

**CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH,
LUCKNOW.**

Diary No. 2129 of 2009

Reserved on 10.2.2014

Pronounced on 25th February, 2014

Hon'ble Mr. Navneet Kumar, Member-J
Hon'ble Ms. Jayati Chandra, Member-A

1. Girish Kumar Mishra, aged about 47 years, S/o late V.C. Mishra, R/o D-31, Vineet Khand, Gomti Nagar, Lucknow.
2. Bhola Nath Shukla, aged about 52 years, S/o Sri Shyam Baran Shukla, R/o 56 Bajrang Nagar, Near Telephone Exchange, Krishna Nagar, Alambagh, Lucknow.
3. Sudhakar Prajapati, aged about 48 years, S/o late Mita Ram, R/o SS-2/411, Sector-F, Jankipuram, Lucknow.
4. Ram Mahesh, aged about 50 years, S/o late Angnu Prasad, R/o Type 3/237, P&T Colony, Sector K, Aliganj, Lucknow.

Petitioner nos. 1 to 4 present posted as Junior Accounts Officer (Officiating) at Lucknow.

5. Sanjoy Kumar Bose, aged about 47 years, S/o late Santosh Kumar Bose, R/o 63 Tularam Bagh, Mahatma Gandhi Marg, Allahabad.

Petitioner no.5 presently posted as Junior Accounts Officer (Officiating) at Allahabad

.....Applicants

By Advocate : Sri R.C. Tiwari

Versus.

1. Bharat Sanchar Nigam Limited, through its Chairman-cum-Managing Director having its Corporate Office at B-201 Statement House, Barakhamba Road, New Delhi.
2. Director (Finance), Bharat Sanchar Nigam Limited, Corporate Office at B-201 Statement House, Barakhamba Road, New Delhi.
3. Joint Deputy Director General (SEA), Bharat Sanchar Nigam Limited, Corporate Office at 312, Sanchar Bhawan, 20 Ashok Marg, Lucknow.
4. Chief General Manager (Telecom), Bharat Sanchar Nigam Limited, Uttar Pradesh (East) Circle, Hazratganj, Lucknow.

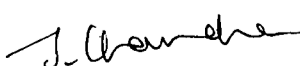
.....Respondents.

By Advocate : Sri Pankaj Awasthi for Sri A.K. Chaturvedi.

ORDER

Per Ms. Jayati Chandra, Member (A)

The five applicants have filed this Application under Section 19 of Administrative Tribunals Act, 1985 alongwith M.P. No. 2105



of 2009 under rule 4 (5)(a) of CAT (Procedure) Rules, 1987 seeking liberty to jointly plead the following relief(s):-

- “(i) to quash the orders dated 21.8.2009, as contained in Annexures A-1 to this Original application and direct the respondents to declare the result of the applicant for promotion to the post of Junior Accounts Officer of Junior Accounts Officer Examination Part II on the basis of old pattern and, thereafter, promote them on the said post with all the consequential service benefits.*
- “(ii) any other order which is deemed just and proper in the nature and circumstances of the case be also passed in favour of the applicant in the interest of justice alongwith the cost of this original application.”*

2. This case has been heard alongwith O.A. No. 513 of 2009 (Smt. Malti Singh Vs. Union of India & Others), but while dictating the order, it is notice that since the facts and the relief sought for in connected case are different and as such the separate order is being passed separately.

3. The facts, disclosed by the applicants, are the applicants were initially appointed as Senior TA and Phone Mechanic in the department of Telcom under Ministry of Telecommunication. Subsequently, they were working as Junior Accounts Officer (In short JAO) on officiating basis w.e.f. 2.2.2005m 9.3.2005, 8.1.2004, 17.1.2005 and 3.10.2003 respectively initially for a period of six months, which was extended from time to time after giving artificial breaks. The Department of Telecommunication was converted into BSNL, a registered Corporation under the Ministry of Telecommunication in the year 2000. As per Recruitment Rules of 1977, the categories of persons eligible to be appointed as JAO, the mode of recruitment etc. were enumerated in Rules 5, 6 and 7. These rules provide that a candidate must pass departmental examination for JAO taken in two parts part I and Part II in not more than two years with maximum of two attempts in each part. This mode of examination also provided for certain procedure for marking and certain relaxation given to candidates particularly SC/ST candidates. After conversion into BSNL Corporation, the respondents in this case, decided to extend the old pattern of examination including old syllabus by order dated 17.7.2002. This extension was available from 1.8.2002. This letter was

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accompanied by detailed guidelines for holding the examination. In detailed guidelines para A(i) provides that the candidates who opt to continue in the existing (DOT) syllabus and mode of examination were required to qualify both part I and Part II examination within a period of two years, with maximum of two attempts in each part. If the candidates were unable to qualify both the part i.e. part I and Part II within two years, they have to switch over to new syllabus and will have to clear the new syllabus. Pare A (ii) provides that the candidates who have already passed JAO Part I and have not qualified in part II examination were required to exercise either of two options: (a) to continue in the existing syllabus (DOT); and (b) to switch over to the new syllabus. The candidates who opted to continue to continue in the existing and mode of examination, they were required to qualify Part II examination within a period of two years with two attempts.

4. Part I examination as per old syllabus was held from 17.9.2003 to 19.9.2003. All the applicants were declared passed in this Part I examination using the same method of marking and allowing them the same relaxed standard as was earlier available to DOT. Thereafter, the respondents were required to hold part II examination. One examination of part II was held from 4.5.2006 to 6.5.2006. The result of this was declared in a different format using a more stringent method of marking and without affording the relaxation as given during the part I examination. This is contrary to the spirit of the letter dated 17.7.2002. More-over the respondents failed to hold minimum two examinations for Part II within stipulated period. As the department had failed to hold an examination certain others who were working in other Circles filed Writ Petition No. 5710 of 2005 (Sanjeev Kumar & Others Vs. Chairman, BSNL & Others) in which Hon'ble High Court passed the order that the respondents must hold atleast two examinations for the applicants, who were already officiating as JAO prior to examination of new entrants.

5. In the instant case, the respondents have, by impugned order dated 21.8.2009, gone against the order of Hon'ble High Court as well as their own policy as they are seeking to hold examination against 40% quota on the basis of new syllabus. The

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applicants had preferred representation variously by various representations annexed as Annexure no.7 to declare them qualified in part II examination taken by them in May, 2006 as they had all qualified as per the old procedure and standard, but nothing was done.

6. The respondents have raised preliminary objection on maintainability of joint application by which five applicants have claimed to join in the single case on the basis of similar facts and relief sought. Their contention is that the applicants had appeared in part II examination conducted in May, 2006 in response to the notification issued by the respondents vide letter dated 12.5.2005. In para 4 of the notification, it was made clear that contrary to earlier pattern of examination, which was held in centralized manner, this examination shall be held in completely decentralized manner. In case the number of qualified candidates is more than the available vacancy, the selection will be done as per merit and vacancy in different category in circle. Para 4 of the said letter dated 12.12.2005 reads as under:-

“para 4 - The examination shall be held in a completely decentralized manner. Since JAO is a circle cadre, eligible candidates from the circle will be allowed to complete for the vacancies for that circle only. In case the number of qualified candidates is more than the available vacancy, the selection will be done as per merit and vacancy in different category in circle.”

Para 6 of the aforesaid letter provides for qualifying marks for OC candidates as well as SC/ST candidates thereby drawing a clear distinction between old pattern and present one. The applicants had agreed to abide by these terms & conditions without challenging this notification and had appeared for the same. The result was declared by letter dated 8.12.2006 and they were also informed about the same in reply to the various representations by letter dated 16.1.2007 and 13.2.2009 etc. More-over, the applicant nos. 1, 2,3 and 5 have filled in and submitted their application forms as called for through the impugned notification dated 21.8.2009 and have also participated in the same. The result of this examination has been declared on 23.9.2010 Annexure S-1. As the name of four applicants, who

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have appeared in this examination are not figuring in the same, it would be understood that they have failed to qualify. The applicant no.4 is a separate and distinct from other applicants in so much he did not appear in the second round of examination in compliance of notification dated 12.12.2005. Therefore, apart from the two cases being separate and distinct, this application and the relief claimed therein are misconceived in terms of principle of waiver and estoppel.

7. The applicants have filed Rejoinder Reply refuting the averments made by the respondents in their Counter Reply and reiterating the averments made in the Original Application.

8. We have heard the learned counsel for the parties and have perused the pleadings on record.

9. We find that the Joint application does not merit acceptance as the case of four applicants namely applicant nos. 1, 2, 3 and 5 are separate and distinct from that of applicant no.4 in so far as the merit of the case is concerned. The applicants have not denied that they had appeared in part II examination held in the month of May, 2006 in accordance with the notification dated 12.12.2005 in which all conditions were stated. In the case of **Union of India Vs. N. Chandrasekharan & Others reported in (1999) 3 SCC 694** the Hon'ble Supreme Court has held that *when a person participated in the selection then he cannot 'u' turn saying that the selection procedure is faulty.*

10. The respondents in changing and alternating the parameters for holding a decentralized vacancy based examination with different marking system as was done in May, 2006 have exercised their administrative authority in doing so. These guidelines enshrined in letter dated 17.7.2002 and 2006 are not in the nature of Rules or statutes. The Hon'ble Supreme Court in the case of **K.A. Nagamani Vs. Indian Airlines & Others reported in (2009) 5 SCC 515** has held in para 23 that *"mere administrative rules are not legislation of any kind. They are in the nature of statements of policy and the practice of government departments, statutory authorities whether published or otherwise. Statutory rules which are made under the provisions of any enactment and*


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regulations subject to parliamentary approval, stand on entirely different footing. The administrative rules are considered to be rules of administrative practice merely, not rules of law and not delegated legislation and they have no statutory force. Mere description of such rules of administrative practice as 'Rules' does not make them to be statutory rule. Such administrative rules can be modified, amended or consolidated by the authorities without following any particular procedure. There are no legal restrictions to do so as long as they do not offend the provisions of the Constitution or statutes or statutory rules as the case may be." The Hon'ble Supreme Court has further held in para 53 that "yet another aspect of the matter: that the appellate admittedly had participated in the similar selection process for erstwhile Grades 15 & 16, Manager (Maintenance/Systems) and senior Manager (Maintenance/Systems) respectively. The Corporation had given adequate opportunity to the appellant to compete with all other eligible candidates at the selection for consideration of the case of all eligible candidates to the post in question." The Apex Court has further held in para no. 54 that the "Corporation did not violate the right to equality guaranteed under Article 14 & 16 of the Constitution. The appellant having participated in the selection process alongwith the contesting respondents without any demur or protest cannot be allowed to turn round and question the very same process having failed to qualify for the promotion."

11. In view of the above, the applicants have failed to establish their case and the application is liable to be dismissed and is accordingly dismissed. No costs.



(Ms. Jayati Chandra)
Member (A)



(Navneet Kumar)
Member (J)