

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

Date of Order: 07.09.2012

TA No. 14/2009 (CWP No. 4796/2007) with
MA No. 273/2010

Mr. S.P. Sharma, counsel for applicant.
Mr. T.P. Sharma, counsel for respondents.

Both the learned counsels for parties have exchanged and filed their written submissions, and they want to submit their oral arguments.

At the request of learned counsels for the parties, put up the matter on 12.09.2012 for hearing.

Anil Kumar
(ANIL KUMAR)
MEMBER (A)

K.S. Rathore
(JUSTICE K.S. RATHORE)
MEMBER (J)

Kumawat

12-09-2012

T.A. No. 14/2009 (CWP No. 4796/2007) With
M.A. No. 273/2010

Mr. Raghunandan Sharma, proxy counsel for
Mr. S.P. Sharma, Counsel for applicants.
Mr. T.P. Sharma, Counsel for respondents.

Heard. T.A. ^{EMA.} disposed of by a
separate order on the separate-sheets
for the reasons recorded therein.

[Anil Kumar]
Member (A)

K.S. Rathore
[Justice K.S. Rathore]
Member (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 12th day of September, 2012

TRANSFERRED APPLICATION No.14/2009
(SB Civil Writ Petition No.4796/2007)

CORAM:

HON'BLE MR. JUSTICE K.S.RATHORE, MEMBER (JUDL.)
HON'BLE MR. ANIL KUMAR, MEMBER (ADMV.)

1. All India Graduate Engineers Telecom Officers Association having its Circle Branch of Rajasthan Circle through its Secretary, Pritam Singh s/o Shri Swaroop Singh r/o 57/III, Telecom Colony, Malviya Nagar, Jaipur
2. Praveen Choudhary s/o Shri P.P.Choudhary r/o III/165, Sanchar Vihar Colony, Malviya Nagar, Jaipur
3. Bhudev Sharan s/o R.S.Meena r/o III/60, Sanchar Vihar Colony, Malviya Nagar, Jaipur
4. Pawan Sharma s/o Shri P.C.Sharma r/o E-2/175, Chitrakoot, Jaipur
5. Amit Panjabi s/o Shri S.N.Panjabi r/o III/51, Sanchar Vihar Colony, Malviya Nagar, Jaipur

.. Applicants

(By Advocate : Shri Raghunandan Sharma proxy counsel for Shri S.P.Sharma)

Versus

1. Bharat Sanchar Nigam Ltd. through its Chairman-cum-Managing Director, Statesman House, Barakhamba Road, New Delhi.
2. The Chief General Manager, Telecommunication, Rajasthan Circle, Sardar Patel Marg, C-Scheme, Jaipur

3. The General Manager (Admn.) Office of the Chief General Manager, Telecommunication, Rajasthan Circle, Jaipur
4. The Asstt. General Manager (Personnel), Office of the Chief General Manager, Telecommunication, Rajasthan Circle, Jaipur
5. Arjun Ram Vishnoi, Junior Telecom Officer (WLL), Mahavir Nagar Telecom Colony, Barmer.
6. Chela Ram Keswani, Junior Telecom Officer (MM), Officer of the GMTD, Basant Vihar, Silver Jubilee Road, Sikar.
7. Krishan Lal Mathur, Junior Telecom Officer, Telephone Exchange, Bilara, Jodhpur.
8. Iliyash Ahmed, Junior Telecom Officer (Estimate), Office of the TDM, Jhalawar.

.....Respondents

(By Advocate : Shri Tej Prakash Sharma)

ORDER (ORAL)

The applicant association filed S.B. Civil Writ Petition No.4796/2007 before the Hon'ble High Court. The Hon'ble High Court vide order dated 6.3.2009 in view of the provisions of Section 29(2) of Administrative Tribunals Act, 1985 and notification dated 10.11.2008, transferred the Writ Petition to this Tribunal and parties were directed to remain present before the Tribunal on 30.3.2009. The applicant association has filed application through its authorized signatory who is Circle Secretary of the Rajasthan Branch of the Association.

2. The grievance raised by the applicant association pertains to its members working in Rajasthan Circle. The respondent Bharat



Sanchar Nigam Limited (BSNL) issued an advertisement calling for application for appointment of graduate engineers as Junior Telecom Officer (JTO) through all India competitive examination. The educational qualification was provided in para 3 of the said advertisement, according to which, the candidate was required to be in possession of the qualification of B.E./B.Tech. or equivalent degree from a recognized engineering college in specific discipline. Pursuant to the advertisement, the applicants submitted their application and after appearing in All India competitive examination, they were selected for appointment on the post of JTO as graduate engineers and sent for four weeks orientation programme as well as 10 weeks field training and it is only on successful completion of orientation programme and field training, the appointment order was issued in favour of the members of the applicant association.

3. As per JTO Recruitment Rules, 1996, 50% JTOs were recruited from direct recruitment quota through paper advertisement on the basis of qualification i.e. BE/B.Tech/B.Sc. The remaining 50% JTOs were recruited from the departmental candidates having different qualifications/posts and other service conditions as detailed in JTO Recruitment Rules, 1996. After successful completion of prescribed theoretical and practical training by the candidates, the seniority list was prepared on the basis of marks secured in the JTO training from both streams of recruitment (direct recruitee and departmental promotee candidates) for a particular year of recruitment. Further, as per JTO Recruitment Rules, 1999, the



recruitment of JTO was continued as per recruitment rules and cadre was placed as General Central Service Group-B non Ministerial vide schedule-I of Gazette Notification dated 1.9.1999.

4. As per these Recruitment Rules, 50% JTOs were recruited from direct quota through paper advertisement on the basis of qualification of B.E./B.Tech. in the prescribed discipline like Telecom, Electrical, Radio, Computer and Electronics through competitive examination. The remaining 50% JTOs were recruited through departmental competitive examination on the basis of qualification, post/cadre and service experience rendered in the department. The JTOs after prescribed departmental training from both the streams (direct and departmental) were kept in common gradation/seniority list for a particular year of recruitment. As per column-9 of Schedule-I, it was made clear that the age and educational qualification prescribed for direct recruits will not apply for the departmental promotees. All the JTOs working in DOT/BSNL, were notified as General Central Service Group-B Gazetted (non-ministerial cadre).

5. The BSNL issued notification for direct recruitment of approximately 4000 graduate engineer JTO on 30.11.2000 having qualification of B.E./B.Tech or equivalent in different disciplines. It is not disputed that the applicants applied for the same and appeared in the examination held in March, 2001 and selected for the post of JTO as per terms and condition of advertisement and after successful completion of training posted as JTO in the BSNL.



6. The applicant association by way of filing the present Transferred Application has claimed the following reliefs:-

- (i) issue an appropriate writ, order or direction in the nature thereof holding the action of the respondents to be illegal in merging the erstwhile junior Telecom Officer non-gazetted Group-C post in the amended post of Junior Telecom Officer (Gazetted Group-B post) and preparing common seniority list and assigning higher to the Junior Telecom Officers (Non-Gazetted Group-C post) and the seniority list so prepared be set aside accordingly.
- (ii) Issue an appropriate writ, order or direction in the nature thereof declaring the action of the respondents to be illegal in passing promotion order on the post of Junior Telecom Officer from retrospective date and assigning promotion orders prior to the appointment of the petitioner and having passed such promotion order subsequent to the appointment of the petitioners be declared as illegal and being the orders passed in violation of quota rules;
- (iii) Issue an appropriate writ, order or direction in the nature thereof declaring the promotion of the Junior Telecom Officers who are not possessing qualification as was amended in the year 1999 and 2001 and all those promotees who are having the qualification lesser than provided under the Rules of 1999 and 2001 be declared to be ineligible for promotion to the post of Junior Telecom Officers Gazetted Group-B post;
- (iv) Issue an appropriate writ, order or direction in the nature thereof keeping the petitioners having in

possession of the higher qualification like B.E./B.Tech. etc. separately looking to their appointment in a Gazetted Group-B post now taken as executive post with higher pay scale and thereby all those Junior telecom Officers having lesser qualification like Secondary, Senior Secondary etc. be treated on lower post, i.e. Non-Gazetted Group-C post and thereby unequals made as equals by the policy of the Government be declared as unconstitutional being violative of Article 14 and 16 of the Constitution of India;

- (v) Issue an appropriate writ order or direction in the nature thereof declaring the action of the respondents to be illegal and treating Junior Telecom Officers initially recruited or promoted in Non-Gazetted Group-C post to be eligible for their promotion to the post of Sub-Divisional Engineer and to permit them to appear in the limited departmental competitive examination to promote them based on seniority under challenge and such all candidates should be awarded promotion to the post of Sub-Divisional Engineer till they possess the required qualification of the post of Junior Telecom Officer Gazetted Group-B post and or promoted subsequent to the appointment of the petitioners only to the extent of quota meant for promotees; and
- (vi) Issue an appropriate writ, order or direction in the nature thereof declaring the action of the respondents to be illegal in upgrading the pay scale and the posting of Junior Telecom Engineers initially recruited in Non-Gazetted Group-C post to match the higher pay scale inasmuch as a candidate having not recruited for Gazetted Group-B post and



has not been promoted cannot be entitled for higher pay scale as given to the petitioners or alternatively the petitioner be given higher pay scale taking note of their qualification, their appointment on all India competitive examination basis and looking to the amendment whereby the post of Junior Telecom Officer has now been taken as a post in executive care. Suitable relief may kindly be granted to the petitioner.

Any other appropriate order or direction which this Hon'ble Court may consider just and proper in the facts and circumstances of the case may also kindly be passed in favour of the humble petitioners.

Cost of this writ petition may also kindly be awarded in favour of the petitioners. "

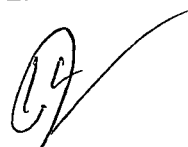
7. It is not disputed by the respective parties that respondents published rules for recruitment of Sub Divisional Engineer (Telecom). In those rules the number of posts as well as method of promotion etc. was provided. As per these rules, out of total posts, 75% posts of SDE (T) are filled by seniority cum fitness on the basis of common eligibility list prepared among both streams of JTOs i.e. direct recruits and departmental candidates. The rest 25% of the posts of SDE (T) are filled by Limited Departmental Competitive Examination amongst JTOs who have rendered for less than 3 years in the grade on first July of year of the vacancy.

8. The action of the respondents is challenged by the applicants on the ground that the respondents have ignored qualification of the applicants vis-à-vis JTOs earlier recruited which shows violation



of Article 14 and 16 of the Constitution of India. The applicants were recruited on the basis of all India competitive examination that too after acquiring qualification of B.E./B.Tech. etc., therefore, they cannot be kept at par with those candidates who are in possession of qualification of Secondary etc.

9. Further challenged on the ground that the respondents failed to consider the fact that the BSNL was created in the year 2000 and having formulated their own rules in the year 2001 and taking note of the posts of JTO as executive post, at least BSNL should not have given promotion from retrospective effect that too not only to ineligible persons but even to those who cannot be treated as JTO Gazetted Group-B posts to be given placement in seniority. Looking to the change in rules, JTOs should have been taken in two groups, those recruited in Gazetted Group-B post should have been continued in Gazetted Group-B post for avenue of promotion to Group-A and those appointed in non-gazetted Group-C post should have been continued as such with further promotion to the higher group. Thus merger of two separate posts merely for its nomenclature being the same shows total illegality in the action of the respondents and therefore, determination of seniority by adding JTO of Non-gazetted Group-C post while determining seniority of Gazetted Group-B post becomes illegal and all those who have been placed above the applicants are required to be ousted from the seniority list and consequently those candidates should not be allowed to compete or appear in the departmental examination meant for further promotion to the post of SDE.



10. The learned counsel appearing for the respondents referred Department of Personnel and Training letter dated 3.3.2008 which was forwarded to BSNL Corporate Office, New Delhi vide letter dated 5.5.2010 wherein in para-4 it is clearly provided that cases of seniority already decided with reference to any other interpretation of the term available as contained in OM dated 3.7.1986 need not be reopened and it is submitted that all the actions of the BSNL are based on the order passed by the Hon'ble High Court on 15.10.2008, It is further submitted that the seniority list dated 2.6.2010 is provisional and is prepared as per the prevalent rules on the subject. It is not disputed that all the applicants were ordered to be posted on 18.4.2002. The respondents published seniority list dated 6.2.2006 and 2.6.2010 (provisional) as per prevalent rules at that time on the subject. All the officials holding the post of JTO on regular basis and selected for the post of JTO as per recruitment rules applicable at that time against the vacancies of the respective year in erstwhile DOT/DTS/DTO were deemed to be appointed as JTO in the BSNL and rank senior after formation of BSNL on 1.10.2000. Thus, the seniority and right of promotion of applicants alongwith similar cadre JTOs is well protected within terms of JTO Recruitment Rules against which they were recruited. Since the said examination has already taken place and the entire process of the examination has been completed, and the Group-C JTOs have been given benefit above the applicants, they would become entitled for benefits prior to the applicant and would



become eligible for further promotion to the post of SDE (T) prior to the applicants.

11. We have heard the rival submissions of the respective parties and carefully perused the recruitment Rules of JTO, 1996 and rules of 2001 and also perused the provisional gradation list. We have also considered the fact that the post of JTO in the Department of Telecom was classified as General Civil Services Group 'C' Non-Gazetted & 'non-ministerial' upto 31.8.1999 and recruitment in this cadre was governed by the Recruitment Rules of 1996 which were duly published in the Gazetted of India before implementation. The cadre of JTO in the then DOT was classified as Group-B Gazetted non ministerial w.e.f. 1.9.1999 vide Govt. of India, Ministry of Communicaiton, Department of Telecom letter dated 21.12.1999. Accordingly, revised recruitment rules were issued on 6.9.1999 after due publication in the Gazette of India on 31.8.1999 and on formation of BSNL w.e.f. 1.10.2000 from the Department of Telecom by conversion into corporation, Public Sector Enterprises under the Ministry of Communicaiton, Government of India, all the employees of the then DOT including the JTOs recruited/appointed were placed on deemed deputation in BSNL from a Govt. of India department for a period of five years or till absorption in BSNL whichever is earlier. As per the policy of merger of a Govt. department into Corporation, the employees absorbed in that Corporation from parent Government Department will rank en-block senior to those recruited after formation of Corporation in the respective grade/cadre.



12. The cadre of JTO is retained in the BSNL as it was in the Department of Telecom before formation of the BSNL having same duties, responsibilities and pay scales. The cadres equivalent to JTO and above including JTO are classified as executive in the company. Thereafter company issued its own recruitment rules of JTO known as JTO Recruitment Rules 2001. As per JTO Recruitment Rules, 2001 all officials holding the posts of JTO on regular basis in the erstwhile DOT/DTS/DTO before commencement of these rules and those have been absorbed in BSNL shall be deemed to have been appointed as JTO in BSNL.

13. Whereas the applicants are recruited by the BSNL against the vacancies notified for the year 2001. They have been given appropriate seniority in the gradation list of JTO of Rajasthan Telecom Circle circulated vide CGMT Jaipur memo dated 6.2.2006 for all the JTOs recruited upto the year 2004 as per rules applicable for inter-se seniority.

14. It is not disputed that there are two modes of recruit for the post of JTO in the then DOT/Present BSNL, as per the Recruitment Rules of 1996, 1999 and 2001. 50% of posts to be filled up by way of direct recruitment having prescribed educational qualification is known as 'direct recruitment quota' and 50% of posts by promotion through Limited Departmental Competitive Examination from amongst specified subordinate Group-c employees having 10 years regular service in the post of Group-c besides a defined educational qualification applicable from time to time which is known as 'Promotional Recruitment quota' or 'Departmental



quota'. Accordingly gradation list (seniority list) of JTO recruited upto 2004 (including those absorbed in BSNL from DOT) of Rajasthan Telecom Circle of BSNL was prepared and circulated vide CGMT Rajasthan letter dated 6.2.2006 and all the 5 applicants are included in this gradation list at SI.No.588,649, 698, 600 and 606 against the vacancies of the year 2001 depending upon their marks obtained in the training. Admittedly, local level officiating promotion of JTOs is purely on temporary and need basis to the cadre of SDE (T) against the vacancies of circle for not more than 180 days is given at Circle level as per gradation list of circle on seniority-cum-fitness basis. Regular promotion to the cadre of SDE(T) is given at all India level as per recruitment rules of SDE (T) from the eligibility list of JTO prepared at corporate level against seniority-cum-fitness quota and through departmental limited competitive examination of eligible JTOs having regular 3 years service as JTO against competitive quota and applicants are also entitled for promotion accordingly. Thus, the seniority and right of promotion of the applicants along with similar category of JTO is well protected within the frame work of JTO Recruitment Rules against which they are recruited.

15. In view of the aforesaid discussion, as observed hereinabove, we are of the view that no interference is required in this case as has been claimed by the applicants. Consequently, the OA being bereft of merit fails and the same is hereby dismissed with no order as to costs.



16. In view of the order passed in the OA, no order is required to be passed in MA No.273/2010, which stands disposed of accordingly.

Anil Kumar

(ANIL KUMAR)
Admv. Member

K.S. Rathore

(JUSTICE K.S.RATHORE)
Judl. Member

R/