

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00190/2014

Thursday, this the 16th day of August, 2018

CORAM:

**Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member
Hon'ble Mr. Ashish Kalia, Judicial Member**

Jithu L Dev, S/o. Sahadevan, aged 25 years,
Parankimanvila Veedu, Neeleswaram PO,
Kottarakara, Kollam. **Applicant**

(By Advocate – M/s. M.R. Rajendran Nair & Associates)

V e r s u s

1. The Chief General Manager, Kerala Circle, BSNL,
Thiruvananthapuram, Pin – 695 001.
2. The General Manager, Telecom District, BSNL,
Kollam – 691 001.
3. Shamnad O.A., Nishad Bhavan, Charimoodu, Vellimon
Kollam, Pin – 691 001. **Respondents**

**[By Advocates – Mr. Pradeep Krishna (R1&2) and
Mr. S. Abhilash (R3)]**

This Original Application having been heard on 08.08.2018, the
Tribunal on 16.08.2018 delivered the following:

O R D E R

Per: Ashish Kalia, Judicial Member -

The applicant applied for the post of Telecom Technical Assistant in the various executive categories under BSNL Kerala and he was provisionally selected. On declaration of results, the applicant's name was included first under the OBC category. As per the Rank List, S1.No. of the applicant was 13

in the list of OBC candidates. Total number of 14 vacancies were there. It is further submitted that out of 14 the vacancies, 2 posts were vacant. So her name should have been included. Feeling aggrieved of non-inclusion her name in the select list she has approached this Tribunal seeking following reliefs as under:

“i. Call for the records leading to Annexure-A4 and set aside the same to the extent it adversely affects the applicant, lowering rank of the applicant from main list to waiting list.

i(a) to call for the records leading to Annexure R(1)(e) and Annexure R(1)(g) produced along with reply statement dated 15.7.2014 of the respondents.

ii. Issue appropriate order or direction to respondents to appoint the applicant as Telecom Technical Assistant in accordance with the rank list originally published by the 2nd respondent.

iii. Restrain the respondents from appointing any other candidate who is junior to the applicant in the rank list for the post of Telecom Technical Assistant in Kollam District.

iv. Issue such other orders which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.”

2. This Tribunal issued notice to respondents and they have contested the matter and filed their reply statement and submitted therein that vacancy position of Kollam SSA was OC 10, OBC-3, SC-1. The age limit for examination for OC candidates between 18-27 years as on 13.5.2013, the upper age limit was relaxable for 5 years for SC/ST and 3 years for OBC.

3. This condition was given in the Notification. The respondents noticed some candidates who were placed in OC can be considered only under OBC quota as they have got age relaxation to appear for the examination. It is further submitted one candidate Shri Shibu.J who got age relaxation under OBC quota was selected at Sl.No.7 in the first, thereafter Respondents

notified their inadvertent mistake and placed him in OBC list as Sl.No.1 and last candidate on OBC quota, namely Smt.Jithu L Dev was shifted to waiting list on filling up of the 14 vacancies.

4. It is further submitted that 3 other OC candidates who secured more marks than applicant are also in the waiting list. The top 2 candidates are Shamnad O.A and Smt.Jithu L Dev, both are having same marks. The date of birth will be taken as the criteria for determining the rank. Mr.Shamnad O.A.'s date of birth is 18.5.1988 and of the applicant is 24.5.1989, but by inadvertent mistake, applicant was placed in the first list.

5. Heard counsel of the parties, Sri Hariraj for applicant Mr.Pradeep Krishna for respondents 1 & 2 and Ms. Archana K.S., appearing on behalf of Mr. S.Anilash for respondent No.3 and considered the rival submissions and judicial verdicts cited by them.

6. The point in issue raised by the applicant before the Tribunal is whether applicant who belongs to the OBC category after getting marks equal to the OC category candidate is to be considered in the other category candidate or not?

7. The contention raised by the applicant seems to be reasonable because OBC candidates who secured mark sufficient to be considered in OC category. Why should not they be included either in OC list or applicant to OBC list. Because if this happen the party respondent who got employment in OC List, Applicant has chance to be considered in the OBC list. On rectifying the inadvertent mistake by the official respondents the name of the party respondent has brought in the OBC list and applicant's name pushed down to waiting list.

8. The counsel for the applicant has cited the judgment of the Supreme Court in the matter of *Jitender Kumar Singh Vs. UOI* 2010(3) SCC 119.

“72. Soon after the enforcement of the 1994 Act the Government issued instructions dated 25-3-1994 on the subject of reservation for Scheduled

Castes, Scheduled Tribes and other backward groups in the Uttar Pradesh Public Services. These instructions, inter alia, provide as under:

“4. If any person belonging to reserved categories is selected on the basis of merits in open competition along with general category candidates, then he will not be adjusted towards reserved category, that is, he shall be deemed to have been adjusted against the unreserved vacancies. It shall be immaterial that he has availed any facility or relaxation (like relaxation in age-limit) available to reserved category.”

From the above, it becomes quite apparent that the relaxation in age-limit is merely to enable the reserved category candidate to compete with the general category candidate, all other things being equal. The State has not treated the relaxation in age and fee as relaxation in the standard for selection, based on the merit of the candidate in the selection test i. e. main written test followed by interview. Therefore, such relaxations cannot deprive a reserved category candidate of the right to be considered as a general category candidate on the basis of merit in the competitive examination. Sub-section (2) of Section 8 further provides that government orders in force on the commencement of the Act in respect of the concessions and relaxations including relaxation in upper age-limit which are not inconsistent with the Act continue to be applicable till they are modified or revoked.”

9. On the other hand, counsel for respondents cited latest Supreme Court judgment in *Deepa E.V. vs. Union of India and Ors.*, in Civil Appeal No.3609 of 2017. Afore-mentioned judgment has also been discussed and held:

“ Department of Personnel and Training had issued proceedings O.M.No.36012/13/88-Esttt. (SCT) dated 22.5.1989 and OM No.36011/1/98-Esttt. (Res.), dated 1.7.1998 laying down stipulation to be followed by the various Ministries/Department for recruitment to various posts under the Central Government and the reservation for SC/ST/OBC candidates. The proceedings reads as under:-

“G.I. Dept. of Per. & Trg. o.M.No.36012/13/88-Estt.(SCT), dated 22.5.1989 and OM No.36011/1/98-Estt. (Res.), dated 1.7.1998 “Subject:- Reserved vacancies to be filled up by candidates lower in merit or even by released standards-candidates selected on their own merits not to be adjusted against reserved quota.

“ It has now been decided that in cases of direct recruitment to vacancies in posts under the Central Government. the SC and ST candidates who are selected on their own merit, without relaxed standards along with candidates belonging to the other communities. will not be adjusted against the reserved share of vacancies. The reserved vacancies will be filled up separately from amongst the eligible SC and ST candidates which will thus comprise SC and ST candidates who are lower in merit than the last candidate on the merit list but otherwise found suitable for appointment even by relaxed standards, if necessary.

All Ministries/Departments will immediately review the various Recruitment Rules/Examination Rules to ensure that if any provision is contrary to the decision contained in previous paragraphah exist in such rules, they are immediately suitably modified or deleted.

The above OM and the OM. No.36012/2/96-Estt.(Res.), dated 2.7.1997 provide that in cases of direct recruitment, the SC/ST/OBC candidates who are selected on their own merit will not be adjusted against reserved vacancies. 3. In this connection, it is clarified that only such SC/ST/OBC candidates .who are selected on the same standards as applied to general candidates shall not be adjusted against reserved vacancies. In other words, when a relaxed standard is applied in selecting an SC/ST/OBC candidates. for example in the age-limit, experience, qualification, permitted number of chances in written examination, extended zone of consideration larger than what is provided for general category candidates. etc.. the SC/ST/OBC candidates are to be counted against reserved vacancies. Such candidates would be deemed as Unavailable for consideration against unreserved vacancies.” (Underlining added).

Learned counsel for the appellant mainly relied upon the judgment of this Court in Jitendra Kumar Sinnigh and Another v. State of Uttar Pradesh and Others, reported in (2010) 3 SCC 119, which deals with the UP. Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes Act, 1994 and Government order dated 25.3.1994. On a perusal of the above judgment, we find that there is no express bar in the said U.P. Act for the candidates SC/ST/OBC being considered for the posts under General Category. In such facts and circumstances of the said case, this Court has taken the view that the relaxation

granted to the reserved category candidates will operate a a level playing field. In the light of the express bar provided under the proceedings dated 1.7.1998 the principle laid down in Jitendra Kumar Singh (supra) cannot be applied to the case in hand.”

10. The after-reading latest Hon'ble Supreme Court judgments, it is quite clear if OBC/SC/ST candidates who are selected on merit will be considered against the general/OC candidate select list. He shall not be considered as reserved category candidate list because he has competed with the general candidate and this is fair and just also.

11. But the only rider put by the Hon'ble Supreme Court is “candidate who are selected in general category the reserved category candidate should be on the same standard as applied to general candidate.” The Apex Court has further elaborated the meaning of the same standard i.e. without relaxation in age qualification, permitted number of chances in written examination, extended zone of consideration larger than provided for the general category candidate. In other words once benefit of relaxation is availed in any form by the reserve category candidate he cannot be adjusted against general candidates list. They will be adjusted against vacancy of their Reserved Candidates' List only.

12. Thus we are of the view that since applicant and the party respondent belongs to OBC category and they have availed the benefit of age relaxation while appearing in the examination of Telecom Technical Assistant covered by principle laid down by the Apex Court in *Deepa E.V.* (Supra) and party respondents' names cannot be included in the general/OC category select list. Resultantly, applicant's name would not come in the OBC/reserve candidate Select List, as her name was finally pushed back in the waiting list

of OBC candidates on detection of their mistakes by the respondents.

13. In view of above law laid down by the Hon'ble Apex Court that if a candidate seeks relaxation in form of SC/ST/OBC category they are not entitled to be considered in the general candidate list. The present OA fails and is hereby rejected with no order as to costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K. BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

aa/sj*

Original Application No.180/00190/2014

List of Annexures of the applicant

- Annexure A-1 - True copy of the call letter issued to the applicant.
- Annexure A-2 - True copy of the communication issued to the applicant for certificate.
- Annexure A-3 - True copy of the relevant portion of the rank list published by the 2nd respondent.
- Annexure A-4 - Proceedings No. AGM (R&E) TTADR/CON/2013/Result 13 dated 28.1.2014 issued by the 2nd respondent.

List of Annexures of the Respondents

- Annexure R1(a) - True copy of the notification for TTA Direct Recruitment Examination, 2012.
- Annexure R1(b) - True copy of the result of the examination dated 2.1.2014 to the cadre of TTA.
- Annexure R1(c) - True copy of the date of birth of candidates selected in the first list.
- Annexure R1(d) - True copy of the corrigendum dated 28.1.14.
- Annexure R1(e) - True copy of the candidates selected from the waiting list.
- Annexure R1(f) - True copy of the order No. 1-12/98-NCG issued by DOT.
- Annexure R1(g) - True copy of the reply dated 5.4.14 to the representation filed by the applicant.
- Annexure R3(a) - True copy of the Secondary School Leaving Certificate of the 3rd respondent.
