

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...

**O.A. No.60/801/2016
M.A. No.60/1978/2018**

Date of decision: 23.01.2019

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

...

Bihari Lal son of Sh. Arjun Dass, age 57 years, working as Telecom Technical Assistant (redesignated as Junior Engineer) posted in the office of Sub Divisional Officer Phones-III, Bathinda, Punjab HRMS No.198203027 (Group-C).

**... APPLICANT
VERSUS**

1. Union of India through Secretary, Ministry of Communications and Information Technology, 20, Ashoka Road, Sanchar Bhawan, New Delhi-110001.
2. Bharat Sanchar Nigam Limited, Bharat Sanchar Bhawan, H.C. Mathur Lane, Janpath, New Delhi-110001, through its Chairman-cum-Managing Director.
3. The Chief General Manager 'Telecom', Bharat Sanchar Nigam Limited, Punjab Circle, Plot No.2, Sanchar Sadan, Sector 34-A, Chandigarh-160022.
4. The General Manager Telecom District, Bharat Sanchar Nigam Limited, Secondary Switching Area (SSA) Bathinda, Bharat Nagar, Bathinda-151001.

... RESPONDENTS

PRESENT: Sh. P.M. Kansal, counsel for the applicant.
Sh. Ram Lal Gupta, counsel for respondent No.1.
Sh. Rajesh Gupta, counsel for respondents no.2 to 4.

ORDER (Oral)

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SANJEEV KAUSHIK, MEMBER (J):-

1. By means of the present O.A., applicant assails order dated 18.02.2016 (Annexure A-1), whereby his representation dated 22.12.2014, has been rejected.
2. Broadly, facts are not in dispute.
3. Applicant, who belongs to reserved category (SC), joined erstwhile Telecomm Department (now BSNL) on 27.07.1982 and was promoted to the post of Telecom Technical Assistant (TTA) w.e.f. 21.12.1996. The next promotion is to the post of Junior Telecom Officer (JTO) which is governed under Rules known as "Junior Telecom Officer Recruitment Rules, 1996" notified on 08.02.1996. These rules provided for filling up vacancies of JTO, 50% by direct recruitment through a competitive examination and 50% by promotion/transfer of departmental candidates. This 50% quota of promotion/transfer of departmental candidates was bifurcated into further, 15% by promotion of departmental candidates through competitive examination from amongst various categories including TTA and 35% by way of Screening Test amongst various categories including TTA. Ministry of Home Affairs issued OM dated 25.7.1970 providing relaxation in standards to persons belonging to SC and ST categories, which was further modified vide DoPT OM dated 23.12.1970 and then later has been issued on 4.5.1981 whereby they have again granted benefit of relaxation in standards for reserved category candidates. Applicant appeared in examination for the post of JTO under 35% quota on 15.5.2000 result of which was declared on 19.9.2000 where

he was declared fail as he secured only 34 marks which were below the cut off marks. At that time, applicant raised a plea that being a candidate of reserved category, he is entitled to concession/relaxation of standards in view of the OMs dated 25.7.1970 and 23.12.1970 and then 30.11.1992 issued by Govt. of India. Said OMs/instructions issued by Govt. of India providing relaxation in standards in written examination had been withdrawn by Govt. of India vide OM dated 22.7.1997 (Annexure A-5) based upon decision of the Hon'ble Supreme Court in the case of **S. Vinod Kumar vs. UOI & Others**, 1998 (8) SC 643, holding that qualifying standards in the examination cannot be relaxed for reserved category candidates. This OM dated 22.7.1997 came up for consideration before the Constitutional Bench of Hon'ble Supreme Court in Civil Appeal Nos.6046-6047 of 2004 titled **Rohtas Bhankhar and others vs. Union of India and Anr.**, where Lordships while holding that the view that law followed by the respondents in the case of S. Vinod Kumar is not a good law and resultantly OM dated 22.7.1997 was held to be illegal and it was further directed to modify the result, in the Section Officer/Stenographers (Grade B/Grade-1) Limited Departmental Competitive Examination, 1996. Thereafter, applicant by taking clue from judgment in the case of **Rohtas Bhankhar** (supra) filed O.A. No.60/569/2015, which was disposed of on 15.10.2015 by this Court directing the respondents to decide his claim by passing a reasoned and speaking order in view of the subsequent development where OM dated 22.7.1997 was held to be illegal. His claim was rejected vide order dated 18.02.2016 which is impugned in the instant O.A.

4. Applicant has taken various grounds for invalidation of the impugned order, first one is that once OM dated 22.7.1997 has been held to be illegal then applicant ought to have been granted benefit by giving relaxation in marks and declared successful and given promotion against vacancies available at that time, as had been done in the case of Rohtas Bhankhar (supra). Therefore, learned counsel for the applicant vehemently argued that the impugned order taking away right of the applicant, which accrued from the judgment in the case of Rohtas Bhankhar (supra), be declared as illegal, arbitrary and be set aside. He submitted that one a view has been taken by the department to give concession to reserved category candidates and withdrawal has been held to be illegal then respondents ought to have applied OMs which were applicable at the time when applicant appeared in the examination. Therefore, he submitted that the impugned order is liable to be set aside and respondents may be directed to allow him concession as available under OM Annexure A-3 (colly).

5. Sh. Rajesh Gupta, learned counsel for the respondents No.2 to 4, referred to para 4(3)(i) of the written statement wherein they have submitted that owing to enforcement of DoPT OM dated 22.7.1997, the result of 2nd Qualifying Screening Test for promotion to the cadre of JTO (T) under 35% quota held on 14.5.2000, for all its intents and purposes, was to be declared on 19th September 2000, without considering the relaxed standards earlier available to the SC/ST candidates. The claim of the applicant, in the light of Hon'ble Supreme Court Constitution Bench judgment dated 15.7.2014 because both S. Vinod Kumar case and OM dated 22.7.1997 (which

was issued on the basis of S. Vinod Kumar case) have been declared illegal, as such the original position which stood prior to issuance of OM dated 22.7.1997 had again come into existence, does not appear to be pragmatic and also does not fit into the prevailing state of affairs of the answering respondent organization. The exam in which the applicant appeared held in erstwhile DOT (now BSNL) way back in the year 2000 and the DoPT OM dated 22.7.1997 had been declared illegal by the Hon'ble Supreme Court of India after a long gap of approximately 14 years. In every departmental examination the stipulated number of vacancies are allocated in each category (viz. OC/SC/ST etc.) falling in those particular years for which examination is conducted. After declaration of result the category wise unfilled vacancies, if any, are carried forward and clubbed together with the next years vacancies for the subsequent examination. In present case also, after the conduct of 2nd qualifying screening test for promotion as JTO (under 35% quota) on 14.5.2000, another Limited Internal Competitive Examination for promotion to the post cadre of JTO (T) was held in the year 2013 for the vacancies years 2000 to 2012. At the time of notification of said exam, there were no direction from any court of law regarding reserving the vacancies for those particular years (i.e. period when DOPT Memorandum was in force) as such the unutilized vacancies of previous examination held in the year 2000 were later on utilized in the examination for subsequent years and the same were filled from amongst successful SC/ST candidates eligible for those years. There is no unfilled vacancy for the year 1999 available at present with the respondents.

6. Perusal of the above paragraph makes it clear that respondents have taken two fold grounds in their defence that earlier examination had been held by DoT prior to creation of BSNL and OM dated 27.7.1997 had been set aside by Court of law in the year 2014 and vacancies that were available at that time against which applicant is staking his claim, had been filled in subsequent examination held in the year 2013 for vacancies year 2002-2012. Since no vacancy is available and applicant has retired, therefore, he cannot be granted benefit. On similar lines, arguments have been raised by him, at the bar.
7. Sh. Ram Lal Gupta, appearing on behalf of DoT has moved application of deletion, raising a plea that at this stage, those issues which have been settled in the year 2000, cannot be reopened because not only the applicant but there are number of other candidates who have not been granted such benefit, and now it is too late in the day to revive such claims.
8. We have given our thoughtful consideration to the entire matter and have perused pleadings available on record.
9. We feel that the impugned order does not deserve any interference for the simple reason that when result was declared, at that time, there was no instruction to grant any relaxation to reserved category candidates as OM at Annexure A-3 had been withdrawn by Govt. of India by issuing another OM dated 22.7.1997 and under those instructions, applicant appeared in the examination and was declared unsuccessful. Though subsequent to that in the case of Rohtas Bhankhar (supra) another OM dated 4.5.1981 was issued by the respondents to again grant benefit but fact remains that on the date when applicant appeared in the examination, there were no

instructions for granting relaxation to reserved category candidate. Merely because law has changed subsequently does not change things at the time of examination. Not only that a similar claim has already been rejected by this very Bench of the Tribunal in O.A. No.60/802/2016 (**Ranjit Singh vs. U.O.I. etc.**) decided on 13.02.2018.

10. Accordingly, the O.A. is dismissed.

11. M.A. filed by the DoT also stands disposed of accordingly.

(P. GOPINATH)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Date: 23.01.2019.

Place: Chandigarh.

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