulam dated 26.5.98 in O.A.No.1397/95 filed by Shri. S.R.Nair & others in which the Hon'ble Tribunal disposed of the application with the following directions:

" Under these circumstances, the application is disposed of with a direction to the first respondent to consider the recommendation of the Internal Committee referred to above and take a decision as expeditiously as possible. If after the decision is taken by the Government of India, the applicants have any further contentions raised namely, the date from which the revised scale is effective, the period after which a higher scale is allowed and the question of additional increments for higher qualifications, they are at liberty to approach the appropriate forum for relief."

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2. The Internal Committee, which was set up on 10.3.97 to study the Vth Pay Commission recommendations, had recommended that in respect of Junior Engineer (Civil/Electrical)/ Architectural Assistant Gr.II, basic qualification for direct recruits may be raised to Degree level and they may be given the pay scale of Rs.2000-3500.

3. The recommendation of Internal Committee was examined and as per DOPT's instructions, the issue was placed before the Departmental Anomaly Committee and thereafter the case was referred to DOPT for revision of pay scale of JE(C/E) etc. to Rs.2000-3500 (revised to Rs.6500-10500).

4. DOPT, however, has not agreed to the revision of pay scale in view of the fact that Junior Engineers (C/E) are common category of posts and their pay scale is corresponding to the pay scale of Junior Engineers in CPWD.

5. In view of the above, it has not been found possible to accept the recommendations of the Internal Committee for revision of pay scale to Rs.2000-3500 (pre-revised). The junior Engineers (C/E) of the Civil Wing of Department of Telecom are entitled for the pay scales granted to their counterparts in the C.P.W.D and there is no justification for pay parity with the Junior Telecom Officers.

Sd/-
(A.K.NAGAR)
DIRECTOR(BW)

14. Now before analysing the equality and similarity of these two cadres we would like to point out the legal position in this case, which is very clear. The Tribunals cannot sit on judgment while exercising the powers and judicial review in the matters of expert Committee recommendations. Any recommendation made by the Expert Committee such as Pay Commissions, Anomaly Committee etc is only having the recommendatory character and ultimately it is the prerogative of the Government to accept it or not. The Government may accept the recommendations based on many reasons of their own in which the Tribunals cannot sit on judgment dated 12.03.97. The Hon'ble Supreme Court in UOI & Anr. Vs. P.V.Hariharan has made the following finding and reminded the Tribunals to exercise due restraint in such matters.

" Before parting with this appeal, we feel impelled to make a few observations. Over the past few weeks, we have

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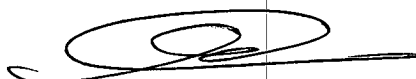
come across several matters decided by Administrative Tribunals on the question of pay scales. We have noticed that quite often the Tribunals are interfering with pay scales without proper reasons and without being conscious of the fact that fixation of pay is not their function. It is the function of the govt, which normally acts on the recommendations of a Pay Commission. Change of pay scale of a category has a cascading effect. Several other categories similarly situated as well as those situated above and below, put forward their claims on the basis of such change. The Tribunal should realise that interfering with the prescribed pay scales is a serious matter. The Pay Commission, which goes into the problem at great depth and happens to have a full picture before it, is the proper authority to decide upon this issue. Very often, the doctrine of " equal pay for equal work " is also being mis-understood and misapplied freely revising and enhancing the pay scales across the board. We hope and trust that the Tribunals will exercise due restraint in the matter.

15. The principles of equal pay for equal work can be enforced only after the persons claiming satisfy the court that not only the nature of work is identical but in all other respects they belong to the same class and there is no apparent reason to treat equals as unequals. The Courts cannot take upon itself the responsibility of fixation of scales of pay especially when the different scales of pay has been fixed by the Pay Commission of Pay Revision Committees having persons as members who can be held as experts in the field and after examination of the relevant materials.

16. On analysing the parity of the different cadres we find from Annexure R-II(b) (Recruitment Rules, JTOs) and R-III(c) (Recruitment for JE(C/E) that the qualification prescribed, duties and responsibilities, pay scale etc. are different in these two Recruitment Rules which has been formulated after careful studies of the duties and responsibilities bestowed on the different cadres. The recruitment by itself shows the disparity on which aspect these two cadres cannot be equated.

Moreover, it is an admitted fact that IVth and Vth Pay Commissions and Departmental Internal Committee had analysed and evaluated the different job requirements and finally came to the conclusion that these two cadres are not similar and equal. Considering the job analysis, qualifications, nature of work, recruitment method and other considerations, though the Internal Committee has recommended for an upgradation of JE(C/E), which was not accepted by the Government for the reasons given in Annexure A-1 impugned order. The recommendations of the Internal Committee was as per DOPT instructions and placed before the Departmental Anomaly Committee and thereafter it was referred to DOPT for revision of pay. Finding that the JE(C/E) are common category of posts and their post and scale is corresponding to the engineers in CPWD the Government did not accept the recommendations, which cannot be faulted. On the basis of the analysis made by the Telecom Commission Annexure R-I (a) and considering the handicap that the JE(C/E) who could not be promoted to the grade of Assistant Engineers due to the non availability of vacancies in the grade of Assistant Engineers were allowed the scale of Assistant Engineers i.e Rs.2000-3500 after completion of 15 years of service, on the basis of seniority-cum-fitness. The benefit of FR 22 (1) (a) (i) shall also not be allowed at the time of granting the pay scale. Therefore, it is quite evident that the decision has been taken to safeguard the interest of the applicants cadre. Now on 1.10.2000, BSNL came into existence and the applicants will be under the employment of the said organisation. They have also made a party to the O.A subsequently by an amendment in M.A 247/2001. The respondents have filed an additional document issued by the BSNL which is reproduced as under :-

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Bharat Sanchar Nigam Limited
(A Govt. of India Enterprise)

U.N.Shrivastav
Sr.DDG(BW)

D.O.No.15-11/2000-CSE

Dated: 8th August, 2001.

Dear Shri Ramachandran,

Kindly refer to your D.O. letter No.LC/11-5/OA No.178/00 dated 5.7.2001 regarding the rejoinder filed by the Shri S.R.Nair in OA No.178/2000. As may be seen from the rejoinder, the applicant has not adduced any no new grounds in his rejoinder and as such it may not be necessary to file a reply there to.

2. As regards the request of the applicants for revision of pay scale at par with JTOs, the Department of Telecom has now been converted to a corporation viz. Bharat Sanchar Nigam Limited (BSNL) and the matter will now have to be decided by the new Company. Hon'ble Tribunal may kindly be informed that the proposal for revision of pay scale of Junior Engineer (C/E) of BSNL is under the active consideration of the management of BSNL and a decision in this regard will be arrived at shortly.

With regards,

Yours Sincerely,

Sd/-
(U.N.SRIVASTAVA)

Shri P.P.Ramachandran,
Chief General Manager,
BSNL, Kerala Telecom Circle,
PMG Junction,
TRIVANDRUM - 695 033.

17. That means the BSNL is actively having a proposal for revision of pay scales of JE(C/E)s of BSNL. This Court trust and hope that a decision will be arrived at shortly as stated in that letter. But the matter as such stands, we could not find any similarity or comparison between the two sets of employment. The averments in the O.A cannot be accepted and we find that the O.A is not merited and therefore to be dismissed. The decision of

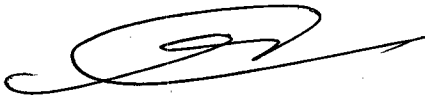
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the Hon'ble Supreme Court reported in JT 2002 (4) SC 129 (the three Bench decision) in SBI Vs. Mr. Ganesh Babu & Ors., the Hon'ble Supreme Court has made it clear that degree of responsibility and reliability was not the same between the two groups and therefore, any interference by the Court is not justified. The two officials employed in two wings of the Bank cannot be equated and cannot be considered since their functions and responsibilities are different and risk involved in the jobs are also not the same.

In the conspectus of facts and circumstances of the case and considering all the factual and legal position, we are of the considered view that applicants were not able to make out a case of parity and therefore, this Original Application is not merited and is to be dismissed. We do accordingly and direct the parties to bear their costs.

Dated, the 12th September, 2002.



K.V.SACHIDANANDAN
JUDICIAL MEMBER



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

VS

A P P E N D I X

Applicants Annexures:

1. A-1: True copy of the Order No.15-22/95-CSE dated 2.7.99 issued by the 2nd respondent.
2. A-2: True copy of the letter No.15-1/89-PAT, dated 11.7.1990 issued by the Director, Telecom, New Delhi.
3. A-3: True copy of the order No.6-1/89-CSE, dated 6.1.1992 issued by the 2nd respondent.
4. A-4: True copy of the representation dated 6.12.1992 submitted by the Circle Secretary to the 2nd respondent.
5. A-5: True copy of the judgment dated 10.6.1994 in OA 2032/93 of this Hon'ble Tribunal.
6. A-6: True copy of the order No.15-2/94-CSE, dated 1.3.1995 issued by the Assistant Director General, Office of the 2nd respondent.
7. A-7: True copy of the order dated 26.5.1998 in OA 1397/95 of this Hon'ble Tribunal.
8. A-8: True copy of the order dated 11.8.1999 in CP(C) 17/99 of this Hon'ble Tribunal.

Respondents Annexures :

1. R-I(a) : Copy of Ministry of Communication, New Delhi letter No.6-8/87-CSE dated 9.5.91.
2. R-II(b): Copy of Recruitment Rules of JE(C) and JE(E) of Civil Wing of Department of Telecom - 1992.
3. R-III(c): JTO Recruitment Rules 1999.
4. R-IV(d)" Para 8 of CAT, Principal Bench New Delhi order dated 9.7.97 in OA No.1629/92. No.2-55/93-STG-II dated 18.11.98.
5. R-V(e): True copy of the letter DO.No.15/11/2000-CSE dated 8.8.2001 issued by BSNL.
6. R-VI(f): Copy of Recruitment Rules of 2001 of Junior Telecom Officers (Civil)
7. R-VII(g): Copy of the letter No.5/8/2001/Pers IV/1 dated 26.02.2002 issued by Corporate Office, New Delhi, BSNL.
8. R-VIII(h): Copy of the letter No.Rectt/30-1 BSNL CIVIL/RLG/2001 dated 5.03.2002.

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