

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA 2647/2013
With
OA 3614/2013
MA 511/2015
MA 3992/2014
OA 4312/2014
OA 4345/2014

Reserved on 28.08.2018
Pronounced on 04.09.2018

Hon'ble Ms. Nita Chowdhury, Member (A)
Hon'ble Mr. S.N. Terdal, Member (J)

OA 2647/2013

1. Sanjeev Rao Y
At 1-10-247/A; 227/203
Udaya's Sai Mansion,
Ashok Nagar 'X' Roads,
Ashok Nagar, Hyderabad-500020
2. Kumar Dharmendra Sinha
At:- Flat No. 102, Maa Chhindamastike
Complex, Sheikhpura More, Baily Road,
Patna-14, Bihar.
3. Akshaya Chandra Behera
At: Qtr. No.IV-28/2, Unit-1,
Bhubaneswar, Odisha-751009
4. P.L.Venkatesan
No. 9 Old Police Lane 'A'
Armstrong Road, Cross Bangalore,
Karnataka-560001
5. Chinmaya Sahoo
At: Q.R No. H-34, G.B.Nagar,
Chhend, Rourkela, Odisha, 769015
6. Snehadri Sekhar Saha
At: O/o the SDE (GR), BSNL
P.O. Bilasipara DT- Dhubri, Assam.
7. Tapash Roy Chowdhury
At: JTO, CCN Mobile
Guwahati, Assam

... Applicants

(By Advocate: Mr.Padma Kumar S.)

VERSUS

1. Bharat Sanchar Nigam Limited,
Through its Chairman-cum-Managing
Director, Bharat Sanchar Nigam Limited,
Corporate Office, Janpath, New Delhi.
 2. Director (HRD),
Bharat Sanchar Nigam Limited,
BSNL, Corporate Office, Janpath,
New Delhi-1.
 3. The General Manager (Recruitment),
Bharat Sanchar Nigam Limited,
BSNL, Corporate Office, Janpath,
New Delhi-1.
 4. The Assistant General Manager,
Departmental Examination Section,
Bharat Sanchar Nigam Limited,
Corporate Office, Janpath,
New Delhi-1.
 5. The Assistant General Manager (Recruitment),
BSNL Corporate Office, Janpath,
New Delhi-1
- ... Respondents

(By Advocate:Mr.Rajnish Prasad)

OA 3614/2013

1. Indhu.C.G,
Flat No. : 4D,
Swapnil Apartments,
Kaloor Kadavantra Road,
Kadavantra, Cochin, Kerala-682017
 2. Sumal N.K.,
"Indeevaram", Viyalathuparamba,
Opposite Fire Station, Mukkam,
Mukkam (PO),
Kozhikode Distt., Pin-673 602.
 3. Bikas Biswal, Biology Enclave,
Basant Vihar,
Sambalpur University,
Distt.Sambalpur, Orissa-768 019.
- ... Applicants

(By Advocate: Mr. Padma Kumar S)

VERSUS

1. Bharat Sanchar Nigam Limited,
Through its Chairman-cum-Managing
Director BSNL Corporate Office,
Janpath, New Delhi-1
 2. Director (HRD), BSNL,
BSNL Corporate Office, Janpath,
New Delhi-1
 3. The General Manager (Recruitment),
BSNL, BSNL Corporate Office,
Janpath, New Delhi-1
 4. The Assistant General Manager,
Departmental Examination Section,
BSNL Corporate Office,
Janpath, New Delhi-1
 5. The Assistant General Manager (Recruitment),
BSNL Corporate Office,
Janpath, New Delhi-1
- .. Respondents

(By Advocate: Mr.Rajnish Prasad)

OA 4312/2014

1. Hari Babu Bharti,
Age 38 years,
Jr. Telecom Officer,
S/o Late (Sh) Himmat Singh
BL-1, Type-4/2, New BSNL Colony,
Ganga Nagar, Meerut.
2. Satish Chandra
Age 35 years,
Jr. Telecom Officer,
S/o Sh.Rameshwar Prasad,
R/o Type-3, QS-9,
Almaspur Telephone Colony,
Muzaffarpur Nagar (U.P.)
3. Jai Prakash Singh,
Age 40 years,
Jr. Telecom Officer,
S/o Late Sh. Balraj Singh,
R/o Village Mirzalipur,
P.O.Harganpur,
District Bijnor (UP).

4. Arvind Kumar
Age 33 years,
Jr. Telecom Officer,
S/o Rama Kanta
R/o 304, Civil Lines, P.O.Road,
Etah (UP).
5. Naveen Kumar Nautiyal
Age 39 years,
Jr. Telecom Officer,
S/o Shri Om Praskah,
R/o 70, Upper Alhowala,
Dehradun-248 001.
6. Rahul Kumar
Age 34 years,
Jr. Telecom Officer,
S/o Shri Bachhchu Lal
Aged about 34 years,
R/o H.No.67, MIC, Barra-7,
Kanpur (UP).
7. Pummy Pipal
S/o Shri K.S.Pipal,
Junior Telecom.Officer,
Aged about 42 years,
R/o 286-C, Pocket-J &K,
Dilshad Garden, Delhi-110095.
8. Love Kumar Gupta
Junior Telecom Officer
S/o Late Sh.R.C. Gupta
Aged about 41 years,
R/o Qt. 5, Block-3, P&T Colony,
Gwalior Road, Jhansi-284001 (UP).
9. Md. Quaiser Azam
Junior Telecom Officer
S/o Md. Halim,
Aged about 39 years,
R/o Flat No. G1/48, Gali No.22,
Zakir Nagar, Okhla,
New Delhi-25.
10. Saun Prabha
Junior Telecom Officer
D/o Late Sh. Indrajeet Singh,
Aged about 34 years,
R/o 17, Bhogal Lane, Jangpura,
Bhogal, ND-24.

11. Akash Kassu
Junior Telecom Officer
S/o Sh. Vijay Kumar Kassu
Aged about 35 years,
R/o Plot No. D-76, Sector-4,
Devendra Nagar, PO-Ganj,
Raipur, Chattisgarh-492 009.
12. Nirankar Nath Pandey,
Junior Telecom Officer
S/o Sh.S.P.Pandey
Aged about 40 years,
R/o 3/189, Vijayant Khand
Gomti Nagar, Lucknow.
13. Sachin Jaiswal
Junior Telecom Officer
S/o G.C. Jaiswal
Aged about 35 years
R/o Telephone Exchange,
Near Officers Colony, Lakshipur Kheri,
UP-262 701.
14. Kishori Lal
Junior Telecom Officer
S/o Sh.Roshan Lal,
Aged about 39 years
R/o VPO Basaral, The Nadaun,
Distt. Hamirpur, H.P. 177 301.
15. Tejpal Bairwa
Junior Telecom Officer
S/o Sh.Laxman Lal,
Aged about 37 years,
R/o Type III/167, Telecom Colony,
Malviya Nagar, Jaipur-302 017
16. Nirmal Kumar Pahadia
Junior Telecom Officer
S/o Sh.Dev Lal Pahadia
Aged about 41 years,
R/o Type-III/29, Telecom Colony,
Bajaj Nagar, Jaipur-302015 (Raj).
17. Anil Kumar Meel
Junior Telecom Officer
S/o Sh.Shivpal Singh Meel
Aged about 33 years
R/o 167A Vidhut Nagar-B
Ajmer Road, Jaipur-302 021
Friends Colony, Saloh Road,
Nawanshahr (Punjab)- 144 514

19. Vinay Kumar
Junior Telecom Officer
S/o Sh. Hemraj
Aged about 35 years,
R/o 2222/1A, Gali No. 2
Opp. Civil Lines,
Chander Nagar, Ludhiana
Pin-141 001.
20. Aprana Mahajan
Junior Telecom Officer
D/o Sh. Yograj Mahajan
Aged about 36 years
R/o H.No.13, Soumya State,
Near Avadhपुरi, Bhopal, Pin-462 021.

... Applicants

(By Advocate: Mr. Abishek Atrey)

VERSUS

1. Bharat Sanchar Nigam Limited,
Through its Chairman-cum-Managing
Director, Bharat Sanchar Nigam Limited,
Corporate Office, Janpath, New Delhi.
2. Bharat Sanchar Nigam Limited,
Through its Director (HRD),
Corporate Office, Janpath, New Delhi.
3. General Manager (Recruitment),
Bharat Sanchar Nigam Limited,
Corporate Office, Janpath, New Delhi.
4. Assistant General Manager (DE),
Bharat Sanchar Nigam Limited,
Corporate Office, Janpath,
New Delhi.
5. Sri Pradip Kumar Das,
S/o Sri Jogen Chandra Das,
Working as JTO, Office of DE (BB),
Telephone Exchange,
Panbazar, Guwahati-1.
6. Shri Rupak Medhi,
S/o Sri Suren Medhi,
Working as JTO,
Office of CGMT, BSNL,
PANBAZAR Guwahati-1
7. Sri Gobina Chandra Sarma, SDE(L/A),
S/o Shri Karuna Kanta Sarmah,
NUNMATI, Dist:- KAMRUP,
Guwahati-1

8. Sri Amiya Kumar Sarma
S/o Sri Charu Chandra Sarma
Working as JTO Office of DE Ext.IV,
Telephone Exchange, Dispur,
Guwahati-5
9. Shri Manik Chandra Deka
S/o Late Pusparam Deka
Working as JTO Office of CGM (NFTF),
BSNL, Silpukhri, Guwahati-5.
10. Sri Kadam Ali Ahmed
S/o Md.Hasmati Ali,
Working as JTO,
Office of DE (TP-II), BSNL,
Bhangagarh, Guwahati-5
11. Sri Hitendra Kumar Chowdhury
S/o Late Bachiram Choudhury,
Working as JTO Office of DE(TP-II),
BSNL, deleted vide order Bhangagarh,
Guwahati-5 Dated 28.6.2012.
12. Sri Sabiram Kalita
S/o Late Dhanoram Kalita
Working as JTO Office of DE (ETR),
BSNL, Panbazar, Guwahati-1
13. Sri Moinul Islam,
S/o Late Ibrahim Ali,
Working as JTO Office of DE (OCB),
Telephone Exchange, Ulubari,
Guwahati-7.
14. Sri Habibr Rahman
S/o Md Naimuddin Sarkar,
Working as JTO Office of SDE (Group),
BSNL, Nagaon-782003.
15. Sri Sumanta Naid Purkayastha
S/o Shri Susanta Kr. Nandi,
Purkayastha, Working as JTO,
Office of DE (Mobile), Telephone Exchange,
Panbazar, Guwahati-1
16. Sri Arunijyoti Saikai,
S/o Late Nirmal Chandra Saikia
Working as JTO Office of DE (Mobile),
Telephone Exchange, deleted vide order
Panbazar, Guwahati-1 dated 28.6.2012.

17. Shri Gaurishankar Bora
S/o Late Makhan Bora
Working as JTO Office o SDE,
Telephone Exchange, Sibsagar-785640.
18. Sri Manash Ranjan Pradhan
S/oLate Bauri Bandhu Pradhan,
Working as JTO, Office of DE (TP-11),
BSNL, Bhangagarh, Ghy-5.
19. Sri Jagannath Kakati,
S/o Late Rabiram Kakati
Working as JTO,
Office of RTTC, BSNL,
Ulubari, Guwahati-7.
20. Sri Sushil Kumar Sarma
S/o Shri Basudev Sarma
Working as JTO
Office of SDE, Orang Telephone Exchange,
Orang-784114.
21. Sri Swapan Sarkar
S/o Late Sribash Chandra Sarkar
Working as SDO (P), Telephone Exchange,
Goalpara-783101.
22. Sri Subrata Dey
S/o Late Narayan Chandra Dey
Working as JTO,
Office of SDO (P), BSNL,
Kokrajhar-783370.
23. Sri Salen Md.Mizanur Rahman
S/o Late Reazuddin Ahmed,
Working as JTO,
Office of CMTS, BSNL, Telephone Exchange,
Bongaigaon-783380.
24. Sri Utpal Goswami
S/o Late Brajamohna Goswami
Working as JTO,
Office of GMTD, BSNL,
Bongaigaon-783380.

... Respondents

(By Advocate: Mr. Rajnish Prasad)

OA 4345/2014

1. P.Ravichandranarayanan
S/o Late V.M.Palani,
Aged about 58 years,

- Junior Telecom Officer,
R/o APT.II, BBC CREST,
D.No. (Old) 11 (New) 27,
Thiagaraya Gramani Street
North Usman Road,
T. Nagar, Chennai-600 017.
2. Swarna Sarada
D/o S. Vemaiah,
Aged about 39 years,
Junior Telecom. Officer,
R/o H.No. 25-2-20141, Gowtham Nagar,
IIIrd Street, Podalkur Road,
A.K.Nagar, Post, Nellore-524004
Andhra Pradesh.
 3. Vekkalagadda Ramachandra Rao,
S/o Late V.Koteswara Rao,
Aged about 38 years, Junior Tele.Officer,
R/o D.No. 214-29-223/8, Gulabi Thota,
Vijayawda, Krishna (Dist.)
Andhra Pradesh.
 4. K.Selvi
D/o V.R. Kuppuswamy,
Aged about 51 years, Junior Tele. Officer,
R/o 15, Filterbed Road,
Vellore-1.
 5. Vemula Chandra Sekhar
S/o Late V.Nandagopal
Aged about 35 years, Junior Tele. Officer,
R/o GI, Avenue Jayam Apartments,
13/17, East Street, Kolathur,
Chennai-99.
 6. P.Aridass
S/o Pakkiry
Aged about 47 years,
Junior Telecom Officer,
R/o No.3, Munakulavinayagar St,
Jayamnagar, Mudaliarpeth,
Pondicherry-605004
 7. K.Ramanathan
S/o Krishna Murthy
Aged about 59 years,
Junior Telecom Officer,
R/o Plot No. 92, Second Main Road,
Annai Theresa Nagar,
Moolakulam,
Pondicherry-605010.

8. S. Sakthivel,
S/o T. Sanjeevi Chettiar,
Aged about 54 years,
Junior Telecom Officer,
R/o S. Sakthivel,
Door No. Old 189-A, New No. 24,
Chinnammal Street, Saibaba Colony,
K.K.Pudur, Coimbatore-641 038.
9. S.Rajendran
S/o M. Sundaresan
Aged about 51 years, Jr. Telecom Officer,
R/o 283 AI Eighth Cross East,
Cooperative Nagar, SS Nallur Post,
Mayiladudurai-609 118.
10. G.Rama Subramanian
S/o P.Gopala Krishnan,
Aged about 36 years, Junior Telecom Officer,
R/o Plot No.19, Park Town,
6th Street, P&T Nagar,
Madurai-625017.
11. Shubhada Boddun
W/o Sameer Boddun,
Aged about 34 years, Jr. Telecom Officer,
R/o 206, Parivar Prince,
Anugraha Layout,
Bilekahalli, Bannerghatta,
Road Bangalore-560 076.
12. Dara Lokanadam
S/o Late Ramaiah,
Aged about 37 years, Junior Telecom Officer
R/o Biradawada (Village)
Nayudu Pet (Manadal),
S.P.S.R.Nellore (Distt), A.P.-524126.

... Applicants

(By Advocate: Mr. Abhishek Atrey)

VERSUS

1. Bharat Sanchar Nigam Limited,
Through its Chairman-cum-Managing
Director, Bharat Sanchar Nigam Limited,
Corporate Office, Janpath, New Delhi.
2. Bharat Sanchar Nigam Limited,
Through its Director (HRD),
Corporate Office, Janpath,
New Delhi.
3. General Manager (Recruitment),
Bharat Sanchar Nigam Limited,
Corporate Office, Janpath,
New Delhi.

4. Assistant General Manager (DE),
Bharat Sanchar Nigam Limited,
Corporate Office, Janpath,
New Delhi.
5. Sri Pradip Kumar Das,
S/o Sri Jogen Chandra Das,
Working as JTO, Office of DE (BB),
Telephone Exchange,
Panbazar, Guwahati-1.
6. Shri Rupak Medhi,
S/o Sri Suren Medhi,
Working as JTO,
Office of CGMT, BSNL,
PANBAZAR Guwahati-1
7. Sri Gobinda Chandra Sarma, SDE(L/A),
S/o Shri Karuna Kanta Sarmah,
NUNMATI, Dist:- KAMRUP, Guwahati-1
8. Sri Amiya Kumar Sarma
S/o Sri Charu Chandra Sarma
Working as JTO Office of DE Ext.IV,
Telephone Exchange, Dispur,
Guwahati-5
9. Shri Manik Chandra Deka
S/o Late Puspam Deka
Working as JTO Office of CGM (NFTF),
BSNL, Silpukhri, Guwahati-5.
10. Sri Kadam Ali Ahmed
S/o Md.Hasmati Ali,
Working as JTO,
Office of DE (TP-II), BSNL,
Bhangagarh, Guwahati-5
11. Sri Hitendra Kumar Chowdhury
S/o Late Bachiram Choudhury,
Working as JTO Office of DE(TP-II),
BSNL, deleted vide order Bhangagarh,
Guwahati-5 Dated 28.6.2012.
12. Sri Sabiram Kalita
S/o Late Dhanoram Kalita
Working as JTO Office of DE (ETR),
BSNL, Panbazar, Guwahati-1
13. Sri Moinul Islam,
S/o Late Ibrahim Ali,
Working as JTO Office of DE (OCB),
Telephone Exchange, Ulubari, Guwahati-7.

14. Sri Habibr Rahman
S/o Md Naimuddin Sarkar,
Working as JTO Office of SDE (Group),
BSNL, Nagaon-782003.
15. Sri Sumanta Naid Purkayastha
S/o Shri Susanta Kr. Nandi,
Purkayastha, Working as JTO,
Office of DE (Mobile), Telephone Exchange,
Panbazar, Guwahati-1
16. Sri Arunijyoti Saikai,
S/o Late Nirmal Chandra Saikia
Working as JTO Office of DE (Mobile),
Telephone Exchange, deleted vide order
Panbazar, Guwahati-1 dated 28.6.2012.
17. Shri Gaurishankar Bora
S/o Late Makhan Bora
Working as JTO Office of SDE,
Telephone Exchange, Sibsagar-785640.
18. Sri Manash Ranjan Pradhan
S/o Late Bauri Bandhu Pradhan,
Working as JTO, Office of DE (TP-11),
BSNL, Bhangagarh, Ghy-5.
19. Sri Jagannath Kakati,
S/o Late Rabiram Kakati
Working as JTO,
Office of RTTC, BSNL,
Ulubari, Guwahati-7.
20. Sri Sushil Kumar Sarma
S/o Shri Basudev Sarma
Working as JTO
Office of SDE, Orang Telephone Exchange,
Orang-784114.
21. Sri Swapan Sarkar
S/o Late Sribash Chandra Sarkar
Working as SDO (P), Telephone Exchange,
Goalpara-783101.
22. Sri Subrata Dey
S/o Late Narayan Chandra Dey
Working as JTO,
Office of SDO (P), BSNL,
Kokrajhar-783370.
23. Sri Salen Md.Mizanur Rahman
S/o Late Reazuddin Ahmed,
Working as JTO,
Office of CMTS, BSNL, Telephone Exchange,
Bongaigaon-783380.

24. Sri Utpal Goswami
S/o Late Brajamohna Goswami
Working as JTO,
Office of GMTD, BSNL,
Bongaigaon-783380.

... Respondents

(By Advocate: Mr. Rajnish Prasad)

ORDER

Hon'ble Mr. S.N.Terdal, Member (J):

Heard Shri Padma Kumar S and Mr. Abhishek Atrey, counsel for the applicants and Mr. Rajnish Prasad, counsel for respondents, perused the pleadings and all the documents produced by the parties.

2. The relevant facts of these cases are that all the applicants had appeared in the Limited Departmental Competitive Examination (LDCE) held on 4.03.2012 in response to the Notification issued by the respondents-BSNL on 18.03.2010. The result of said examination were declared on 12.06.2012. All the applicants in these four Original Applications were qualified in examination with respect to Paper-1-Advanced Technical Paper General and Paper-II-Advanced Technical Paper (Special). But, however, some of the unsuccessful candidates in the said examination filed OAs. Some of the successful candidates also filed OAs. This Tribunal clubbed all those OA being OA No. 207/2013 and connected matters and after hearing all of them passed a detailed order on 21.05.2013. The said order of this Tribunal dated 21.05.2013 is upheld by the Hon'ble High Court of Delhi in Writ Petition (Civil) 4843/2013. The relevant portion of the order of this Tribunal states that with respect to a particular question if two answers

are correct then that question should be totally ignored. The relevant portion which finds place in para 19 of the said order which is extracted below:

“Conversely, the recommendation of the Expert Committee that two options for another set of questions also cannot be accepted as it would create further confusion, particularly when there is negative marking. Therefore, all such questions shall be totally ignored.”

3. That in the said order for arriving at the above conclusion, this Tribunal considered in detail every aspects of the matter and concluded as follows:

“19. In our considered view, still there are discrepancies and, therefore, still there is scope for improvement. According to the Expert Committee, for some questions, 2 options can be taken as correct, for some other questions all options are wrong and for few other questions, one option is alone correct. But according to paper setters for some questions (3) three options are correct and for some other questions (2) two options are correct. In such circumstance, we shall look forward to the principles laid down by Apex Court which say that merit shall not be allowed to be the casualty of wrong answer key and the correct answers shall not be sacrificed. Further, in such circumstances, as far as possible, the final authority to decide whether a answer is correct or wrong shall be left to the Expert(s). For some questions, however, if the decision of the Expert(s) does not solve all the problem, we are bound to take appropriate decisions. Therefore, there is nothing wrong in accepting the recommendation of the Expert Committee to award one full mark to all the answers where all options are wrong. Again, for a set of questions when the Expert Committee says option “D” is the only correct answer and for another set of questions when it says, option “A” alone is the correct answer, the Respondent-BSNL shall go with the said recommendations and not to substitute them with its own compromise formula of awarding full one mark to all who have opted for “A”, “B” and “D” or “A” and “D” respectively. Conversely, the recommendation of the Expert Committee that two options for another set of questions also cannot be accepted as it would create further confusion, particularly when there is negative marking. Therefore, all such questions shall be totally ignored.

20. We, therefore, dispose of all these OAs with the direction to the Respondent-BSNL to re-evaluate all the answer sheets of all the candidates based on the aforesaid principles and parameters and prepare a fresh list of qualified candidates. Since the examination was held on 04.03.2012 and candidates are awaiting for their promotion for over an year, the Respondent-BSNL shall ensure that the fresh list of qualified candidates is published as early as possible, preferably within 2 months from the date of receipt of a copy of this order”.

4. Earlier there were 100 questions and minimum qualifying marks was 50% i.e. minimum qualifying marks was 50. When one question was ignored, the total questions were 99. As a result, minimum qualifying marks of 50% of 99 came to 49.5 in re-evaluation made by the respondents in implementing the order of this Tribunal dated 21.05.2013. In so far as SC/ST are concerned, the said minimum qualifying marks was 45%, accordingly when one question was ignored, the minimum qualifying marks came to 44.55.

5. In the above stated background the facts peculiar to OA 2647/2013 are that the applicants in this OA had answered the relevant question correctly by answering one of the two correct answers. When the said question itself is ignored one mark secured earlier is reduced from their score. Their grievance is that since they had secured 50 marks and were declared passed and selected and now as the said relevant question was ignored their score is reduced to 49 whereas the respondents have fixed the minimum qualifying marks as 49.5 as a result, they were not selected. Hence, they have challenged the action of the respondents on the ground when one question was ignored then out of 50 one mark should have been

reduced and the minimum qualifying marks should have been 49. The contention of the applicants in this case is that this aspect of the matter was not dealt with by this Tribunal while passing the order dated 21.05.2013 in the earlier OAs and in view of there reasoning stated above they submitted that the fixing of the minimum qualifying marks as 49.5 for the general candidate and 44.55 for the SC/ST candidate should be set aside. The relevant portion of the averment is extracted below:

"4.18. That the actual grievance of the applicants in the present OA is as under:-

- (a) In Paper-1, the question No.32 of Set A, which is question no.20 in Set B, question No.3 in Set C and question No.23 in Set D, which had two answers correct as per the Expert Committee viz Option C and Option D.
- (b) All the applicants here have marked the answer as either C or D.
- (c) All the Applicants have been therefore awarded 1 mark for the question.
- (d) All the other candidates who have either chosen A or B have been deprived of .25 by way of negative marking."

6. The facts peculiar to OA No. 3614/2013 are that the applicants in this OA had wrongly answered the said relevant question as such they had lost only .25 in view of negative marking for wrong answers. Their grievance also is that fixing the above said minimum qualifying marks as 49.5 instead of 49, they were also not selected. Consequently on the same ground as raised by the applicants in OA 2647/2013 they submitted for setting aside the action of the respondents.

7. The counsel for the respondents brought our attention to para 79 of the order of this Tribunal dated 21.05.2013 which has clearly dealt with this aspect. The said para is extracted below:

“79. Let us first consider the condition with regard to minimum qualifying marks. When there were 200 questions, the maximum possible marks were 200 on the basis of one mark for each correct answer. Consequently, the minimum qualifying marks for general candidates was 120 (60% of 200) and for reserved candidates it was 110 (55% of 200). Because we have directed that 12 questions be removed from the purview of consideration for the purposes of re-evaluation, the minimum qualifying marks would also change. It would become 112.8 (60% of 188) for general candidates and 103.4 (55% of 188) for the reserved categories”.

Following the said reasoning given by this Tribunal in para 79, the respondents have fixed the minimum qualifying mark as 49.5 for the general candidate and 44.55 for the SC/ST candidate and this order as stated earlier has been upheld by the Hon’ble High Court of Delhi in Writ Petition No. 4843/2913.

8. In view of the same, the submission made by the applicants is devoid of merit. Both the OAs, therefore, are liable to be dismissed.

9. The facts peculiar to OA No.4312/2014 and OA 4345/2014 are that the respondents had applied the said method of ignoring the questions having two correct answers and re-evaluation with respect to both Paper 1 and Paper-II. In these OAs no.4312/2014 and 4345/2014, the applicants herein have challenged the application of the said method to Paper-II. Their grievance is that this Tribunal in the order dated 21.05.2013 did not discuss anything about question Paper-II, yet extending the same method to Paper-II by the

respondents is bad in law and as a result the applicants were not selected, though they were selected earlier. The relevant averments made by the applicants are extracted below:

“(xii) Because in the judgment dated 21.05.2013 there was no discussion of Paper II which were 12 types of different papers of higher level and level of mistakes in these papers were also different therefore the principles and formula given by the Hon’ble Tribunal could not be made applicable to paper II but respondents BSNL had reevaluated paper II also on the same principles, which has adversely effected the result of the petitioners without their fault.

(xiii) Because the result in reevaluation is that the petitioners who had been declared successful, their marks have now been reduced and they were declared unsuccessful by a margin of marks from 0.25 to 2 marks due to deletion and change of answers and the petitioners remained no longer equivalent and have been illegally discriminated.”

10. The counsel for the respondents has brought to our notice that in the order dated 21.05.2013 this Tribunal had dealt with the examination as a whole consisting of both the papers and it is clearly stated in para 19 and 20 of the order dated 21.05.2013 which are already extracted above.

11. In this regard, it is further pointed out by the counsel for the respondents that in OA no. 644/2013 (Amit Kumar) which was part of the 7 OAs considered in the common order dated 21.05.2013, the issues pertaining to Paper-II was under challenge and that the applicants in the said OA 644/2013 had challenged the order of this Tribunal dated 21.05.2013 by filing Writ Petition (C) 4843/2013 separately and the Hon’ble High Court of Delhi upheld the order dated

21.05.2013 of this Tribunal with respect to Paper-II also. It was also stated in the counter affidavit. The relevant portions of the counter affidavit are extracted below:

"4(xxi) That the contents of para 4(xxi) are denied as misleading and incorrect. It is denied that challenge in the 7 O.As which was decided vide common order dated 21.5.2013 was limited only to 28 questions of Paper 1. As a matter of fact challenge was against the entire exam and prayer was to cancel the entire exam and to hold fresh exam.

Moreover out of the above seven OAs in OA No. 644/2013 (Amit Kumar Vs. BSNL) issues pertaining to Paper II was also under challenge and said issues were dealt with by BSNL in their reply to said OA but in the order dated 21.5.2013 it does not find mention.

It is also pertinent to reiterate as stated in the preceding paras that BSNL had also constituted Expert Committees with regard to different papers of Paper II also wherein also for some questions two or more answers were taken as correct answers.

In addition after arguments were concluded and order was reserved by this Hon'ble Tribunal records pertaining to both Paper I and Paper II were produced before this Hon'ble Tribunal.

Further the applicants of above OA 644/2013 challenged the aforesaid order dated 21.5.2013 before the Hon'ble Delhi High Court and the said challenge was also unsuccessful and infact the Hon'ble High Court upheld the order passed by this Tribunal.

That it is submitted that a bare perusal of the aforesaid order dated 21.5.2013 would reveal that the said order was passed on broad principles after hearing all sides including BSNL., successful candidates and unsuccessful candidates. Para 19 and 20 of the aforesaid order of this Hon'ble Tribunal is self explanatory and it is amply clear that BSNL was directed "...to re-evaluate all the answer sheets of all the candidates based on the aforesaid principles and parameters and prepare a fresh list of qualified candidates...". It is therefore clear from the aforesaid

direction that BSNL was duty bound to re-evaluate all the answer sheets of all candidates (including the answer sheets of Paper II) based upon the principles and parameters laid down in the said order and therefore BSNL committed no irregularity in doing so."

12. In view of these facts and the orders of the Hon'ble High Court, these OAs are also devoid of merit.

13. Accordingly, all the OAs are dismissed. No order as to costs.

(S.N.Terdal)
Member (J)

(Nita Chowdhury)
Member (A)

`sk'