

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH**

ORIGINAL APPLICATION NO.170/00641/2017

DATED THIS THE 07th DAY OF MARCH, 2019

HON'BLE DR.K.B.SURESH, JUDICIAL MEMBER

HON'BLE SHRI C.V.SANKAR, ADMINISTRATIVE MEMBER

Kashinath Hosalli
S/o Dashrath Hosalli
Aged 59 years, working as
Office Superintendent (TG)
O/o SDE-Mobiles, BSNL
CSC & DTO Building Main Road
Gulbarga-585 101.
Residing at H.No.1-891/84/2/1
Janatha Housing Society
New Jewargi Road
Karuneshwar Nagar
Gulbarga-585 101.

....Applicant

(By Advocate Sri A.R.Holla)

Vs.

1. Union of India
By Secretary
Department of Telecommunications
Ashoka Road
New Delhi-110 020.
2. Bharat Sanchar Nigam Limited
Corporate Office
4th Floor, Bharat Sanchar Bhavan
H.C.Mathur Lane, Janpath
New Delhi-110 001.
By its Chairman & Managing Director
3. The Chief General Manager, Telecom
Karnataka Circle
No.1, Swamy Vivekananda Road
Halasuru
Bengaluru-560 008.
4. The General Manager, Telecom
BSNL Telecom District
Gulbarga-585 103.

...Respondents

(By Advocates Sri Vishnu Bhat for R2-4 & Sri Vijayakumar Swamy for R1)

ORDER

(PER HON'BLE SHRI C.V.SANKAR, MEMBER (ADMN))

The case of the applicant in a nutshell is that the applicant who belongs to Scheduled Tribe(ST) was appointed as Telegraph Assistant on 21.3.1982 in the Department of Telecom(DOT) and was confirmed in the post on 01.04.1988. On completion of 16 years of service, he was promoted under the OTBP scheme on 21.3.1998. He has been absorbed in Bharat Sanchar Nigam Limited (BSNL) w.e.f. 1.10.2000. On completion of 26 years of service, he was promoted under BCR scheme on 21.3.2008. The applicant appeared for the Junior Accounts Officer (JAO) Part II Internal Competitive Examination conducted by BSNL against 40% quota from 4th to 6th January 2010 and the results of which were announced by a notification dtd.7.4.2010(Annexure-A2) wherein the applicant's name has not been found as he has failed in the examination. The marks obtained by him have been announced vide notification dtd.1.5.2010(Annexure-A3). He submits that there were many vacancies(under ST category) which could not be filled for want of successful candidates. The respondent No.1 vide order dtd.30.11.1992(Annexure-A1) provided for awarding of marks to the failed SC/ST candidates in the departmental examination according to which the failed SC candidates with 20% marks and failed ST candidates with 15% marks should be reviewed for recommendation to declare them successful. The applicant submitted representation to the Asst. General Manager (Recruitment & Examinations) on 25.7.2014(Annexure-A4) with a request to consider him for the post reviewing his result with the lesser standard of evaluation. However, he has been informed by letter dtd.25.9.2014(Annexure-A5) that he is not eligible for review of the result.

2. The applicant submits that a committee was constituted by the BSNL for review of results of failed SC/ST candidates in Limited Internal Competitive Examination(LICE) in different Non-Executive and Executive cadre. Accordingly, a copy of the list of LICEs with revised standards for review of failed SC/ST candidates has been notified vide notification dtd.28.7.2016(Annexure-A6). However, the modifications were made applicable retrospectively to all such examination notifications issued after 2.12.2014. In spite of it, the results of the applicant was not reviewed, though he was entitled for the same vide order dtd.30.11.1992. The applicant submits that in pursuance of 35th meeting of the National Council held on 11.5.2017(Annexure-A7) wherein in item No.4 & 5 of the proceedings, it was decided to consider the individual representations for review of the result of failed SC/ST candidates in LICE, a circular was issued to all circles of BSNL on 28.8.2017(Annexure-A8) to review the results of only those failed SC candidates who have secured at least 20% marks and ST candidates who have secured at least 15% marks in each paper with the cut off date as 02.12.2014. The applicant submitted another representation seeking review of his result on 8.9.2017(Annexure-A9) to the 3rd respondent who vide order dtd.25.9.2017(Annexure-A10) rejected his request holding that he is not qualified for review of his result in view of rules/guidelines in vogue at the relevant time. Thereafter, BSNL issued an order dtd.17.10.2017(Annexure-A11) intimating to incorporate the reduced qualifying marks to review the failed SC/ST candidates in each required qualifying sections/parts of a paper for the LICEs/LDCEs etc. notified on or after 2.12.2014. Applicant submits that both the orders at Annexures-A10 & A11 are contrary to the original order(Annexure-A1) conferring a substantial right. It is a settled principle of law that the vested right of the applicant for review of his

result in terms of order dtd.30.11.1992(Annexure-A1) cannot be taken away by subsequent clarifications. The order dtd.30.11.1992 is applicable to the examinations conducted on or after 01.12.1992 and as such the result of the applicant, in respect of the examination held in 2010 was required to be reviewed in terms of Annexure-A1. The cut off date 02.12.2014 mentioned in Annexure-A11 has no rationale and is arbitrary. As Annexure-A10 and A11 are not sustainable in law, the applicant prays for quashing of the said orders and also seeking direction to carry out review of his result in JAO Part-II LICE against 40% quota by the respondents in accordance with order dtd.30.11.1992 and also to extend consequential benefits.

3. The respondents, on the other hand, have submitted in their reply statement that the applicant is currently working as Office Superintendent in the office of the Sub Divisional Engineer Mobiles, BSNL, Gulbarga. He appeared for JAO Part-II LICE 40% quota held on 4th, 5th & 6th January 2010 in Karnataka Circle. The result of that exam was declared on 7th April 2010 and applicant did not qualify in the said exam. The representation of the applicant seeking review of his result in the light of the order dtd.30.11.1992 was disposed of by the CGM, Karnataka Circle mentioning that review for the said exam has been conducted as per BSNL Corporate Office Guidelines in vogue at that point of time as per letter dtd.8.1.2007(Annexure-R1). The applicant has not qualified under review of the said exam as he has scored 44 marks in Paper-III and Paper-IV whereas the qualifying marks is 66 and only a maximum of 5 marks can be allowed as grace marks. A committee was constituted to consider relaxation in qualifying marks for failed SC/ST candidates and as per recommendation of the committee approved by the competent authority, review of failed SC/ST candidates result has been notified vide letter dtd.28.7.2016 wherein it

was mentioned that the revised standards for review of failed SC/ST candidates will be applicable to all such examination notifications issued after 2.12.2014. Further, staff union had taken up the issue of relaxation standard at the 35th meeting of the National Council held on 11.5.2017 and it was decided to relax the standard as per DOT letter dtd.30.11.1992. Review of result of failed SC/ST candidates has been revised vide letter dtd.28.8.2017 superseding the letter dtd.28.7.2016 which state that result of only those failed SC/ST candidates who secured at least 20% & 15% marks respectively in each paper should be reviewed. The date of applicability shall be to those departmental exams notified after 2.12.2014. Since the applicant appeared for the exam in 2010, the BSNL order dtd.28.8.2017 is not applicable to him.

4. The respondents submit that the item No.4 in letter 16.8.2017 quoting minutes of 35th National Council meeting held on 11.5.2017, it is mentioned that the issue of relaxation in qualifying marks for SC/ST officials for promotional examination for which the results were announced between 22.7.1997 and 3.10.2000 has been examined. But the applicant has written the examination in 2010 only. Hence, item No.4 is not at all applicable to the applicant. As such it is clear that the modus operandi to review such cases is as per the prevailing cut off date of notification i.e. on or after 02.12.2014 only. It is objectionable for the applicant to ask for review of result of failed SC/ST candidates now after a gap of seven years as per DOT orders of 30.11.1992. Applicant is also ignorant of the fact that review for the said examination has already been conducted as per BSNL CO letter dtd.8.1.2007. Further it is submitted that DOT letter dtd.30.11.1992 is in accordance with and in continuation of DG &PT letter dtd. 4.5.1981 wherein it is written to review the result of failed SC/ST candidates but the letter has been released by NCG section which

was incharge of Group C employees and the referred order was for Departmental Competitive/Qualifying Examination in the cadre of Group C only. JAO is a Group B executive post. Hence, the averments of the applicant are denied and the OA is liable to be dismissed.

5. We have heard the Learned Counsel for both the parties and perused the materials as well as the written argument notes filed by both the parties in detail. The issue relates to adopting relaxed standards of percentage of marks to be obtained by the employees belonging to SC/ST in the Limited Departmental or Limited Internal Competitive Examination for promotions to higher cadres. The DOT had a policy enunciated in 1992 to review the results of those failed SC candidates who have secured at least 20% marks and ST candidates who have secured at least 15% marks in each paper. Apparently this was done since it was noticed that even those SC/ST candidates who had secured zero marks had been recommended as successful. The respondents state that due to a number of judgments passed by the Hon'ble Apex Court in the matter relating to grace marks, this procedure was not followed till 1999 and thereafter had been adopted. In 2016 based on the number of vacancies existing and the demand of the employees belonging to the SC/ST categories, the respondents have come out with the revised scheme for giving relaxation with respect to each paper as well as in aggregate as at Annexure-A5. This was to be implemented w.e.f. 2.12.2014 (the date of issuance of existing policy). While the applicant would claim that this date 2.12.2014 is arbitrary, the respondents have stated in their written arguments as follows:

The committee constituted to consider relaxation in qualifying marks for failed SC/ST candidates and as per recommendation of the committee got approved by the competent authority, review of failed SC/ST candidates result has been notified vide letter no.250-22/2013/Estt-III dated 28.7.2016 wherein it is clearly mentioned that the revised standards for review of failed SC/ST candidates will be applicable to all such examination notifications issued after 02.12.2014(the date of issuance of

existing policy).

Further, staff union has taken up the issue of relaxation standard at the 35th meeting of the National Council held on 11.05.2017 and it was decided to relax the standard as per DOT letter No.22-5/91-NCG dated 30.11.1992. Review of result of failed SC/ST candidates has been revised vide letter No.9-2/2016-Rett. dated 28.8.2017 which state that 'result of only those failed Scheduled Caste candidates who have secured at least 20% marks and Scheduled Tribe candidates who have secured at least 15% marks in each paper should be reviewed.

This communication of July 2016 was also adopted by the employees union and in the 35th meeting of the National Council on 11.5.2017 (Annexure-A7) in agenda item No.5, the issue was dealt with and it was minuted as follows:

Item No.5 Unwarranted reluctance of BSNL management in implementing the concessions granted by DoPT orders in relaxing the qualifying marks for the SC/ST employees in promotional exams-Request to reconsider and cause justice.

Staff side stated that the revised guidelines issued on 28.7.2016 are not meeting the requirement of DoPT orders in implementing relaxed standards for SC/ST officials in promotion exams for filling up the vacancies allotted for SC/ST officials. Therefore the orders issued on 28.7.2016 may be modified given retrospective effect and be made applicable for all promotional exams.

Management side replied that a committee was constituted by Recruitment Branch to examine the issue of review of results of failed SC/ST candidates. Based on the recommendations of said Committee, Estt. Branch had issued letter no.250-22/2013-Estt-III dated 28.07.2016.

Staff side expressed its dissatisfaction over the letter dated 28.07.2016 and strongly demanded that the DoT order number 22-5/91-NCG dated 30.11.92 should be implemented, which accepts 20% marks for SC and 15% marks for ST. After detailed discussion on the issue it was agreed to review the matter in the light of DoT letter dated 30.11.92.

6. Based on these minutes, revised orders were issued on 28.8.2017 accepting the earlier position of at least 20% marks for SCs and 15% marks for STs in each paper being taken for the purpose of review(Annexure-A8). Based on the above, it is clear that the relaxed standards of 20% and 15% were initially brought in in the year 1992 but were not continuously adopted as stated. Later, based on the deliberations of a committee, the same was modified w.e.f. 2.12.2014. The applicant in this case has already written the exam in the year 2010 and was not qualified even after the grant of grace marks in the failed subjects as per the policy existed at that time as

noted by the respondents. We find that the department had taken the date of 2.12.2014 based on persistent representations from the employees and on the recommendations of the committee. The new policy was to be adopted for the examinations notified w.e.f. 2.12.2014. This policy of adopting a relaxed standard for marks based on the letter of 1992 has already been quashed by this Tribunal in OA.No.916/2015 dtd.18.7.2016 wherein this Tribunal ordered as follows:

“We therefore, take strong exception to Annexure-A5 issued by the DoT as letter No.22-5/91-NCG dated 30.11.1992 wherein it has been prescribed that a review of result of SC/ST candidates with 20% and 15% marks can be allowed. The minimum requirement being 45%, such a reduction for a further review will defeat the constitutional process. The process under 15(4) and 16(4) cannot be utilized to give that sort of benefit to particular persons so that their continuance in governance system will impede, diminish and defeat the general public interest. Therefore, Annexure-A5 is against the constitutional process and it is hereby quashed.”

7. This being a position, it is not clear as to how the respondents as late as 2017 have adopted the policy which existed earlier from the year 1992. We are not aware whether any challenge to the order of the above OA was taken up and any further orders have been issued in this regard. However, as already explained above, there is a logic in adopting 2.12.2014 as the cut-off date for the purpose of adopting a uniform standard in terms of the SC/ST candidates for relaxation in marks in the Limited Departmental/Internal Competitive Examination. The applicant having written the examination before the cut-off date is clearly not entitled for the benefit. The OA is therefore, dismissed. No costs.

(C.V.SANKAR)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ps/

Annexures referred to by the applicant in OA.No.170/00641/2017

Annexure A1: Copy of the order dtd.30.11.1992
Annexure A2: Copy of the notification dtd.7.4.2010
Annexure A3: Copy of the notification dtd.1.5.2010
Annexure A4: Copy of applicant's representation dtd.25.7.2014
Annexure A5: Copy of the letter dtd.25.09.2014
Annexure A6: Copy of the order dtd.28.7.2016
Annexure A7: Copy of the minutes of the National Council meeting dtd.16.8.2017
Annexure A8: Copy of the order dtd.28.8.2017
Annexure A9: Copy of applicant's representation dtd.8.9.2017
Annexure A10: Copy of the order dtd.25.09.2017
Annexure A11: Copy of the order dtd.17.10.2017

Annexures with reply statement filed by R2 to 4:

Annexure-R1: Copy of letter dtd.8.1.2007
Annexure-R2: Copy of the note sheet

Annexures with written arguments note filed by the applicant:

-NIL-

Annexures with written arguments note filed by the R2 to 4:

Annexure-1: Copy of the order passed in OA.No.921/2015 dtd.18.7.2016
