

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 19th day of March, 2009

ORIGINAL APPLICATION No.6/2000

CORAM:

HON'BLE MR.M.L.CHAUHAN, MEMBER (JUDICIAL)
HON'BLE MR. B.L.KHATRI, MEMBER (ADMINISTRATIVE)

Bhusan Lal Bhatt (Staff No.4040)
s/o late Shri J.L.Bhatt,
working as Telecom Techincal Assistant
in the office of the Principal G.M.T.D.,
Jaipur, r/o III/189, Telecom Colony,
Malviya Nagar, Jaipur

.. Applicant

By Advocate: Shri V.B.Srivastava

Versus

1. Union of India,
Through Secretary,
Ministry of Communication,
Department of Telecom.,
Sanchar Bhawan,
New Delhi.
2. The Chief General Manager,
G.M.T.D.,
M.I.Road,
Jaipur
3. The Principal G.M.T.D.,
M.I.Road, Jaipur
4. The Chief General Manager Telecom,
J&K Circle, Sri Nagar at Jammu,
Telephone Exchange Road,
Jammu.

... Respondents

By Advocate: Shri N.S.Yadav

O R D E R

Per Hon'ble Mr. M.L.Chauhan

This case has been remitted by the Hon'ble High Court when the judgment/common order passed by this Tribunal in OA No.6/2000 was challenged before the High court by the present applicant and the Hon'ble High Court while affirming the judgment rendered by this Tribunal, however, remitted this case to this Tribunal on the ground that case of the applicant is solely different than the applicants in other OAs which were disposed of by common order. As such, we are proceeding to decide this OA afresh.

2. Briefly stated, facts of the case are that the applicant after acquiring B.Sc. qualification joined Telecom Department as Technician and was initially posted in Jammu and Kashmir Circle at Srinagar on 8.2.1979. Since in the year 1990 situation of the Kashmir Valley was grave, as such, keeping in view the prevailing situation in Kashmir Valley certain officials requested for being accommodated outside the Kashmir Valley. Accordingly, the Government of India, Ministry of Communication vide order dated 7th April, 1990 (Ann.1) decided to accommodate such officials as far as possible at the stations requested by them for the time being and until further orders. As can be seen from Para 8 of this order, it was also decided that in case vacancies are not available at the

Stations, Circle/District concerned, arrangement to accommodate the officials by diverting the vacancies available elsewhere in the Circle/Units be made by the Head of the Circle/District and Administrative Units under their control. Pursuant to the said policy decision, the applicant was transferred to Rajasthan Circle where he is continuing from 7th April, 1990. Keeping in view the modern technology and fast development in Bharat Sanchar Nigam Limited (BSNL) decision was taken to introduce restructuring of various cadres and policy was framed vide letter May 17, 1994 by Telecom Department thereby inviting options from the prospective officials seeking their options under the restructured cadre and from those volunteers who forms part of Walk-in-Group. Since the applicant was in Walk-in-Group category, he was to be granted OTBP/BCR scale after completing formalities such as undergoing training etc.

The grievance of the applicant in this case is that although he was granted ad-hoc promotion as Telecom Technical Assistant (TTA) w.e.f. 1.1.1994 by extending the benefit of restructuring scheme but he was ^{sent} for training for the post of TTA alongwith other eligible official who were working in the Rajasthan Circle at the first instance. For that purpose, the applicant has placed on record select panel Ann.3 where name of the applicant find mention at the bottom at Sl.No.55. According to the applicant, in case he

could have been sent for training pursuant to this list, in that eventuality, he would have been entitled for promotion to the post of Junior Telecom Officer (JTO). In other words, according to the applicant, in order to become eligible for promotion to the post of JTO and for treating a person regular TTA, completion of training is necessary consequences. However, the applicant was sent for training for the post of TTA pursuant to the select panel prepared on 2.6.99 (Ann.5) whereby name of the applicant find mention at Sl.No.4 and he has been shown to be optee of the year 1994. Admittedly, the applicant completed training on 10.12.99 i.e. after 31.8.1999 when the persons who have already completed training of TTA pursuant to Ann.3 were promoted as JTO. Thus, according to the applicant because of inaction on the part of the respondents, his right for promotion to the post of JTO which has accrued on 31.8.1999 has been denied and by way of this OA, the applicant has prayed that respondents may be directed to allow and permit the applicant to appear in the second screening test for the post of JTO which is scheduled to be held on 18.10.2000 or any other date which is fixed by the respondent Department for screening test of JTOs in future and that appropriate direction may be issued to the respondents to withdraw their orders passed vide Ann.A1 and A-1A by which eligibility for appearing in the examination was wrongly interpreted. Although in

the relief clause the applicant is praying that he be permitted to appear in the selection test for the post of JTO scheduled to be held on 8.1.2000 onwards but as can be seen from the averments made in the OA more particularly from para 4.5, the applicant has also raised grievance regarding the screening test conducted in the month of January, 1995 in which the applicant did not appear and the screening test to be held on 23rd May, 1999 where the applicant has applied to appear in the same screening test but he was not held eligible but subsequently, eligibility criteria was relaxed vide letter dated 12th March, 1999 on the basis of the interim order passed by the Principal Bench allowing such TTA to appear in the 35% quota of screening test who have not completed six years service in the cadre of TTA.

3. Notice of this application was given to the respondents. The respondents have filed reply. According to the respondents, the applicant does not fulfill the initial condition to appear in the screening test of JTO as only those regular TTAs who have completed six years service as regular TTA were eligible to appear, which condition of six years of regular service was relaxed vide communication dated 18.11.99 subject to outcome of the OA filed before different benches of the Central Administrative Tribunal. Thus, according to the respondents TTAs who

were working on 31.8.1999 were permitted provisionally to appear in the screening of JTO. According to the respondents, the applicant was not eligible for screening test of JTO for the reason that he was not working as TTA and he was given officiating promotion in the cadre of TTA w.e.f. 1.1.1994. The stand taken by the respondents before the Hon'ble High Court in writ petition, copy of which has been placed on record, is that placing the applicant from Technician category to restructured cadre of TTA is not a promotion. He was placed in TTA w.e.f. 1.1.1994 on humanity basis. Thus, according to the respondents simply because he has been placed in a higher grade does not entitle him for promotion to higher post of JTO as he is not entitle to hold the post of JTO under this Circle and he is having his lien in Jammu and Kashmir Circle. Thus, according to the respondents, the applicant is not entitled for screening for promotion to the post of JTO and is entitled only for placement in TTA under Rajasthan Circle which has been done. According to the respondents, the applicant applied for transfer to this Circle under Para 38 of P&T Manual Vol.IV on 21.5.2002 but the same has not been granted till now (Ann.R1).

4. The applicant has filed rejoinder to the writ petition before the Hon'ble High Court. Along with rejoinder the applicant has placed on record order No.

250-9/2002 Pers-III dated 18.11.2002 signed by the Assistant Director General (Pers-III) which contained a list of the Kashmiri migrant officials posted at the relevant time in different Circles of BSNL where name of the applicant find mention at Sl.No.10 and his designation has been shown as TTA posted under GMTD, Jaipur, Rajasthan. The applicant has also placed on record, copy of the order dated 3.7.2004 (Ann.13) on record which shows that the competent authority has accorded approval for inter-circle transfer under Para 38 of P&T Manual Vol.IV in the cadre of Technician of the applicant which fact shows that the applicant was only absorbed in the Rajasthan Circle only w.e.f. 3.7.2004 in terms of the conditions stipulated in the said letter.

5. We have heard the learned counsel for the parties and gone through the material placed on record.

6. From the facts, as stated above, it is quite evident that the applicant while working as Technician under Jammu and Kashmir Circle was transferred to Rajasthan Circle in terms of the Government of India policy decision as circulated vide order dated 17th April, 1990 (Ann.1). From perusal of this order, it is evident that on account of prevailing situation in the Kashmir Valley certain officials who have requested for accommodating outside Kashmir Valley may be

accommodated even if the vacancies are not available at the Station/Circle/District concerned as per their option as far as possible. As can be seen from para 3 of the said order, it is clear that these officials may be required to serve in the Kashmir Valley as per the exigency of service. Para 2 of the aforesaid order makes it clear that posting of such persons was for time being and until further orders. Pursuant to such policy decision, the applicant was transferred as Technician in PGMT, BSNL, Jaipur, Rajasthan Circle. From the material placed on record, it is evident that case of such officials who were posted in different circles being Kashmiri migrants, a decision was taken at the Government level vide order No. 250-9/2002-Pers.III dated 18.11.2002 for permanent absorption of such employees presently posted in different Circles in BSNL on temporary deputation at the same place under Rule 38 of P&T Manual Vol.IV after filling up prescribed proforma of Rule 38 duly signed by the controlling officer and declaration of the official concerned. Pursuant to the aforesaid policy decision, the applicant was posted on transfer under PGMT, Jaipur vide letter dated 3.7.2004 (Ann.A13). At this stage, it will be useful to quote relevant portion of the order, which thus reads:-

"In pursuance of BSNL Corporate office letter No. 250/9/2002-Pers.III dated 18.11.2002 approval of the competent authority is hereby accorded for inter-circle transfer under Para-38 of P&T Man Vol.IV, in the cadre of Technician of the below

official belonging to the establishment of GMT SK (J&K Circle) to PGMT BSNL, Jaipur (Rajasthan Circle).

Sl. No.	NAME OF OFFICIAL	PRESENT POSTING UNDER	POSTING ON TRANSFER UNDER
1.	Sh.B.L.Bhatt Technician	PGMT, Jaipur (presently on deputation)	PGMT, Jaipur

This is subject to following terms and conditions:-

1. He will not be entitled to any TA/TP except actual journey time.
2. That his seniority in the new unit will be fixed strictly in accordance with the provisions under Rule 38 of P&T Man Vol.IV as amended from time to time.
3. That on his transfer to new unit he will be eligible for confirmation only according to his new position in the G>List of that unit.
4. That he will not claim repatriation to his old unit.
5. that he will have to forego all claims for confirmation in his old unit even if permanent vacancies were available because of retrospective permanency of posts or for any reasons and he was entitled to confirmation against such a post in the old unit.
6. In addition to the usual declaration required under the provision of Rule 38 of P&T Man Vol.IV a declaration to the effect that he will not claim past services in the present unit for appearing in any departmental examination may also be obtained and recorded in the service book of the official.
7. A declaration agreeing to all the conditions as prescribed in the rules and the other conditions as specified be obtained from the official before striking him off from the present unit and send to the new unit for office record under intimation to this office.
8. Before relieving the official, it may please be ensured that no disciplinary case is pending/contemplated against the official in the office PGMT Jaipur.
10. The official is transferred to PGMT Jaipur Rajasthan Circle against the available post of Technician at Jaipur as conveyed by CGMT

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Rajasthan Circle Jaipur vide letter No. STA/8-11/TOA.../incoming/128 dated 21.7.03.

11. The Official is struck Off from the strength of GMT Srinagar (J&K Circle)."

Thus, as can be seen from the order dated 3.7.2004 as reproduced above, it is quite evident that the applicant was treated as Technician on deputation basis under PGMT, Jaipur since his posting in the aforesaid Circle in the year 1990 till he was permanently absorbed on transfer basis vide order dated 3.7.2004. From the aforesaid order, it is also clear that seniority of the applicant will to be fixed in accordance with provisions under Rule-38 of the P&T Manual Vol.IV and he will be entitled for confirmation as per new position in the Gradation/Seniority list. Further, his claim for repatriation in the old unit was also forfeited and as per condition No.10 the applicant was transferred to Rajasthan Circle against the available post of Technician at Jaipur which post was available in Jaipur circle as conveyed vide letter dated 21.7.2003. Thus, from perusal of the aforesaid letter, it is quite evident that the applicant became employee of the Rajasthan Circle only in the year 2004. The respondents have also placed on record, copy of the recruitment rules to the post of JTO. As can be seen from column 11 which deals with method of recruitment to the post of JTO whether recruitment by way of direct recruitment or by way of promotion or *deputation/transfer*, it has been stipulated that 50%

posts have to be filled in by direct recruitment through competitive examination and 50% by promotion/transfer as indicated under column 12 of the schedule. Here we are concerned with filling up of 50% posts of JTO by promotion/transfer as indicated under column 12 of the schedule. Column 12 of the schedule provides that against aforesaid 50% quota, 50% posts have to be filled in by promotion from the departmental candidates i.e. 15% by promotion of departmental candidates through a competitive examination and 35% by promotion/transfer of Transmission Assistant/Wireless Operator/Auto Exchange Assistants/Phone Inspectors/ Teleco. Technical Assistants. Admittedly, at the relevant time, the applicant was not working as TTA in Rajasthan Circle, thus, entitling him for promotion to the post of JTO against 35% quota. As can be seen from the letter dated 3.7.2004, relevant portion of which has been extracted above, the applicant was treated as Technician on deputation basis since his transfer to Rajasthan circle in the year 1990 and he was also absorbed on transfer basis under PGMT, Jaipur in the capacity of Technician vide order dated 3.7.2004. Thus, the applicant became member of PGMT, BSNL, Jaipur (Rajasthan Circle) only w.e.f. 3.7.2004 that too in the cadre of Technician which is not feeder cadre for promotion to the post of JTO. According to us, granting of scale of TTA on account of

restructuring of the post cannot be termed as promotion in the cadre of TTA which scale has been given to the applicant on humanitarian basis w.e.f. 1.1.1994.

Further, as can be seen from order dated 1.2.1996 (Ann.4) the applicant alongwith other persons were considered for promotion as TTA on ad-hoc basis only from 1.1.1994. As can be seen from order dated 3.7.2004 (Ann.A13) which order has been placed by the applicant on record alongwith the rejoinder filed to the writ petition before the Hon'ble High Court, the applicant has been absorbed on transfer basis as Technician and not as TTA, the validity of this order is not under challenge before this Tribunal.

7. Thus, viewing the matter from any angle, it is clear that the applicant was not regular TTA when the selection was conducted by the respondents for the post of JTO in the year 1995 and 2000 onwards and, as such, was not eligible for promotion to the post of JTO. The applicant was permanently absorbed on 3.7.2004 that too in the category of Technician, thus, he became member of the Rajasthan Circle of PGMT only in the year 2004. Thus, he cannot be treated to be departmental candidate for the purpose of promotion to the post of JTO as per recruitment rules. As already stated above, even if for arguments sake, it is to be assumed that the applicant while serving in PGMT,

Jaipur Rajasthan Circle on deputation basis has to be considered as departmental candidate for the purpose of promotion in the Rajasthan Circle, even then the applicant could not have been considered for selection in the year 1995 and 2000 on the ground that the applicant at the relevant time was only a Technician. He was granted benefit of restructuring scheme in the cadre of TTA purely on ad-hoc basis and the respondents have categorically stated that granting of higher pay scale of TTA on ad-hoc basis will not confer the applicant status of TTA as granting of pay scale of the higher post is simply placement in restructured cadre and is not promotion as per the departmental rules.

8. The learned counsel for the applicant vehemently argued that the applicant was never put to notice that he is not an employee of the Rajasthan Circle, as such, his case cannot be considered for promotion to the post of JTO. We are of the view that such contention of the applicant deserve out right rejection. As can be seen from the material placed on record and in view of the policy decision taken by the Government of India from time to time and option exercised by the applicant, it was clear that the applicant was transferred to the Rajasthan Circle purely on temporary basis in view of the prevailing situation in Kashmir Valley in the year 1990. Not only

that he has also exercised his option for his regular absorption in Rajasthan Circle in the year 2002 and claiming his seniority under Rule 38 of P&T Manual Vol.IV. It is the applicant who from very inception was aware that he has been temporarily transferred to Rajasthan Circle and conditions stipulated in this absorption order also makes it clear that applicant was to be assigned seniority under Rule 38 of the P&T Manual Vol.IV from the date of his absorption in the respective cadre. Thus, it was not the incumbent upon the respondents to inform the applicant that he is not eligible for promotion to the post of JTO as he has his lien in J&K circle.

9. Before parting with the matter, we may also notice the new point taken by the applicant in the rejoinder for the first time before the Hon'ble High Court to the effect that the respondents have adopted pick and choose policy, inasmuch as, one Shri R.K.Rana was promoted as JTO who was also a Kashmiri migrant employee of the year 1990 like the applicant but no such benefit has been extended to the applicant. We are of the view that such a plea taken by the applicant in the rejoinder for the first time that too before the Hon'ble High Court when the judgment of this Tribunal was challenged cannot be entertained. It was permissible for the applicant either to amend the writ petition before the Hon'ble High Court thereby

incorporating such plea so that respondents could have given opportunity to defend the case. Be that as it may, in order to satisfy our judicial conscious, we directed the learned counsel for the respondents to apprise this Tribunal about this aspect of the matter. When the matter was listed on 15.9.2008, the learned counsel for the respondents submits that no doubt, the applicant was Kashmiri migrant like that of Shri R.K.Rana but Shri Rana was given promotion in different quota, as such, case of the applicant cannot be equated with that of Shri Rana. On the basis of the submissions made by the learned counsel for the respondents, we directed the respondents to file additional affidavit. In compliance of the aforesaid directions, the respondents have filed additional reply. In the reply, the respondents have categorically stated that Shri R.K.Rana appeared in the competitive examination held on 10 and 11 February, 1996 for the vacancies of the year 1993 against 15% of promotion quota of departmental candidates through the competitive examination and on selection in this competitive examination, he was promoted as JTO vide Ann.R1 alongwith 11 persons whereas the applicant appeared against 35% post of JTO and since he was not allowed in the screening test of the post of JTO, as such, according to the respondents, promotion of Shri R.K.Rana cannot be equated with the claim of the applicant as the

applicant is claiming promotion against 35% quota and Shri Rana was considered against 15% quota for departmental candidates through competitive examination. Besides it, the respondents have stated that the applicant submitted his request for absorption in Rajasthan Circle in the year 2002. Thus, on the relevant date, he was not regular employee of Rajasthan Circle, so he was not entitled for promotion to the post of JTO under 35% quota.

10. In view of what has been stated above, we are of the view that the applicant has not made out a case for grant of relief. Accordingly, the OA is dismissed with no order as to costs.

11. In view of dismissal of the OA, no order is required to be passed in MA No.151/2008 and 414/2008 which are disposed of accordingly.



(B.L.KHATRI)

Admv. Member



(M.L.CHAUHAN)

Judl.Member

R/