CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 367 of 2010
Original Application No. 534 of 2010
Original Application No. 559 of 2010
Original Application No. 570 of 2010
Original Application No. 604 of 2010
Original Application No. 612 of 2010

Wednesday, **this the 15th day of June, 2011**

CORAM:

Hon'ble Mr. Justice P.R. Raman, Judicial Member
Hon'ble Mr. K. George Joseph, Administrative Member

1. **Original Application No. 367 of 2010** -

1. Girija S., HR No. 198301437,
Sr. TOA(G) Plg Section, O/o GMT, BSNL,
Thiruvalla.

2. Anitha Thomas, HR No. 197700554,
Sr. TOA(G), O/o. GMT, BSNL,
Thiruvalla.

3. Suneetha M., HR No. 198305795,
Sr. TIA (G), O/o. SDE (Phones),
Edathua BSNL, Alleppey:SSA.

4. Sivaprasad K.S., HR No. 198301429,
Sr. TOA (P), O/o. GMT BSNL, Thiruvalla. ..... **Applicants**

(By Advocate Mr.R.Santhosh Babu)

Versus

1. The Chief General Manager,
Bharat Sanchar Nigam Limited,
Kerala Circle, Thiruvananthapuram.

2. The General Manager (Recruitment),
BSNL Corporate Office,
Bharat Sanchar Bhavan, New Delhi – 1.

3. The Chairman & Managing Director,
Bharat Sanchar Nigam Limited,
Corporate Office, New Delhi – 1. ... Respondents

(By Advocate Mr.George Kuruvilla)

2. **Original Application No. 534 of 2010** -

K.C.Muralee Mahoharan,
S/o.P.Chellapan Pillai,
Senior Telecom Operative Assistant (Phones),
Telecom Revenue Accounts Section,
Office of the General Manager (Telecom), Thiruvalla.
Residing at Harimurali, Kaviyoor PO, Thiruvalla. ... Applicant

(By Advocate – Mr. T.C.Govindaswamy)

Versus

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 Assistant General Manager, (Recruitment),
Office of the Assistant General Manager, BSNL,
Trivandrum.

4. The Assistant General Manager (DE),
Departmental Examination Branch, BSNL,
New Delhi. ... Respondents

(By Advocate – Mr. George Kuruvilla)

3. **Original Application No. 559 of 2010** -

1. L.Kusalakumari,
Senior TOA,
O/o.SDE (T), BSNL,
Telephone Entry Building, Aryanad.

2. T.Thomas,
Sr.TOA, O/o.SDE (CML),
BSNL, Pathanapuram. ... Applicants

(By Advocate Mr.Vishnu S Chempazhanthiyil)

Versus

1. The Chief General Manager,
Bharat Sanchar Nigam Limited,
Kerala Circle, Thiruvananthapuram.

2. The General Manager (Recruitment),
BSNL Corporate Office,
Bharat Sanchar Bhavan, New Delhi – 1.

3. The Chairman & Managing Director,
Bharat Sanchar Nigam Limited,
Corporate Office, New Delhi – 1. ... Respondents

(By Advocate Mr.George Kuruvilla)

4. **Original Application No. 570 of 2010** -

1. C.Mercy,
D/o.S.Chellayyan,
Sr.TOA (G), O/o.SDE (External),
Poojappura, Trivandrum – 695 012.
Residing at T.C.39/1884, Dr.PNRA,
99, Church Road, Poojappura, Trivandrum.

2. T.Sulochana,
W/o.P.Devadas,
Sr.TOA (P), Telephone Exchange,
Parassala, Trivandrum.
Residing at Ambadi, Amsi,
Thengapattanam Post – 629 173. ... Applicants

(By Advocate – Mr. V.Sajith Kumar)

Versus

1. The BSNL represented by its CMD,
Corporate Office, New Delhi.

2. The Chief General Manager,
BSNL, Trivandrum. .... Respondents

(By Advocate – Mr. George Kuruvilla)

5. **Original Application No. 604 of 2010 -**

G.Muraleedharan,
Senior Section Supervisor,
HRD Section, O/o.the Chief General Manager,
Telecom, BSNL, Thiruvananthapuram – 33. .... Applicant

(By Advocate Mr.Vishnu S Chempazhanthiyil)

Versus

1. The Chief General Manager,
Bharat Sanchar Nigam Limited,
Kerala Circle, Thiruvananthapuram.

2. The General Manager (Recruitment),
BSNL Corporate Office,
Bharat Sanchar Bhavan, New Delhi – 1.

3. The Chairman & Managing Director,
Bharat Sanchar Nigam Limited,
Corporate Office, New Delhi – 1. ... Respondents

(By Advocate Mr.George Kuruvilla)

6. **Original Application No. 612 of 2010 -**

V.Babu,
Junior Accountant,
Sales & Marketing Section,
O/o.PGMTD, Uppalam Road,
Statue, Thiruvananthapuram – 1. .... Applicant

(By Advocate Mr.Vishnu S Chempazhanthiyil)

Versus

1. The Chief General Manager,
Bharat Sanchar Nigam Limited,
Kerala Circle, Thiruvananthapuram.

2. The Chairman & Managing Director,
Bharat Sanchar Nigam Limited,
Corporate Office, New Delhi – 1. ... Respondents

(By Advocate Mr.George Kuruvilla)

These applications having been heard on 19.5.2011, the Tribunal on 15-06-11 delivered the following:

ORDER

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

Having common facts and issues these OAs are heard together and are disposed of by this common order.

2. The applicants are Senior Telecom Assistants (in short Sr. TOA) under the Chief General Manager, BSNL, Kerala Circle, Trivandrum. Aspiring to be promoted to the post of Junior Accounts Officer (JAO) (40% quota) they had cleared the screening test held on 27.5.2007 and participated in the internal competitive examination held in January, 2010, which consisted of 5 papers. Some of the applicants failed in Paper-V and others in Paper III & IV and some of them were given insufficient marks or no marks at all for correct answers as the case may be. Their prayers are to revalue the papers, publish fresh rank list thereafter, set aside Annexure A-3 list of successful candidates and to afford an opportunity to examine the answer sheets of Papers III, IV and V after revaluation.

3. The applicants submit that the examination was conducted with erroneous questions and evaluated on the basis of erroneous answer key. The Kerala Circle had 172 vacancies. Only 57 candidates qualified. This is the direct consequence of faulty conduct and evaluation causing substantial loss and prejudice to the applicants. Paper-V of JAO Part-II examination was in respect of Civil Work Accounts Rules and Procedure (with books) which is not followed by the BSNL. Despite pointing out the irregularities even before the results were declared, no action has been taken by the competent authority.

4. The respondents in their reply statement submitted that after formation of BSNL on 1.10.2000, new Recruitment Rules for recruitment to the cadre of Junior Accounts Officer was made on 31.8.2011. As per the said Recruitment Rules 50% is by direct recruitment, 40% by promotion through an internal competitive examination and 10% by promotion from Sr. Accountants having graduation. Junior Accountants and Senior Accountants up to the age of 55 and having graduation and 5 years service were eligible for appearing in the examination. With a view to tone up efficiency in services, certain changes were made by the competent authority to improve the quality of manpower at the direct recruitment and promotion levels, compared to recruitment method followed earlier. In the JAO Part-II exam held in January, 2010, out of 529 candidates who appeared in the Kerala Circle, only 57 candidates were successful. Due to poor performance the applicants do not figure in the select list. Further, various representations

received regarding allegations against the questions and answer key of the exam and also regarding revaluation have been considered and rejected by common order dated 29.07.2010 [Annexure R1(g)]. The examination in January, 2010 was conducted bye and large on the same pattern as was the exam conducted in 2006. In so far as the alleged mistakes in the question Paper-V and its key is concerned, corrective measures were taken before evaluation of the paper. Evaluation of answer sheet is not permissible in any case or under any circumstances as per P&T Manual, Vol.IV (Appendix No. 37 Para 15). The respondents relied on the judgment of the Hon'ble High Court Andhra Pradesh in WP No. 26059 of 2007 which is based on the judgment of Hon'ble Supreme Court in the matter of examination. The respondents further submitted that the applicants were well aware of the syllabus before appearing in the examination. If there was any objection they could have represented before appearing in the exam. It is for the appointing authority to prescribe the tests and the standards for selecting the candidates for appointment in promotion to any post. The applicants never raised any complaints of erroneous questions or faulty answer keys in their representations for revaluation. In the examination conducted in 26 circles so far 1137 candidates have been declared passed. Having failed in the examination the applications now trying to find loopholes in the examination system. The respondents also relied on the judgment of the Hyderabad Bench of this Tribunal in OA No. 644 of 2009 and that of the Hon'ble High Court of Allahabad (Lucknow Bench) in WPC 2696 of 2004.

5. We have heard learned counsel on both the sides and carefully perused the records.

6. The applicants have not relied on any rule for granting the reliefs they have prayed for. The representation on the alleged discrepancies in the JAO Part-II exam held in January, 2010 has been rejected by the respondents vide letter dated 29.7.2010 at Annexure R-1(g). As stated therein, it is well settled law that it is for the appointing authority to prescribe the tests as well as their standard for selecting the candidates for appointment on promotion to any post. In G. Banu Rao Vs. BSNL decided on 28.12.2005, the Hon'ble High Court of AP observed as follows:

> "It is always for the appointing authority to prescribe tests as well as their standards for selecting candidates for appointment/promotion to any particular post. Such qualifications/standards would in turn depend upon the nature of duties to be discharged by the candidates selected for the concerned posts. Courts maintain utmost reluctance in this matter of allocation and standards prescribed by academic agencies or appointing authorities."

In OA No. 644 of 2009 the Hyderabad Bench of this Tribunal held that:

> "The law is fairly well settled that Court/Tribunals cannot interfere in matters like prescribing qualifications/standards for appointment/promotion to any particular post. These are matters that lie exclusively in the administrator's domain. In our considered view, it is for the respondent to consider the request of the applicants depending on the exigencies service and the facts of the case. Their rejection of the applicants request for relaxation/exemption, cannot be said to be legally unsustainable."

7. Further as submitted by the respondents the revaluation of answer sheet is not permissible in any case and under any circumstances as per P&T Manual Vol. IV (Appendix No. 37-para 15). We also do not find any exceptional circumstance to deviate from the normal rule and to direct revaluation of the answer papers.

8. In view of the settled legal position as above, the prayer of the applicants for revaluation of answer sheets and other related prayers cannot be allowed.

9. Further, the fact that so far 1137 candidates have been declared as successful in 26 circles shows that applicants are far behind them in merit. There is no justification to quash the list of successful candidates. Therefore, the OA, lacks merit and is liable to be dismissed.

10. However, we would observe that there is ample scope for the respondents to improve their performance in conducting examinations. There is a gap of about 3 years between the JAO Part-I (screening test) held on 27.5.2007 and the JAO Part-II (internal competitive examination) held in January, 2010. This is the second examination that the BSNL is conducting. Such a gap between two parts of the same examination does not bring credit to the management of the BSNL. Although corrective measures were taken by the competent authority before evaluation of the Paper-V, that there was a mistake in the said paper and its key is a serious deficiency

which may well be avoided in future. Despite the blanket ban on revaluation under any circumstances as per P&T Manual, Vol. IV (Appendix No. 37 para 15) the Postal Department has issued instructions to revalue answer sheets in certain circumstances. When numerous complaints are made against evaluation, it is for the respondents to find out administrative remedies to redress the grievances of the employees, in the absence of specific legal provision to meet the situation. While the rule prohibits revaluation, the respondents should not hide behind it but efficiently discharge the corresponding moral responsibility of conducting a flawless and smooth internal competitive examination. The respondents have not answered the point that Civil Work Accounts Rules and Procedure is not relevant to the BSNL. To be a performing giant in the corporate world the BSNL will have to first set its house in order.

11. With the above observations these O.As are dismissed with no order as to costs.

(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER

(JUSTICE P.R. RAMAN)
JUDICIAL MEMBER

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