

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.-1467/2013
MA No.-1440/2014
MA No.-1279/2015
MA No.-2609/2015
MA No.-1801/2013

Order Reserved on: 03.09.2015
Order Pronounced on: 30.03.2016

Hon'ble Mr. Sudhir Kumar, Member (A)
Hon'ble Mr. Raj Vir Sharma, Member (J)

1. BSNL Officers' Association (Regd.)
Through its General Secretary,
Subhash Chand Gaur
Office of the T15, Atul Grove Road,
New Delhi.
2. N. Kabeer Das JTO (O),
S/o N.Narayan,
Aged about 53 years
Office of SDE Udaan,
S/M Charminar, Hyderabad
Andhra Pradesh.
3. Vijay Bhende, JTO (O),
S/o Dattatray Bhende,
Aged about 52 years,
Office of SDE,
WTR, Bhopal (MP).
4. Sharad J. Lele,
JTO (O), Cable
Aged about 43 years
Office of SDE City Centre,
O/o GHTD BSNL Gwalior,
Sanchar Bhavan City Centre,
Madhya Pradesh-474011.
5. R. Adam, JTO (O), CSC
S/o Raj Mohammed,
Aged about 56 years,

JTO (O) CSC,
 O/o SDE Commercial,
 Trinvanamalai,
 Tamil Nadu-606601.

6. Vinay Prakash Srivastava,
 JTO (O),
 S/o late (Sh.) T.D. Srivastava,
 Aged about 52 years, JTO (O),
 CTSD, Lucknow, UP. (East)
7. P.S. Chunda, JTO (O),
 S/o M.S. Chunda,
 Aged about 49 years
 Office of AGM (Sales),
 C-56, Bhilwala, Rajasthan.
8. B.A. Rao, JTO (O)
 S/o Ajit Kumar,
 Aged about 45 years,
 Office of EB-2 Cell,
 Telephone Bhawan, Circle Office,
 Ahmedabad, Gujarat.
9. Umesh K. Dokhale,
 S/o late Keshav L. Dokhale,
 CTTC, BSNL Indore (MP).
10. Sanchar Nigam Association of
 Telecom Technical Assistants (SNATTA)
 Represented through Shri Nagesh Kumar,
 Telecom Technical Assistant.
 Having office at 1414, Section-8
 Faridabad, Haryana-121006.
11. Shri Subhash,
 S/o Shri Rohtas Singh,
 192, Jeevan Nagar,
 Near Maharani Bagh,
 New Delhi-110014.

-Applicants

(By Advocate Mrs. Rani Chhabra, for applicants 1-9 &
 Shri Amit Gupta, for applicants 10 &11))

-Versus-

1. Bharat Sanchar Nigam Limited,
 A Government of India Enterprise,
 Corporate Office
 Through its Chairman-cum-Managing Director,
 Corporate Office (Personnel),
 4th Section, 5th Floor,
 Bharat Sanchar Bhawan,
 Janpath, New Delhi-110001.
2. Assistant General Manager
 Personnel-4,
 Corporate Office (Personnel),
 4th Section, 5th Floor,
 Bharat Sanchar Bhawan,
 Janpath, New Delhi-110001.

-Respondents

(By Advocate : Shri Lalit Bhardwaj with Shri Randhir Beri and
 Shri Amit Gupta).

O R D E R

Per Sudhir Kumar, Member (A):

This OA had been filed on 30.04.2013 by the Association and 8 individual applicants from all corners of the country naming two official respondents, both belonging to the corporate entity named Bharat Sanchar Nigam Limited (BSNL, in short). The matter came up before the Bench on 06.05.2013, when short notices were ordered to be issued on the point of Interim Relief. On the next date of hearing on 20.05.2013,

the MA No.1137/2013 filed by the applicants for joining together had been allowed under Rule 4(5) (a) (b) of CAT (Procedure) Rules, 1987.

2. In the meanwhile, MA No.1333/2013 had been filed on 16.05.2013 by certain non-parties, praying for their impleadment through learned counsel Shri Amit Gupta, in which another Association, namely Sanchar Nigam Association of Telecom Technical Assistants (SNATTA), represented through Shri Nagesh Kumar, Telecom Technical Assistant (TTA, in short), and one individual member of that Association, Shri Subhash, had prayed for their being impleaded as petitioners in the OA. Notices had been issued in that MA by the Bench on 20.05.2013. On 27.05.2013 this MA came to be allowed by the Bench that day.

3. At this stage, we may note here that though we are noting in the cause-title of this order the effect of that M.A. having been allowed, to our mind the allowing of MA No.1333/2013 by the Coordinate Bench on 27.05.2013 was not strictly as per the proper procedure prescribed under the A.T. Act, as well as the CAT (Procedure) Rules, 1987, as well as the CAT (Rules of Practice), 1993, inasmuch as after the MA No. 1133/2013, allowing non-applicants for joining together as applicants/petitioners was not possible, once the O.A. had been filed by a/few applicant(s). They could have been added as opposite party respondents to the case, if their prayer for impleadment had been allowed, but applicants could not have been added to a case, and the

Coordinate Bench could have only ordered for the applicants of MA No.1333/2013 to file a separate parallel case on the original side.

4. When the Bench had for the first time considered the issuance of notice on 06.05.2013, the judgment of Hon'ble High Court of Kerala at Ernakulam dated 14.09.2012 in OP (CAT) No.3714/2011(Z) **v.**

Sureshkumar vs. Bharat Sanchar Nigam Limited had been brought to the notice of the Bench, and it was submitted that through this O.A. the applicants have challenged the order dated 14.01.2013 issued by the respondents regarding holding of a Limited Internal Competitive Examination (LICE, in short) for promotion to the grade of Junior Telecom Officer, (JTO, in short)(T) under 35% and 15% quota for vacancies which had arisen upto 31.03.2012, and the challenge was to the order dated 09.03.2013, in which it was stated that even the officiating already JTOs will also have to appear in the Limited Departmental Competitive Examination (LDCE, in short), which was named as LICE by the Department, to become regular. It was submitted that similar order had been passed by the Madras Bench of this Tribunal in OA No.587/2013 on 23.04.2013, staying the order dated 28.02.2013 passed by the Chief General Manager-TN Circle, BSNL, Chennai. It was further submitted that the dispute in that case before the Madras Bench also was with regard to insistence on the part of respondents that "officiating JTOs would have to appear at LICE to become regular", and hence there is no question of keeping any JTO vacancy reserved for them.

5. On 27.05.2013, the counsel for the applicants of the OA had brought to the notice of the Coordinate Bench the Ernakulam Bench order dated 23.05.2013 in OA Nos. 278, 378 & 411 of 2013, which O.As, were stated to be similar to the present OA, through which the respondents had been permitted to conduct the LDCE/LICE, and all those who had applied for JTOs' posts were allowed to sit in the examination, and it was said that the applicants and similarly situated persons, who were not desirous to take the examination, may not appear at the same, and that their non-participation shall not, in any way, deprive them of their promotion, regularization etc. if they are otherwise eligible, and their officiation, as in the past, may continue for the time being.

6. It was submitted that since the LICE was scheduled to be held on 02.06.2013, and the number of posts to be filled up was 11000, the request of the applicants was that they may be considered for absorption against vacancies which had fallen vacant on account of retirements etc., which had taken place in the meanwhile, in view of the fact that they have already passed the said examination, and have been working as officiating JTOs since the year 2000.

7. The Coordinate Bench had that day noted that in view of the fact that large number of JTOs' posts are vacant, which have to be filled up, it was directed that respondents will not fill up as many vacancies as

occupied by the original applicants in the present OA, and that they will not be disturbed from their present in-charge positions till the disposal of the OA.

8. Thereafter, on 16.07.2013, the matter was ordered to be listed under “Ready for Hearing Matters” on 16.08.2013. After many adjournments had been sought on various dates, the MA No. 1440/2014, filed on 30.04.2014, on behalf of 780 applicants, praying for their impleadment as party-applicants, had been listed for hearing before the Coordinate Bench. It was submitted on behalf of these Miscellaneous Applicants that they want to file an affidavit from the original applicants of the O.A., for their being permitted to join together with the original applicants of the OA as co-applicants, and time was sought on that ground on numerous occasions, till the middle of 2015, but the MA No. 1440/2014 was never allowed, till the case was heard and reserved for orders. Therefore the 780 applicants, on whose behalf MA No.1440/2014 had been filed, could never join as parties in the present O.A., either as applicants or respondents, till the case came to be heard and reserved for orders.

9. In the meanwhile, MA No. 2609/2015 had also been filed for adding 11 applicants of that M.A. as co-applicants of the O.A., but when it was taken up by the Coordinate Bench on 12.08.2015, the learned counsel for Miscellaneous Applicants had submitted that she wants to withdraw this MA, and that MA No. 2609/2015 was, therefore, dismissed

as withdrawn, with liberty to those Miscellaneous Applicants to move a fresh original application. Thereafter the case was heard and reserved for orders.

10. Therefore, as has been mentioned above, since, in our opinion, once the MA for joining together filed in terms of Rule-4 (5) (a) or Rule-4 (5) (b) of CAT (Procedure) Rules, 1987, had been allowed by a Coordinate Bench, others can only join as respondents/non-applicants, and in our opinion, even the order passed by the Coordinate Bench on 20.05.2013 in MA No. 1137/2013, which we have had to follow, was not entirely correct, the MA No.1440/2014 filed by 780 Miscellaneous Applicants is rejected.

11. For arriving at our conclusions, we need to describe the genesis of the *lis* before us, and the history of the previous connected cases. The Department of Telecommunications, under the Ministry of Telecommunications of the Union of India, which is not a party respondent before us, had a procedure for regular promotions in that Department, and also another procedure for holding the LDCE/LICE for promotions to the grade of JTO (T) for the purpose of granting accelerated promotions. Even for these accelerated promotions, the Department of Telecommunication had two separate quotas of 35% and 15%.

12. The JTO Recruitment Rules (RRs, in short), 1990, of the Department of Telecommunications, Ministry of Telecommunications of the Union of India, which is not a party in the present case, had been notified through the Notification dated 08.02.1996 (Annexure A-5) in which the Column-11 of the Schedule to those Rules, concerning the method of recruitment, it was prescribed that 50% of the vacancies of JTOs in the Department of Telecommunications will be filled up by direct recruitment through a competitive examination, in accordance with the instructions issued by the Department in this behalf, and 50% by promotion/transfer quota, to be filled up as follows:-

“(1) 50% by promotion/transfer of department candidates referred to in item (ii) Column-11 will be regulated as under:-

- (i) 15% by promotion of departmental candidates through a competitive examination.
- (ii) 35% by promotion/transfer of Transmission Assistants/Wireless Operators/Auto Exchange Assistants/Phone Inspectors/Telecom Technical Assistants”.

13. It was further prescribed within the Department of Telecommunications, which is not a party in the instant case, that for appearing at the competitive examination to be conducted for the purpose of 15% promotions through competitive examination quota, the following Group ‘C’ employees in the Department of Telecommunications, whose scale of pay was less than that of Junior Telecom Officers, shall be eligible, if such employees are:-

“(i) borne on the regular establishment and working in Telecom Engineering Branch of Department including those working in the office of the Chief General Manager, Telecommunication Circles/Districts other than

- (a) Transmission Assistants, Telephone Inspectors, Auto Exchange Assistants and Wireless Operators, and
- (b) Plumbers/Sanitary Inspectors/Conservancy Inspector.
- (ii) Working in Telecommunication Factory, other than those come on industrial establishments.
- (iii) Borne on the regular establishment and working as Accounts Clerks in the Accounts Wing under the Telecommunication circles.
- (iv) Borne on the regular establishments and working as Works Clerks Grade I and II, Work Assistants, Draftsman, Junior Architects and Electricians in the Civil Win under Telecom Circles.

Provided that:-

- (a) They have passed High School/Matric Examination or its equivalent and have completed five years regular service or
- (b) they possess the qualifications prescribed in column 8 and have completed 3 years regular service.

Provided further that they are not above the age of 40 years on the crucial date.

14. In respect of the 35% transfer/promotion quota, it was prescribed within the Department of Telecommunications, which is not a party in the instant case, that such 35% transfers/promotions would be from amongst the following categories of employees of the Department of Telecommunications:-

- “(a) The Phone Inspectors/Auto Exchange Assistants/ Transmission Assistant/Wireless Operator who possess the qualification prescribed in column 8 and have completed 5 years regular service in the cadre of Phone Inspector/Auto Exchange Assistant/Transmission Assistant/Wireless Operator.
- (b) The Phone Inspector/ Auto Exchange Assistant/ Transmission Assistant/Wireless Operators/Transmission Assistant/Telecom. Technical Assistant who possess the High School/matriculation qualification and who have completed 6 years of regular service

through a qualifying screening test, unless he has already passed such test.

Note:

They shall have to undergo a simple medical test to ensure that they are physically fit and mentally alert to perform the duties expected of a Junior Telecom Officer.

Explanation:

Length of service in the cadre of Phone Inspector/Auto Exchange Assistant/Assistant Transmission Assistant/Wireless Operator will be the criteria for sending them for JTO Training.

Note:

No candidate other than these belonging to Scheduled Castes and Scheduled Tribes Communities shall be granted more than four chance to appear in the competitive examination. But those candidates who secure more than 70% marks in the 4th chance but are not selected for appointment as Junior Telecom. Officers may be allowed one more chance as a special case. The restriction in respect of number of chances is not applicable to members of Sch. Castes/Sch.Tribes communities.”

15. Even though there was no prescription of any Departmental Competitive Examination in respect of this 35% quota of vacancies in the Department of Telecommunications, somehow, through their order dated 10.11.1999 (Annexure A-6), the Department of Telecommunications of the Ministry of Telecommunications had decided that all eligible candidates, who were eligible for promotion upto 31.08.1999 under 35% quota, may also be permitted to appear in the JTO screening test to be held shortly, and it was ordered that all the TTAs may also be permitted provisionally to appear in the 35% qualifying Screening Test, without

insisting on six years of service in the cadre of TTA as on 31.08.1999, subject to the outcome of the various OAs pending at that time before different Benches of CAT.

16. It was further stated by the Department of Telecommunications that all the eligible candidates of 35% JTO screening test may be informed clearly that the qualified officials of 35% JTO screening test will be sent on training only to the extent of available vacancies under 33% quota upto 31.08.1999, and that the remaining qualified officials will have no claim whatsoever for training/appointment as JTO. However, soon thereafter, many events intervened, leading to the filing of numerous cases, as well as the present O.A.

17. After some other events, to which we shall revert soon, the most cataclysmic event took place on 01.10.2000. The Department of Telecommunications, which was earlier mandated to provide telecom services all over the country within the Government sector, created a new and entirely autonomous corporate entity for carrying out its the then tasks, under the Companies Act, 1956, and thus the Respondent No.1 Company, BSNL, was born on 01.10.2000, and the Department of Telecommunications transferred its responsibilities, and assets and liabilities in regard to maintenance and operation of Telecommunication services throughout the country (except Delhi & Mumbai) to the BSNL. As correctly mentioned in Para 4.10 of the O.A., all the officers and staff working in the Departmental units like Circles and Districts were

transferred to the newly created corporate entity BSNL. All the Gazetted Group B, and non-Gazetted staff were given option of being absorbed in BSNL's employment in the corresponding service cadres created back to back in the newly created Corporation. The Department of Telecommunications of the Union of India was left with only the responsibility of policy decisions in regard to the Telecommunication Industry in India.

18. The new Corporate entity BSNL took some time to frame its own Rules and Regulations. Through Notification dated 26.09.2001, new RRs for JTOs were notified by BSNL (Annexure A-7). Through the Schedule of these RRs, 19716 vacancies of JTOs which were created and advertised up to the year 1999 by the Department of Telecommunications were taken into account, and in the Column-11, Method of Recruitment etc., it was prescribed that 50% of these vacancies will be filled by Direct Recruitment and "**50% by promotion through LDCE of BSNL.**" This was a change from the previous prescription contained in the 1996 RRs notified by the Telecommunication Department. But, immediately thereafter, in Column-12 of these new RRs notified by BSNL, the specifications for promotion of Internal candidates referred to in item (B) (ii) were also changed, to be as follows:-

“ (B) ii) 10 years' regular service in post in Group C.

(II) 15% by promotion through limited Internal competitive examination from amongst following Group 'C' employees of Telecom Engineering.

- i) Working in Telecom Engineering Branch including office of the Chief General Manager, Telecom Circle/District other than Plumber Sanitary) Inspectors/Conservancy.
- ii) Working in Telecommunication Factory, other than those borne on Industrial Establishments.
- iii) Borne on the regular establishment and working as Accounts Clerks in the accounts wing under Telecommunication Circle.
- iv) Borne on the regular establishment and working as works Clerks Grade I and if work Assistants, Draftman, Junior Architects and Electricians in the Civil Wing under Telecom Circles and possessing the following educational qualifications namely.
 - * 3 years Diploma in Telecom/Electronics/Electrical /Radio/Computer Engg. And
 - * 10 years service in posts in Group 'C'

Note:

The employees eligible to take up competition examination under 35% limited internal competitive examination quota shall not eligible for appearing the competitive examination under 15% limited internal competitive examination quota.”

19. In the Note below the Schedule of these new RRs notified by BSNL, it was further mentioned that the very cadre of JTOs will be a circle level cadre, meaning thereby that every circle of the newly created corporate entity BSNL will have its own cadre of JTOs. As regards TTAs were concerned, through Annexure A-8, extracts of the Minutes of 23rd Board of Directors Meeting of BSNL held on 30.03.2001, it is seen that against the subject of considering diversion of posts of direct recruit quota of JTOs for one time promotion of the TTAs, it was decided by the Board of BSNL as follows:-

“The proposal of the HRD Group for diversion of 736 posts from Direct Recruit Quota of JTOs for filling up the posts in the tenure circle by training and promotion the TTAs who have qualified in

the screening test against the 35% Departmental Quota was discussed. After discussion, the Board decided to approve the training the subsequent recruitment as JTOs of all the TTAs who have qualified in the screening test but cannot be sent for training due to non-availability of vacancies in the Departmental Quota. This would be done @ 500 posts per year by diversion from Direct Recruit. The guidelines for select of the TTAs to be sent each year for training would be finalized and issued by the Personnel Cell”.

20. Further confusion in this whole process was created by the letter dated 13.05.2004, issued by the Corporate Office of BSNL through Annexure A-9, in which, the aspect of the change in the legal position brought about on 01.10.2000 was over-looked, and on the subject of ad-hoc promotion of waiting qualified TTAs as JTOs, it was stated that the waiting qualified TTAs will be sent for JTO training, and Head of Circles will be authorised to order ad-hoc promotion of these trained and qualified TTAs against JTO vacancies for a period up to 180 days, though, however, adding that such an arrangement will not entitle any of the waiting TTAs for regular promotion to the JTO cadre, which regular promotion will continue to be governed by standing provisions.

Accordingly, the following orders were issued:-

“(i) Waiting qualified TTA’s, who could not be promised against 35% JTO quota posts so far, will be deputed for JTO Phase-I training as provided under training cell letter No.4-13/2000-Trg. Dated 21st October 2002 after such candidates given an undertaking that they will have no claim for local officiating co regular promotion as JTO after this training.

(ii) After successful completion of the above said training, the officials will be sent back to respective Circles and kept as trained pool. The officials of this training pool in any Circle may be considered for local officiating promotion against vacant JTO posts. For this, the Heads of Circle will be competent to give purely local officiating promotion for a period upto 180 days. On local officiating promotion, the official will be liable to be

posted anywhere within the jurisdiction of Circle including non-recruiting units.

(iii) Select Panel against 35% JTO posts will be drawn as per standing instructions from the trained pool. The official of the select Panel will be impugned four weeks field training and thereafter will be appointed as regular JTOs as per the standing instructions.

(iv) These instructions will remain applicable till official in trained pool are available or issuance of any other instruction affecting the arrangement ordered here-in-whichever is earlier.”

(Emphasis supplied)

21. The matter was carried before the Hon’ble High Court for the States of Punjab and Haryana at Chandigarh in CWP No.5608/2007 **Dalbir Singh and Others vs. Bharat Sanchar Nigam Limited and another.** In that, unfortunately the change in legal status brought about on 01.10.2000 was not pointed out by the parties of either side, and the matter was limited only to the aspect of diversion of quotas by BSNL, and orders came to be passed on 30.05.2008, which changed the complexion of the BSNL’s instructions standing till then regarding diversion of posts of JTOs from Direct Recruit Quota to 35% Departmental Quota. After the directions of the High Court, the matter was then re-considered by the Management Committee of BSNL Board on 04.11.2008, and the following instructions were issued:-

- “1. There will be no further diversion of DR quota Posts to 35% Departmental quota.
- 2. All the 3500 posts of JTOs of DR quota diverted vide above quoted letters will stand re-diverted to the DR Quota with immediate effect.
- 3. Creation of 3500 supernumerary posts, may be done as per the Circle wise break up of posts diverted vide above referred letters, as a special measure, to adjust those officials who have already been promoted against the above said diverted

posts and also in order to ensure that the promotional aspects of those officials who are eligible for consideration under the Recruitment Rules of JTOs, 2001 are not diminished in any manner. These supernumerary posts will be kept as a separate group and will not be a part of the regular sanctioned strength of JTOs. In case any such diverted post so filled up by promoting Departmental Quota Candidate has fallen vacant due to superannuation, promotion etc. corresponding supernumerary posts shall not be created.

4. Further, these supernumerary posts, so created, will stand abolished as and when the incumbent/s or these posts vacates the same due to promotion, superannuation etc. and should not be used for the purpose of local officiating”.

22. Since in the meanwhile, the Department of Telecommunications screening test qualified TTAs were working against the post of JTOs, some from dates even prior to the formation of BSNL on 01.10.2000, they represented to the Hon’ble Minister of State for Communication & Information Technology for the upgradation of the posts of all such 2137 officials, who were then officiating as JTOs, for being promoted in substantive capacity on personal basis, as a one time measure, so that the promotional prospects of those who were eligible for consideration under the BSNL’s RRs of JTOs, notified in 2001, are not affected, and that such persons may be kept in supernumerary posts, and that they may be kept as a part of a separate Group, and may not form part even of the regular sanctioned strength of JTOs. Their contention further was that the orders of the Hon’ble High Court of Punjab and Haryana in CWP No.5608/2007 (supra) had only interfered with the aspect of BSNL’s decision regarding diversion of the Direct Recruit Quota of vacancies for regularization of Departmental candidates, and had not forbidden the regularization of qualified officials in any other manner, like one time

upgradation on a personal basis, which are personal to them alone, without disturbing the management of the cadre itself. Representations were also given by the persons who had passed the earlier screening test, held by the Department of Telecommunications, before the formation of BSNL, based on the RRs of 1996, and who had successfully completed one phase of training thereafter, because of the reason that the BSNL could not conduct LDCE under the new BSNL RRs 2001.

23. We have already mentioned above that the impleadment application MA No.1333/2013 had been allowed by a Coordinate Bench. The members of that applicant Association, and applicant No.2 of that MA, were working as TTAs in the BSNL, and had felt that the applicants of the present OA are trying to obstruct the process of BSNL now holding the LDCE for the posts of JTOs, and somehow get themselves regularized, against the new BSNL RRs in vogue at present, by concealing and suppressing crucial facts. Through this MA, which had been allowed by a Coordinate Bench, the following orders and judgments of other Benches of this Tribunal had also been brought on record:-

- “ i) Order dated 13.12.2012 in OA No.161/2012 with OA No.177/2012 **Pushaparajan K. Vs. BSNL & Ors, and P.M. Michael and Ors. vs. BSNL and another** of CAT Ernakulam Bench (Annexure R-10);
- ii) Annexure R-11, a copy of OA No.587/2013 filed before the Madras Bench of this Tribunal by **R. Ramasundaram and another vs. BSNL & Ors.**

24. The respondents filed their counter reply on 24.05.2013. It was submitted that the OA is barred by limitation, as the applicants of this OA had qualified the screening test held in the year 2000 under the JTO

RRs of 1996 of the Department of Telecommunications, but, thereafter, BSNL had come into existence, by way of its separation from the Department of Telecommunications, and had after some time, notified its own RRs. It was submitted that although the applicants had passed the screening test while they were working under the Government, they cannot raise their grievance from the same now in the year 2013, and the OA was liable to be dismissed on this ground alone.

25. While it was not denied that the Respondent No.1 had proposed holding LDCE for promotions to the grade of JTO (T) under 35% and 15% quota for the vacant posts of JTOs in BSNL through the Notification dated 14.01.2013, and the examination was scheduled for 02.06.2013, it was submitted that after the BSNL's own RRs of 2001 had come into force, all the TTAs shall have to undertake the LDCE for promotions to the post of JTO (Telecom) in BSNL. It was further submitted that even though some of them had passed the screening test earlier, while they were Government servants, and have even been officiating for the post of JTOs in BSNL also, but the Rules do not permit such applicants to be absorbed by the respondents BSNL as JTOs only, even after their absorption as the Corporation's employees.

26. It was further submitted that in order to address and satisfy the concerns of those who had passed the screening test to the post of JTOs conducted by the Department of Telecommunications, under the RRs of 1996, initially the BSNL had started appointing some of the TTAs as JTOs

after diverting 500 vacancies each year from the Direct Recruitment Quota in favour of the persons who had passed the screening test to the post of JTOs earlier while they were Government servants, under the then RRs of 1996. However, that had been held to be unjustified by the Punjab and Haryana High Court in its order in CWP No.5608/2007 (supra), and further that a Contempt Petition has been filed before the High Court in this regard. It was admitted that when the earlier screening qualifying examination under the 35% quota was held by the Department of Telecommunications on 23.04.2000, as per the qualifications then prescribed under the Government prescribed JTO RRs of 1996, it was decided by the DoT that successful candidates will be absorbed only up to the actual JTO vacancies available as on 31.08.1999, and, thereafter, approximately 6,000 candidates who had passed the screening test became surplus, after exhausting the 35% LDCE quota, due to non-availability of vacancies.

27. It was pointed out that when the BSNL came to be registered as a new Corporate entity under the Companies Act, 1956, as on 01.10.2000, at that time, when the assets and liabilities of Department of Telecommunications had been transferred to BSNL, including all the officers and staff, all the Group-B and non-Gazetted staff had been given the option of being absorbed in the corporate employment with BSNL, even in the corresponding junior Cadres of the service in the Corporation.

28. However, after come into existence of the BSNL, it framed its own RRs for JTOs' recruitment, substituting the earlier 1996 Rules framed by the DoT under the Government, by which the composition of vacancies in the respective promotional avenues came to be changed, as has been reproduced by us above. Only when the BSNL adopted a policy of diversion of Direct Recruitment posts, in order to accommodate the surplus already screening test qualified 35% Departmental Quota candidates, which was quashed by the Punjab and Haryana High Court, and the SLP filed against the same was dismissed by the Apex Court, in order to accommodate the excess available already screening test qualified persons concerned, BSNL decided to create 3500 supernumerary posts, and regularize the already screening test qualified candidates against such supernumerary posts. But this action of BSNL also was not found justified, and contempt proceedings had been initiated before the Hon'ble High Court of Punjab and Haryana.

29. It was pointed out that the decision of the Respondent-BSNL to conduct the JTOs' LDCE (i) from Group-C for 35% quota promotions, and (ii) from amongst Group-C officials of Telecom Engineering against 15% quota, it had been challenged before various Benches of this Tribunal, but all of them refused to stay the holding of that LDCE by the BSNL. The attempt of the applicants of the present OA to try to do the same was, therefore, decried, and it was submitted that only on account of the applicants, who had earlier qualified in the screening test conducted by the DoT (when they were all Government servants), or were even officiating against the said posts of JTOs, does not confer upon them any

right to get appointed or absorbed against the posts of JTOs, and it was submitted that the applicants of this OA are, therefore, required to sit in the LDCE as scheduled to be conducted by the BSNL.

30. It was submitted by Respondent-BSNL that applicants, herein, cannot be considered for regular appointments as JTOs unless they qualify in the LDCE scheduled on 02.06.2013. They had, therefore, justified the Notification issued for conducting the LDCE, and had prayed that the applicants are not entitled to either any final relief as prayed for in this O.A., or any Interim Relief, as the said LDCE was being conducted for almost 11,000 persons, as per the extant RRs since framed by the BSNL, which was in larger interest, and that any indulgence granted to the applicants at this stage would cause great prejudice to the TTAs employees, and also to the respondent-BSNL.

31. As Annexure-A to the counter reply, the respondents had filed a copy of the order in C.O.C.P. No. 1431/2008 in C.W.P. No. 5608/2007, which order was pronounced by the High Court of Punjab and Haryana at Chandigarh on 19.11.2008.

32. They had also filed copies of the judgment dated 20.08.2008 in CWP No.5608/2007 passed by the High Court of Punjab and Haryana, and a copy of the order in OA No.161/2012 with OA No.177/2012 dated 13.12.2012 passed by the Ernakulam Bench of this Tribunal, and the

order dated 03.05.2013 in OA No.708/2013 passed by Madras Bench of this Tribunal in **R. Sekaran & ors. vs. BSNL & Ors.**

33. Pertaining to the facts of this case, one case had reached the Andhra Pradesh High Court in Civil Writ Petition No.14213/2005 decided on 08.03.2007 titled **M. Sreenivasa Reddy v. Union of India & Others**, which judgment was rendered by a Single Judge, and Punjab & Haryana High Court at Chandigarh had, in its judgment dated 30.05.2008, did not agree with the view taken by the Andhra Pradesh High Court in that case. The impleadment petitioners had themselves, along with the impleadment petition, filed a copy of the judgment of High Court of Kerala at Ernakulam in **V. Sureshkumar vs. Bharat Sanchar Nigam Limited** (supra), in which the Kerala High Court had also considered the same issue, arising from the Writ Petition filed there against the orders dated 13.12.2012 passed by Ernakulam Bench of this Tribunal in OA No.161/2012 with OA No.177/2012 (Annexure R-10) as already mentioned above. From the pleadings as filed through Annexure R-11, it is seen that an OA No.587/2013 had been filed before the Madras Bench of this Tribunal also, though the final order had not been passed by the Madras Bench on the date of filing of this OA on 30.04.2013, and on the date of filing of the impleadment application dated 16.05.2013, of which this Annexure formed a part.

34. Heard. We have given our anxious consideration to all the pleadings made and arguments advanced before us. We have also gone through

the pleadings before the Madras Bench as filed, and the orders of the High Court of Kerala at Ernakulam on the orders passed by Ernakulam Bench of this Tribunal, in OP (CAT) No.3714/2011(Z), and the judgments of Punjab & Haryana High Court at Chandigarh. We beg to disagree with all these orders and judgments, for the simple reason that all of them are *sub-silentio*, as they have all failed to take into account the fact that from the Department of Telecommunication of the Union of India, first the Corporation called Mahanagar Telephone Nigam Limited (MTNL, in short) had been created, and then another Corporation, covering the telephone operations in the rest of India except Mumbai and Delhi, had been created under the name of BSNL, which Corporation came into being w.e.f. 01.10.2000. We are, rather, bound by the law as laid down by our jurisdictional High Court, the Delhi High Court.

35. The matter and the facts regarding transfer of the assets and liabilities of the Department of Telecom Services and Department of Telecom Operations of the Ministry of Telecommunications of the Govt. of India to the BSNL were noticed by the Hon'ble Delhi High Court in its order dated 17.04.2012 in W.P. (C) No. 22515-22518 **Indian Telecom Service Association & others vs. Union of India & Others**, with related Writ Petitions, as follows:-

“1. This batch of writ petitions are directed against the orders dated 21.10.2005 and 31.10.2005 passed by the Central Administrative Tribunal, Delhi (hereinafter referred to as the Tribunal) in OA No. 1963/2005 and other connected OAs.

2. Pursuant to its decision to set up a Public Sector Corporation viz. MTNL from 1.4.1986, Government of India, Ministry of Communications, Department of Telecommunications vide order dated 18.3.1986 directed that on commencement of operations of MTNL w.e.f. 1.4.1986, the staff of Delhi and Bombay telephone districts working within the jurisdiction of Union Territory of Delhi and Bombay, New Bombay and Thane Municipal areas, will be deemed to be transferred on deputation to MTNL, on existing terms and conditions without any deputation allowance for a maximum period of 05 years. It was further directed that till the terms and conditions of service in MTNL were decided and options were called from the concerned Officers of Department of Telecommunications (DoT), the posts which at that time were manned by the existing Officers of DoT would continue to be manned by them, with DoT service conditions continuing to apply to them. The staff working on deputation with MTNL was to have an option for permanent absorption in the company, once the terms and conditions in this regard were finalized.

On setting up of another Public Sector Corporation viz. Bharat Sanchar Nigam Limited (BSNL), Government of India vide OM dated 30.9.2000 decided to transfer the business of providing telecom services in the country to BSNL w.e.f. 1.10.2000. Department of Telecom Services and Department of Telecom Operations, which were concerned with providing telecom services in the country and maintaining the telecom network/telecom factories were separated and carved out of the Department of Telecommunications (DoT). The assets and liabilities of the aforesaid departments were also transferred to BSNL by a separate order. The following interim arrangements were, inter alia, made vide the aforesaid order dated 30.9.2000:

(i) The establishment (officers, staff, employees and industrial workers) sanctioned for exchanges/offices, in various telecom circles, metro districts of Calcutta and Chennai, project circles, civil, electrical and architectural wings, maintenance regions, specialized telecom, units namely Data Networks, National Centre for Electronic Switching, Technical and Development circle, Quality Assurance circle (except TEC), training institutions, other units like telecom factories, stores and electrification projects of DoT/DTS/DTO (belonging to various organized services and cadres given in Annexure A to this letter) and posted in these circules/offices/units will stand transferred to Bharat Sanchar Nigam Limited along with their posts on existing terms and conditions, on as is where is basis, on deemed deputation without deputation allowance, with effect from 1st October, 2000, i.e., the date of taking over of telecom operations by the Company from DTS & DTO. Bharat Sanchar Nigam Limited will exercise

control and supervision of staff working against these posts.

(ii) The organizational structure of restructured Department of Telecommunications (DoT) is given at Annexure "B" (Tables I to IV giving posts/units to be retained in DoT and to be transferred to BSNL). Consequent to residual work of DTS and DTO being transferred to DoT, it will continue to do the work allocated under Allocation of Business Rules. The officers and staff presently working in these posts will continue to work, until further orders, in their existing posts under DoT and **all other officers and staff will stand transferred along with their posts on existing terms and conditions, on as is where is basis, on deemed deputation without deputation allowance w.e.f. 1.10.2000 to the Company.**

(iii) x x x x

(iv) Officers and staff belonging to various Central Secretariat Services (mentioned in Annexure A) providing services to offices/units being transferred to the Company will stand transferred along with their posts, on as is where is basis, on deemed deputation, without existing terms and conditions of service. Further orders in the matter would be decided by DoT in consultation with DoPT which is the cadre controlling authority of CSS.

(v) Officers and staff shall continue to be subject to all rules and regulations as are applicable to Government servants, including the CCS (CCA) Rules till such time as they are absorbed finally by the Company after they exercise their options. Their pay scales, salaries and allowances will continue to be governed by existing rules, regulations and orders.

3-5 xxxxxxxxxxxxxxxx (Not reproduced here)

6. The main issue which arises for our consideration in this case is as to whether the respondents were entitled, in law, to notify 1.10.2000 as the date of absorption of the petitioners in BSNL/MTNL.

Rule 37-A of CCS (Pension) Rules, 1972, on which reliance was placed by Shri Parag Tripathi, learned Senior Counsel for the petitioners as well as by Shri A.S.Chandiok learned Additional Solicitor General representing Union of India and its Departments, to the extent it is relevant, reads as under:

37-A. Conditions for payment of pension on absorption consequent upon conversion of a Government Department into a Central Autonomous Body or a Public Sector Undertaking:-

(1)On conversion of a department of the Central Government into a Public Sector Undertaking or an Autonomous Body, all Government servants of that Department shall be transferred en masse to that Public Sector Undertaking or Autonomous Body, as the case may be, on terms of foreign service without any deputation allowance till, such time as they get absorbed in the said undertaking or body, as the case may be, and such transferred Government servants shall be absorbed in the Public Sector Undertaking or Autonomous Body, as the case may be, with effect from such date as may be notified by the Government.

(2)The Central Government shall allow the transferred Government servants an option to revert back to the Government or to seek permanent absorption in the Public Sector Undertaking or Autonomous Body, as the case may be.

(3)The option referred to sub-rule (2) shall be exercised by every transferred Government servant in such manner and within such period as may be specified by the Government.

(4)The permanent absorption of the Government servant as employees of the Public Sector Undertaking or Autonomous Body shall take effect from the date on which their options are accepted by the Government and on and from the date of such acceptance, such employees shall cease to be Government servants and they shall be deemed to have retired from Government service.

(5)Upon absorption of Government servants in the Public Sector Undertaking or Autonomous Body, the posts which they were holding in the Government before such absorption shall stand abolished.

(6)The employees who opt to revert to Government service shall be re-deployed through the surplus cell of the Government.

(7)The employees including quasi-permanent and temporary employees but excluding casual labourers, who opt for permanent absorption in the Public Sector Undertaking or Autonomous Body, shall on and from the date of absorption be governed by the rules and regulations or bye-laws of the Public Sector Undertaking or Autonomous Body, as the case may be.

7.xxxxxxxxx(Not reproduced here).

8. It can hardly be disputed that while interpreting a statutory Rule, the Court is required as far as is possible, to give a meaningful effect to all the provisions contained in that Rule and it would not be appropriate to interpret one Rule in isolation, without taking into consideration the intent and purport of other Rules. All the Sub-Rules forming part of Rule 37-A of CCS (Pension) Rules stipulate

various conditions for payment of pension on absorption consequent upon conversion of a Government department into a Central Autonomous Body or a Public Sector Undertaking. The attempt of the Court therefore has to be to give effect to all these conditions, while interpreting the Rule. It is true that Sub-Rule (1) empowers the Government to notify a date from which the absorption of the Government servants transferred en masse to a Public Sector Undertaking or an Autonomous Body, has to become effective. Had there been no other Sub-Rule in Rule 37-A or had there been nothing in other Sub-Rules of Rule 37-A which would negate the interpretation suggested by the learned Additional Solicitor General, it could be possible for the respondents to contend that the Government in its wisdom having notified 1.10.2000 as the date with effect from which the absorption of the petitioners into BSNL/MTNL was to take place, the petitioners are not entitled to challenge the decision taken by the Government and if the date notified by the Government in this regard was not acceptable to them, they were at liberty not to opt for the absorption in the BSNL/MTNL. However, the provisions contained in W.P(C) 22515/2005 Page 14 of 26 Sub-Rule (2) and Sub-Rule (4) clearly negate the interpretation suggested by the learned Additional Solicitor General. The scheme of absorption, as contained in Rule 37-A is that: (i) on conversion of a department into a Public Sector Undertaking/Autonomous Body all the Government servants of that department stand transferred en masse to the PSU/Autonomous Body; (ii) the Government servants who are so transferred to the PSU/Autonomous Body are on deemed foreign service with the PSU/Autonomous Body concerned, though without any deputation allowance; (iii) they continue to be on foreign service with the PSU/Autonomous Body concerned till they are absorbed in that Undertaking/Body; **(iv) once the en masse transfer of Government servants in terms of Sub-Rule (1) has taken place, the Government has to give an option to them either to revert to Government service or to seek permanent absorption in the Undertaking/Autonomous Body concerned; (v) those employees who opt for permanent absorption in the PSU/Autonomous Body concerned cease to be Government servants and are deemed to have retired from service, with effect from the date the options exercised by them are accepted by the Government; (vi) those Government servants who do not opt for permanent absorption in the PSU/Autonomous Body concerned stand reverted to the Government and have to be re-deployed through its surplus cell.**

.....We are in agreement with the learned Senior Counsel for the petitioners that the expressions “absorption” and “permanent absorption” have been used interchangeably in various Sub-Rules of Rule 37-A and the scheme contained in the said Rule does not envisage two absorptions i.e. initial absorption followed by a permanent absorption, after giving option to the Government servants in terms of Sub-Rule (2) of the said Rule. In fact even the Circular dated 24.3.2005 whereby options were invited by the Government does not use the expression “permanent absorption”.

The heading refers to “option for absorption”. Clauses (i) and (ii) of the OM refer to “absorption”, Clause (iii) provides that the “effective date of absorption” will be of 26.10.2000. Clause (x) speaks of option, for absorption” in BSNL/MTNL. There was a prescribed proforma for exercise of option by the Government servants concerned. The Sub-Heading given on the proforma speaks of “absorption” whereas Clauses (ii) and (iii) refer to “permanent absorption”. **This also indicates that the expression “absorption” and “permanent absorption” are being used interchangeably and the scheme contained in Rule 37-A of CCS (Pension) Rules does not envisage an absorption/initial absorption, followed by permanent absorption.**

At this stage we would also like to refer to Clause (v) of the OM dated 30.9.2000, whereby the petitioners, along with others, were transferred en masse to BSNL/MTNL. The OM stipulated that the Officers/staff shall continue to be subject to all rules and regulations as are applicable to Government servants including CCS (CCA) Rules till such time as they are absorbed finally by the company, after they exercise their option. This clearly shows that the Government servants who were transferred en masse to BSNL/MTNL continued to be Government servants till they are absorbed in BSNL/MTNL as the case may be. If we accept the construction suggested by the learned Additional Solicitor General, it would mean that despite being absorbed/initially absorbed in BSNL/MTNL, the Government servants who were transferred en masse to these PSUs continued to be governed by the rules applicable to Government servants, during the period between their absorption/initial absorption and their permanent absorption. Once a Government servant is absorbed in a PSU, he cannot be governed by the Rules applicable to Government servants and it is the rules and regulations of the PSU concerned which shall apply to him. If the PSU concerned needs time to frame its own rules and regulations, nothing prevents it from adopting such of the rules applicable to the Government servants as are deemed appropriate by it for its employees. **But it cannot be said that the rules applicable to the Government servants, would continue to apply to the Government servants who are absorbed/initially absorbed even when such rules have not been adopted by the concerned PSU.....**

9-15 xxxxxxxxxxxx (Not reproduced here.)”

(Emphasis supplied).

36. Even though the Delhi High Court has in the above case very rightly taken the correct position of law into consideration that as on 01.10.2000, all Group-B, Group-C and Group-D employees transferred to BSNL from the erstwhile Department of Telecom Services under the

Ministry of Telecommunications were absorbed in BSNL w.e.f. 01.10.2000, and it has been held clearly in Para-8 of the Hon'ble Delhi High Court judgment (supra) that it cannot be said that the rules applicable to the Government servants, would continue to apply to such Government servants who are absorbed/initially absorbed even when such rules have not been adopted by the concerned PSU, however, this preposition of law was not noticed or/and had been left **sub-silentio** by the Punjab & Haryana High Court while deciding the case before it. Therefore, this Bench of the Tribunal being under the writ jurisdiction of the Hon'ble Delhi High Court, and not being under the writ jurisdiction of Punjab & Haryana High Court, we are bound by the above reproduced orders of the Hon'ble Delhi High Court, and we are at liberty to treat the orders of Hon'ble Punjab & Haryana High Court as **sub-silentio**, and, therefore, *per incuriam*, since the Hon'ble Punjab & Haryana High Court had not noticed the correct position in law, as has been clarified by the Hon'ble Delhi High Court.

37. Therefore, all the applicants of this O.A., and the persons who got themselves impleaded in this OA through their application dated 16.05.2013, were all employees of the Government only till the date 30.09.2000, and, thereafter, they became corporate employees of BSNL w.e.f. 01.10.2000 onwards. Actually in Para 4.10 of the OA, the applicants have themselves stated as follows:-

“4.10. That the Department of Telecommunication which (was) earlier mandated to provide telecom service all over the Country, created an autonomous company called Bharat

Sanchar Nigam Limited (hereinafter referred to as 'BSNL') a Government company registered under the Companies Act, (which) came into effect on 1.10.2000, and the Department of Telecommunication had transferred its responsibilities and assets and liabilities in regard to maintenance and operation of Telecommunication Services throughout the country. All the officers and staff working in the Department of Telecommunication Services throughout the country, (and) all the officers and staff working in the Department of Telecommunication in the units like circles and districts controlled by the Chief General Manager were transferred to the newly created BSNL, and all the Gazette (d) group B and non-Gazetted staff were given option of being absorbed in the corporation's employment in the corresponding junior cadre of service in the corporation. The Department of Telecommunication was left with the responsibility of policy decision in regard to Telecom Industry".

38. The very character of the employment of the applicants and the intervenors, had thus had undergone a change with effect from 01.10.2000, the date they ceased to be Government employees, and became employees of the BSNL Corporation. Much emphasis had been laid in the judgment of Punjab & Haryana High Court, and even in the High Court of Kerala at Ernakulam's judgment of the continuity of the RRs of 1996 & 1999, but those RRs, which were framed when the concerned persons were Government employees which they ceased to be as on 30.09.2000, ceased to be applicable w.e.f. 01.10.2000 onwards.

39. The BSNL Corporation thereafter notified its RRs for the posts of JTOs in the year 2001, through Notification dated 26.09.2001. Therefore, any submission in regard to the continuity of any status which had been acquired by any individual during the period when he was a Government servant under the Department of Telecommunication of

Govt. of India upto 30.09.2000, ceases to have any relevance whatsoever from 01.10.2000 onwards. As a result, when BSNL was created as a corporate entity w.e.f. 01.10.2000, all the incumbents who were occupying civil posts under the Government of India as on 30.09.2000, ceased to hold such civil posts, within the meaning of FR (2) of the Fundamental Rules.

40. Since BSNL was created on the concept of back to back abolition of the relevant about 4 lakh civil posts under the Government, and creation of an equal number of corresponding posts in the new Corporation w.e.f. 01.10.2000, as has been mentioned by the Delhi High Court also in para 2 of its judgment, reproduced in para 35 (supra), several legal consequences followed, some of which may be enumerated as follows:-

- 1) Instead of the incumbents of being holders of civil posts and remaining to be civil servants under FR (2), they all became employees of the BSNL Corporation, against the back-to-back newly created posts in BSNL;
- 2) Their liens against their former posts as Government servants under FR 9 (13) got extinguished, and fresh corresponding liens became available to them to hold the newly created posts in the BSNL w.e.f. 01.10.2000;
- 3) As a result, all the persons who got so transferred from the erstwhile department of Telecommunications of the Union of India to the BSNL ceased to be holders of any “Permanent

Post" under FR 9 (22), or any "Temporary Post", under FR-9 (30), or if there were any "Tenure Posts", they ceased to hold any "Tenure Posts" under FR-9(30A);

- 4) All such employees were no longer eligible to draw any "Time Scale Pay" from the Consolidated Fund of India under FR 9 (31) w.e.f. 01.10.2000, and became entitled to draw salaries only from the new corporate entity BSNL;
- 5) They became employees of BSNL under FR-11 and none of them could claim that their lien was retained under the Government under Proviso (i) to FR-13;
- 6) Rather they all acquired a lien to hold posts under BSNL under FR-14 (A) (d);
- 7) It was not as if their absorption in the equal number of posts created back to back in BSNL was in the nature of their being appointed in Foreign Service under FR-10;
- 8) Rather, abolition of about 4 lakh posts, paid from the Consolidated Fund of India, had taken place, and creation of an equal number of posts, paid from the Corporate Funds of the newly created corporate entity BSNL, had followed.

41. As had been held by the Hon'ble Apex Court in **S.K. Saha vs. Prem Prakash AIR 1994 SC 745=1994(1) SCC 431**, since all these persons

were asked to give an option, and they gave their option for absorption of their services in the newly created Corporate entity BSNL, they were no longer in Government service at all, as the corresponding Department of Telecommunications, performing those functions which stood transferred to BSNL, itself became truncated, as noted by the Hon'ble Delhi High Court (supra).

42. It was not as if any of these about 4 lakh persons had at that time questioned the Government's right to entrust the activities of the erstwhile Government Department to the newly created Corporate body BSNL, which right to question the wisdom of the State they did not have under the law as laid down by the Apex Court in **S.K. Saha vs. Prem Prakash** (supra).

43. As was held by the Apex Court in **P.U. Joshi & Ors. vs. The Accountant General, Ahmedabad & Ors., 2003 (2) SCC 632**, there is no right in any employee of the State to claim that the Rules governing the conditions of his service should forever be the same, as at the time he had entered the service. Rather, in this case rather options were also called for, and the employees had opted for their being absorbed in the newly created Corporate entity of BSNL. It was held by the Hon'ble Apex Court in **Avas Vikas Sansthan & Anr. vs. Avas Vikas Sansthan Engineers Assn. & Ors. (2006) 4 SCC 132=(2006) SCC (L&S) 613**, the State has untrammelled power to abolish any post or organization, which the Union of India had exercised in this case by abolishing about 4

lakh posts under the erstwhile Department of Telecommunications, and providing for equivalent number of posts to be created for accommodating the incumbents in the newly created entity of BSNL.

44. It was held by the Hon'ble Apex Court in **Bharat Petroleum Coopn. Ltd. Ex-Employees Association and Others vs. Chairman and Managing Director, Bharat Petroleum Corp. Ltd., Bombay and Others, AIR 1994 SC 1304** that a Corporation has a right to make its own Rules and Regulations, laying down the service conditions. The freedom of public enterprises like BSNL to perform their functions and day-to-day administrative affairs was emphasized by the Hon'ble Apex Court in **Oil and Natural Gas Commission and Another vs. Association of Natural Gas Consuming Industries of Gujarat and Others, etc. etc. AIR 1990 SC 1851.**

45. In the context of employees of such enterprises, it was held that they fell in a separate category; however, they cannot complain that such corporatisation and privatisation would adversely affect them by depriving them from the status of being holders of civil posts, as employees of the State. In the case of **Shashikant Laxman Kale and Another VS. Union of India and ANOTHER AIR 1990 SC 2114**, and **Balco Employees Union (Regd.) vs. Union of India and Others (2002) 2 SCC 333**, it was held by the Hon'ble Apex Court that after such corporatisation and privatisation, the employees would continue to enjoy their Fundamental Rights as citizens, and all the rights and privileges

which are available to other Industrial employees, though not as employees of the State, and holders of civil posts.

46. It was further clarified by the Hon'ble Apex Court in **Dr. S.L. Agarwal, General Manager, Hindustan Steel Ltd., AIR 1970 SC 1150**, and in **Sukhdev Singh and Others Vs. Bhagatram Sardar Singh Raghuvanshi and Another AIR 1975 SC 1331** that although the public undertaking concerned could be termed as State for the purpose of Part-(III) of the Constitution of India, but its employees are not civil servants in terms of Part-XIV of the Constitution, and, therefore, they are not governed by Articles 309, 310 and 311 of the Constitution, even though they would be protected by the Rules and Regulations made by such Public Sector Undertakings for their own employees. In fact, in the case of **Managing Director, Orissa Industrial Infrastructure Development Corporation, Bhubaneswar vs. Sarat Chandra Patnaik (1996) 4 SCC 590**, the Hon'ble Apex Court had refused to interfere with the decisions of the Boards of such Corporations and Public Sector Enterprises, unless it was clearly shown that those decisions were *mala fide*.

47. In fact, under Service Law, transformation of a department performing certain governmental functions to Corporations or undertakings with autonomous status, for performing those very functions, but outside the structure of the State, is one of the expected methods or patterns through which change in the terms of appointment

of Government employees may take place, so long as the interests and salary of those employees are protected.

48. Therefore, it appears that the judgment of the Hon'ble Punjab and Haryana High Court at Chandigarh in **Dalbir Singh and Others vs. Bharat Sanchar Nigam Limited and another** (supra), being *sub-silentio* on the aspect of the change in the nature of employment of the parties before it w.e.f. 01.10.2000, had not followed the law of the land as laid down by the Hon'ble Apex Court in the above cited judgments.

49. The issue before us is as to what extent we are bound by the doctrine of law of precedent. Uniformity and consistency are the core of judicial discipline, as was held by the Hon'ble Apex Court in **SI Roop Lal and others vs. Lt. Governor through Chief Secretary of Govt. of NCT of Delhi: JT 1999 (9) SC 597**. We are even bound by the final judgments, and pronouncements of Coordinate Benches of this Tribunal on the same point of law, in so far as the *ratio decidendi* arrived at in them is concerned. However, the Paragraph-41 of the Apex Court's judgment in **State of U.P. v. Synthetics and Chemicals Ltd. (1991) 4 SCC 139** as reproduced by the Hon'ble Apex Court in its judgment in **Madhya Pradesh Housing and Infrastructure Development Board & Ors. vs. B.S.S. Parihar & Ors. & Madhya Pradesh Housing and Infrastructure Development Board vs. Dr. Sudha Jain and Ors. etc. AIR 2015 SC 3436**, stated as follows:-

"41. Does this principle extend and apply to a conclusion of law, which was neither raised nor preceded by any consideration. In other words can such conclusions be considered as declaration of law? Here again the English courts and jurists have carved out an exception to the rule of precedents. It has been explained as rule of sub-silentio. "A decision passes sub-silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind.". In Lancaster Motor Company (London) Ltd. v. Bremith Ltd. the Court did not feel bound by earlier decision as it was rendered 'without any argument, without reference to the crucial words of the rule and without any citation of the authority'. It was approved by this Court in Municipal Corporation of Delhi v. Gurnam Kaur. The bench held that, 'precedents sub-silentio and without argument are of no moment'. The courts thus have taken recourse to this principle for relieving from injustice perpetrated by unjust precedents. A decision which is not express and is not founded on reasons nor it proceeds on consideration of issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. Uniformity and consistency are core of judicial discipline. But that which escapes in the judgment without any occasion is not *ratio decidendi*. In B. Shama Rao v. Union Territory of Pondicherry it was observed, 'it is trite to say that a decision is binding not because of its conclusions but in regard to its *ratio* and the principles, laid down therein'. Any declaration or conclusion arrived without application of mind or preceded without any reason cannot be deemed to be declaration of law or authority of a general nature binding as a precedent. Restraint in dissenting or overruling is for sake of stability and uniformity but rigidity beyond reasonable limits is inimical to the growth of law."

50. Thus, this principle does not apply to a conclusion of law, which was neither raised nor considered, as has been cited by the Hon'ble Apex Court in **B. Shama Rao v. Union Territory of Pondicherry, AIR 1967**

SC 1480. But in the words of the Apex Court itself, that which escapes in the judgment without any occasion is not *ratio decidendi*, as in **B. Shama Rao v. Union Territory of Pondicherry** (supra), it was observed by the Apex Court that a decision is binding not because of its conclusions but in regard to its *ratio* and the principles, laid down therein.

51. Therefore, any declaration or conclusion arrived at without the proper point in law having been raised and considered by the Court concerned, cannot be deemed to be declaration of law or authority of a general nature, binding as a precedent. This concept is an exception to the Rules of precedence, and is stated as Rule ***sub-silentio***. A decision passes ***sub-silentio*** in the technical sense when the particular point of law involved in the decision is not perceived by the Court, or present to its mind. This aspect had been considered in detail by the Hon'ble Apex Court in **Municipal Corporation of Delhi vs. Gurnam Kaur (1989) 1 SCC 101**, in Paragraphs 11 & 12 of its judgment, as follows:-

11. Pronouncements of law, which are not part of the ratio decidendi are classed as obiter dicta and are not authoritative. With all respect to the learned Judge who passed the order in Jamna Das' case and to the learned Judge who agreed with him, we cannot concede that this Court is bound to follow it. It was delivered without argument, without reference to the relevant provisions of the Act conferring express power on the Municipal Corporation to direct removal of encroachments from any public place like pavements or public streets, and without any citation of authority. Accordingly, we do not propose to uphold the decision of the High Court because, it seems to us that it is wrong in principle and cannot be justified by the terms of the relevant provisions. A decision should be treated as given per incuriam when it is given in ignorance of the terms of a statute or of a rule having the force of a statute. So far as the order shows, no argument was addressed to the court on the question whether or not any direction could properly be made compelling the Municipal Corporation to construct a stall at the pitching site of a pavement squatter. Professor P. J. Fitzgerald, editor of the Salmond on Jurisprudence, 12th edn., explains the concept of sub silentio at p. 153 in these words :

"A decision passes sub silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the Court or present to its mind. The Court may consciously decide in favour of one party because of point A, which it considers and pronounces upon. It may be shown, however, that logically the Court should not have decided in favour of the particular party unless it also decided point B in his favour; but point B was not argued or considered by the Court. In such circumstances, although point B was logically involved in the

facts and although the case had a specific outcome, the decision is not an authority on point B. Point B is said to pass sub silentio."

12. In *Gerard v. Worth of Paris Ltd. (K)*, (1936) 2 All ER 905 the only point argued was on the question of priority of the claimant's debt, and, on this argument being heard, the Court granted the order. No consideration was given to the question whether a garnishee order could properly be made on an account standing in the name of the liquidator. When, therefore, this very point was argued in a subsequent case before the Court of Appeal in *Lancaster Motor Co. (London) Ltd. v. Bremith, Ltd.*, (1941) 1 KB 675, the Court held itself not bound by its previous decision. Sir Wilfrid Greene, M. R., said that he could not help thinking that the point now raised had been deliberately passed sub silentio by counsel in order that the point of substance might be decided. He went on to say that the point had to be decided by the earlier Court before it could make the order which it did; nevertheless, since it was decided "without argument, without reference to the crucial words of the rule, and without any citation of authority", it was not binding and would not be followed. Precedents sub silentio and without argument are of no moment. This rule has ever since been followed. One of the chief reasons for the doctrine of precedent is that a matter that has once been fully argued and decided should not be allowed to be reopened. The weight accorded to dicta varies with the type of dictum. Mere casual expressions carry no weight at all. Not every passing expression of a Judge, however eminent, can be treated as an ex cathedra statement, having the weight of authority.

52. Therefore, when it is seen that the aspect of change in the legal aspect of the employment status of the employees of the erstwhile Department of Telecommunications from being Government servants upto 30.09.2000 to becoming employees of the newly created Corporation BSNL w.e.f. 01.10.2000, and thus losing the status of being Government servants etc., as enumerated in detail by us above, had not at all been presented before the Hon'ble High Court of Punjab & Haryana in Writ Petition No. CWP No.5608/2007 (supra), or before the Hon'ble High Court of Kerala High Court in at Ernakulam dated 14.09.2012 in OP (CAT) No.3714/2011(Z) (supra), or before the Coordinate Benches in OA No.161/2012 with OA No.177/2012 dated 13.12.2012 passed by the

Ernakulam Bench, or the order dated 03.05.2013 in OA No.708/2013 passed by Madras Bench of this Tribunal (supra), these judgements and orders were passed ***sub-silentio*** the position the law concerning the change in the legal status of the employment of all such employees.

53. Therefore, with utmost respect towards the High Court of Kerala at Ernakulam, and High Court of Punjab and Haryana at Chandigarh, and with due deference to the decisions arrived at by the Coordinate Benches of this Tribunal in the cases cited above, since all of them were ***sub-silentio*** about the cataclysmic event which took place on 01.10.2000, bringing a change in the legal status and position of all the concerned employees, and the Rules applicable to them, we are unable to follow those orders and judgments under the Rule of ***sub-silentio***.

54. Even though the BSNL had for the purpose of convenience borrowed the same designations w.e.f. 01.10.2000 onwards, which were earlier prevailing under the Department of Telecommunications till the previous date on 30.09.2000, there was an element of discontinuity in the nature of employment on that date, which had been totally overlooked by the Hon'ble Punjab and Haryana High Court at Chandigarh in ***Dalbir Singh and Others vs. Bharat Sanchar Nigam Limited and another*** (supra). The RRs of 1996 & 1999 had been framed by the Department of Telecommunications, and remained applicable for all the promotions to be given and actually given till 30.09.2000, since both the original applicants as well as the intervenors before us had voluntarily opted for their absorption in the newly created Corporation BSNL w.e.f.

01.10.2000 onwards. Such absorption on the next date of 01.10.2000 could only have been on "**as is where is basis**", as on 30.09.2000, as had been noted by the Hon'ble Delhi High Court in para 2(ii) of its judgment reproduced by us in para 35/above.

55. The LDCE for promotions to the posts of JTOs was held on 23.04.2000 when the Department of Telecommunication was still in existence, and its result was declared on 10.10.2000. Thereafter, all those persons who had joined such posts of JTOs on substantive basis up to 30.09.2000 alone can lay a claim to such JTOs' posts. Around 6,000 more persons, who had qualified at the LICE/LDCE held on 23.04.2000, according to the result of that examination declared on 10.10.2000, could not occupy such higher posts of JTOs before 30.09.2000 due to non-availability of vacancies, and lost their claims as on 01.10.2000, when they occupied the lower status posts in BSNL on absorption basis.

56. Therefore, in view of the weight of the law of the land as laid down by the Hon'ble Apex Court in the cases cited above, we have no option but to hold and point out that even though there had been a list of 6000 persons as on 30.09.2000, who were yet to be accommodated as JTOs, after they qualified in the LICE/LDCE examination held on 30.04.2000, all of them had lost any significance whatsoever of that, and their status of having qualified the LICE/LDCE became redundant on 01.10.2000, when the posts ceased to exist under the Department of

Telecommunications, and the old Governmental RRs themselves were no longer applicable to the newly created Corporation of BSNL.

57. BSNL framed its own parallel Recruitment Rules for JTOs in 2001. The subsequent framing of these new Recruitment Rules, and the consequential decisions of the Board of the BSNL, could not have been tested on the touchstone of the redundant 1994 and 1996 LDCE Rules, which had been framed by the Department of Telecommunications earlier, which department itself had almost ceased to exist, as was mistakenly done *sub silentio*, by the various Benches of this Tribunal, by the Hon'ble Punjab & Haryana High Court, and by the High Court of Kerala at Ernakulam, in the cases cited above.

58. It is most unfortunate that the Board of BSNL itself did not in its decisions, as produced before us, and cited by both the sides before us, recognized this aspect properly, and did not take cognizance of and address the disconnect and discontinuance which had taken place in between the dates of 30.09.2000 and 01.10.2000. And, in some ways, the Board of BSNL also continued to feel to be burdened by the waiting list of the LICE/LDCE examination of 23.04.2000, which itself had ceased to exist on 30.09.2000, when the Department of Telecommunications itself almost ceased to exist.

59. Therefore, when the Corporation of BSNL has issued the impugned Notifications dated 14.01.2013 (Annexure A-2) and dated 09.05.2013

(Annexure A-3), notifying for fresh LDCE to be held for the JTO(T) posts of BSNL, within the respective quotas, neither the applicants nor the intervenors can be allowed to plead that these Notifications should be quashed, in so far as they direct the applicants, and the members of the respective Associations to appear again in the LICE/LDCE for their appointment/regularization on the posts of JTOs in BSNL. Whatever rights or equity had accrued in favour of the members of the applicant Associations under the previous Recruitment Rules of the Telecommunications Department had got no relevance whatsoever to the position as obtained w.e.f. 01.10.2000 onwards. Therefore, the prayer at para 8 (a) of the present OA cannot lie.

60. Because of the same reason, the prayer at Para-8 (b) of the OA also does not lie, since, as we have discussed in detail and held above, all the employees of the erstwhile Department of the Telecommunications at Gazetted & Non-Gazetted Group B and Group C & D levels had been absorbed in the newly created Corporation BSNL w.e.f. 01.10.2000, on **“as is where is basis”**, as noticed by the Hon’ble Delhi High Court also, and if thereafter the newly created Corporation BSNL has, in its wisdom, decided to fill up their circle-wise JTOs’ vacancies on the basis of such LICE/LDCE examination, their actions cannot be questioned on this account.

61. Also, since the Corporation itself had been created w.e.f. 01.10.2000 onwards, we find nothing wrong in the reply and clarification given by the Corporation at Annexure A-3 that the vacancies would be

calculated financial year-wise only thereafter, w.e.f. 01.04.2001 to 31.03.2002, 01.04.2002 to 31.03.2003, and onwards, since the financial year 2001-2002 was the first financial year for which the JTOs' vacancies could have been calculated in the Corporation newly created w.e.f. 01.10.2000.

62. Under the force of the law, as laid down by the Hon'ble Apex Court, as cited by us above, it is expected that in undertaking their recruitment and promotion from the financial year 2001-2002 onwards, the rights of all the persons, who were occupying their respective positions on substantive basis as on 01.10.2000, as they were inherited by the new Corporation from the erstwhile Department of Telecommunications, would be protected and safeguarded, under the Rules framed by the Corporation. But such protection would not extend to all those who were only occupying the higher posts of JTOs on an ad-hoc or temporary basis as against any lower posts, of any category whatsoever.

63. In the result, there is no merit in the OA, and the same is, therefore, dismissed, but there shall be no order as to costs.

(Raj Vir Sharma)
Member (J)

(Sudhir Kumar)
Member (A)

cc.