

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 232 of 2009

Thursday..., this the 10th day of December, 2009

CORAM:

**HON'BLE DR. K.B.S. RAJAN, JUDICIAL MEMBER
HON'BLE MR. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

Jayarani.N,
W/o. C.K. Premnath Dayanand,
Junior Accounts Officer (O),
Planning Section, O/o. PGM, BSNL,
CALICUT : 2
Residing at Ashiyana,
Yamuna Nagar, Near Vrindavan Housing Colony,
Chevayur, CALICUT – 17

... Applicant.

(By Advocate Mr. A.G. Adithya Shenoy)

v e r s u s

1. The Chief General Manager Telecom,
Kerala Circle, Trivandrum.
2. C.M.D., BSNL Corporate Office,
New Delhi.
3. The Assistant General Manager (R&E),
O/o. CGM, BSNL, Kerala Circle,
Trivandrum

... Respondents,

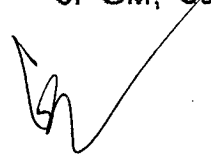
(By Advocate Mr. N. Nagresh)

The Original Application having been heard on 08.12.09, this Tribunal on 10.12.09 delivered the following :

O R D E R

HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

The applicant joined the services of the respondents in March 1981 at Calicut as Telegraph Assistant and on 01-10-1990, on her request under Rule 38 of Postal Manual, she was transferred as Telecom Office Assistant in the office of GM, Calicut with bottom seniority. The next hierarchical post is Junior




Accounts Officer for which Departmental examinations of Part I and Part II are to be cleared. The applicant qualified in the Part I examination held in October, 1999, vide Serial No. 25 of the list at Annexure A-2. The said Annexure contains another list of candidates qualified with grace marks, as per which one Accamma Wilson qualified with such grace marks.

2. After qualifying in the above examination Part I, the applicant, vide Annexure A-10 order dated 21st July 2000, was afforded promotion on officiating basis as JAO and the applicant has been functioning in that capacity since then.

3. Prior to the applicant's taking up the examination part II, a Supplementary examination Part II was held in 2002 in which 696 candidates were successful, of which as many as 87 were afforded with grace marks. vide para 4 of Annexure A-8 of the list of qualifying persons dated 8th February 2006.

4. Part II examination consists of five papers and the percentage of marks for qualifying therein is 40% in each paper and 45% in aggregate. In December, 2005, notification thereof proposing the examination to be scheduled from 28th to 30th March 2006 was published, vide Annexure A-4. The applicant participated in the same examination. The result of the department examination of Part II was published on 29-06-2006 but the name of the applicant was not figuring in. The mark sheet of the applicant indicated that she had qualified in each subject securing more than 40% but in the aggregate, the mark secured was 44.54% (i.e. it fell short by .46%, which is 2.3 marks).

5. The applicant was given a technical break of three days by reverting her back as Sr. TOA(G) on 19-12-2008 and posting her again as JAT w.e.f. 22-12-2008, vide order dated 05-12-2008 at Annexure A-11.



6. As the applicant came to know about grace marks having been given to many, she penned a representation dated 20-07-2006 vide Annexure A-12, requesting the CMD to afford her with the grace marks, and make her qualified in the Examination Part II. Vide Annexure A-13 read with A-14, the applicant was informed that the decision taken on 11th August, 2006 regarding grant of grace marks cannot be revised.

7. It is against the above that the applicant has come up in this O.A.

8. Respondents have contested the O.A. They have stated that the applicant had passed the JAO Part I exam held in March 1999 and that as regards JAO Part II examination, the same was conducted in 2006 by BSNL RR with old (DOT) syllabus and was 'competitive' in nature. Therefore, instructions issued by DOT regarding grant of grace marks were not ipso-facto applicable in the exam until and unless adopted by BSNL. However, BSNL had reviewed the issue and decided not to give any grace marks in the JOA Part II examination held in 2006. It has also been stated that the applicant could now participate in the Part II examination under the revised syllabus.

9. The applicant filed her rejoinder in which she had annexed Annexure A-16 order dated 7th November, 1996, whereby grace marks in examination Part II had been granted. Other contentions as raised in para 5 of the OA have been reiterated in the rejoinder.

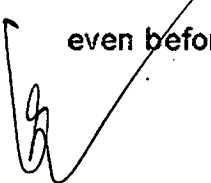
10. Counsel for the applicant precisely and perspicaciously argued that the following points weigh in favour of the applicant for grant of grace marks:-



- (a) The examination wherein the applicant appeared was as per the Old syllabus and thereafter the examinations are under the new syllabus.
- (b) She has qualified in each subject and was falling short only to the extent of point four percent which is less than 3 marks.
- (c) Just a few months earlier, vide order dated 8th February 2006, as many as 87 candidates were granted the grace marks.
- (d) The applicant has been officiating as J.A.O. right from 2000
- (e) There is no other candidate who would require such a grace marks and as such, grant of grace mark to the applicant would not unduly affect the system.

11. Counsel for the respondents submitted that while grace marks were given by the DOT, B.S.N.L. does not give any such grace marks.

12. Arguments were heard and documents perused. That there has been a practice of grant of grace marks had been there is not disputed. Even when DOT conducted the examination in 2002, it was the B.S.N.L. which allowed grace marks for the supplementary 2002 examination Part II. And that too, to the extent of 87 candidates. This was in February, 2006 and the applicant took up the examination on 28th March, 2006, i.e. within less than 2 months. As such, the general expectation is that if by chance the applicant could not make to the aggregate and it fell short, the same would be moderated by grant of grace marks as has been the practice. When the DOT allowed such a grace marks for the previous examination, if it desired not to continue the grace mark system, better it had informed in advance of the examination. In the instant case, the decision not to grant grace marks was taken not prior to holding the exam, nor even before declaration of results, but as late as on 11-08-2006. It is pertinent to



mention that the examination conducted in March 2006 was under the old syllabus and those who could not clear the same have to face the new syllabus. The requirement in the case of the applicant is just .46% equal to less than 3 marks. Round off is not uncommon. That has been the practice even in respect of recruitment through Public Service Commission, vide **State of Punjab v. Asha Mehta, (1997) 11 SCC 410**, wherein the Apex Court has stated as under:-

"1. The question whether 32.5% could be rounded off to 33% is purely an arithmetical calculation, a procedure which the Public Service Commission in fairness has been adopting in all other cases.

13. In **State of U.P. v. Pawan Kumar Tiwari, (2005) 2 SCC 10** the Apex Court has held as under:-

"The rule of rounding off based on logic and common sense is: if part is one-half or more, its value shall be increased to one and if part is less than half then its value shall be ignored."

14. Thus, if the aggregate marks get rounded off, then, 44.54 would be rounded off to 45, in which event, there may not be any grace marks required. If such rounding off which has been considered as a practice in 'fairness' and which is based on logic and common sense, as observed by the Apex Court, is not followed, then in view of the fact that till the previous exam such a grace marks have been given, justifies such a grant of grace marks to the applicant as well. In fact, that the applicant has been functioning in the very same post of J.A.O. cannot be lost sight of at this juncture. Lastly, such a grant of grace mark is not to open any Pandora's Box as no other person is in such a situation as to need grace marks. Thus, the applicant is the lone candidate requiring the grace marks. She would be isolated when compared to all others in the past have been rightly granted grace marks.



15. In view of the above, we are of the strong and considered opinion that the applicant does deserve sympathetic consideration and grant of grace marks would be fully justified in this case. However, as it is the discretion of the respondents, we feel that the matter has to be left to the discretion of the CMD, who may take into account all the above facts and findings of the court and arrive at a judicious conclusion.

16. The O.A. Is disposed of with the above observations and time limit for consideration of the case by the CMD is calendared as 3 months from the date of communication of this order.

17. No costs.

(Dated, the 10th December, 2009)



K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER



(Dr. K B S RAJAN)
JUDICIAL MEMBER

cvr.