

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

Original Application No. 513 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**

Smt. Malti Singh, aged about 49 years, W/o Sri L.P. Singh, R/o 202-A Insaf Nagar, Indira Nagar, Lucknow, presently working as Telecom Operator in the office of Chief Accounts Officer, Bharat Sanchar Nigam Limited, Office of Regional Manager, Marketing Division, Trans Gomti, Lekhraj Market, Lucknow.

.....Applicant

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, P.K. Bhawan, Hazratganj, Lucknow.
5. Assistant General Manager (Recruitment) Bharat Sanchar Nigam Limited, Office of Chief General Manager (Telecom), Uttar Pradesh (East) Circle, P.K. Bhawan, Hazratganj, Lucknow.
6. Chief Accounts Officer, Bharat Sanchar Nigam Limited, office of Regional Manager Marketing Division, Trans Gomti, Lekhraj Market, Lucknow.

.....Respondents.

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

O R D E R

Per Ms. Jayati Chandra, Member (A)

The applicant has filed this Original Application under Section 19 of Administrative Tribunals Act, 1985 seeking the following relief(s):-

"(i) to quash the orders dated 21.8.2009 and 19.1.2007, as contained in Annexures A-1 and A-2 respectively to this Original application and direct the respondents to

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provide the benefit of three grade marks as per letter dated 21.1.2000 for promotion to the post of Junior Accounts Officer or Junior Accounts Officer Examination Part II on the basis of old pattern and thereafter promote her 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 Diary No. 2129 of 2009 (G.K. Mishra & Others Vs. Union of India & Others), but since the facts and the relief sought for in connected case are different and as such the same is being dealt with separately.

3. The facts of the case are that the applicant was working on the post of Telephone Operator. By order dated 2.8.2006 (Annexure no.3) she was promoted on officiating basis on the post of Junior Accounts Officer (In short JAO) against existing vacancy for six months, which has been extended from time to time with artificial breaks. The promotion to the post of JAO is carried out as per the guidelines dated 9.9.2002 (Annexure-5) through an examination conducted in two parts i.e. Part I and Part II. As per the said guidelines, the candidates are required to qualify in Part I and Part II examination within a period of two years with maximum of two attempts in each part. This is applicable to those candidates who opted for continuing in the existing (DOT) syllabus and mode of examination. The applicant had appeared in Part I examination held in the year 2003 and also appeared in Part II examination held in the year 2006. Although, as per the old pattern of such examination, three grace marks were available to the candidates in accordance with the guidelines dated 21.1.2000 (Annexure-7), but the same was denied to the applicant in Part II examination. She represented to the respondents, but her representation was turned vide order dated 19.1.2007 (impugned order Annexure -2). The applicant has challenged this decision of the respondents on the ground that Part II examination in which she had appeared was carried out in the month of May, 2006, the decision to deny the benefit of three grace marks was taken on August 11, 2006 as mentioned in the letter of headquarters dated 19.1.2007. No such decision can be taken retrospectively.

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4. The respondents have now decided to hold a fresh examination by impugned order dated 21.8.2009 (Annexure-1) by which JAO competitive examination against 40% quota to be held on various dates from 30.11.2009 to 2.12.2009 as per the new pattern. This decision is contrary to the order dated 8.3.2006 passed by Hon'ble High Court at Allahabad in Civil Misc. Writ Petition No. 55710 of 2005 (Sanjeev Kumar & Others Vs. Chairman-cum-MD, BSNL, New Delhi) whereby it was directed that the examination of the petitioners (in the said Writ petition) for JAO Part II shall be held prior to the examination of new entrants and the petitioners shall be given two attempts in the examination of JAO Part II. (Annexure no.11).

5. The respondents have, through Counter Reply raised the issue of maintainability of the O.A. both on merit and on the ground of limitation and concealment of facts. The applicant had appeared in Part I examination for the post of JAO and had passed in the same in the year 2003. Thereafter, she appeared in part II examination held from 4.5.2006 to 6.5.2006. She secured less than 60% marks in three subjects. The result of the examination was declared vide letter dated 8.12.2006. After declaration of the result, the applicant preferred a representation dated 27.12.2006 (Annexure no. CA-2) in which she had sought the benefit of three grace marks in Xth paper and be declared successful. The prayer of the applicant made in the representation was considered and rejected through letter dated 16.1.2007 (Annexure CA-3) relying upon the headquarters' letter dated 11.8.2006. She was informed of the decision again through impugned letter no. T.R.-14/Chap III/2000/11 dated 19.1.2009 which has been impugned in this O.A. The copy of headquarter letter dated 11.8.2000 had also been enclosed and is now produced as Annexure no. CA-4. When the decision to hold fresh round of examination was notified by letter dated 21.8.2009 (1st impugned order), she submitted an application form dated 4.9.2009 (Annexure-6) for appearing in subject 5, 6 and 7 i.e. all fresh subjects. Meanwhile, an interim order was passed in this case whereby it was provided that although the examination may be held and the result declared, but the same would be subject to decision of this O.A. The result was declared on 23.9.2010

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(Annexure-4). A total of 66 candidates were declared to have cleared the examination from amongst OC category and 08 amongst SC category.

6. No Rejoinder Reply has been filed by the applicant in this case.

7. During the course of hearing, learned counsel for the applicant has placed the following case laws:

- (i) Prem Chandra & Others Vs. State of U.P. & Others reported in 2009 (3) ULLBEC 2656.
- (ii) State of U.P. & Others Vs. Santosh Kumar Mishra & Another reported in 2010 (9) SCC 52.
- (iii) B.L. Gupta & Another Vs. MCD reported in 1998 (9) SCC 223.
- (iv) Y.V. Rangaiah & Others Vs. J. Sreenivassa Rao & Others reported in 1993 (3) SCC 284.
- (v) P.Murugesan & Others Vs. State of T.N. & others reported in 1993 (2) SCC 340
- (vi) Amar Singh Vs. U.P. Co-operative Bank Ltd. & Others reported in 2007 (25) LCD 1292.
- (vii) Achchan Miyan Vs. State of U.P. & Others reported in 2003 (21) LCD 982.

In the case of Prem Chandra (supra) it has been held by Hon'ble High Court that the case of existing employees should be considered in accordance with the existing practice and thereafter only new entrants should be considered.

In the case of Santosh Kumar Mishra (supra) the Hon'ble Supreme Court has deplored the practice of different interpretation of the same rules at different times relating to same person is unsustainable.

The Other cases relied upon by the learned counsel for the applicant have been cited for the purpose of scrutinizing the claim of the applicant towards the grant of three grace marks as was available in 2000 to the result of Part II examination held in May 2006 and which the applicant had failed to qualify.

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

9. It is not disputed that the applicant is required to pass JAO both Part I and Part II examination as per old syllabus in two years in order to be considered for regular promotion as JAO. The applicant had cleared part I examination held in the year

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2003. Thereafter, she had appeared in Part II examination held in May, 2006. She has prayed for consideration of her case under the provisions of 3% grace marks as she was short of three marks for qualifying in Part II examination in accordance with the similar provisions as per guidelines no. 9-32/98-DE dated 21.1.2000. She had given her representation against the result declared of Part II examination by representation dated 27.12.2006 to which she received the decision of the respondents by letters dated 16.1.2007 and 19.1.2007. She has produced no record to show that she had made further representation after January, 2007. Under Section 21 of the Administrative Tribunals Act, 1985 the applicant is required to file the Original Application within one year from the date of occurrence of cause of action or file delay condonation application explaining the reasons why the O.A. could not be filed within the stipulated period of time. This O.A. has been filed on 9.12.2009 seeking quashing of the order dated 19.1.2007. The applicant has contended that it is a continuous cause of action and as such there is no delay in filing the O.A.; whereas it is not a continuing cause of action and as such the O.A. is liable to be dismissed on the ground of delay and latches.

10. Coming to the merits of the case with regard to the relief claimed for quashing of the order dated 19.1.2007, it is noticed that the applicant has not produced a copy of letter dated 11.8.2006, which is the basis for denying the provisions for awarding three grace marks. It is disclosed by the applicant herself that the first time that the provision for awarding three grace marks were provided vide letter no. 9-32/98-DLS dated 21.1.2000. A detailed examination of this provision discloses that this provision for granting grace marks is applicable only to JAO Part I examination. The subject matter of the letter under reference clearly states the following:-

“Subject: Grant of grace marks in JAO Part I examination classification therein.”

There is no mention, in the aforesaid letter dated 21.1.2003, of similar availability of 3 grace marks in Part II examination. The applicant has not been able to produce any rules or statutory

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provisions which provides grace marks in part II examination or prevents the respondents from amending earlier guidelines through administrative statutory order. In fact the letter dated 11.8.2006 demonstrates that the subject matter of granting grace marks in Part II JAO examination was still an open one. The subject matter is captioned as "Departmental examination of Junior Accounts officer (JAO)-Part II under old (DOT) syllabus to be held in the month of March, 2006- issues relating to grant of grace marks and preparation of exemption list-clarification regarding" Further more, although part II examination in which she appeared was held in the month of May, 2006, the result was declared in December, 2006 after the decision taken in the month of August, 2006 not to award grace marks in Part II examination. The applicant has not challenged the relied upon documents that is the letter dated 11.8.2006. Therefore, the prayer of the applicant for awarding 3 grace marks in Part II examination has no basis.

11. The applicant has not denied the fact that she had submitted her application for appearing in JAO Part II competitive examination as notified by impugned order dated 21.8.2009. Having submitted her application for appearing in the examination as notified in the notified order, she cannot now turn around and challenge the same. as held by Hon'ble Supreme Court in the case of **Union of India & Another Vs. N. Chandrasekharan & Others reported in (1998) 3 SCC 694 and K.A. Nagmani Vs. Indian Airlines & Others reported in (2009) 5 SCC 515.**

12. Moreover at this belated stage she is seeking to join issue with the petitioners of Writ Petition No. 55710 of 2005. It is seen that the facts and circumstances of the Writ petition No. 55710 of 2005 are totally separate and distinct from the present facts of the case. The petitioners in the Writ Petition had initially applied for Part I examination held in the year 1999 and had sought relief against the proposed action in 2004 in which they had not submitted any form.

13. The question, therefore, arises that the respondents within its jurisdiction to call for an examination as per new syllabus in

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2009 without holding part II examination a period of two years as decided by their administrative order dated 17.7.2002. It is seen that the said letter is in continuation of administration decision taken during transition period converting the department of Telecom to BSNL. The two years span of time for old syllabus was to be counted from 1.8.2002. It is also incorporated in the body of the said letter that the detailed examination scheme and internal examination as per the new syllabus for 40% and 10% quota will be forwarded shortly. The detailed guidelines had catered to various categories of candidates, such candidates who opt to continue in the existing syllabus. There is a separate category for candidates who have already passed JAO Part I examination and have not qualified part II examination. Since the applicant had passed her Part I examination in the year 2003, it is clear that she comes in the first category of Annexure no.1. Since she had not qualified the Part II examination, in that event, she ought to have approached the respondents or this Tribunal for holding second examination before passing of impugned order by which new examination is to be held. Infact by her own action in choosing to give an application in pursuance of the impugned order she has converted herself into a candidate who has switched over the new syllabus.

14. In view of the above, we do not find any good ground to interfere in the impugned orders. The O.A. fails and is accordingly dismissed. The interim order passed earlier stands vacated. No costs.

J.Chandra
(Ms. Jayati Chandra)
Member (A)

Mr. Agarwal
(Navneet Kumar)
Member (J)

Girish/-