

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00188/2014

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Original Application No.180/00299/2014

Tuesday this the 31st day of July, 2018

CORAM:

Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member

Hon'ble Mr. Ashish Kalia, Judicial Member

1. O.A. No. 180/00188/2014 -

1. Raju M.B.,
Aged 45 years, S/o. Balan M.K.,
Junior Telecom Officer (Officiating), EIOB External,
Bharat Sanchar Nigam Ltd (BSNL) Chembukavu,
Thrissur – 20, Residing at Mundackal House,
Mannampetta, Varakkara P.O., Thrissur District – 680 302.
2. Raimon C.P.,
Aged 49 years, S/o. Pyloth C.A.,
Junior Telecom Officer (Officiating),
Mannamangalam, Bharat Sanchar Nigam Ltd. (BSNL),
Thrissur – 20, Residing at: Chukkiri House,
Pudukkad P.O., Thrissur Dt. - 680 301.
3. Xavier A.A.,
Aged 54 years, S/o. Esthappanos, Junior
Telecom Officer (Officiating), Office of the
Sub- Divisional Engineer (Installation),
Bharat Sanchar Nigam Ltd. (BSNL), Ernakulam,
Residing at: Attupuram House, Cherukunnam,
Asamannoor P.O., Ernakulam Dt. 683 549.
4. Antony K.J.,
Aged 52 years, S/o. Joseph K.V.,
Junior Telecom Officer (Officiating),
Telephone Exchange, Bharat Sanchar Nigam Ltd. (BSNL),
Fort Kochi, Kochi – 682 001., Residing at:
Kattikkatu House, Maravukad, Chellanam P.O.,
Kochi – 682 008.
5. Poullose C.V.,
Aged 51 years, S/o. Varghese C.P.,
Junior Telecom Officer (Officiating),
Telephone Exchange, Bharat Sanchar Nigam Ltd. (BSNL),

Mulavukad, Ernakulam Dt., Residing at:
Chiraparamban House, Near Madras Kavala
Koovappadi P.O., Ernakulam Dt. 683 544.

6. Peter P.P.,
Aged 51 years, S/o. Pavu P.P.,
Junior Telecom Officer (Officiating),
Office of the Divisional Engineer (SAN),
Transmission Project, Bharat Sanchar Nigam Ltd. (BSNL),
Ernakulam, Residing at: Pullerkkudi House,
Koovappadi P.O., Ernakulam Dt. - 683 511. **Applicants**

(By Advocate – Mr. T.C. Govindaswamy)

V e r s u s

1. The Chairman-cum-Managing Director,
Bharat Sanchar Nigam Ltd. (BSNL),
Corporate Office, Bharat Sanchar Bhavan,
4th Floor, Janpath, New Delhi – 110 001.
2. The Chief General Manager (Telecom),
Bharat Sanchar Nigam Limited (BSNL),
Kerala Circle, Trivandrum – 695 033. **Respondents**

(By Advocate – Mr. George Kuruvila)

2. O. A. No.180/00299/2014

1. Kuriakose K.P.,
Aged 50 years, S/o. K.V. Paulose,
Officiating Junior Telecom Officer,
Bharat Sanchar Nigam Limited (BSNL),
BSS III, BSNL Mobile Services, 1st Floor,
Telephone Exchange, Desabhimani Road, Kaloore,
Cochin – 682 017, Residing at Kochukudy House,
Kuruppampady P.O., Perumbavoor, Ernakulam District,
Pin – 683 545.
2. Shylaja T.,
Aged 44 years, D/o. Narayankutty Nair,
Officiating Junior Telecom Officer,
Bharat Sanchar Nigam Limited (BSNL),
NIB II, O/o. SDE NIB, 2nd Floor,
Telephone Exchange Building, T.B. Road,
Palakkad – 678 014., Residing at Bhavana,
Tharavathapadi, Pirayiri, Palakkad District,
Pin – 678 004.

3. Sebi Louis M.,
Aged 44 years, S/o. M.T. Louis,
Officiating Junior Telecom Officer,
Bharat Sanchar Nigam Limited (BSNL),
Chandra Nagar, Palakkad – 678 007.,
Residing at 16/219, Nehru Colony,
Kunnathurmedu, Palakkad District – 678 013.
4. Michael P.M.,
Aged 43 years, S/o. Mathew P.T.,
Officiating Junior Telecom Officer,
Bharat Sanchar Nigam Limited (BSNL),
Telephone Exchange, Puvathur P.O.,
Pavaratty, Thrissur – 680 507., Residing at
Puthoor House, Anedath Road, Pavaratty,
Thrissur District – 680 507.
5. Daisy P.F.,
Aged 43 years, D/o. Antony,
Officiating Junior Telecom Officer,
Bharat Sanchar Nigam Limited (BSNL),
Telephone Exchange, Thottippal, Thrissur,
Residing at Kanjirathingal House, Vandore,
Alagappa Nagar P.O., Thrissur District – 680 302.
6. Babu M.,
Aged 43 years, S/o. Kannan Nambiar (late),
Officiating Junior Telecom Officer,
Bharat Sanchar Nigam Limited (BSNL),
Mathamangalam, Payyannur Division, Kannur,
Residing at Near GHSS Vellur, Vellur P.O.,
Via Payyannur, Kannur District, Pin - 670 307.
7. Kunhalen,
Aged 52 years, S/o. Kunhali,
Officiating Junior Telecom Officer,
Bharat Sanchar Nigam Limited (BSNL),
OCB Telephone Exchange, Manjeri, Malappuram,
Residing at Ealam Kulvan House,
Chathan Gottupuram P.O.,
Malappuram District – 679 328.
8. Rahmathullah Kotta,
Aged 45 years, S/o. K. Abbobacker Moulavi,
Officiating Junior Telecom Officer,
Bharat Sanchar Nigam Limited (BSNL),
Telephone Exchange, Areacode P.O.,
Malappuram – 673 639, Residing at Kinaav,
Mullath Thoad Road, Puthalam, Areacode P.O.,

Malappuram District, Pin – 673 639.

..... **Applicants**

(By Advocate – Mr. T.C. Govindaswamy)

V e r s u s

1. The Chairman-cum-Managing Director,
Bharat Sanchar Nigam Ltd. (BSNL),
Corporate Office, Bharat Sanchar Bhavan,
4th Floor, Janpath, New Delhi – 110 001.

2. The Chief General Manager (Telecom),
Bharat Sanchar Nigam Limited (BSNL),
Kerala Circle, Trivandrum – 695 033.

..... **Respondents**

(By Advocate – Mr. T.C. Krishna)

These Original Applications having been heard and reserved on 26.07.2018, the Tribunal on the 31.07.2018 day delivered the following:

ORDER

Per : Ashish Kalia, Judicial Member -

Since the relief they seek in these OAs and the legal contentions raised by them are more or less similar, for the sake of brevity a common order is being passed.

2. The relief sought by the applicants in both the OAs are as under:

O.A. No. 180/00188/2014 -

“(i) Call for the records leading to the issue of Annexures A9, A10 and A13 and quash the same in so far as they relate to the applicants;

(ii) Declare that the applicants are not liable to undergo fresh training for promotion to the post of Junior Telecom Officers in so far as they had already undergone the training successfully;

(iii) Direct the respondents to regularise the applicants' services as Junior Telecom Officers with effect from the date they have been officiating in that capacity as shown in paragraph 4(i) above; and

(iv) Direct the respondents to grant all the consequential benefits of such regularisation within a time frame as may be found just and proper by this Hon'ble Tribunal;

- (v) Award costs of and incidental to this application;
- (vi) Pass such other orders or directions as deemed just fit and necessary in the facts and circumstances of the case.”

O.A. No. 180/00299/2014 -

- “(i) Call for the records leading to the issue of Annexures A6, A7, A9 and A10 and quash the same in so far as they relate to the applicants;
- (ii) Declare that the applicants are not liable to undergo fresh training for promotion to the post of Junior Telecom Officers in so far as they had already undergone the training successfully;
- (iii) Direct the respondents to regularise the applicants' services as Junior Telecom Officers with effect from the date they have been officiating in that capacity as shown in paragraph 4(i) above; and
- (iv) Direct the respondents to grant all the consequential benefits of such regularisation within a time frame as may be found just and proper by this Hon'ble Tribunal;
- (v) Award costs of and incidental to this application;
- (vi) Pass such other orders or directions as deemed just fit and necessary in the facts and circumstances of the case.”

3. The brief facts of the case are:-

3.1. The applicants were working under the respondents as Junior Telecom Officers (in short JTOs) for more than 9 years on officiating basis and they had underwent requisite training for the same. But department has asked them to go for training once again after reverting them to their original last post of Telecom Technical Assistant (in short TTE/TTA) resulting in reduction of pay. Except second applicant in OA No. 180/188/2014 who is having degree in Engineering all others have Diploma in Engineering as stated in the OAs.

3.2. As per the Recruitment Rules of JTO dated 9.1.1996, 50% of vacancy of the JTO were to be filled by direct recruitment and 50% by way of

promotion. The promotion quota was divided in to two groups 15% by promotion of departmental candidate through competitive examination and 35% quota for promotion on transfer of Transmission Assistants/phone Inspector/Telecom Technical Assistants by qualifying screening test.

3.3. In the year 2000 under the Recruitment Rules of 1996 a screening test was conducted by the department. Applicants participated in the screening test and qualified it. Their names were placed in the panel. In the meanwhile, BSNL came into existence in place of DOT with effect from 1.10.2000 and new Recruitment Rules were framed on 26.9.2001, by which 50% vacancies was to be filled by way of direct recruitment and 50% by way of promotion through Limited Internal Competitive Examination from feeder categories out of which one was TTA. The applicants were again asked to go for training under the new Recruitment Rules and Training but later on they have appeared and they were successful in the year 2013. The applicants successfully undergone training in the year 2004-2005 also. Thereafter applicants were posted against vacancies of 2003 as Junior Telecom Officer ('JTO in short). During the course of arguments both sides counsel submitted that they appeared in the training and declared successful. Now the second relief sought for appearance of trade test has become infructuous and only left open to be decided by the Tribunal is regularization of the applicants as JTO with effect from the date of their officiation on the said with consequential relief thereon.

4. The respondents contested the OAs and filed their reply. The

respondents submitted that the applicants were appointed as Technicians. The cadre was restructured to constitute the cadre of Telecom Technical Assistants. The restructuring of cadre was not uniform in the different Secondary Switching Area/Telecom Division even in the Kerala Circle itself. In the result, some of them came over to the restructured cadre prior to 1995 and some others after 1995 on various dates. In relaxation of the Recruitment Rules to the post of Junior Telecom Officers which existed from the year 1990, the incumbents of the restructured cadre of Telecom Technical Assistants were permitted in a so-called screening test which was held on 29th January, 1995 for eventual promotion as JTO. Those who were brought to restructured cadre of TTAs as on the date, had the opportunity to participate in the screening test while those others like the applicants and those who are qualified and promoted as a matter of course as JTOs, both against direct recruits vacancies as well as promotion quota vacancies of JTO for the year 2003.

5. Under 50:50 quota for both direct recruits and promotion quota through Limited Internal Competitive Examination from amongst a specified set of Group-C employees of the engineering wing included TTA vacancies were filled. Those qualified were sent for training for the post of the JTO. It is further submitted that all the applicants were posted on regular vacancies of JTO in the year 2005 on different dates. In the nutshell the respondents submitted that the applicants were given promotion from the date of the vacancies in the year 2005 when they are eligible and joined the post under the new Recruitment Rules qualifying the LDCE examination against the

vacancy in their quota and they are entitled for.

6. Heard the learned counsel for the parties. Mr. T.C. Govidaswamy, learned counsel for the applicants appeared in both cases and Mr. George Kuruvilla, learned counsel for the respondents appeared in OA No. 180/188/2014 and Mr. T.C. Krishna learned counsel for the respondents appeared in OA No. 180/299/2014. Perused the records.

7. Now the short point raised before this Tribunal is whether the applicants are entitled to get promotion with effect from the date of officiation or not ?

8. The learned counsel for respondents handed over the judgment of this Bench of the Tribunal titled K.P. Girija & Ors. v. Union of India & Ors. in OA No. 1047 of 2012 dated 31.05.2016 where the present issue is discussed by relying of judgments as under:

“13. Annexure R2(c) is a decision of the Division Bench of the Hon'ble High Court in OP (CAT) No. 335 of 2010 dated 12.4.2012. In that case it was held by the Hon'ble High Court that Annexure A1 therein promoting 6000 JTOs to the post of Sub Divisional Engineer is a regular promotion order and the seniority of the officers promoted therein shall be as per the list appended. It was stated that there was no mention that the promotions were subject to the quota rota rule or that the seniority therein would be subject to any change consequent to the departmental competitive examination. It was specifically held that though the departmental competitive examination was conducted calculating the number of vacancies for the previous years, none of the persons who were successful therein are entitled to have their seniority counted from a date before which they joined duty. It was so held in the light of the 3 Judges Bench decision of the Apex Court in **Central Provident Fund Commissioner & Anr. v. N. Ravindran & Ors. - 1995 Supp(4) SCC 654**. It is submitted by the learned counsel for the applicants that Annexure R2(c) was in respect of the promotion by departmental examination under general quota and it was not with reference to the SC/ST quota but the ratio decided therein is that the persons who became successful cannot claim seniority from a date before which they joined duty.

14. As per Annexure A2 the applicants were appointed as JTOs for the recruitment year 1999 and joined duty without any demur accepting Annexure A2 and it was not challenged for nearly 11 years. The contention that the principle laid down in Annexure R2(c) is not at all applicable to the

facts of this case cannot be accepted. In paragraph 19 of Annexure R2(c) the Hon'ble High Court held:

“19. To sum up, we declare that there is no rule entitling an employee of the respondents to claim service benefits from the date of arising vacancy. Service benefits can be claimed only from the date of joining duty. When appointments are made from different streams one after another, those who are subsequently appointed are not entitled to seniority over those who are appointed earlier so long as no such condition is stated in the earlier appointment order. Resultantly, we further find that the applicant before the Tribunal is entitled to have his seniority settled in pursuance to Annexure A1 promotion order. The review applicants who were later appointed towards 25% quota under departmental competitive examination are not entitled to have their seniority fixed with retrospective effect against the applicant. The review applicants are not entitled to claim service benefits from the date of arising of vacancy. They are entitled to count their seniority reckoned from the date of joining duty in the promoted post.”

9. In view of the above judgements, the point in law is settled that the seniority cannot be claimed from the date of vacancy in the respective quota. Rather it should be granted from the date of acquiring of requisite qualification of the post on the date of joining. If we apply this principle in the present case to applicants who were officiating as Junior Telecom Officer on adhoc basis, under the old recruitment rules and under the new recruitment rules of 2000, they were eligible for the post JTOs on the date of acquiring the requisite qualification/training under the new rules of 2000, they are entitled to get the post merely because they have officiated on the said post without having requisite qualification and training they cannot claim seniority from the respective date. Applicants have qualified under the new recruitment rules by competing in the Limited Departmental Competitive Examination. They have been promoted to the said post and their seniority has been fixed from the date of joining of the said post. It is settled principle merely holding post on adhoc officiation basis does not get any right of seniority without fulfilling the requisite qualification. The

applicants have qualified under the respective recruitment rules in the year 2013 and their seniority has been given from the date of joining the post and vacancy arose in their quota.

10. In view of what is stated above, we are of the view that the respondents have rightly reckoned the date of seniority of the applicants from the date of joining as also held by the above said ruling. Accordingly, the O.A.s are dismissed. No order as to costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K. BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

sj*/ SA

O. A. No. 180/00188/2014

List of Annexures of the applicant

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|---------------|---|---|
| Annexure A-1 | - | True copy of the extracts of the 23 rd meeting of the Board of Directors of BSNL held on 30.03.2001 at New Delhi. |
| Annexure A-2 | - | True copy of Recruitment Rules of Junior Telecom Officer communicated by the BSNL as per its publication dated 26 th September 2001. |
| Annexure A-3 | - | True copy of various orders issued by the respondents. |
| Annexure A-4 | - | True copy of Certificate dated 02.04.2005 issued by the Deputy General Manager of the Regional Telecommunication Training Centre indicating successful completion of the training course for Junior Telecommunication Officer as regards the 4 th applicant. |
| Annexure A-5 | - | True copy of Certificate dated 10.06.2005 issued by the Deputy General Manager of the Regional Telecommunication Training Centre indicating successful completion of the training course for Junior Telecommunication Officer as regards the 5 th applicant. |
| Annexure A-6 | - | True copy of order promoting the fourth applicant bearing No. ST/EK-214/JTO Offtg/94 dated 06.05.2005 issued from the office of Principal General Manager (Telecom)/ Ernakulam. |
| Annexure A-7 | - | True copy of Notification bearing No. Rectt./30-4/2013/15 dated 01.03.2013, issued by the 2 nd respondent. |
| Annexure A-8 | - | True copy of letter No. AGM (R&E)/ CON/ LICEJTO35%/15%/45 dated 12.02.2014, issued from the office of the 2 nd respondent. |
| Annexure A-9 | - | True copy of the Order bearing No. 5-3/2012-Pers-IV(Pt) dated 23 rd Oct 2013, issued from the office of the 1 st respondent. |
| Annexure A-10 | - | True copy of the Letter bearing No. 4-1/2013-Trg |

dated 13.11.2013, issued from the office of the 1st respondent.

- Annexure A-11 - True copy of representation submitted by 1st applicant dated 17.02.2014.
- Annexure A-12 - True copy of letter dated 17.02.2014, addressed to the 2nd respondent by the National Federation of Telecom Employees.
- Annexure A-13 - True copy of the Order bearing No. ES/22-2/2013-2014/32 dated 12.03.2014, issued by the 2nd respondent.

List of Annexures of the Respondents

- Annexure R-2 (a) - True copy of the JTO Recruitment Rules 2001.
- Annexure R-2 (b) - True copy of the Notification dated 08/03/2000.
- Annexure R-2 (c) - True copy of the Notification dated 30/11/1999.
- Annexure R-2 (d) - True copy of the Judgment dated 13/12/2012 in OA No. 161/2012.
- Annexure R-2 (e) - True copy of the Notification dated 1/3/2013 notifying JTO (T) Limited competitive Examination.
- Annexure R-2 (f) - True copy of the interim order dated 23/5/2013 in O.A. No. 278/2013 .
- Annexure R-2 (g) - True copy of the letter No. 5-3/2012-Pers IV (Pt) dated 23/10/2013.
- Annexure R-2 (h) - True copy of the present syllabus of JTO Phase-I training.
- Annexure R-2 (i) - True copy of the subjects newly added in JTO Phase-I training.
- Annexure R-2 (j) - True copy of the representation 25/04/2014 submitted by one of the employees seeking exemption from training.
- Annexure R-2 (k) - True copy of the letter dated 02/05/2014 rejecting application for exemption from training.

List of Annexures of the applicant

- Annexure A-1 - True copy of the extracts of the 23rd meeting of the Board of Directors of BSNL held on 30.03.2001 at New Delhi.
- Annexure A-2 - True copy of Recruitment Rules of Junior Telecom Officer communicated by the BSNL as per its publication dated 26th September 2001.
- Annexure A-3 - True copy of various orders issued by the respondents.
- Annexure A-4 - True copy of Notification bearing No. Rectt./30-4/2013/15 dated 01.03.2013, issued by the 2nd respondent.
- Annexure A-5 - True copy of letter No. AGM (R&E)/ CON/ LICEJTO35%/15%/45 dated 12.02.2014, issued from the office of the 2nd respondent.
- Annexure A-6 - True copy of the Order bearing No. 5-3/2012-Pers-IV(Pt) dated 23rd Oct 2013, issued from the office of the 1st respondent.
- Annexure A-7 - True copy of the Letter bearing No. 4-1/2013-Trg dated 13.11.2013, issued from the office of the 1st respondent.
- Annexure A-8 - True copy of representation submitted by one of the applicants.
- Annexure A-9 - True copy of the Order bearing No. ES/22-2/2013-2014/32 dated 12.03.2014, issued by the 2nd respondent.
- Annexure A-10 - A true copy of the order bearing No. HR-III/2/Offg/2014/4 dated 17.03.2014, issued from the office of the second respondent.

List of Annexures of the Respondents

- Annexure R-2 (a) - True copy of JTO Recruitment Rules 2001.
- Annexure R-2 (b) - True copy of Notification dated 08/03/2000.
- Annexure R-2 (c) - True copy of Notification dated 30/11/1999.
- Annexure R-2 (d) - True copy of Order dated 13/12/2012 of CAT, Ekm Bench.

- Annexure R-2 (e) - True copy of Notification dated 1/3/2013.
- Annexure R-2 (f) - True copy of interim order dated 23/5/2013 of CAT, Ernakulam Bench.
- Annexure R-2 (g) - True copy of Order dated 23/10/2013 of the respondents.
- Annexure R-2 (h) - True copy of Syllabus for JTO 2008 Batch.
- Annexure R-2 (i) - True copy of the newly added Subjects in the syllabus.
- Annexure R-2 (j) - True copy of representation dated 25/04/2014 of the applicant.
- Annexure R-2 (k) - True copy of order dated 2/5/2014 passed by the respondents.
