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**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

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ORIGINAL APPLICATION NO.060/00489/2014
Chandigarh, this the 16th Day of April, 2015

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CORAM: HON'BLE MRS. RAJWANT SANDHU, MEMBER (A).
HON'BLE DR. BRAHM A. AGRAWAL, MEMBER (J).

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1. Gurbinder Singh, HRMS No.200204313, S/O S. Balbir Singh, working as Telecom Technical Assistant, O/O SDOP-III, BSNL, Sector 34, Chandigarh.
2. Suresh Kumar, HRMS No.200202721, S/o Sh. Anand Kumar, working as Telecom Technical Assistant, O/O SDOP Group, Dhanaula, BSNL, Sangrur.
3. Vikas Kahol, HRMS No.2001000049, S/O Sh. Paras Ram Kahol, working as Telecom Technical Assistant, O/O SDE, CSE, BSNL, Hoshiarpur.
4. Amrit Pal Singh, HRMS No.200200637 S/O S. Harjinder Singh, working as Telecom Technical Assistant O/O SDOP, BSNL, Hoshiarpur.
5. Amrit Mohan, HRMS No. 200200654, S/O Sh. Harmesh Lal, working as Telecom Technical Assistant O/O SDOP, BSNL, Hoshiarpur.
6. Vinod Kumar, HRMS No.200200442, S/O Sh. Ranjit Singh, working as Telecom Technical Assistant O/O SDOP, Rural, Outdoor, BSNL, Hoshiarpur.
7. Raminder Kaur, HRMS No. 200202979, D/O S. Sukhdev Singh, Telecom Technical Assistant O/O SDOP Planning, BSNL, Sector 34, Chandigarh.
8. Varinder Kumar Maurya, HRMS No.200304400 S/O Sh. Sant Ram Maurya, working as Telecom Technical Assistant O/O SDE, OFC-II, BSNL, Sector 34, Chandigarh.
9. Manish Kumar, HRMS No. 200201805, S/O Sh. Surinder Pal, working as Telecom Technical Assistant O/O SDO Group, Kotkapura BSNL, Ferozpur.
10. Ravinder Singh, HRMS No.200201886, S/O S. Kulwant Singh, working as Telecom Technical Assistant O/O SDOP, Outdoor, BSNL, Ferozepur Cantt.

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11. Sevanand Mourya, HRMS No. 200201890, S/O Sh. Basawan Mourya, working as Telecom Technical Assistant O/O SDOP, Zira BSNL, Ferozpur.
 12. Gurbrinder Singh, HRMS No. 200202070, S/O S. Jaswant Singh, working as Telecom Technical Assistant O/O SDOP Civil-II, BSNL, Amritsar.
 13. Gajender Kumar Verma, HRMS No. 200201162, S/O Sh. Udal Ram Verma, working as Telecom Technical Assistant O/O SDOP, BSNL, Tarntaran Road, Amritsar.

...APPLICANTS

Versus

1. Bharat Sanchar Nigam Limited, Corporate Office, 4th Floor, Bharat Sanchar Bhawan, Janpath, New Delhi-110001, through its Chairman-cum-Managing Director.
2. Chief General Manager Telecom, Bharat Sanchar Nigam Limited, Punjab Telecom Circle, Sector 34-A, Chandigarh.

...RESPONDENTS

Present: Sh. R.K. Sharma, counsel for the applicants.
Sh. D.R. Sharma, counsel for the respondents.

ORDER

BY HON'BLE MRS. RAJWANT SANDHU, MEMBER (A)

1. This O.A. has been filed under Section 19 of the Administrative Tribunals Act, 1985, seeking the following relief:

"8 (i) Quash final answer key (Annexure A-1 dated 01.02.2014) for JTO 35% and 15% Limited Internal Competitive Examination for promotion to the post of Junior Telecom Officer in terms of Recruitment Rules, 2001 issued by Respondent No.2 to the extent whereby without dealing with the objections raised by the affected candidates including the applicants qua the wrong questions or wrong options and inspite of giving Grace marks to the extent either the questions were faulty or the answer were wrong, the total marks of both the parts of the examination i.e.

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Part-A (50 marks) and Part-B (100 marks) i.e. 150 marks have been reduced from 150 to 133, thus causing prejudice to the candidates who had attempted those questions and were entitled to Grace marks and if these were granted, as granted in other circles, they would have qualified the test by acquiring minimum qualifying marks i.e. 30% in each of the two papers and aggregate of 37% for General Category and 23% in each of the two papers and aggregate 30% for Reserved Category and they would have come in the final merit list particularly when number of vacancies declared was 520 and only 386 candidates have qualified and thus the availability of vacancies was no dispute, as such, applicants having given answer to that extent, with directions to the respondents to follow the Provisional Key answers and directing the respondents to follow the same criteria, as has been followed in other Circles viz. U.P. West, U.P. East, Kerala, Chennai, Madhya Pradesh, Maharashtra, Gujarat, Karnataka, Rajasthan etc., including constitution of fresh Committee to examine the whole issue as directed by the Hon'ble Allahabad and Patna Benches of this Hon'ble Tribunal, so as not to reduce the total marks and rather to award Grace Marks to every one of the equivalent marks qua the wrong questions or wrong answers.

- ii. Quash the final result of JTO Examination (Annexure A-2 dated 22.02.2014) to the extent the applicants have been declared unsuccessful by not including their names in the list of successful candidates.
- iii. Direct the respondents to identify the questions in LICE, 2013 wherein discrepancies exist and accord the applicants benefit in the form of grace marks/bonus or in any other manner for the questions wherein discrepancies have been so found.

2. Averment has been made in the O.A. that the applicants have been serving as Telecom Technical Assistants. The next channel of promotion is to the post of Junior Telecom Officer (JTO) and 35% quota is assigned for TTAs qualifying the Limited Internal Competitive Examination (LICE) who have 7 years service in the respective cadres subject to

minimum qualification of Diploma in Engineering. The Punjab Circle of BSNL issued notification dated 16.02.2013 for holding LICE for promotion to the grade of JTO(T) under 35% and 15% quota for the vacancies from 2000 onwards (Annexure A-5). The applicants being eligible appeared in the examination that was held on 02.06.2013, however, they were not declared successful. Hence this O.A.

3. In the grounds for relief it has, inter alia, been stated as follows:

- i. It is a matter of record that there are number of wrong questions in question papers and wrong answers, as pointed out in the body of the Original Application and instead of following correct criteria as followed in other Circles or as directed by the Hon'ble Allahabad Bench and Bihar Bench of the Tribunal as well as Hon'ble Principal Bench, the respondent No.2 has followed criteria which is alien to law in as much as it seldom happened even total marks of the test / examination are reduced. It is seen that grace marks are given to the candidates so as not to cause prejudice to any member by reducing the total marks and excluding the questions/ answers, which were wrong.
- ii. Applicants have missed their chance of promotion by meager/negligible deficiencies in their percentage of marks obtained and that too not for their fault or demerit. The razor thin margin with which the applicants have missed the qualifying percentage, would depict that it is not but for the failure of the applicants, but the discrepancies in at least 12.66% of the question paper. Thus, the respective candidates cannot be held guilty for any answer adjudged by the respondents as wrong at least for these 12.66% questions out of the total questions in the question paper. The Respondents have adopted the same method by grant of grace marks to the candidates in other circles and thus, there is no

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reason for not adopting the same methodology qua the present applicants too.

- iii. The number of wrong questions/ answers are maximum in Punjab Circle and maximum questions have been omitted whereas in other circles only few questions, which have been omitted and thus discrimination is writ large on the face of it.
- iv. Action of the respondents is not supported by any law or instructions including conditions contained in Appendix 37 of the P&T Manual IV dealing with the conduct of Departmental Examination or any rule nor there was any such criteria in the questions paper that the total marks can be reduced. Thus by no stretch of imagination, respondent No.2 could reduce total marks, which is not legally sustainable.

4. In the written statement filed on behalf of the respondents it has been stated that examination was conducted as per laid down procedure of OMR based departmental examination circulated vide BSNL CO Letter No.2-3/2011-Rectt.I dated 15.02.2011, the provisional answer key of the paper was uploaded on BSNL Punjab Intranet site www.intranettob.bsnl.co.in on 19.06.2003. The candidates were asked to send representations/feedback on the provisional answer key by 29.06.2013 on email as well as through Fax. Out of 13 applicants of this O.A. only 4 had given representation against the provisional answer key as such 9 applicants were satisfied with the provisional answer key. Total 80 representations/feedback were received from the candidates and various Unions (Annexure R-1) highlighting discrepancies over 46 questions against the provisional answer key upon which the comments

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were called from the Paper Setter and the Expert Committee nominated by the competent authority on the basis of comments of the Expert Committee as well as Paper Setter, keeping in view all the aspects and the decision of the Principal Bench of C.A.T. vide order dated 21.05.2013 upheld by the Hon'ble Delhi High Court vide judgment dated 01.08.2013 in connection with the LDCE for the promotion to the post of SDE (T) under 33% quota held on 04.03.2012. Out of 46 pointed out questions, the answer of 27 questions were found correct as per provisional answer key as the paper settler and Expert Committee agreed to the answer of provisional answer key uploaded on 19.06.2013. The contention of the applicants that with the reduced total marks, the prejudice was caused to the candidates who were required to acquire minimum qualifying marks for being successful in the examination is misconceived, wrong and hence vehemently denied. After excluding 17 remaining questions, the qualifying criteria adopted as per the total marks of 133 instead of 150 as such there was no loss to candidates for qualifying marks/criteria. After finalizing the answer key, the evaluation work of answer sheets was carried out and the provisional result was declared on 01.02.2014 and the candidates were asked to submit representations against discrepancies/errors, if any, in their personal details and marks communicated to them in the provisional result within 15 days i.e. up to 15.02.2014 along with carbonless answer sheet already available with the candidates and as such the final result was declared on 22.02.2014.



5. Rejoinder has been filed on behalf of the applicant reiterating the content of the O.A.

6. Arguments advanced by learned counsel for the parties were heard when learned counsel for the applicant narrated the background of the matter. He stated that in Punjab Circle a different methodology from that adopted in other Circles was applied for finalizing the Answer Key for the examination. While grace marks were allowed for two questions, 17 questions were deleted and hence the applicants were marked from out of 133 total marks instead of 150 as in other circles. Learned counsel also submitted that while the applicants do not seek to disturb the selection and merit list of the selected candidates in the Punjab Circle that has already taken place but uniformity of practice should be adopted and the result of the Punjab Circle reviewed. He stated that there were a large number of JTO vacancies still available and if the applicants qualified through review being conducted, they could be placed below the already selected candidates.

7. Learned counsel for the respondents fairly admitted that in the Punjab Circle a different methodology had indeed been followed for finalizing the Answer Key. He stated that if the Bench considered it appropriate, the matter could be referred to the respondents to review the results of the selection of JTOs that took place as per LICE-2013.

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8. Considering the ad-idem between the parties, this O.A. is disposed of with direction to the respondents to review the result of LICE-2013 in respect of Punjab Circle with a view to ensure that the parameters for finalizing Answer Key and provision of grace marks/qualification of candidates is the same as adopted in other Circles of BSNL. Such consideration may be completed within two months from the date of a certified copy of this order being served upon the respondents and if any of the applicants is found to have qualified in the examination, consequential benefits may be allowed.

B. A. Agrawal

**(DR. BRAHM A. AGRAWAL)
MEMBER (J)**

**Place: Chandigarh.
Dated: 16.04.2015.**

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**(RAJWANT SANDHU)
MEMBER (A)**