

Reserved
(On 15.10.2014)

CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,
JAIPUR

Dated: This the 3rd day of December 2014

Original Application No. 18 of 2011

Hon'ble Mr. Anil Kumar, Member (A)
Hon'ble Dr. Murtaza Ali, Member (J)

Gordhan Lal Ajmera, S/o Norat Mal Ajmera, R/o 2, Bhati Colony, Behind Ahsapura Mandir, Beawar and presently working as Senior TOA (Phones) Telephone Exchange, Beawar.

... Applicant

By Adv: Shri C.B. Sharma

V E R S U S

1. Bharat Sanchar Nigam Limited through its Chairman and Managing Director, Corporate Office, Bharat Sanchar Bhawan, Harish Chander Mathur Lane, Jan Path, New Delhi – 110001.
2. Chief General Manager, Telecommunication, Rajasthan Telecom Circle, Sardar Patel Marg, Jaipur – 302008.
3. Assistant General Manager, (REctt.), Office of Chief General Manager, Telecommunication, Rajasthan Telecom Circle, Sardar Patel Marg, Jaipur – 302008.

... Respondents

By Adv: Shri Neeraj Batra

O R D E R

By Hon'ble Dr. Murtaza Ali, Member (J)

Through this OA filed under Section 19 of the Administrative Tribunal Act, 1985 the applicant seeks the following main reliefs:

- "i. **That the respondents be directed to award correct marks in paper-V or grace marks to the applicant and applicant be declared as qualified and his name be placed at S. N. 16 in Annexure – A/5 with all consequential benefits.**
- ii. **That the respondents be further directed to fix qualifying marks as 36% for OBC category in the**

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internal competitive examination against 40% quota as fixed for remaining 60% quota from open market by quashing instructions of the respondents which deprived the applicant for qualifying marks as 36% and thereafter applicant be declared qualified by placing his name at S. No. 16 in Annexure A/5 with all consequential benefits."

2. The brief facts of the case are that the applicant was appointed as Telephone Operator on 08.02.1980 and became Senior Telecom Operative Assistant in the year 1996. The applicant being eligible, appeared in the Part I departmental examination to the cadre of Junior Account Officer in the year 2005 and after qualifying the said examination he appeared in Part II examination held on 04 – 06 January 2010 against 150 notified vacancies. The applicant absorbed in BSNL w.e.f. 01.10.2000 and no examination for Part II took place during the year 2005 – 2009. The applicant was awarded 57 marks out of 150 in paper V, whereas in all other papers he secured more than 60 marks which was a minimum requirement. Only 49 candidates were declared qualified out of 150 notified vacancies but the name of the applicant does not find place in the declared result. The applicant as well as Shri Banwari Lal Pareek obtained the copies of their answer sheets under RTI Act, 2005 and the applicant found that he was discriminated in awarding of marks. He applied for re-totaling / verification of marks but no change of marks was informed. It has been submitted that the applicant answered question No. 5 and 6 with the aid of book and correctly answered these questions, but he was awarded less marks whereas other candidates were awarded more marks for the

same answer. The applicant pointed out the said discrimination vide his letter dated 16.09.2010 but his request was rejected on the ground that re-evaluation is not permissible. It has further been contended that the respondents remained in practice to review the result from time to time and also reviewed the result of failed SC/ST candidates who appeared alongwith applicant and declared them qualified. The applicant being an OBC candidate prayed for lowering the qualifying marks as 36% at par with the SC/ST candidates and declaring him qualified and selected in the said examination.

3. In the counter reply filed on behalf of the respondents it has been submitted that the applicant appeared in JAO Part I (Screening Test) held on 27.05.2007 and declared qualified but he could not qualify JAO Part II Internal Competitive Examination against 40% quota held on 04 – 06 January, 2010. It has been submitted that according to scheme / syllabus of the examination, the required minimum pass percentage (except SC/ST/Physically Handicapped) was 40% in each subject and 45% in aggregate provided that a minimum of 40% is also secured separately in the practical papers to be answered with the aid of the books. The minimum qualifying marks for SC/ST/Physically Handicapped candidates were 33% in each subject and 38% in aggregate and no special consideration is provided to OBC candidates in the departmental examination. Revaluation of answer scripts is not permissible in any case or under any circumstances and the



applicant has been informed accordingly. On the request of the applicant he was provided copies of answer scripts of paper V and his totaling / verification of marks was also done but no discrepancy was found. As the applicant could not secure 40% qualifying marks in paper V in the said examination, he was not declared qualified in the said examination.

4. Heard Shri C.B. Sharma learned counsel for the applicant and Shri Neeraj Batra learned counsel for the respondents and perused the entire record.

5. Learned counsel for the applicant has confined his arguments only on two counts. Firstly, it has been contended that the applicant was discriminated in awarding the marks and revaluation of his marks has wrongly been refused. Secondly, the applicant being an OBC candidate should also be given same grace marks as has been made admissible to SC/ST candidates.

6. As regards his first argument it has been argued on behalf of the respondents that as per Appendix 37 of P&T Manual Vol. IV, the revaluation of answer scripts is not permissible in any case or under any circumstances. It has been submitted that there was no discrimination in awarding the marks in paper V which was to be answered with the aid of books. The answer books of the candidates were checked by the examiner as per key supplied by the paper setter. There is no scope of deliberate lower marking by



the examiners in the case of some selective candidates. The totaling and verification of marks were done as admissible under the rules. Learned counsel for the respondents also relied on a decision of Hon'ble Uttanchal High Court delivered in **Km. Sneha Baisora Vs. State of Uttranchal** reported in **2003 (53) AIR 96**, in which it has been held as under:

"The High Court cannot step into the shoes of an expert body and examine the answer books or reevaluate the marks given in the answer books on its own. The selection was made on all India basis in which only 222 candidates are said to have been selected. Mere reevaluation of answer books of three or four candidates would not be proper for the purpose of taking a decision on the question whether the evaluation of marks given to all the candidates have been rightly done or not. If that exercise is to be done then the answered books of the entire candidates who have appeared in the examination must be evaluated. This court declines to take such an action as this court will not step into the shoes of an expert body. Moreover all the 222 candidates have been declared successful, hence no question of reevaluation of few of them only."

7. Learned counsel for the respondents has also relied on a decision of Hon'ble Andhra Pradesh High Court delivered on 18.03.2008 in **WP No. 26059/2007 – Mohd. Mahboob Ali and Ors Vs. General Manager Telecom** in which it has been held as under:

"The request of the petitioners for revaluation of the answer scripts of paper I could have been acceded to, if only there exists a provision, in the relevant rules. Time and again, the Hon'ble Supreme Court held that revaluation of an answer script in an examination can be undertaken, only when there is a provision of the same. When no such facility is provided for under the relevant rules, this court cannot compel the respondents, to undertake the revaluation."

8. Thus in view of the decision of Hon'ble Uttrakhand High Court and Hon'ble Andhra Pradesh High Court, as there is no provision of

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revaluation of answer scripts in the relevant rules, no direction for revaluation of answer scripts could be issued by the Tribunal.

9. As regards second argument, there seems legal force in the contention of learned counsel for the applicant. It is an admitted fact that the required minimum pass percentage was 40% in each subject and 45% in aggregate, provided a minimum 40% in practical papers, which are to be answered with the aid of books. It was also provided that minimum qualifying marks for SC/ST/Physically handicapped candidates were 33% in each subject and 38% in aggregate but there was no consideration for OBC and other category of candidates in so far as departmental examination is concerned.

10. It has been submitted on behalf of respondents that review of result for failed SC/ST candidates of JAO Part II examination was carried out in accordance with the instructions contained in BSNL Headquarters' letter dated 08.01.2007 (Annexure R/8) and clarification letter dated 08.07.2010 (Annexure R/9). The letter dated 08.01.2007 reads as under:

**"Examination Main
No. 10-4/2006-DE
Bharat Sanchar Nigam Limited
Corporate Office
(A Govt. of India Enterprise)
"A" Wing, 9th Floor, Stateman House
Barakhamba Road, New Delhi - 110001
Dated: 08.01.2007**

**To,
All Heads of Telecom Circles, BSNL**

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**Heads of Telephones Distt, Chennai/Kolkata,
Chief General Manager, Mtco.; NTR, New Delhi.**

**Subject: Review of results of failed SC/ST candidates of
JAO Part II Examination under old (DoT) syllabus to be
held in the month of March, 2006 and next JAO Part II
Examination to be held after conduct Screening Test –
regarding.**

Sir,

**I am directed to state that the issues relating to
review of results of failed SC/ST candidates with respect
to the above two examinations have been examined in
detail and the following have been decided with the
approval of the competent authority :**

- a. In case number of vacancies announced for SC/ST
category are filled by candidates as per the
minimum percentage laid down for the examination
there is no need for review of result of failed SC/ST
candidates.**
- b. In case number of SC/ST vacancies announced for
the circle are not filled by the candidates as per the
minimum percentage and candidates have failed
only for want of aggregate marks, then such
candidates may be given grace marks to the extent
of unfilled vacancies in their respective categories.
However, to maintain uniformity among the
recipients of grace marks for the purpose of
determining inter-se-seniority, the maximum number
of grace marks that are required to be given to any
candidate will be given to all other candidates who
need some grace marks.**
- c. In case of candidates, who failed in only one of the
subjects, result may be reviewed in following order
of seniority.
 - i. Firstly, the result of those candidates who failed in
subject III i.e. Civil Works Accounts Rules and
Procedures only, may be reviewed by giving
grace marks of upto 5 which is further subject to
extent of unfilled vacancies in respective
categories i.e. in case unfilled vacancies are
filled by giving grace of 4 marks in subject III,
then further relaxation of 5 marks need not be
given in further review of the result need not be
done. However, to maintain uniformity amongst
the recipients of grace marks for the purpose of
determining inter-se-seniority, the maximum
number of grace marks that are required to be****

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given to any candidate will be given to all other candidates who need some grace marks.

ii. In case after exhausting the above steps, still certain vacancies are unfilled in SC/ST category the result of those candidates who failed in subject II i.e. Telecom Accounts II (Works) only the review by giving grace of upto 5 marks, (without insisting upon a pass in practical) which is further subject to the extent of unfilled vacancies in respective categories i.e. in case unfilled vacancies are filled by giving grace of 4 marks in subject II, then further relaxation of 5 marks need not be given and further review of result need not be done. However, to maintain uniformity amongst the recipients of grace marks for the purpose of determining inter-se-seniority, the maximum number of grace marks that are required to be given to any candidate will be given to all other candidates who need some grace marks.

iii. In case after exhausting the above steps, still certain vacancies are unfilled in SC/ST category then the result of those candidates who failed in subject I i.e. Telecom Accounts I (Telecom Revenue) only, may be reviewed by giving grace of upto 5 marks, (without insisting upon a pass in practical) which is further subject to the extent of unfilled vacancies in respective categories i.e. in case unfilled vacancies are filled by giving grace of 4 marks in subject II, then further relaxation of 5 marks need not be given. However, to maintain uniformity amongst the recipients of grace marks for the purpose of determining inter-se-seniority, the maximum number of grace marks that are required to be given to any candidate will be given to all other candidates who need some grace marks.

d. Candidates who qualify according to the minimum percentage laid down for the examination will get seniority en-block above all those, who requires grace marks, irrespective of aggregate marks two groups on the basis of the aggregate marks obtained by them and they will be en-block junior to the candidates who qualify as per the minimum percentage laid down for the examination.

2. Doubts/clarification, if any, in regard to the above instructions may be referred to SEA, BSNL.C.O directly.

3. These instructions issue in supersession of earlier instructions issued vide letter No. 9/1D93-DE dt. 31st January 1993."

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11. Letter dated 08.07.2010 relates to the result of JAO Part II held in the year 2010 which provides that the instructions given vide letter dated 08.01.2007 are applicable to JAO Part II examination held in March, 2006 and next JAO Part II examination to be held after conduction of screening test.

12. It is an admitted fact that there is no provision in any statute or manual in respect of review of result for failed SC/ST candidates in JAO Part II internal competitive examination against 40% quota and only on the basis of a letter dated 08.01.2007/08.10.2010 received from BSNL Headquarter, grace marks to SC/ST candidates were awarded but no grace mark was provided to the candidates of other categories though several vacancies meant for other categories of candidates could not be filled in the said examination. From the perusal of BSNL letter dated 23.07.2010 (Annexure A/12) it is evident that 5 failed SC/ST candidates in JAO Part II (40% quota) examination held on 04 – 06 January, 2010 were declared qualified and selected after awarding grace marks upto

10. It is also an admitted fact that a notification for internal competitive examination against 40% departmental quota for fulfilling 150 vacancies was issued and only 49 candidates could qualify in the said examination and finally selected which shows that 101 vacancies are still lying vacant against 150 notified vacancies.



13. It is pertinent to mention here that reservation of SC/ST candidates in public appointment has been authorized under Article 16 (4), 4 (a) and & 4 (b) of Constitution of India and a ceiling limit of 50% has already been imposed to such appointments. Proviso to Article 335 also authorizes to make any provision in favour of members of SC/ST for relaxation in qualifying marks in any examination or lowering the standard of evaluation. In the case of **Indra Sawhney Vs. Union of India** reported in **AIR 1993 SC 477** Hon'ble Supreme Court has held as under:

"There is need to maintain a balance between reservation and efficiency and not only with reference to Scheduled Caste and Scheduled Tribes but also with reference to other backward classes. Since sacrifice of merit may have to be made for social justice."

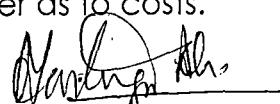
14. Thus it is clear from the bare perusal of Article 16 (4), 4 (a) and 4 (b) read with Article 335 of the Constitution of India that besides certain percentage of public posts may be reserved for SC/ST candidate and qualifying marks in any examination may be relaxed or standard of evaluation may be lowered but awarding of grace marks besides above relaxation to the candidates of SC/ST has not been permitted under the Constitution. If certain posts are unfilled against the notified vacancies after conducting the departmental examination due to not achieving the minimum qualifying marks by the candidates the department may take a decision to award grace marks to all the candidates but this concession cannot be restricted to SC/ST candidates only.

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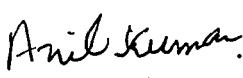
15. In view of the above we are of the considered opinion that in absence of any Constitution Authority, the candidates of SC/ST category could not get any extra benefit in any competitive examination in which their qualifying marks were already put lower than the other category of candidates. In case any SC/ST candidate is provided any grace mark the same benefit of awarding grace mark should also be provided to other categories of candidates because more than 100 out of 150 notified posts of JAOs could not be filled through the said examination. It would be a violation of Article 14 and 16 of Constitution of India if the same benefit of grace mark is not provided to the candidates other than SC/ST category.

16. Considering all the facts and circumstances of the case we are of the view that as 101 out of 150 notified vacancies left vacant, the respondents should consider not only the case of the applicant but also the cases of other candidates for awarding uniform grace mark in order to fill the unfilled vacancies of JAOs.

17. The OA is disposed of accordingly. The respondents are directed to take a policy decision to award uniform grace marks to all the candidates appeared in the said examination and declare the final result within 03 months from the date of receipt of this order. No order as to costs.



(Dr. Murtaza Ali)
Member – J.



(Anil Kumar)
Member – A