

**CENTRAL ADMINISTRATIVE TRIBUNAL  
CHANDIGARH BENCH**

...

**OA No. 060/00581/2016**

**Date of decision- 20.12.2017**

...

**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)  
HON'BLE MRS. P. GOPINATH, MEMBER (A)**

...

Vanita Aggarwal, aged about 53 years,

Widow of late Sh. Gurparshad,

Working as Regular Mazdoor (RM),

office of General Manager, Telecom,

Sector 34 A, Chandigarh

R/o H.No. 1055 P, Sector 25, Panchkula. (Group D).

**...APPLICANT**

**BY ADVOCATE :** Mr. Y.P. Singla, Advocate.

**VERSUS**

1. Union of India through Secretary to Ministry of Communication, Department of Telecommunication, Govt. of India, 20 Ashoka Road, Sanchar Bhawan, New Delhi.
2. Chairman-cum-Managing Director, Bharat Sanchar Nigam Limited, Statesman House, New Delhi.
3. Assistant General Manager (Recruitment Branch II), Bharat Sanchar Nigam Limited Corporate Office, Eastern Court, 2<sup>nd</sup> Floor, Room No. 223, Janpath, New Delhi.
4. Chief General Manager, Telecom, Punjab Circle, Bharat Sanchar Nigam Limited, Sector 34 A, Chandigarh.
5. General Manager, Telecom District Bharat Sanchar Nigam Limited, Sector 34 A, Chandigarh.

**...RESPONDENTS**

**BY ADVOCATE:** Mr. S.P. Garg, Advocate.

**ORDER**

**SANJEEV KAUSHIK, MEMBER(J):-**

The applicant challenged the correctness of order dated 03.03.2016 (Annexure A-12) rejecting her claim for promotion to the cadre of Telecom Mechanic. She also stakes her claim for revising her result by giving the benefit of '7' additional/compensatory marks in both Sections i.e. Section I & II of Limited Departmental Competitive Examination (in short 'LDCE') conducted on 28.09.2014 for promotion to the cadre of Telecom Mechanic for the recruitment year 2013 on account of dropping of '7' wrong questions and also fix the achievable passing criteria in Section I & II. She also sought issuance of direction for quashing of policy guidelines dated 08.04.2016 (Annexure A-14).

2. The facts are not in dispute. The applicant was appointed on compassionate ground after the death of her husband while in service as Regular Mazdoor (RM) on 06.04.2000. On 05.07.2014, the respondents issued circular for conducting LDC examination for promotion to the cadre of Telecom Mechanic amongst Group 'D' employees in the Punjab Circle for the recruitment year 2013. Total 54 posts for Chandigarh region were notified out of which 41 posts were reserved for General category (OC), 8 posts were reserved for SC category, 4 posts were reserved for ST category and one post was reserved for Physically Handicap category. On 28.09.2014, the LDC Examination was conducted and 28 candidates including the present applicant appeared in the said examination. The examination was bifurcated in two parts i.e. Section I & II having 50 marks each. As per criteria therein, minimum qualifying marks was set to 30 % i.e. 15 marks in each Section and 37 % i.e. 37 marks in aggregate in both Sections for General Category candidates. For ST/SC category candidates, it was fixed to 20 % in each Section and 30% in aggregate

in both Sections. While declaring the result, 7 candidates out of 28 were declared pass and the applicant was declared fail as she secured 34.25 marks in aggregate which was lesser to the requisite aggregate of 37 marks.

3. On 18.05.2015, the applicant submitted representation for re-totaling and re-evaluation of her paper. She came to know that after conducting the examination, original passing criteria of securing 37 marks in aggregate has been changed and now as per the changed passing criteria, the candidate was required to secure minimum 34.41 marks in aggregate instead of minimum 37 marks as earlier. Since the applicant secured 34.25 marks, she again submitted representation dated 27.05.2015 requesting the respondents to give her relaxation in qualifying marks and award 0.16 marks so that she may qualify the exam. Then the applicant submitted an application under Right to Information Act and she came to know that 7 questions out of 100 were dropped from the zone of consideration from both the sections as there was difference of opinion between paper setter and the Expert Committee constituted by the respondent department and in that eventuality her representation against change of passing criteria was rejected by the respondents vide impugned order dated 03.03.2016. Hence the present O.A.

4. In furtherance of above plea, Mr. Singla, learned counsel for the applicant vehemently argued that action of the respondents in changing the game of rule after commencement of game is bad in law, thus, impugned order be set aside and a direction be issued to the respondents to award her 0.16 marks and declare her successful in said examination. To elaborate his argument, he submitted that since the respondents have not awarded any marks for 7 questions where difference of opinion is there and as per the judicial pronouncement,

they were required to award marks for those questions by considering opinion given by the paper setter. He also submitted that letter dated 08.04.2016 issued by the BSNL under the subject of procedure to be followed by the Expert Committee in case of OMR based Departmental Examinations conducted by BSNL, is bad in law. It was made applicable only qua JTO and not for others where similar mistake occurred. He, therefore, submitted that view has been taken that where there is a difference of opinion between the paper setter and Expert Committee, they have to award full marks to all the candidates for those ambiguous questions. To strengthen his plea, he placed reliance upon the judgment passed by the Hon'ble Delhi High Court in case of **Bharat Sanchar Nigam Limited & Ors. Vs. Rakesh Kumar Gupta**, WP (C) 8397/2014 upholding the order passed by the Principal Bench in this matter.

5. Per contra, Mr. Garg, learned counsel for the respondents vehemently opposed his prayer and submitted that in terms of policy decision dated 15.02.2011 (Annexure A-13), the respondents adopted the procedure for departmental examinations. Accordingly, they found doubt in 7 questions and decided to drop those seven questions which came in examination and have awarded marks out of 93 questions which was attempted by the candidates. Thus, there is no illegality in their decision as it equally applies to all the candidates who appeared in departmental examination. He further argued that decision (Annexure A-14) cannot be said to be illegal and arbitrary because being a policy decision by the Authority which cannot be interfered by the Court until it is shown prejudice to any particular candidate or class. To buttress his plea, he placed reliance upon the judgment passed by the Hon'ble High Court of Delhi in case of **Amit Kumar & Ors. Vs. Union of India & Ors.** (W.P (C) 4843/2013 decided on 01.08.2013.

6. We have given our thoughtful consideration to the entire matter and have perused the pleadings as available on record.

7. Conjunctive perusal of pleadings makes it clear that question paper was of 100 marks. It was bifurcated in two sections i.e. Section I & Section II having 50 marks each. Each question carries one mark. There were four choices for each question. There was a negative marking of 0.25 marks for each wrong answer. As per passing criteria, general candidates were required to obtain 30 % in each section and 37% aggregate in both sections. Against 54 posts in Chandigarh Region, 28 candidates appeared including the applicant out of which seven were declared successful. Since the applicant secured 34.25 marks in aggregate, therefore, she was not declared successful. It is not out of place to mention herein that since there was difference of opinion between the paper setter and Expert Committee constituted by BSNL, therefore, it was decided by the competent authority not to add those seven questions while preparing the result. Accordingly, result was prepared out of 93 questions carries one mark each. They reduced the cut of percentage to 34.41 marks against earlier 37 marks as notified in the advertisement. Since the applicant secured 34.25 marks which is less than the minimum requirement, therefore, she was declared ineligible. Decision by the respondents for not adding seven questions is as per their policy dated 15.02.2011 (Annexure A-13) under the subject of procedure to be followed in case of OMR based Departmental Examinations conducted by BSNL in future. As per para III of the policy, the Committee consisting of two to three officers of appropriate level was required to give necessary recommendations. Since they have recommended in present case to drop seven questions, therefore, their decision was in consonance with the circular dated 15.02.2011, thus, we find no fault in decision arrived by the

respondents in this regard. More over there is no discrimination while taking decision because it applies to all candidates who appeared in LDC examination along with applicant. Accordingly, O.A is dismissed being devoid of merit.

8. No costs.

**(P. GOPINATH)**  
**MEMBER (A)**

**(SANJEEV KAUSHIK)**  
**MEMBER (J)**

**Dated:20.12.2017.**

`jk'

