

**Central Administrative Tribunal
Principal Bench**

**OA No.2598/2018
OA No.2430/2018**

New Delhi, this the 13th day of July, 2018

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Pradeep Kumar, Member (A)**

I. OA No.2598/2018

1. K. B. Upasani
Aged about 49 years,
S/o Sh. Bhalchandra Upasani,
working as AGM,
Group 'A' officer,
R/o A 503, Satin Skay Katepuram Chowk
Pimple Gurav Pune,
Maharashtra.
2. Sheela V
aged about 49 years,
W/o Sh. Suresh Babu A. P.
Working as AGM,
Group 'A' officer,
R/o GF-2 Jeevandi Magnus,
K. R. Garden, Murugeshpalya
Bengaluru-17.
3. Prasenjit Bhattacharya
Aged about 50 years,
S/o Lt. Styendra Prasad Bhattacharya
Working as a DE
Group 'A' Officer,
R/o S3/18, P S. Saruddhi,
NIBM Road, Kondhwa,
Pune 411048.
4. G. Ravi Kumar
Aged about 51 years,
S/o Sh. G. Baswaraj
Working as a AGM
Group A Officer,
R/o BSNL Transit Quarter No.1
Satellite Compales,

Opp Hotel Dony Polo Ashk,
Itanagar,
Arunachal Pradesh 791111.

5. S. Sivagamasundari
Aged about 46 years,
D/o Sh. V. Seetharaman
Working as a DGM
Group A Officer
R/o Flat-A, No.750, 59th Street,
10th Sector, K. K. Nagar,
Chennai 600078.
6. M. Giridhar
Aged about 47 years,
S/o M. C. Venkatasubbaiah
Working as AGM
Group A Officer,
R/o 28-65-9,
Kothaindhu
Punganur-517247 Chittur,
A.P.
7. Reshma M. Bhatia
Aged about 46 years,
D/o Mohanlal G. Bhatia
Working as AGM
Group A Officer
R/o Row House No.3,
Sukhwani Udyan, Link Road
Chinchwad, Pune 411033.
8. E. Dinesh
Aged About – 46
D/o Mohanlal G. Bhatia
Working as a AGM
Group – A
R/o E2, BSNL Officers Complex,
Road No. 92, Film Nagar, Jubilee Hills,
Hyderabad – 500096
9. Paresh Pattani
Aged about – 58
S/o Sh. M.P. Pattani
Working as a AGM
Group-A

R/o 451-A, Kasturba Nagar
Ratlam (M.P)

10. S. Girish
Aged about – 47
S/o Sh. Sabbaramu
Working as a AGM
Group-A
R/o 1352, 18TH A Main
J.P. Nagar II Phase
Bangalore-560078
11. Sushanta Kumar Mishra
Aged about – 48
S/o Late Sh. Jogeshwar Mishra
Working as a AGM
Group-A
R/o Qr. No. 01/IV
Telephone Kendra BSNL, Uditnagar
Rourkela
Distt: Sundargarh
Odisha-769012
12. U.C. Bhaumik
Aged about – 53
S/o Late M.C., Bhaumik
Working as a AGM
Group-A
R/o Ramnagar Road No. 3
AGartala, Tripura
13. K. Rajeshwari
Aged about – 45
D/o Sh. K. Kanthaiah
Working as a AGM
Group-A
R/o No. 10, Bakkiathammal Nagar
Padi, Chaennai,’
Distt: Tamilnadu-600050
14. Rajesh Govind Dalvi
Aged about – 44

S/o Sh. Govind Gopal Dalvi
 Working as a AGM
 Group-A
 R/o Bldg. No. 37, Room No. 1082
 Parijat CHS Pant Nagar Ghatkopar
 East Mumbai-400075

15. Md. Salaruddin
 Aged about –54
 S/o Mohd. KUtabuddin
 Working as a DE
 Group-A
 R/o Plot No. 18
 SBI Staff Colony
 Beside Satya Sai Baba Temple
 Bondilipuram
 Srikakulam, AP-532001
16. Sunil Narayan Lagate
 Aged about – 45
 S/o Sh. Narayan V. Laghate
 Working as a AGM
 Group-A
 R/o 10, WAsudev Nivas Saptagiri Nagar
 Nagpur-440015
17. Bulusu Sridhar
 Aged about – 48
 S/o Sh. Bulusu Rama Rao
 Working as a AGM
 Group-A
 R/o 303, Akshitha Enclave, Vijaywada
 Andhra Pradesh -520004
18. Laxmana Meher
 Aged about – 51
 S/o Sh. Purusottam Meher
 Working as a AGM
 Group-A
 R/o Koraput, Odisha-764020
19. Md. Siraz Mohiddin

Aged about – 52
 S/o Mod. Ghousie Mohiddin
 Working as a AGM
 Group-A
 R/o 13-28-6/A, KGH up Road
 G-3, Maharanipeta
 Vishakhapatnam-530002 (A.P.)

20. S. Shiva Kumar
 Aged about – 52
 S/o Sh. Shivanva
 Working as a AGM
 Group-A
 R/o No. 125, Kuvanpunagar
 Mandya-571401
 Karnataka
21. Shaik Vazeeruddin
 Aged about – 49
 S/o Sh. Shaik Yakoob Ali
 Working as a DGM
 Group-A
 R/o 67/22, G.T. Road, (West)
 Mallick Para (PO)
 Serampore,
 Hooghly (Dst.) – 712203 ... Applicants.

(By Advocates, Shri Manish Kumar wth Shri Sarat Chandra and Ms. Priyanka Pandey)

VERSUS

1. Union of India, Through its Secretary
 Department of Telecommunications
 M/o Communications & Information Technology
 421, Sanchar Bhavan, New Delhi
2. Bharath Sanchar Nigam Ltd.
 Represented by its Chairman
 & Managing Director,
 Bharath Sanchar Bhavan
 Janpath, New Delhi-1

3. Department of Telecommunication,
Through its Secretary
20, Sanchar Bhavan
Ashoka Road
New Delhi-110001 Respondents.

(By Advocates, Shri R. V. Sinha, Shri Subhash Gosai and
Shri Satish Kumar)

II. OA No.2430/2018

1. Sanjay Kumar Aggrawal
Aged about-48
S/o Late Sh. Satendra Kumar,
Working as a DET OFC NTR Meerut
Group-A
R/o 66, Meera Enclave,
Garh Road, Meerut, U.P.
 2. Hari Kishan Tambia
Aged about- 46
S/o Sh. B.L. Tambia
Working as a AGM Circle Office Rajasthan
Group-A
R/o 15-16, GAnesh Nagar-B,
Near Kissan Dharam Kata
Near Metro Pillar No. 07,
JAipur-302020 (Rajasthan)
 3. Milan Jain,
Aged about- 48
S/o Sh. R.K. Choudhary
Working as a AGM in BSNL CO New Delhi
Group-A
R/o R-403, Plot No. 20A,
Vrinadavan Heights Vrinadavan
Gardens Sahibabad,
Distt. Ghaziabad-201005 (U.P)
 4. Abhay Gupta
Aged about- 49
S/o Sh. K.G. Gupta
Working as a DGM(L/A) in ALTTC Ghaziaba

Group-A
 R/o Quarter No. 5/1,
 Kosi Block ALTTC
 Ghaziabad-201002 (UP)

5. Pratibha Gupta
 Aged about- 48
 W/o Sh. Abhay Gupta
 Working as a AGM in ALTTC Ghaziabad
 Group-A
 R/o Quarter No.; 5/1,
 Kosi Block ALTTC
 Ghaziabad-201002 (UP)
6. J.K. Patel
 Aged about- 46
 S/o Sh. Kantilal G. Patel
 Working as a DGM (L/A),
 Circle Office, Gujrat Circle
 Group-A
 R/o 3 Divine Park,
 Opp. Satyam Complex,
 Science City Road, Sola,
 Ahmedabad-380060. Applicants.

(By Advocates, Shri Manish Kumar wth Shri Sarat Chandra and Ms. Priyanka Pandey)

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1. Union of India
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 Bharath Sanchar Bhavan
 Janpath, New Delhi-1

3. Department of Telecommunication,
 20, Sanchar Bhavan
 Ashoka Road
 New Delhi-110001 ... Respondents.

(By Advocates, Shri R. V. Sinha, Shri Subhash Gosai and
 Shri Satish Kumar)

: O R D E R :

Justice L. Narasimha Reddy, Chairman:

Both these OAs are filed, challenging the office order dated 06.06.2018 passed by the Corporate Office of BSNL. Hence, they are disposed of by this common order.

2. The brief facts pertaining to the cases are that in the establishment of BSNL, appointment to the post of Sub Divisional Engineer (Telegraph) [hereinafter referred to as SDE (T)] is partly through promotion simplicitor to the extent of 66-2/3% and through competitive examination, limited to departmental candidates, to the extent of 33-1/3%. The same is provided under the Telegraph Engineering Services (Group 'B') Recruitment Rules framed in the year 1981 (hereinafter referred to as Rules, 1981). Rule 5 thereof stipulates that wherever any departmental competitive examination is conducted, Junior Engineers who have completed five years of regular service in the grade, on the 1st of January of the year in

which the examination is held, are eligible. The rules were modified in the year 1986 to certain extent.

2. The competitive examinations, contemplated under the Rules for the vacancies of the years 1994-95 to 1996-97 were conducted in the years 2000 & 2003. About 150 candidates, including the applicants herein, became eligible and were promoted.

3. In the context of deciding the eligibility, and consequential seniority, the question as to whether a candidate can count only his five years of regular service, or any other type of service, arose for consideration. On the basis of the amendment carried through in the year 1986, it was assumed that even non-regular service would count for this purpose and eligibility and thereafter seniority can be fixed accordingly. This, in turn, gives rise to a spate of litigation.

4. In OA No.86/2009, the Ernakulam Bench of the CAT through its order dated 05.02.2010 repelled the contention that five years service mentioned in relevant rule need not be regular in nature. The unsuccessful applicants therein filed WP (C) No.5406/2010 (S) before the Hon'ble Kerala High Court. A Division Bench of the Kerala High Court dismissed the writ petition through judgment dated 01.07.2013. Civil Appeal No.392/2017,

and a batch of appeals were filed against the same before the Hon'ble Supreme Court. The batch of civil appeals, were dismissed on 12.12.2017.

5. After the controversy in this regard came to an end with the dismissal of civil appeals by the Hon'ble Supreme Court, the BSNL issued the impugned order dated 06.06.2018. The seniority of SDEs promoted against the 1/3rd quota was determined, by taking into account, the five years of regular service.

6. The applicants contend that the BSNL itself has modified the Recruitment Rules in the year 1986 removing the word 'regular' in the eligibility criteria, and just by taking note of a passing observations in the judgment of Kerala High Court, the respondents have changed the entire seniority list. It is stated that the question as to whether the service of five years must be 'regular' or otherwise, was not under consideration before the Kerala High Court and that innocuous observation in the order of the Tribunal cannot be treated as an authoritative pronouncement.

7. Since the matter is heard in detail, at admission stage itself, there was no occasion for the respondents to file counter affidavit.

8. The limited controversy in these OAs is as to the nature of the service of five years, as an eligibility criterion for appearing in the competitive examination for promotion to the post of SDE against 1/3rd quota.

9. The condition stipulated in the Recruitment Rules of 1981, treads as under:-

“5. The eligibility for appearing in each part of the examination shall be as:

(a) Departmental Qualifying Examination:

- (i) Junior Engineers who have completed five years of regular service in the grade on the first of January of the year in which the examination is held.
- (ii) Ex-Company officials who have put in a minimum of five years of continuous service in their respective grades on the first of January of the year in which the examination is held.

(b) Limited Departmental Examination:

- (i) Junior Engineers who have completed five years of regular service in the grade on the first of January of the year in which the examination is held.
- (ii) Ex-Company officials who have put in a minimum of five years of continuous service in tier respective grades on the first of January of the year in which the examination is held.”

In the year 1986, the Recruitment Rules were amended.

The modified Rules read as under:-

“5. The eligibility for appearing in each part of examination shall be:

(a) Departmental Qualification Examination:-

- (i) Junior Engineering recruited in that grade against the vacancies of a year ordinarily for not less than five years prior to the year of announcement of such examination.
- (ii) Ex-company officials appointed as Junior Engineers or equivalent post ordinarily for not less than five years prior to the year of announcement of the said examination.

(b) Limited Departmental Competitive Examination:-

- (i) Junior Engineers recruited in that grade against the vacancies of a year ordinarily not less than five years prior to the year of announcement of the said examination.
- (ii) Ex-company officials appointed as Junior Engineers or equivalent post ordinarily for not less than five years prior to the year of announcement of the said examination.

A comparison of the amended and unamended provisions discloses that as regards the Junior Engineers, the emphasis in the amendment to Recruitment Rules, 1986, was mostly about the length of service of five years, as against the completion of five years of regular service in the grade, occurring in the 1981 Recruitment Rules. “Ordinarily, not less than five years” was mentioned in the

1986 amended Recruitment Rules. There is nothing to indicate that the requirement as to "regular service" was diluted in any way. The expression "ordinarily not less than five years service" may have paved way for those who do not have full five years of service, if only, the number of candidates with five years of regular service is less than the number of vacancies available to be filled. We are not concerned with the ex-company officials, who were on the pay roll. Obviously by taking those aspects into account, the Kerala High Court held, in its concluding part of the judgment, held as under:-

"...The eligibility year has to be considered since, one combined examination was held for three years. A candidate entitled to appear in 1996 by reason of completing five years of regular service in the feeder category on the 1st of the January of the year cannot be placed in the vacancy of 1994-1995; however, high his rank may be. If the seniority list requires any recast on the above lines; obviously, the official respondent ought to do so. In the circumstances, we do not find any reason to differ from the decision of the Tribunal impugned in the writ petitions or interfere with the dismissal of the review applications impugned in the Original Petitions (CAT). The Writ Petitions and Original Petitions (CAT) are dismissed, however, with no costs."

This judgment of the Kerala High Court was upheld by the Hon'ble Supreme Court by dismissing the batch of Civil Appeals.

10. One of the points urged by learned counsel for the applicants is that in a Civil Appeal occurring in the same

batch, Hon'ble Supreme Court appointed Expert Committee, and that, in turn, suggested that the service be taken as 'ordinary' and not "regular" one. Though the committee was appointed, and it made certain suggestions, the Hon'ble Supreme Court dismissed the Civil Appeal. Reference has been made to the suggestion of the Committee, but none of the suggestions made by it were either accepted or were directed to be implemented.

11. The applicants are not able to point out that the impugned order, in any way, deviates from the directions issued by the Kerala High Court.

12. We are not prepared to accept the contention of the learned counsel for the applicants that the judgment of Kerala High Court is *per incuriam* inasmuch as, it has taken a view contrary to specific amendment to Recruitment Rules of 1986. Firstly, there is nothing in the said amendment to suggest that the service of a candidate need not be regular. Once the amendment itself refers to the recruitment, the service arising out of such recruitment cannot be otherwise than 'regular'. Secondly, this was one of the main contentions raised before the Hon'ble Supreme Court, and once it was not accepted, the applicants cannot be permitted to raise this contention in the second innings, before the Tribunal.

13. We do not find any merit in the OAs. Both are accordingly dismissed.

(Pradeep Kumar)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

/pj/