

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/01166/2013

Original Application No. 180/00295/2014

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

1. Original Application No. 180/01166/2013 -

- 1 B. Bipin, Aged 32 years, S/o. K. Balachandran,
Junior Telecom Officer, BSNL Telephone Exchange,
N. Parur, Residing at "Vrindhavanam",
Ammankoil-Kannankulangara Road, North Parur,
Ernakulam District – 683 513.
- 2 Smt. B. Rashmi, Aged 35 years, D/o. T.K. Balakrishnan,
Junior Telecom Officer (Mobile), O/o. The GMTD,
2nd Floor, BSNL Bhavan, South Bazar, Kannur,
Residing at "Adwaitham" Kisan Road, Manal, Chalad P.O.,
Kannur – 14.
- 3 Smt. S. Jijimol, Aged 36 years, D/o. O.V. Karthikeyan,
Junior Telecom Officer, O/o. The General Manager, Telecom,
District Kannur, Residing at "Sreevalsam",
63/Puzhathi Housing Colony, Kakkad, Kannur – 670 002.
- 4 P.M. Chandran, Aged 34 years, S/o. Aruthan,
Junior Telecom Officer, O/o. the SDE, Meladi,
Badagara Telephones Division, BSNL, Badagara,
Residing at Parambath House, Kizhpayyur P.O.,
Meppayur, Kozhikode – 673 524. **Applicants**

(By Advocate : Mr. Shafik M.A.)

V e r s u s

1. The Chairman Cum Managing Director,
Bharat Sanchar Nigam Ltd., New Delhi – 110 011.
2. The Chief General Manager,
BSNL, Kerala Circle, Trivandrum – 695 033. **Respondents**

(By Advocate : Mr. George Kuruvila)

2. **Original Application No. 180/00295/2014 -**

1. Maxmillan K., S/o. K.V. Xavier, Aged 30 years,
Junior Telecom Officer, 3rd Floor NIB, DTS Building,
Carrier Station Road, Ernakulam – 682 016,
Residing at 'Kavungal House', Manjanakkad,
Narakkal P.O., Ernakulam – 682 505.
2. Mahin C.B., S/o. Burhanudeen, Aged 29 years,
Junior Telecom Officer, O/o. DE Computer, Boat Jetty,
Ernakulam – 682 011,
Residing at 'Cherodath' House, Kuttamassery,
Thottumughom, Aluva – 683 105.
3. Krishnakumar N., S/o. Narayanan M.K., Aged 28 years,
Junior Telecom Officer, 3rd Floor NIB, DTS Building,
Carrier Station Road, Ernakulam – 682 016,
Residing at 'Mylattumolel', Valampoor, Pattimattom P.O.,
Ernakulam – 683 562.
4. Anilkumar V.A., S/o. A.N. Anantharaman, Aged 32 years,
Junior Telecom Officer, O/o. SDE NIBI, 2nd Floor,
Telephone Exchange, BSNL, Panampilli Nagar,
Kochi – 682 036,
Residing at 31/2154, Vilambamuri, Kader Road,
Kuthappady, Thammanam P.O.,
Kochi – 682 032.

..... **Applicants**

(By Advocate : Mr. R. Sreeraj)

V e r s u s

1. The Chairman Cum Managing Director,
Bharat Sanchar Nigam Ltd., New Delhi – 110 011.
2. The Chief General Manager, BSNL, Kerala Circle,
Trivandrum – 695 033.
3. The General Manager (HR/ADMN), BSNL,
Kerala Circle, Trivandrum – 695 033.
4. The Secretary to the Government of India,
Ministry of Personnel, Public Grievances and Pension,
Department of Personnel and Training,
New Delhi – 110 001.

..... **Respondents**

**[By Advocates : Mr. George Kuruvila (R1-3) &
Mr. K. Kesavankutty, ACGSC (R4)]**

These applications having been heard on 07.08.2018, the Tribunal on the 16.08.2018 delivered the following:

ORDER

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

OAs Nos. 1166 of 2013 and 180/295/2014 have common points of fact and law involved and hence are being disposed of through this common order. For the purpose of convenience we shall advert to the facts and Annexures produced in OA No. 1166 of 2013.

2. The applicants are aggrieved by the refusal of the 2nd respondent to prepare a combined circle gradation list of Junior Telecom Officers (in short JTOs) applying the correct method as per the instructions of the Government of India in ratio 1:1 and incorporate the names of the applicants in the correct places. They are further aggrieved by the refusal of the respondents to apply such corrected gradation list for assigning duties as per the 'looking after' method adopted by the 1st respondent in place of officiating arrangements.

3. The applicants are direct recruit JTOs appointed under the 1st respondent on 11.8.2003, 8.7.2002, 8.7.2002 and 30.1.2007 respectively. The 1st applicant has been recruited against a 2002 vacancy, 2nd and 3rd applicants against 2001 vacancies and the 4th applicant against a 2005 year vacancy. BSNL was incorporated on 1.10.2010 as a public sector enterprise. Direct recruitment in the cadre of JTO was made from engineering graduates in the year 2001 and subsequently in the years 2002, 2005, 2006,

2007 and 2009. For the next promotion to the cadre of Sub Divisional Engineer (in short SDE) the ratio was fixed as 67:33 of which 67% is by promotion through DPC based on seniority and fitness and the remaining 33% by way of limited competitive examination.

4. The JTOs comprise of both direct recruits and promotees. 67% vacancies earmarked for promotion to the post of SDE by the DPC from the JTOs are to be divided in the ratio 1:1 between direct recruits and promotees and the seniority fixed accordingly. The post of JTO in the 1st respondent is filled up by way of direct recruitment and through promotion in the ratio of 1:1. Thus 50% of the posts are filled up by direct recruitment on all India competitive examination with basic qualification of engineering degree and the remaining 50% is filled up from the cadre of Telecom Technical Assistant (in short TTA) by way of promotion. The direct recruitment candidates appointed to the post are treated as external candidates and the 50% promotees are considered as departmental candidates. The applicants contend that fixation of seniority in the cadre of JTO prior to 1990 was 36:65 for departmental and external candidates respectively. Later it was changed and the percentage quota for departmental cadre was subsequently increased to 50% from 35% and the quota for outside/external candidates was reduced to 50% from 65% from the recruitment year 1990 onwards.

5. Various circles of the 1st respondent issued communication specifying that the combined seniority list of outsider quota and departmental quota in

the JTO is to be prepared by rotation of the vacancies in accordance with revised percentage of 1:1. Subsequently the Sub Divisional Engineer (Telecom) Recruitment Rules, 2002 (Annexure A3) was formulated on 28.2.2002. In Annexure A3 it was made clear that promotion to JTOs shall be made on the basis of all India eligibility list at corporate office level only. Further it was stated that if there are vacancies prevailing in any quota remaining unfilled the same shall be diverted to other quota subject to the condition that the quota shall be restored to the subsequent recruitment years. So far none of the direct recruits have been promoted to the post of SDE by the DPC through seniority-cum-fitness quota in 67% except in the case of SC/ST category.

6. The applicants further submit that the provisional gradation list was dated 17.12.2007 was not in conformity with the instructions issued and is violating the orders of the Tribunal and the Hon'ble High Court. One Sri R. Bijoy and others have challenged the same by filing OA No. 35/2010. The OA was allowed following the decision in OA No. 1278/2000 and it was declared that the applicants therein are to be considered for local officiating promotions as SDE in TES Group-B with reference to their position in the combined seniority list of JTOs. The matter was challenged by the respondents through OP (CAT) No. 421/2011. However, the Hon'ble High Court upheld the decision of the Tribunal. In OA No. 1278/2000 this Tribunal held on 25.1.2001 that the seniority for promotion to the post of SDE should be based on all India seniority based on the recruitment year of the candidate. The 1st respondent issued circular Annexure A8 introducing a

system of 'looking after' instead of local officiating promotions to fill up the temporary shortages in the grades/posts of SDE/DE/DGM. Accordingly, the 2nd respondent has issued Annexure A9 order granting 'looking after' duties to 114 officials in the JTO cadre. Further the 2nd respondent has not so far issued any seniority list circle wise or based on all India seniority basis for a long time. OA No. 185/2013 has been filed by a group of direct recruit JTOs challenging the draft seniority list prepared in violation of the guidelines and the orders of this Tribunal and the same is still pending for consideration by this Tribunal. They have prayed for a direction to the respondents to prepare a combined seniority list of JTOs on all India basis maintaining the ratio of 1:1 between direct recruit JTOs and promotee JTOs based on the date of joining the cadre of JTO and date of absorption into BSNL. The applicants contend that it is settled law that all India seniority shall be reckoned on the basis of the date of entry of the incumbent in the said cadre.

7. Applicants in OA No. 180/295/2014 contended that in a similar dispute between the direct recruit and promotee Income Tax Inspectors of the Income Tax Department, the Hon'ble apex court declined the claim of the promotees that the direct recruit Income Tax Inspectors in that case should be assigned seniority with reference to the date of their actual appointment in the Income Tax Department.

8. The applicants in OA No. 1166 of 2013 claimed the relief as under:

“(i) To call for the records relating to Annexure A1 to A14 and to direct the 2nd respondent to prepare a combined seniority list JTOs in the circle as per their date of entry and year of recruitment and to make look after local promotions as per A8 to the vacancies of SDEs in TES Group B based on the position of the officials in such list;

(ii) To declare that the applicants are to be considered for look after promotions as Sub Divisional Engineers in TES Group B with reference to their position in the combined seniority list of JTOs on the basis of the date of entry as specified in A8 and A10;

(iii) To direct the 2nd respondent to prepare a combined seniority list of JTOs in the circle as per their date of entry and year of recruitment and to forward the same for incorporation in all India eligibility list.

(iv) To direct the 2nd respondent not to make any look after promotions till such a combined list as per A4, A5 and A8 and A10 is prepared;

(v) To issue such other appropriate orders or directions this Hon'ble Tribunal may deem fit, just and proper in the circumstances of the case;

And

(vi) To grant the costs of this Original Application.”

9. Respondents contested the claim of the applicants and have filed a similar reply statements in both the cases. They submitted that they have already prepared a provisional all India eligibility list of JTOs which has been challenged by a few junior JTOs by filing OA No. 185/2013 and 1081/2013 before this Tribunal and the same is pending consideration by this Tribunal. The ratio between direct recruits and departmental candidates is 1:1 in view of the revised percentage of vacancies with effect from the recruitment year 1990. As per Annexure A3 Recruitment Rules promotion to the cadre of SDE is to be made on the basis of all India eligibility list. There is no direct recruitment to the cadre of SDE which means that the cadre of SDE is filled by promotion only. The promotion is made by seniority-cum-fitness and by limited departmental competitive examination. If any one

quota remains unfilled, the unfilled vacancies shall be diverted to the other quota on condition that the quota shall be restored in the subsequent recruitment years. The JTO cadre has both direct recruits and promotees while the SDE cadre consists only of promotees. In the last DPC held in the year 2011 for seniority-cum-fitness quota the 1994 year recruit JTOs and a part of 1995 year recruit JTOs became SDEs. The 1994 recruit JTOs are mostly direct recruits. There is no element of direct recruitment to the cadre of SDE and hence there does not arise any question of carry over of direct recruitment to the subsequent years in the cadre of SDEs. The JTOs ordered to look after in the Annexure A9 order belong to recruitment years 1995 to 1998.

10. The respondents submit that this Tribunal in Annexure A4 order has categorically directed to prepare the combined seniority list based on the year of recruitment. The respondents have ordered looking after arrangement in the cadre of SDE in order to meet the shortage in the cadre. There is no willful disobedience on the part of the respondents as the all India eligibility list based on the year of recruitment has already been prepared. They also contend that as per the provisions in Annexure A14, 100% 1:1 fixation can be achieved if the number of candidates recruited and appointed against direct recruitment and promotion quota are equal. If the number of persons recruited against the above quota are not equal in a particular recruitment year, 1:1 ratio cannot be maintained in that year. Further Annexure A14 envisaged that the seniority of direct recruits and promotees is to be determined according to the rotation of vacancies

between the two groups. In case sufficient number of direct recruits and promotees are not available in a particular year the rotation of quotas for the purpose of seniority will take place only to the extent of the available direct recruits and promotees. To the extent direct recruits are not available, the promotees will be bunched together at the bottom of the seniority list below the last position up to which it is possible to determine the seniority. The unfilled direct recruitment vacancies would be carried forward and added to the corresponding direct recruitment vacancies of the next and subsequent years.

11. A rejoinder has been filed by the applicants and an additional reply statement, filed by the respondents in OA No. 1166 of 2013 reiterating the facts stated in the OA and the reply statement.

12. Heard Shri Shafik M.A. learned counsel appearing for the applicants in OA No. 1166 of 2013, Shri R. Sreeraj learned counsel for the applicants appearing in OA No. 180/295/2014, Shri George Kuruvilla learned counsel appearing for the respondents in OA No. 1166/2013 and for respondents 1-3 in OA No. 180/295/2014 and the learned ACGSC appearing for respondent No. 4 in OA No. 180/295/2014. Perused the records.

13. The controversy involved in these cases is with regard to the competing claims of direct recruit JTOs and promoted JTOs regarding their place in the seniority list which would decide their promotion as SDEs. BSNL was formed in 2000. Up to 1996 JTOs were promoted as well as

directly recruited. The direct recruitment of JTOs resumed after 2000 after a hiatus.

14. The issue raised by the applicants in the two OAs is that they being direct recruit JTOs are discriminated against for the benefit of the departmental candidates who were promoted as JTOs. The latter category is allegedly taking advantage of the fact that no All India combined seniority list has been formulated, enabling the respondents to pick and choose candidates by their whims and fancy, allowing them to function on 'looking after' arrangement.

15. The authorities in BSNL have been dragging their feet on this vexed issue. Series of OAs have been filed before this Tribunal seeking adjudication of the same issue. They were OAs Nos. 185 and 1081 of 2013 and 553/2015. The Hon'ble High Court in OP (CAT) Nos. 25, 45 and 126 of 2015 considered the issue at length and treating the 1:1 ratio as sacrosanct, ordered revision and finalization of the seniority list of JTOs as per the ratio principle. Accordingly, the integrated final eligibility list of JTOs was directed to be finalized within six months of receipt of copy of the judgment of the Hon'ble High Court dated 5th June, 2018.

16. It would be necessary to mention here that another OA No. 180/508/2018 has been filed before this Tribunal by a set of direct recruit JTOs alleging that in violation of the Hon'ble High Court's order the respondents have rushed through finalization of a seniority list in great haste

and published the same within ten days of the order of the Hon'ble High Court. This OA along with a contempt petition filed by the applicants over the non-compliance of the interim direction is pending before this Tribunal.

17. What remains to be done by the respondents is to set the matter at rest by adhering to the directions contained in the judgment of the Hon'ble High Court. Once that is done it would signal an end to the controversy relating to 'looking after' arrangement as well as allegations of discrimination.

18. Hence considering the facts before us and the long pending dispute, even at the risk of going beyond the specific relief sought in the two OAs we direct that the order of the Hon'ble High Court in OP (CAT) Nos. 25, 45 and 126 of 2015 should be followed in these cases as well within the time limit prescribed.

19. The Original Applications stand disposed of. No order as to costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K. BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

“SA”

Original Application No. 180/01166/2013

APPLICANTS' ANNEXURES

- Annexure A1** – True copy of the Letter No. 6-34/2001-SNG dated 26.11.2001 issued by the Under Secretary (SNG) of Ministry of Communications.
- Annexure A2** – True copy of the Letter No. ST-III/2-15/2003 dated 05.01.2004 issued by the AGM of the 2nd Respondent.
- Annexure A3** – True copy of the SDE Recruitment Rules No. 20-24/2001-Pers.II dated 28.02.2002 issued by the 1st Respondent.
- Annexure A4** – True copy of the Order dated 16.11.2010 of this Hon'ble Tribunal in OA No. 35/2010.
- Annexure A5** – True copy of the judgment dated 27.02.2012 of the Hon'ble High Court in O.P.(CAT) No. 421/2011.
- Annexure A6** – True copy of the judgment dated 08.11.2012 in IA No. 14311/2012 in O.P. (CAT) No. 421/2011 of the Hon'ble High Court.
- Annexure A7** – True copy of the Letter No. 412/13/2013-Pers.I(1) dated 22.03.2013 issued by the 1st Respondent.
- Annexure A8** – True copy of the Letter No. 412-13/2013-Pers.I(II) dated 22.03.2013 issued by the 1st Respondent.
- Annexure A9** – True copy of the Order No. HR-III/3-25(O)/2012/37 dated 26.03.2013 issued by the 2nd Respondent.
- Annexure A10** – True copy of the letter No. 412-13/2013-Pers. I dated 01.04.2013 issued by the 1st Respondent.
- Annexure A11** – True copy of the letter No. 412-13/2011-Pers.I dated 29.04.2013 issued by the 1st Respondent.
- Annexure A12** – True copy of the Order No. HR-III/3-25(O)/2012/41 dated 17.10.2013 issued by the 2nd Respondent.
- Annexure A13** – True copy of the Representation dated 08.11.2013 submitted before the 2nd Respondent.
- Annexure A14** – True copy of the OM No. 22011/7/86-Estt(D) dated 03.07.1986 issued by the Ministry of Personnel.

Annexure A15 – True copy of the OM No. 20011/1/2006-Estt.(D) dated 03.03.2008 issued by the Ministry of Personnel.

RESPONDENTS' ANNEXURES

Annexure R1 – A true copy of the letter No. 2-18/2007-Pers.II(Pt.I) dated 30th October 2012.

Annexure R2 – A true copy of the letter No. 2-18/2007-Pers.II(Pt.I) dated 16th April 2013.

Annexure R3 – A true copy of the BSNL Corporate Office Letter No. 2-18/2007-Pers.Ii(Pt.I) dated 20.02.2015.

Annexure R4 – True copy of the Letter No. 5-6/2014/Estt-IV dated 16.04.2014 issued by the Corporate Office to all heads of Telecom Circles.

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APPLICANTS' ANNEXURES

Annexure A1
Series –

True copies of the appointment details of the applicants as available from the Employees Portal of the BSNL.

Annexure A2 – True copy of the OM No. 20011/1/2008-Estt. (D) dated 11.11.2010 issued by the Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel, which contains the compilation “Instructions and Guidelines on Seniority”.

Annexure A3 – True copy of the Junior Telecom Officer Recruitment Rules, 2001.

Annexure A4 – True copy of the final order dated 16.11.2010 in OA 35/2010 on the file of this Hon'ble Tribunal.

Annexure A5 – True copy of the judgment dated 27.02.2012 in W.P(C) 421/2010 on the file of the Hon'ble High Court.

Annexure A6 – true copy of the OM No. 20011/1/2006-Estt(D) dated 03.03.2008 issued by the Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training.

Annexure A7 – True copy of the decision Union of India & others v. N.R. Parmar & Others CA 7514-7515 of 2005 and

connected cases on the file of the Hon'ble Supreme Court of India.

- Annexure A8** – True copy of the Office Memorandum No. 20011/1/2012-Estt.(D) dated 04.03.2014 issued by the Government of India, Ministry of Personnel, Public Grievances & Pension, Department of Personnel & Training.
- Annexure A9** – True copy of the BSNL Corporate Office Letter No. 5-11/2009-Pers.IV(Pt) dated 08.03.2013.
- Annexure A10** – True copy of the BSNL Circle Office Letter No. Rectt/30-4/2013/15 dated 01.03.2013.
- Annexure A11** – True copy of the BSNL Circle Office Letter No. AGM(R&E)/CON/LICEJTO35%/15%/45 dated 12.02.2014.
- Annexure A12** – True copy of the BSNL Circle Office Letter No. ES/22-2/2013-2014/6 dated 19.02.2014.
- Annexure A13** – True copy of the BSNL Circle Office Letter No. ES/22-2/2013-2014/32 dated 12.03.2014..
- Annexure A14** – True copy of the representation dated 13.03.2014 submitted by the 1st applicant to the 2nd Respondent.
- Annexure A15** – True copy of the representation dated 13.03.2014 submitted by the 2nd applicant to the 2nd Respondent.
- Annexure A16** – True copy of the representation dated 13.03.2014 submitted by the 3rd applicant to the 2nd Respondent.
- Annexure A17** – True copy of the representation dated 13.03.2014 submitted by the 4th applicant to the 2nd Respondent.

RESPONDENTS' ANNEXURES

- Annexure R1** – A true copy of the DGP&T letter dated 28.02.1963.
- Annexure R1(b)** –A true copy of the DGP&T Memo dated 28.06.1966.
- Annexure R1(c)** –A true copy of the interim order dated 13.03.2015 in OP(CAT) No. 25/2015 and connected cases.

-X-X-X-X-X-X-X-