CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.Nos.224/10,225/10,226/10,227/10,242/10,814/10,203/10, 297/10 202/10 & 254/10

Tuesday **this the 15th day of March, 2011**

CORAM:
HON'BLE MR.JUSTICE P.R.RAMAN, JUDICIAL MEMBER
HON'BLE MR.K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER

In O.A.No.224/2010

1. Mathews Paul, aged 52 years,
S/o A.V.Poulose
Officiating Junior Telecom Officer,
Telephone Exchange,
Bharat Sanchar Nigam Limited(BSNL)
Odakkali, Perumbavoor,
Residing at: Pulluvazhi, Perumbavoor,
Ernakulam District.

2. Lalitha, P.V., aged 50 years,
W/o R.Sankar,
Officiating Junior Telecom Officer,
Telephone Exchange,
Bharat Sanchar Nigam Limited(BSNL),
Kalamassery, Ernakulam District,
Residing at:Guru Kripa, Puthen Pura Road,
Changampuzha Nagar, Thrikkakara P.O.
Kochi-682 03, Ernakulam District.

3. C.V.Valsala, aged 50 years,
W/o. M.Sanalkumar,
Officiating Junior Telecom Officer,
Telephone Exchange,
Bharat Sanchar Nigam Limited(BSNL)
Vennala, Ernakulam District,
Residing at: 28/2610-A,'Kavitha',
Chilavannur Road, Ernakulam District.

... Applicants

By Advocate :Shri T.C.Govindawamy

vs.
1. The Chairman and Managing Director,
Bharat Sanchar Nigam Ltd.(BSNL)

Corporate Office, New Delhi.

2. The Chief General Manager,(Telecom)
Bharat Sanchar Nigam Ltd., Kerala Circle,
Trivandrum.

3. The General Manager,(Telecom),
Bharat Sanchar Nigam Ltd,Telecom District,
Ernakulam. .. Respondents

By Advocate:Shri Johnson Gomez

In O.A.No.225/10

1. A.D.Radhakrishnan, aged 49 years,
S/o (late) K.Damodaran,
Sr.Telecom Operating Assistant(P)
Office of the Accounts Officer/TR-V
Bharat Sanchar Nigam Limited(BSNL)
Catholic Centre, Broadway,Ernakulam,
Residing at: No.4/3, Dwaraka,
Tripthy Lane, Chambakkara Road,
Maradu P.O., Ernakulam District.

2. P.C.Radhakrishnan Nair, aged 50 years,
S/o(late) T.R.Chellappan Nair,
Sr.Telecom Operating Assistant(P)
Office of the Sub Divisional Engineer- External-I
Bharat Sanchar Nigam Limited(BSNL),
Customer Centre, Tripunithura,
Residing at :Jyothis, Karippadam P.O.,
Thalayolapparambu,
Kottayam District. .. Applicants,

By Advocate: Sri TCG Swamy

vs.

1. The Chairman and Managing Director,
Bharat Sanchar Nigam Ltd.(BSNL)
Corporate Office, New Delhi.

2. The Chief General Manager,(Telecom)
Bharat Sanchar Nigam Ltd., Kerala Circle,
Trivandrum.

3. The General Manager,(Telecom)
Bharat Sanchar Nigam Ltd.,Telecom District,
Ernakulam. .. Respondents

By Advocate :SriJohnson Gomez

In O.A.No.226/10

Xavier A.A., aged 50 years,
S/o Esthappan,
Officiating Junior Telecom Officer,
Telephone Exchange(BSNL),
Murickassery, Idukki Dt.
Residing at: Attupuram, Cherukunnam,
Asamannoor, Ernakulam District. .. Applicant

By Advocate :Sri TCG Swamy

vs.

1. The Chairman and Managing Director,
Bharat Sanchar Nigam Ltd.,(BSNL)
Corporate Office, New Delhi.

2. The Chief General Manager,(Telecom),
Bharat Sanchar Nigam Ltd., Kerala Circle,
Trivandrum.

3. The General Manager(Telecom),
Bharat Sanchar Nigam Ltd., Telecom District,
Ernakulam. .. Respondents

By Advocate : SriJohnson Gomez

In O.A.No.227/10

J.Sheela Devi, aged 50 years,
W/o K.Nandakumar,
Sr.Section Supervisor(Operative)TRA-VI,
Bharat Sanchar Nigam Ltd (BSNL),
Catholic Centre, Broadway,
Ernakulam, Cochin-682 031
Residing at: No.57/354, Midhunam,
Monastry Road, Karikkamuri,Cochin-682 011. .. Applicant

By Advocate: Sri TCG Swamy

vs.

1. The Chairman and Managing Director,
Bharat Sanchar Nigam Ltd,(BSNL),
Corporate Office, New Delhi.

2. The Chief General Manager,(Telecom,
Bharat Sanchar Nigam Ltd., Kerala Circle,
Trivandrum.

3. The General Manager,(Telecom),
Bharat Sanchar Nigam Ltd., Telecom District,
Ernakulam. .. Respondents

By Advocate: Sri Johnson Gomez

In O.A.No.242/10

1. K.Narayanan Potti, Senior TOA(P), Staff No.5173003,
Office of the AGM(Project Udan),
CTO Building, Statue Thiruvananthapuram.

2. Lalitha Skariah, RLU Exchange, Paruthippara,Thiruvananthapuram.
.. Applicants

By Advocate: Sri Vishnu S.Chempazhanthiyil

vs.

1. The Chief General Manager, Bharat Sanchar Nigam Ltd.,
Kerala Circle, Thiruvananthapuram695 033.

2. The Chairman and Managing Director,
Bharat Sanchar Nigam Limited, New Delhi.

3. Assistant Director General(DE), BSNL,9th Floor, Statesman House,
Barakhamba Road, New Delhi-110 001.

4. Sanchar Nigam Association of Telecom Technical Assistants
(An Association of All India BSNL-TTA's Registered Office No.1414,
Sector-8, Faridabad Aryan's-121006, represented by its Treasurer,
Sri Sachin Bhatt, House No.2421, Phase X, Mohali, Mohali District.

5. Chandrika Panamboor, Telecom Technical Assistant,
O/o Sub Divisional Engineer, Poonkunnam, Thrissur.

6. Santhosh Antony, Telecom Technical Assistant,
O/o The Sub Divisional Engineer, Bharat Sanchar Nigam Ltd.,
Thirunakkara, Kottayam.

7. Shafi M.S., Telecom Technical Assistant, Circle Telecom
Training Centre, Bharat Sanchar Nigam Limited, Thiruvananthapuram.

8. Jayan P.S., Telecom Technical Assistant, Customer Service,
Central Telegraph Office, Bharat Sanchar Nigam Limited,
Thiruvananthapuram. .. Respondents

By Advocate: Mr.Thomas Mathew Nellimoottil
Mr. P.K.Madhusoodhanan

In O.A.No.814/10

1. Sivaraj.K.G. Aged 45 years,
S/o Govindian,
Junior Telecom Officer, Telephone Exchange,
Bharat Sanchar Nigam Limited(BSNL),
Melattur, Malappuram Dt.,
Residing at Koomully House, Mulangunnathu Kavu,
Trichur District.

2. P.K.Jyothiprasadan, aged 48 years,
S/o Kombayi M.K,
Junior Telecom Officer, Telephone Exchange,
Bharat Sanchar Nigam Limited(BSNL)
Parli, Palakkad District,
Residing at: Thekkekalam, Poriyani,
Mundur P.O., Palakkad Dt. .. Applicant

By Advocate:Sri TCG Swamy

vs.

1. The Chairman and Managing Director,
Bharat Sanchar Nigam Ltd.(BSNL),
Corporate Office, New Delhi.

2. The Chief General Manager,(Telecom),
Bharat Sanchar Nigam Ltd., Kerala Circle,
Trivandrum.

3. The General Manager,(Telecom),
Bharat Sanchar Nigam Ltd, Telecom District,
Malappuram.

4. The General Manager,(Telecom),
Bharat Sanchar Nigam Ltd., Telecom District,
Palakkad. .. Respondents

By Advocate:Mr.Johnson Gomez

In O.A.No.203/10

1. K.Gopalakrishnan Nambiar, S/o E.G.B.Nambiar, aged 54 years, JTO(Officiating),BSNL, Cherupuzha, Kanoor District,

residing at Neel Kamal, Temple Road, Payyannur.

2. Vijayarajan.V, S/o.Vasukuttan Nair,aged 49 years, Junior Telecom Officer(Officiating), Transmission Installation,BSNL, Trivandrum residing at Kakkurumbil Veedu, Oorupoika P.O., Attingal, Trivandrum.

3. Madhavan Nampoori P.S.,,S/o. Sankaran Nampothiry P.S. Aged 52 years,JTO(Officiating),SRRC, BSNL, Thirunakkara, Kottayam, residing at Padoor Illam, Parippu P.O., Kottayam.

.. Applicants

By Advocate :Sri V.Sajith Kumar

vs.

1. The Bharat Sanchar Nigam Limited, represented by its Chairman & Managing Director, New Delhi.

2. The Chief General Manager, Bharat Sanchar Nigam Limited, Trivandrum. .. Respondents

By Advocate: Sri Johnson Gomez

In O.A.No.297/2010

V.Suresh Kumar, S/o K.Viswambharan, aged 45 years, JTO(O) Broadband, Core group, BSNL,CTO building,Trivanrum residing at NSP 139,NSP Nagar, Kesavadasapuram,Pattam P.O., Thiruvananthapuram-695004. ..Applicant

By Advocate :Sri V.Sajith Kumar

vs.

1. The Bharat Sanchar Nigam Limited, represented by its Chairman & Managing Director, New Delhi.

2. The Chief General Manager, Bharat Sanchar Nigam Limited, Trivandrum. .. Respondents

By Advocate:Sri Johnson Gomez

In O.A.No.202/10

1. Sreekumar, Son of Sadasivan Nair, presently working as Telecom Technical Assistant(TTA) in Trivandrum SSA, Kerala Circle,HR No. 200203273.

2. Prasanthi Son of Prabhakaran Nair presently working as Telecom Technical Assistant(TTA) in Trivandrum SSA, Kerala Circle HR No. 200303097. .. Applicants

By Advocate: Sri P.K.Madhusoodhanan

vs.

1. The Bharat Sanchar Nigam Limited,
Through its Chief Managing Director,
Corporate Office, 4th Floor,
Bharat Sanchar Bhawan, Janpath,New Delhi.

2. The Assistant Director General(DE),
Bharat Sanchar Nigam Limited,Corporate Office,
Bharat Sanchar Bhawan,Janpath,New Delhi.

3. The Chief General Manager(Technical),
Kerala Circle,Trivandrum-33.

4. The Assistant General Manager,GM(Rectt) BSNLCo.,
Eastern Court Building,New Delhi. ..Respondents

By Advocate:Mr.Johnson Gomez
Mr.V.Sajith Kumar

In O.A.No.254/10

1. Abilash V.,
Telecom Technical Assistant
Telephone Exchange, Ranni.

2. Ajesh N.,
Telecom Technidcal Assistant,
Computer Cell, Kannur.

3. Anish James,
Telecom Technical Assistant,
Telephone Exchange, Ettumanoor.

4. Babitha T.T
Telecom Technical Assistant,SRRC, Kannur.

5. Babu K.
Telecom Technical Assistant, Telephone Exchange,Thanur.

6. Bijesh K.M.,
Telecom Technical Assistant, LNMS,Thrissur.

7. Bindu P.S.
Telecom Technical Assistant, Telephone Exchange, Thrissur.

8. Bindu M.P.
Telecom Technical Assistant,
Telephone Exchange, Poojappura.

9. Deepa M.R.
Telecom Technical Assistant,
Telephone Exchange, Thazhekod.

10. Femina .A
Telecom Technical Assistant,
Telephone Exchange, Badagara.

11. Jayasree R.S.
Telecom Technical Assistant,
Telephone Exchange, Attingal.

12. Jayesh K.A.
Telecom Technical Assistant,
Mobile Services, Pathanamthitta.

13. Jortin Varappallil,
Telecom Technical Assistant,WLL, Thiruvalla.

14. Jyothi S.Pillai,
Telecom Technical Assistant,
CTTC, Thiruvananthapuram.

15. Lawrance.B.
Telecom Technical Assistant,
Wimax Installation, TVM.

16. Mary Teresina,
Telecom Technical Assistant,
Telephone Exchange, Mattacherry.

17. Naveen R.R.
Telecom Technical Assistant,
Telephone Exchange, Nilambur.

18. Nazar.C.
Telecom Technical Assistant,
CTTC, Thiruvananthapuram.

19.Nithin Kumar.M.
Telecom Technical Assistant,
Switching Installation, Kannur.

20.Prasad K.R
Telecom Technical Assistant,
Telephone Exchange, Chembukavu.

21.Prasannakumar.R.
Telecom Technical Assistant,
Telephone Exchange, Chandranagar.

22.Prasannan P.S.
Telecom Technical Assistant,
Telephone Exchange, Kuravilangad.

23.Rajani.O.S.
Telecom Technical Assistant,
CTTC, TVM.

24.Rajeev M.S.
Telecom Technical Assistant,
Telephone Exchange, Chalisserry.

25.Rajendran Nair.K.
Telecom Technical Assistant,
Telephone Exchange, Pallikkal.

26.Rajesh Sekhar.C
Telecom Technical Assistant,
Mobile Services, Kottayam.

27.Rajesh P.
Telecom Technical Assistant,
Telephone Exchange, Anjarakandy, Kannur.

28.Rajneesh.R.
Telecom Technical Assistant,
Telephone Exchange, Alathur.

29.Ramkumar C
Telecom Technical Assistant,
Telephone Exchange, Vengod.

30.Ratheesh Ravi,
Telecom Technical Assistant,
Telephone Exchange, Mattacherry.

31.Reesha.M.P.

Telecom Technical Assistant,
Telephone Exchange, Sulthan Bathery.

32.Ramesh S.
Telecom Technical Assistant,
Telephone Exchange, Mazhuvanoor.

33.Renjith G.
Telecom Technical Assistant,
Telephone Exchange, Kumbazha.

34.Renjith Kumar.M.T.
Telecom Technical Assistant,
Telephone Exchange, Eriyad.

35.Renny John,
Telecom Technical Assistant,
Telephone Exchange, Pandalam.

36.Reshmi Sreedhar.S.
Telecom Techncial Assistant,
CTTC,TVM.

37.Sabith.K.A.
Telecom Technical Assistant,
Mobile Services, Thalassery.

38.Saji.J.B
Telecom Technical Assistant,
OCB Core Group LNMS, Thrissur.

39.Sashi Kumar A.P.
Telecom Technical Assistant,
Telephone Exchange, Chelari.

40.Seema P.S.
Telecom Technical Assistant,
Telephone Exchange, Kariavattom.

41.Shabina M.N.
Telecom Technical Assistant,
Telephone Exchange, Kallambalam, TVM.

42.Shiju Paul,
Telecom Technical Assistant,
Telephone Exchange, Kalpetta.

43.Shinekumar.G.
Telecom Technical Assistant,

Telephone Exchange, Kanyakulangara.

44.Sinimol.D.
Telecom Technical Assistant,
Telephone Exchange, Ochira(internal), Kollam.

45.Smitha Unni,
Telecom Technical Assistant,
CSR,Kottayam Telephone Exchange.

46.Sreejith Kumar.V.K.
Telecom Technical Assistant,
Telephone Exchange, Panoor, Kannur.

47.Sreemon.E.K.
Telecom Technical Assistant,
Telephone Exchange,
Sreekrishnapuram, Palakkad.

48.Subha.M.
Telephone Technical Assistant,
Telephone Exchange(groups),
Sreekandhapuram, Kannur.

49.Sumath .K.
Telecom Technical Assistant,
Customer Care, Palakkad.

50.Ulahannan C.T.
Telecom Technical Assistant,
Telephone Exchange(internal), Kalpetta.

51.Vineetha Ann George,
Telephone Technical Assistant,
Mangattuparambu, Kannnur.

52.Vineeth.P.R.
Telecom Technical Assistant,
Transmission,Malappuram.

53.Vinod V.T.
Telecom Technical Assistant,
Telephone Exchange,
Irimbiliyam,Malappuram.

54.Vinod T.
Telecom Technical Assistant,
Mobile Services, Palakkad.

55.Winson A.K.
Telecom Technical Assistant
Telephone Exchange, Parappur, Thrissur. .. Applicants

By Advocate:Sri P.Santhosh Kumar

vs.

1. The Bharant Sanchar Nigam Limited,
Through Its Chief Managing Director,
Corporate Office, 4th Floor,
Bharat Sanchar Bhawan, Janapath,
New Delhi.

2. The Assistant Director General(DE),
Bharat Sanchar Nigam Limited,
Corporate Office, Bharat Sanchar Bhawan,
Janpath, New Delhi.

3. The Chief General Manager(Technical),
Kerala Circle, Trivandrum-33.

4. The Assistant General Manager,GM(Rectt),
B.S.N.L.Co.,
Eastern Court Building, New Delhi. .. Respondents

By Advocate:Mr.Johnson Gomez(R1-4)
Mr.V.Sajith Kumar(R5&6)

The Applications having been heard on 24.02.2011 the Tribunal on 15.03.11 delivered the following:-

ORDER

HON'BLE MR.JUSTICE P.R.RAMAN, JUDICIAL MEMBER:

In these batch of Original Applications, common questions arise for consideration and hence they were heard together and disposed of by this common judgment.

2. We shall take up O.A.No.224/2010 as the leading case and we shall refer to the facts and pleadings contained therein.

3. The applicants are presently working as Junior Telecom Officers on an officiating basis under the respondents. They are aggrieved by the non-consideration of their case for regular promotion to the post of Junior Telecom Officers, the posts against which the applicants had been working on an officiating basis for the last about 5 years. The applicants were initially appointed as Technicians and later on being restructured, they were brought to the cadre of Telecom Technical Assistants. The applicants were subjected to a qualifying screening test for promotion to the post of Junior Telecom Officers during the year 2000 and on having qualified in the same they have been officiating as Junior Telecom Officer for the last 5 years. As per the Junior Telecom Officers Recruitment Rules, 2001 and in terms of Col.11 of the Schedule thereto (Annexure A1), 50% of the vacancies are to be filled by direct recruitment and the remaining 50% by promotion through a limited internal competitive examination of the BSNL. As per Col.2, the 50% promotion quota is further divided into 35% and 15%. 35% vacancies are to be filled up by promotion through a limited internal competitive examination from amongst those who belong to certain class of employees including Telecom Technical Assistants, subject to fulfillment of certain educational qualification and 10 years regular service in a Group C post. They should also be within 50 years of age as on "the date of such examination". We are not concerned with the remaining 15% of the posts. The aforesaid rule came into force with effect from 26th September,2001. But the respondents did not ever fill up the 50%

quota meant for promotion, though the vacancies in the direct recruitment quota were filled up on a regular measure. When that being so, the respondents amended the Recruitment Rules by a communication dated 12th October,2009, a true copy which is produced in the O.A. and marked as Annexure A2. In Annexure A2 the qualifying service was reduced to 7 years in place of 10 years as required as per the original rule A1.According to the applicants, by an earlier order passed in T.A.No.6/2009 on 21.08.2009 this Tribunal had directed the respondents to fill up the 35% and 15% quota vacancies remaining unfilled forthwith. Subsequently, the respondents-BSNL proceeded to take further steps for holding the examination and the approval of the competent authority was conveyed for the purpose of conducting the Limited Internal Competitive Examination (LICE) by the respective Telecom Circles for promotion to the cadre of JTO under 35% quota and 15% quota. Annexure A3 gives further details with regard to the conduct of the LICE as per which the examination is to be conducted in accordance with the Scheme and Syllabus issued vide BSNL letter No.5-11/2009-Pers-IV dated 20.10.2009 and as per JTO Recruitment Rules -2001 issued vide letter dated 10.10.2001 as amended by the BSNL vide letter dated 12.10.2009. The merit list is to be drawn separately for each quota i.e. 35% quota and 15% quota. The vacancies calculated up to 31.3.2009 are to be filled. The Recruiting Circles were also directed to calculate the vacancies under the above quotas according to the instructions of the DoPT O.M No.AB.14017/2/1997-Estt. (RR)/Pt. dated 19.1.2007.. As per paragraph 6 of the aforesaid letter the

crucial date for determining the regular service condition shall be 1st July,2009. Reference is also made to the directions of this Tribunal dated 21.8.2009 in T.A.No.6/2009 stipulating 4 months time for conducting the examination so that the respective Recruitment Cell was requested to expedite the conducting of the examination. The DoPT O.M. dated 19.1.2007 referred to in paragraph 5 in Annexure A3 is produced as Annexure A4. Annexure A8 is a notification dated 20.02.2010 issued by the Assistant General Manager(Recctt), BSNL,Kerala Circle. This notification pertains to the conduct of the Limited Departmental Competitive Examination for promotion to JTO cadre under 35% and 15% Quota in Kerala Circle. The Recruitment Year shown is 2009 and the examination was to be held on 30.05.2010. It refers to the BSNL HQ Lr.No.12-3/2009-DE dated 21.12.2009 and conveys the directions contained therein as per which the decision has been taken to conduct the limited departmental competitive examination for the departmental quotas under 35% quota and 15% quota for the Recruitment Year,2009 in accordance with the Recruitment Rules,2001 as amended by letter dated 12.10.2009. The vacancies under 35% and 15% quota of JTO as on 31.03.2009 categorywise, i.e., SC, ST and OC have been shown. The total number of vacancy is 423. The crucial date for reckoning the age and service conditions will be as on 1st July,2009. As is evident the total number of vacancies shown in Annexure A8 pertains to all the years from 2001 to 31.03.2009. Further in terms of the above order the age and service conditions were to be satisfied as on 1st July,2009. Following the Annexure A8, a corrigendum was issued

under date 27.02.2010 which is marked as Annexure A9 as per which the year of recruitment shown as '2009' in Annexure A8 was to be deleted from the subject as well from the notification. Further the crucial date for determining the age limit will be the date of examination i.e. 30.05.2010 and the crucial date for reckoning the regular service condition would be 1st July, 2009.The corrigendum notification as aforesaid is produced and marked as Annexure A9. The effect of the notification Annexure A8 read with Annexure A9 is that the Recruitment Year shown as '2009' in Annexure A8 stood deleted and that the crucial date for determining the age limit is fixed as 30.05.2010, which is stated to be the date of the examination and the crucial date for reckoning the regular service condition is to be as on 1st July, 2009. In other words the crucial date for age limit and the service conditions are not the same. According to the applicants, the crucial date for determining the age condition specified in Annexures A1, A8 and A9 will cause substantial prejudice and irreparable injury to the applicants. It is their further case that the absence of the year-wise vacancies for promotion being notified has resulted in substantial injustice. Hence the National Federation of Telecom Employees requested the authorities to publish the year wise vacancies in their letter dated 27.01.2010, a copy of which is produced as Annexure A5. It is contended by the applicants that the Calcutta Circle notification issued however gave the year wise vacancies in their Circle. A copy of the said notification dated 6.2.2010 is produced as Annexure A6. The year wise vacancy position along with community-wise break-up with respect to the concerned Circle, the details of which

are also given. The total vacancies of 338 under 35% quota is thus bifurcated and the actual number of vacancies for the year 2001,2002, 2005 and 2007 were separately shown along with other details regarding OC, SC and ST vacancies etc. Annexure A7 is an order issued by the Kerala Circle of the BSNL dated 27.01.2007 relating to appointment of JTO(Direct- Recruitment Year 2005) which contains a provisional list of candidates newly recruited as GE JTO 2005. According to the applicants, similar appointments by direct recruitment were also made for other years also as shown in Annexure A5.

4. It is urged that Annexures A8 and A9 to the extent they give retrospective effect to the Recruitment Rules is arbitrary, illegal and violative of Articles 14 and 16 of the Constitution. Amendment to Annexure A1 Recruitment Rules i.e. Annexure A2 can have the effect only as against vacancies that had arisen or would arise after its publication i.e. 12th October, 2009 and cannot have retrospective application to the vacancies which has arisen prior to that. It is their further contention that vacancies which arose during the currency of the 2001 unamended Recruitment Rules ought to be filled up according to the year-wise vacancy position dehors the amendment especially since direct recruitment have been resorted to on a regular basis applying the unamended 2001 Recruitment Rules before it was amended. Therefore according to them when direct recruitment were to be made in accordance with the unamended 2001 Recruitment Rules, the present notification proposes to fill up the vacancies for the years 2001 to 2009

by a new set of amended Rules. According to them the 50% DR quota would exceed 600 between the year 2001 and 2009. Hence they are bound to fill up the corresponding number of vacancies against the promotion quota also by determining the year-wise vacancies and by considering those who were eligible as on the date of occurrence of vacancies or as on 1st January of the recruitment year as held by the DoPT in its instructions. Thus Annexures A8 and A9 in so far as it fix the crucial date for determining the age and service conditions as on 30.5.2010 and 1.07.2009 respectively are arbitrary, discriminatory and hence unconstitutional. It is also contended that the crucial date for determining the date of eligibility of the age cannot be on an uncertain date of the examination which is always left to the subjective satisfaction of the authorities and the same would result in eligible persons being not included . The fixation of the said date has no rational nexus to the object sought to be achieved. As per the DoPT instructions the date of eligibility is the 1st January of the year of recruitment and there is no reason as to why a separate standard should apply here. Because of this illegal fixation of the crucial date, eligibles are deprived of their right to be considered for promotion. The DoPT instructions having been adopted by the BSNL there cannot be a different yardstick fixed for determining the eligibility criteria regarding the age. Hence Col. 12 of the schedule to Annexure A1 fixing the crucial date for determining the age as on the date of the examination is totally unconstitutional.

5. On the aforesaid grounds, it is prayed that the records leading to

the issue of Annexure A1 be called for and a declaration be issued that Col.12 of the schedule of Annexure A1 in so far it fixes the crucial date of determination of the age condition as the date of LICE for promotion against the 35% quota is arbitrary, discriminatory and unconstitutional, to call for the records relating to the issuance of Annexure A8 and A9 and to quash the same to the extent they have retrospective effect to Annexure A2 amendment dated 12th October, 2009 and to the extent it holds the crucial date for determination of the age condition would be 30th May, 2010 and the service eligibility condition would be as on 1st of July, 2009 and to the extent they did not disclose the year wise vacancies against the quotas in question. They also seek for a mandatory direction to the respondents to conduct the selection after notifying the year wise vacancies and to consider those who fulfilled the eligibility condition of age of 50 years and service condition of 10 years as on 1st January of the year of recruitment or the year in which the vacancies arose and to prepare the year wise panel of the selected candidates and for a further declaration that the applicants are eligible to be considered for promotion to the 35% quota mentioned in Annexures A8 and A9 and to award costs to the applicant.

6. In the reply statement filed by the respondents, it is stated that the recruitment to the cadre of JTO is governed by the Recruitment Rules of 2001 .With a view to tone up the efficiency in services, certain changes were made by the competent authority to improve the quality of the manpower of BSNL .Accordingly many posts were upgraded by

...

changing the minimum qualification, eligibility conditions, etc as it was necessitated to commensurate with the raised status and raised pay of the post. It is contended that the question of reducing the qualifying service condition from 10 years to 7 years was under consideration since November 2008 as there was persistent demand of recognized staff union of BSNL. It is admitted that there were large number of vacancies due to non-conducting of LICE. Hence the Administration felt that opportunity should be given to the maximum number of candidates to avail the benefit of promotion. In these circumstances that the Management Committee of the BSNL Board in the 19th Meeting held on 13.08.2009 approved reduction of qualifying service from 10 years of regular service to 7 years . According to them the direction in T.A.No.6/2009 of this Tribunal was only to conduct the departmental examination within a stipulated time. It is their further contention that the present examination is conducted circle-wise on different dates and in different months based on the administrative convenience of each circle. In the absence of any uniform practice of adhering to any particular date for conducting the examination by 27 Recruiting Circles, employees in one circle may become eligible whereas similarly placed employees of another circle may not be eligible. It is to rule out such confusion and discrimination that 1.7.2009 has been fixed as the cut off date for determining the regular service. According to them there is no provision in JTO Recruitment Rules for conducting the examination by identifying the year wise vacancies from 2001 to 2009, as contended by the applicants. The Recruitment Rules, according to them, cannot be relaxed

as in the case of the applicants. It is also their case that the matter of conducting the departmental examination and fixing standards are matters within the domain of the competent authority. According to them none of the contentions as raised in the O.A. is tenable and hence the O.A. is liable to be dismissed.

7. In O.A. No.203/10 and O.A.No.297/10 apart from the points as urged as noticed above it is further contended that the applicants who are in the trained pool awaiting regular appointment as JTO. They were selected through a screening test in the year 2000 being eligible as per the 1996 JTO Recruitment Rules. The Notification(Annnexure A1) is an attempt to club the vacancies from 2001 to 2009 by a single examination, is impermissible in law, the cut off date fixed as 1st of July, 2009 is also impermissible. The rights of those candidates who were eligible from 2001 to 2008 are adversely affected by fixing a cut off date as on 1st of July,2009 as many of them would be over-aged. Annexure A1 notification enables a candidate who entered into TTA cadre in the year 2003 to compete against the JTO vacancies in the higher category of the year 2001. The mechanical/instrumentation engineers are not eligible to take part in the fresh selection. Annexure A10 amendment can only be prospective and could only extend to the vacancies occurred thereafter.

8. In O.A.No.202/10 and O.A.No.254/10 the applicants are working as Telecom Technical Assistants (TTA) for more than 7 years. They are

Engineering Graduates in various fields. It is pointed out that under the direct recruitment notification for Junior Telecom Officer , the cut off date for determining the educational qualifications was as on 31.12.2009, whereas the respondents in conducting LICE under JTO RR-2001 vide their letter No.12-3/2009-DE has mentioned that the crucial date of determining the regular service condition will be 1st July, 2009.The respondents again in their notification for conducting the examination for promotion to JTO under 35% and 15% quota in Kerala Circle, the service conditions is to be reckoned as on 1st July, 2009.

9. Applicants in the other O.As. have also raised similar contentions as noticed in the foregoing paragraphs.

10. We have heard the arguments of the learned counsel for the applicants Mr.T.C.Govinda Swamy, Mr.V.Sajith Kumar, Mr.Vishnu S. Chempazhanthiyil, Mr.P.K.Madhusoodhanan,Mr.P.Santhosh Kumar and Mr. Johnson Gomez,Mr.P.K.Madhusoodhanan(R4-8 in O.A.242/10) and Mr.V.Sajith Kumar(R5&6 in O.A.254/10 &R5 in O.A.202/10) on behalf of the respondents.

11. On the above pleadings, the following points arise for consideration:-

(i) Whether the fixation of the crucial date for service conditions fixed as 1st July,2009 is in any way arbitrary or violative of Article 14 and 16 of the Constitution of India?

(ii) Whether the date of conducting the examination fixed as "the crucial date" for deciding the eligibility conditions regarding the age, is arbitrary and illegal?

(iii) Whether the vacancies which arose in the relevant years has to be separately notified and filled up from among eligible candidates qualified during the respective relevant years?

(iv) Whether the reduction of the required experience from 10 years to 7 years is in any way illegal or arbitrary?

(v) What are the reliefs and costs?

12. The method of recruitment, age limit, qualifications etc. to the post of Junior Telecom Officers are governed by the Recruitment Rules,i.e., "Junior Telecom Officer Recruitment Rules, 2001", a copy of which is produced as Annexure A1.As per rule 4 thereof, the number of posts, its classification and scale of pay attached thereto shall be as specified in columns 2 to 4 of the Schedule annexed to these rules. So also the method of recruitment, age limit, qualification and other matters relating to the said post shall be as specified in columns 5 to 13 of the Schedule. Col.11 of the Schedule prescribes the method of appointment , in the ratio 50% by direct recruitment and 50% by promotion through Limited Internal Competitive examination of the BSNL. The 50% promotion of the internal candidates referred to in item (ii) in Col.11 is regulated as provided for in Col. 12 of the Schedule as follows:-

> "(I) 35% by promotion through limited internal competitive examination from amongst following group 'C' employees

below 50 years of age as on the date of such examination of the Engineering Wing, namely:-
Phone Inspector/Auto Exchange Assistants/Wireless Operators/Transmission Assistants/Telecom Technical Assistants/Sr. Telecom Office Assistants and possessing the following essential qualifications and experience:-
A) i) Bachelor of Engineering/Bachelor of Technology or equivalent Engineering Degree in any of the discipline viz. Telecommunications/Electronics/Electrical/Radio/Computer.
Or Bachelor of Science with Physics and Mathematics
Or 3 years Diploma in Telecom/Electronics/Electrical/Radio Computer and;
B) ii) 10 years' regular service in post in Group'C'

(II)15% by promotion through limited internal competitive examination from amongst the following Group 'C' employees of Telecom Engineering
i)Working in Telecom Engineering Branch including Office of the Chief General Manager, Telecom Circle/District other than Plumbers/Sanitory Inspectors/Conservancy
ii)Working in Telecommunication Factory, other than those borne on Industrial Establishments
iii)Borne on the regular establishment and working as Accounts Clerk in the accounts wing under Telecommunication Circles.
iv)Borne on the regular establishment and working as Works Clerks Grade I and II . Work Assistants, Draftsman, Junior Architects and Electricians in the Civil Wing under Telecom Circles and possessing the following educational qualification, namely:-
3 years'Diploma in Telecom/Electronics/Electrical/Radio/ Computer Engg., and 10 years service in posts in Group 'C'.

Note: The employees eligible to take up competitive examination under 35% limited internal competitive examination quota shall not be eligible for appearing at the competitive examination under 15% limited internal competitive examination quota."

The BSNL promotional committee and its composition is prescribed in Col.13 for the post of Junior Telecom Officers. For promotion/confirmation, the committee will consist of the (1)General Manager- incharge of Admn. (2)JAG, an ITS officer, incharge of Admn-Member and (3) any other JAG ITS officer -Member and the Appointing

authority will be CGM, Telecom. As we notice the 50% promotion quota is further subdivided into 35% by way of promotion through limited internal competitive examination from certain groups of employees who falls below the age of 50 years as on the date of such examination of the Engineering wing and the remaining 15% is also to be filled up by promotion through limited internal competitive examination from certain other groups of employees. Besides the rule also prescribes 10 years regular service in posts in Group 'C as required for both these categories. It is the specific case of the applicants that 50% direct recruitment quota has been regularly filled up by conducting the competitive examination for the purpose, but the remaining 50% posts to be filled up by promotion, to which examinations were not held for the past several years. The fact that there was no examination held for filling up the promotion quota for the past several years is not in dispute. This Tribunal in TA No.6/09 has therefore directed that the departmental examination to be conducted as expeditiously as possible within the time limited stipulated. According to the respondents in compliance thereof the BSNL administration has issued orders to conduct the examination LICE for promotion to the cadre of JTO under 35% and 15% quota. Annexure A8 dated 20.02.2010 is notification for conducting the examination on 30.05.2010 showing the recruitment year as '2009'. The said examination is proposed to be held for promotion to the cadre of JTO in the departmental quota as envisaged in the Recruitment Rules, 2001 as amended by letter No.5-28/2009-Pers-IV dated 12.10.2009. Therefore it is necessary to refer to the amendment so made which is seriously

under challenge in this O.A. The vacancies under 35% and 15% quota as on 31.03.2009 is given in a tabulated column as also the vacancy. It is also stipulated in the notification that the crucial date for reckoning the age and service condition will be as on 1st July,2009. Subsequently by Annexure A9 dated 27.02.2010 a corrigendum was issued in partial modification of Annexure A8 dated 20.02.2010. As per this corrigendum , the year of recruitment shown as '2009' is to be deleted from the subject as well from the notification. The crucial date for determining the age limit will be the date of the examination, i.e., 30.05.2010 and the crucial date for reckoning the regular service condition shall be 1st July,2009.Thus the crucial date for determining the age and reckoning the regular service are differently prescribed as '30.5.2010' and '1st July,2009' respectively. It is the specific contention of the applicants that fixation of the cut off date in the manner as prescribed is whimsical and capricious and therefore violative of Article 14. It is pointed out that the crucial date for determining the eligibility of age cannot be on an uncertain date of examination which is always left to the subjective satisfaction of the authorities resulting in eligible persons being denied of their right to be considered for promotion and ineligible persons being included. That there is no rational nexus to the object sought to be achieved. As regards the cut off date prescribed for the service condition as on 1st July, 2009 is concerned, it is pointed out that the DoPT instructions prescribes the date of eligibility as the 1st of January of the year of recruitment and hence the same standard should be applicable here also, as otherwise persons who were qualified,

satisfying both with regard to age and service condition in the relevant recruitment year when vacancy arose, would be deprived of their right of being considered for promotion by not conducting the examination in the recruitment year and making selection in a bunch, that too, prescribing a cut off date much after the relevant date of arising of the vacancy thereby denying of the right of being considered for promotion to those candidates who may become ineligible either because they are over- aged on the date of conducting the examination or the field of choice becomes enlarged as more persons would have become eligible by acquiring the required experience and competing with the candidates like the applicants who alone would have become eligible during the relevant recruitment year. Annexure A2 is an amendment made in the recruitment rules of JTO,2001 on 12th October, 2009 whereunder the reduction of prescribed regular service from 10 years to 7 years was made in posts in Group 'C' for promotion to JTO cadre as prescribed in Col.12 of the Schedule of the Recruitment Rules. According to the applicants reduction of the year of regular service from 10 to 7 years has enlarged the field of choice and since the vacancy position year-wise is not notified, recruitment made in a bunch with the amended qualification will adversely affect their right of being considered for promotion in an arbitrary manner and in violation of their constitutional rights. As per Annexure A3 dated 21.12.2009 the vacancies calculated up to 31.03.2009 were to be filled up. Here also the crucial date for regular service condition is stated to be 1st July, 2009.

13. We may first consider whether the promotion to the post of Junior Telecom Officers based on an examination conducted, and after holding the DPC, should be made and posts filled up against vacancies arising in the relevant Recruitment Year by considering the eligible candidates qualified in each such relevant year of recruitment, or can all the vacancies which have arisen all these years could be filled up in bunch based on the qualification to be satisfied on the cut off date, as notified and in so doing, whether it is arbitrary and violative of Art.14 of the Constitution of India. In this connection we may notice that the practice that was followed by the respondents was to fill up the vacancies with reference to the Recruitment Year in which the vacancies arose though a common examination was conducted for a bloc period. In this connection the Govt. of India, Ministry of Communication had issued a notification under date 4th December, 1998 proposing to hold a Departmental Competitive Examination for promotion to the post of Junior Telecom Officer under the 15% quota of vacancies reserved for Departmental officers to be held on 15th and 16th May, 1999 and the vacancies for the years, 1995, 1996, 1997 and 1998 was to be filled up through this examination and year-wise vacancies to be filled up through this examination with U/R, S/C and S/T break up were also given. It was further provided that vacancies for the year 1998 will be announced later. Further the notification prescribes that the vacancies of the Recruitment year 1995 will be filled up as per the Recruitment Rules circulated vide letter dated 06.07.90 and the vacancies of the Recruitment year 1996, 1997 and 1998 are to be filled up as per the

Recruitment rules circulated vide office letter dated 02.04.96. The notification also states that since the examination is being held to fill up vacancies of recruitment years 1995, 1996, 1997 and 1998, the crucial date for reckoning age and service will be the 1st July, 1995, 1st July, 1996, 1st July, 1997 and 1st July, 1998 respectively for competing against the vacancies of each year. While filling up Col.No.11 in the application form, the candidate should clearly indicate the recruitment year of vacancies against which they wish to compete. A copy of this notification was made available to us by the learned counsel for the applicant and referred to the fact that this notification was Exhibit P3 in T.A.No.4/09 in which the respondents- the Chief General Manager, BSNL, Trivandrum and the Chairman cum Managing Director, BSNL, New Delhi etc. were parties as respondent Nos.2 and 3 respectively. Contrary to that, in the present notification all the vacancies en-bloc are notified and the crucial date for reckoning the age is notified as the 30.05.2010 and that the regular service condition as the 1st July, 2009. In other words, it is evident that candidates who became age barred on the crucial date so fixed, could not compete in the examination even though they were qualified to appear in the examination during the relevant year in which the vacancies had arisen. The manner of filling up the vacancies en-bloc for all these years without conducting any examination in the relevant year and by conducting a common examination and further fixing the crucial date regarding age as also the service condition by prescribing a cut off date, as is now done, clearly takes away the right of the applicants to be considered for

promotion, despite the fact that they were qualified in terms of the recruitment rules and were entitled to be considered against the vacancies which arose in the relevant recruitment year. In other words it is only by the efflux of time and due to the inaction on the part of the respondents to conduct the examination every year for promotion, that they would become ineligible to appear for the examination. Even though amended rule is not given any retrospective operation by any express provision, the effect of this amendment is retroactive as it would apply to all the vacancies which have arisen in the past several years. It is thus clear that by fixing a common date for both the regular service condition to be satisfied as 1st July, 2009 and by fixing the crucial date for reckoning age as 30.05.2010, all the candidates irrespective of whether they became qualified in the relevant year when the vacancies arose will have to satisfy these conditions as on the later date as fixed and not with reference to the year of vacancy, thus affecting their vested right of being considered for promotion. In this connection we may refer to the fact that for 50% of the posts which are to be filled by direct recruitment, the respondents have been conducting the examination regularly to fill up those posts but in the case of promotion, they did not conduct the examination and the vacancies en-bloc are notified and a common examination is conducted. Conducting a common examination by itself may not be invalid provided their eligibility to participate in the examination is determined with reference to a date in the relevant year of recruitment when the vacancies arose. Further the Recruitment Rules Annexure A1 framed by the respondents provides the

BSNL Promotional Committee and its composition in Col.13 and for promotion/confirmation. Therefore even after a candidate passes the examination and a list is prepared, it is for the Committee to finally prepare a select list for promotion. Therefore the rule implies a Departmental Promotion Committee to meet and they have to conduct the exercise for promotion from among the eligible candidates as against the vacancy position in the relevant Recruitment Year. Since the recruitment to the post of Junior Telecom Officer is in the ratio of 50:50 between direct recruits and promotees and when 50% direct recruitment posts have been filled based on examination conducted every year, non-conducting of the examination and thereafter not notifying the year-wise vacancies and that too, by prescribing a condition that the qualification has to be satisfied as on a cut off date much after the year of recruitment and filling up of the vacancies in a bunch will adversely affect the right of the promotees for being considered for promotion against the year in which the vacancies had arisen. In this connection we may also point out that the the Calcutta Circle of the respondents-Corporation has published a similar notification for conducting the examination, but they have clearly notified the year-wise vacancies. It is also to be observed that as on 2.12.2009 only the rule as prescribed in Annexure A1 was in force. The amendment was made subsequent to the notification and after the selection procedure commenced. In Y.V.Rangaiah and Others vs. J.Sreenivasa Rao and Others; 1983 SCC (L&S) 382, the Apex Court held that in terms of the old rules a panel had to be prepared every year in September and that the a panel should

have been prepared in the year 1976 and transfer on promotion to the post of Sub-Registrar Grade II should have been made out of that panel. The vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules. It was observed that there is not even a 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 In this case, though there is no express rule for preparation of a panel every year for the reasons which were already stated, i.e., going by the practice followed as well as impliedly providing for a D.P.C. to be constituted and going by the precedents, and in the light of the fact that 50% direct recruitment vacancies were already filled up by conducting examination every year, there cannot be any doubt that it was always intended to fill up the vacancies occurring every year by conducting an examination for promotion, as well. But for reasons best known to the respondents when they could not conduct the examination in the manner as pointed out, it may not be illegal to conduct a common examination subsequently for the past recruitment years, to which selection is to be made. In other words, if the year-wise vacancies are notified and promotional exercise is done, from among the eligible candidates, the eligibility being determined with regard to any cut off date during the relevant year of recruitment, there would not have been any arbitrariness but the amendment now made after the notification issued and the selection procedure commenced, hence such amendment cannot have any validity with reference to the vacancies which have already arisen in the respective year of recruitment. Any

...

amendment made to the rule after the selection process has commenced can have prospective effect only. In the aforesaid case, the Hon'ble Supreme Court on a consideration of the relevant rules as well as the instructions issued by the Govt. came to hold that a list of approved candidates was required to be prepared as on September 1,1976 for making appointments to the grade of Sub Registrars Grade II by transfer. But no such list having been prepared as on September 1.11.1976, the same having been drawn up in 1977 by which time the amended rules had come into force, it was held that the legitimate expectation of those who were entitled to be included in the list which ought to have been prepared in September 1976 cannot be frustrated on account of the fact that the panel had not been prepared and it was so framed only in the year 1977. On this conclusion the Court had held that the vacancies available prior to 1.9.76 ought to be filled up under the unamended rules.

14. In State of Manipur and Others vs. A.Ongbi Memcha Devi(Smt.) and Another; 1995 SCC (L&S)962, the Hon'ble Supreme Court had occasion to consider the justifiability of simultaneous selection for the vacancies occurring in different years and the procedure to be adopted. It was held as follows:-

> "8. It is not the case of the respondents that the DPC made separate selection for the vacancies for the years 1980, 1982 and 1983 and the DPC appears to have bunched together all the vacancies for the years 1980 to 1985 and has made one selection for the 6 promotional vacancies and this has resulted in enlargement of the field of choice for the purpose of selection. The grievance of the appellant is that this mode of selection is disregard of the instructions

> contained in the office memorandum dated 24-12-1980 operated to his prejudice appears to be justified because if separate selection had been made for the vacancies which occurred in the years 1980, 1982 and 1983 the field of choice would have been much more restricted and the appellant would have had better chances of being selected."

In this connection it is also to be noticed that the amendment in the Recruitment Rules of JTO-2001 was introduced in 12.10.09 has not been given any retrospectivity. Further the vacancies were calculated up to 31.3.2009 which were to be filled up as per the notification. Therefore the selection procedure adopted for filling up those vacancies calculated up to 31.3.2009 has to be made with reference to the rules as existed then and the amendment effected subsequently cannot apply to those vacancies. Therefore the respondents' attempt to fill up the vacancies en-bloc with the amended qualification is clearly wrong and illegal. In O.A.No.242/10 the learned counsel Shri Vishu S.Chempazhanthiyil contends that the action of the respondents in filling up the vacancies up to 31.3.2009 by applying the amendment is in violation of the directions contained in Writ Petition No.1956/2006 produced as Annexure A10 in the case. We have persued Annexure A10 judgment produced in the said case. That was a case of Telecom Technical Assistants which was one of the eligible cadres for promotion to the post of JTO on the basis of screening test and seniority. The contention was that the official respondents had notified a qualifying screening test exclusively for SC/ST candidates for the vacancies of JTO up to 31.8.1999, in the 35% departmental quota,which was subsequently postponed. By notification dated 30.11.1999 persons belong

to the SC/ST. were notified for the test. By another notification, a second qualifying screening test was notified on 8.3.2000 and apparently , a second qualifying screening test was held on 30.4.2000 and the result of the screening test was declared. The BSNL had decided to divert 500 posts of TTAs who had qualified in the screening test, for training every year, by diverting the post of direct recruitment. It was contended that such diversion should be declared as illegal. There was also a contention regarding the amendment made in 1999. The diversion was found to be valid. But the decision to make available the entire diverted vacancies to one set of departmental candidates was held to be arbitrary. But the Court refraining from declaring so for the reasons stated in paragraph 19 of the judgment. It was directed that persons who were eligible as on 31.8.1999 under the 15% departmental quota, will be considered for promotion to the post of JTOs after identifying those persons who are eligible as aforementioned, the BSNL has to conduct a limited departmental competitive examination as undertaken in paragraph 8 of the counter affidavit . It is therefore contended that they are bound by the decision. We are unable to appreciate the contention since the filling up of the vacancy in a particular manner as directed certainly ought to be done in the absence of any amendment to the rules. But the Court cannot take away the power to legislate and, if by a subsequent legislation, whether it be by a statute or by a sub ordinate legislation, the position is altered, such legislation has to be tested with reference to settled principles in this regard. In the absence of any contention of invalidity based on well-

founded principles, merely because the rule if applied would take away any such right, is of no consequence. However, we have tested the amendment made in the foregoing paragraphs and have already held for the reasons stated that such amendment cannot be retrospective in character. For the foregoing reasons, it has to be held that the amendment made to the rule as per Annexure A2 is not retrospective in character and has no application in respect of vacancies which have already arisen prior to 12th October, 2009. We also hold that the crucial date for determination of the age as on 30th May,2010, is irrational and arbitrary, since the vacancies has to be notified and filled up with reference to the eligibility criteria as on the date of arising of the vacancies or as on the cut off date with reference to the recruitment year in which the vacancies arose. A common cut off date, as fixed, now for the vacancies en bloc is therefore, arbitrary and violative of Article 14. For the same reason we hold that the eligibility condition, the crucial date of which is fixed as 1st July, 2009, is also bad. It would, however, be permissible to fix any cut off date as 1st July of the Recruitment year or years. Even though the BSNL, West Bengal Circle by Annexure A6 had notified the vacancies under 35% and 15% quota year-wise, viz.,2001, 2002, 2005 and 2007 respectively , the deviation made by the Kerala Circle, in the view we have already expressed above, is clearly wrong and arbitrary.

15. Even though it is contended that the year of experience to be possessed has been reduced from 10 to 7 years in Group C for

promotion to JTO cadre through LICE under 35% and 15% quota, as arbitrary and violative, we cannot accept the same. Annexure A2 is the notification issued on 12th October, 2009 by which the proposal to reduce the prescribed regular service for appearing in the examination for JTO was stated to be under consideration, based on the request made by the employees and it is as a result of such consideration, the BSNL management had approved the reduction of the prescribed regular service from 10 years to 7 years. It is further provided that the Recruitment Rules issued on 10.10.2001 will stand amended to the above extent. Thus, it can be seen that the amendment is by way of substitution and applying the rule of interpretation, when an amendment is made by way of substitution, it takes effect from the date on which parent rule came into force. Even though it is contended that it takes away vested right, what is the age to be prescribed for appearing in a particular test is always a policy matter with which the Court normally cannot interfere. Further the reduction of the number of years from 10 to 7 will not affect the applicants since if they have 10 years experience necessarily they continue to be eligible as the reduction is only to their advantage. In this connection we may refer to the decision of this Tribunal in O.A.No.411/2000 and O.A.No.436/2000 rendered on 25th March, 2002 where among other things, the challenge was against the reduction of maximum age limit prescribed in the Recruitment Rules brought down to 40 years from 50 years for appearing in the competitive examination quota. The 1999 Rules prescribes the age of 50 years for candidates like the applicant therein. It was held that the

age limit prescription is absolutely on the purview of the administrative parlance due to their own reasons and the scope for judicial review is very much limited unless otherwise it is warranted. Even though it is contended that the field of choice has been increased by reducing the service experience to 7 years, thereby taking away the right of being considered against limited number of persons if the qualification was to be 10 years experience,but we do not think that such a contention has any merit. The rule making authority is empowered to amend the rules retrospectively, the effect of which may be to take away a vested right. So long as it is not mala fide, such amendment is valid. Here the amendment is made by way of substitution, and therefore, it is retrospective. We do not think that merely because the rule is made retrospective, the rule could be held to be arbitrary or violative of Article 14. it is always possible to take away a vested right by a legislation validly made. There is no indefeasible right for promotion. It was held by the Apex Court that introduction of educational qualification rendering some of the existing employees ineligible for promotion is legally valid. There is no guarantee that existing rule will not be changed.(See 1999 (3) SCC 653; 1994(6) SCC 252). In the absence of any challenge to the rule, otherwise than by contending that it is not retrospective or that it takes away a vested right, we do not think that the rule suffers from any unconstitutionality . We, therefore, declare that the amendment of the service from 10 years to 7 years by Annexure A2, is valid. All the points raised are answered accordingly.

16. In the result, the O.As are allowed partly, as above. There will be no order as to costs.

Sd/-
(K.GEORGE JOSEPH)
MEMBER(A)

Sd/-
(JUSTICE P.R.RAMAN)
MEMBER (J)

/njj/