

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00890/2016

Monday, this the 17th day of December, 2018

C O R A M :

**HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER
HON'BLE Mr.ASHISH KALIA, JUDICIAL MEMBER**

1. Anoop Das,
H.R.No.20080578,
S/o.Dasan Vasu,
Junior Engineer,
O/o.The Sub Divisional Engineer,
Transmission, Telephone Bhavan,
BSNL, Alappuzha – 688 011.
2. Sethu P.,
H.R.No.200801905,
S/o.K.V.Purushothaman,
Junior Engineer,
O/o.The Sub Divisional Engineer (Internal),
Cherthala Telephone Exchange,
BSNL, Cherthala – 688 524.
3. Dhanush P.,
H.R.No.200803576,
S/o.Purushothaman.V.M.,
Junior Engineer,
O/o.The Junior Telecom Officer,
Nedumudy, BSNL Kainakary,
Alappuzha – 688 501.
4. Praveen.M.,
H.R.No.200803561,
S/o.Mohanan.P.,
Junior Engineer,
O/o.The Sub Divisional Engineer,
B/B-NIB, Telephone Bhavan,
BSNL, Alappuzha – 688 011.

5. Anjali Vijayan,
H.R.No.200801838,
W/o.Rejith B,
Junior Engineer,
O/o.The Sub Divisional Engineer,
Ambalapuzha Telephone Exchange,
BSNL, Ambalapuzha, Alappuzha – 688 561.
6. Manoj.J.,
H.R.No.200801949,
S/o.Veluthakunju,
Junior Engineer,
O/o.The Sub Divisional Engineer,
Chettikulangara, Chettikulangara Telephone Exchange,
BSNL, Alappuzha – 690 106.
7. Prince Thomas,
H.R.No.200804030,
S/o.Thomas P.P.,
Junior Engineer,
O/o.The Sub Divisional Engineer (S.T.R.),
Telephone Bhavan, BSNL, Alappuzha – 688 011.
8. Mujeeb Baker,
H.R.No.200802007,
S/o.P.H.Aboobacker,
Junior Engineer,
Office of the Sub Divisional Engineer (NS),
The General Manager, Telecom Divisional Office,
BSNL, Alappuzha – 688 011.
9. Ismathulla.M.,
H.R.No.200801841,
S/o.K.M.Mohammed Thamin,
Junior Engineer, BSNL,
Kozhinjampara Telephone Exchange,
Palakkad – 678 555.
10. Rajan R.,
H.R.No.200801702,
S/o.T.S.Ramaswami,
Junior Engineer,
O/o.The Sub Divisional Engineer, Transmission, BSNL,
Telephone Exchange, Ottapalam, Palakkad – 679 103.

.3.

11. Palaghat Venkara Raghu,
H.R.No.200801824,
S/o.P.V.Ramana,
Junior Engineer,
O/o.The Sub Divisional Engineer (FTTH),
Telephone Exchange, BSNL,
Palakkad – 678 014.
 12. Jayan.R.,
H.R.No.200803432,
S/o.Ramankutty,
Junior Engineer,
O/o.The Sub Divisional Engineer,
Digital Transmission Station, BSNL,
Southern Telecom Region, Palakkad – 678 014.
 13. Viji C.,
H.R.No.200803437,
W/o.M.Jayaprakash,
Junior Engineer, Customer Service Centre, BSNL,
Central Telecom Office, Palakkad – 678 001.
 14. Subrahmanian.T.,
H.R.No.200801709,
S/o.late Krishnan Namboothiri,
Junior Engineer, Telephone Exchange, BSNL,
Perumbatta, Kannur – 671 313.
 15. Lison.V.K.,
H.R.No.200801781,
S/o.V.K.Kochunny,
Junior Engineer, Telephone Exchange, BSNL,
Kunnamkulam – 680 596, Thrissur District.
 16. Rasiq.S.M.,
H.R.No.200802712,
S/o.Moosakhan,
Junior Engineer, Transmission, BSNL,
Kanjirappally – 686 512, Kottayam District.
- ...Applicants

(By Advocate – Mr.P.K.Madhusoodhanan)

v e r s u s

.4.

1. Bharat Sanchar Nigam Ltd.,
Corporate Office, Bharat Sanchar Bhavan,
Janpath, New Delhi – 110 001,
represented by its Chairman & Managing Director.
2. The Director (HR),
Bharat Sanchar Nigam Ltd.,
Corporate Office, Bharat Sanchar Bhavan,
Janpath, New Delhi – 110 001.
3. Assistant General Manager (Estt.-IV),
Bharat Sanchar Nigam Ltd., 5th Floor,
Bharat Sanchar Bhavan, Janpath,
New Delhi – 110 001.
4. The Chief General Manager (Telecom),
Kerala Circle, Bharat Sanchar Nigam Ltd.,
Thiruvananthapuram – 695 033.
5. The General Manager (Telecom),
Alappuzha Secondary Switching Area, BSNL,
Alappuzha – 688 011.
6. The General Manager (Telecom),
Palakkad Secondary Switching Area, BSNL,
Palakkad – 678 001.
7. The General Manager (Telecom),
Southern Telecom Region, BSNL,
Kaloor, Ernakulam – 682 017.
8. The General Manager (Telecom),
Kannur Secondary Switching Area,
BSNL, Kannur – 670 002.
9. The General Manager (Telecom),
Thrissur Secondary Switching Area,
BSNL, Thrissur – 680 022.
10. The General Manager (Telecom),
Kottayam Secondary Switching Area,
BSNL, Kottayam – 686 001.

...Respondents

(By Advocate – Mr.George Kuruvilla)

.5.

This application having been heard on 16th November 2018, the Tribunal on 17th December 2018 delivered the following :

ORDER

Per : Mr. ASHISH KALIA, JUDICIAL MEMBER

The applicants, who are working as Junior Engineers in various offices in the Kerala Telecom Circle, have filed this O.A aggrieved by the denial of consideration for promotion against the 50% quota of Limited Internal Competitive Examination (LICE) for the post of Junior Telecom Officer (JTO) against the vacancies notified in Annexure A-4 and Annexure A-5. The reliefs sought by the applicants are as follows :

1. Declare that the applicants are eligible and entitled to be considered for promotion to the post of JTO (Telecom) notified in their respective secondary switching area in Annexure A-4 and on passing the LICE, they are entitled to be promoted as such and direct the respondents accordingly to grant promotion to them on finding them passed the test by declaring their results in the Limited Internal Competitive Examination held on 22.5.2016.
2. Set aside Annexure A-9.
3. Direct the respondents to grant promotion to the applicants to the post of JTO (Telecom), on passing the LICE held on 22.5.2016, in accordance with law, within a time limit to be fixed by this Hon'ble Tribunal.
4. Award costs of these proceedings.

And

5. Grant such other and further reliefs as this Hon'ble Tribunal deems fit and proper in the interest of justice.

2. The applicants were directly recruited and appointed as Telecom Technical Assistants (TTA) grade in the year 2007 against Secondary Switching Area (SSA) wise vacancies in the Kerala Circle. They have to undergo induction training as per the Training Plan laid down by the BSNL before their appointment as TTA. The applicants have successfully completed their induction training within the period stipulated for them. While so the 1st respondent had issued notification on October 2015 publishing JTO (Telecom) Recruitment Rules, 2014 (Annexure A-3) and directed Chief General Managers to issue notification for holding LICE for promotion to the grade of JTO (Telecom) under 50% internal quota as per Annexure A-3 Recruitment Rules in order to fill up the vacancies for the year 2013-2014. It is stipulated in the notification that the eligibility for appearing in the LICE shall be as per Annexure A-3 Recruitment Rules. In terms of Column 11 of the schedule to Annexure A-3 Recruitment Rules the internal quota to be filled through LICE is to be filled from employee in the pay scale of Rs.13600-25420/- or above with combined five years residency period in the pay scale of Rs.13600-25420/- or above and below the age of 55 years as on 1st July of the vacancy year provided they have the essential qualifications mentioned therein. It is submitted that though the applicants and others were selected in the examination held in the year 2007 but since the department imparted training to them much after 1st July 2008, they were unable to apply pursuant to Annexure A-4 as they have not completed their residency period of five years on the cut off date of 1.7.2013. Aggrieved

similarly situated employees approached various Benches of the Tribunal praying to undergo the process of selection by online application as envisaged in Annexure A-4 calling applications for the post of JTO (Telecom). After detailed consideration of the matter the respondents vide Annexure A-6 following the order of the Hyderabad Bench of this Tribunal decided to allow all those passed in the direct selection to TTA in 2007 to apply and appear for LICE for JTO. Accordingly the applicants appeared in the LICE along with others.

3. Thereafter the 1st respondent declared results of all provisionally allowed candidates except the candidates from Kerala Circle. It is also seen from para 6 of Annexure A-8 that the total vacancies of Kerala Circle is only 491 as against the notified total vacancy of 758 in Annexure A-4 and 449 in Annexure A-5 for the vacancy year 2013-2014 and vide Annexure A-9 it has been decided to withdraw the relaxation given vide Annexure A-6 and Annexure A-7. Highlighting their grievance the applicants filed representations before the General Manager (Rectt.), BSNL, Corporate Office, New Delhi requesting to publish the result of their LICE and if they have passed grant them promotion as JTO after induction training. No decision has been taken so far on the said representation. It is alleged that without publishing their results in Kerala Circle, attempts are being made to conduct LICE afresh for subsequent years.

4. Notices were issued. Respondents filed a detailed reply and additional reply also. They submitted that since the applicants does not possess the primary eligibility condition of five years residency period in the pay scale of Rs.13600-25420/- or above as on 1st July of the vacancy year under the new Recruitment Rules they cannot be considered for appointment as JTO even if they qualify in the LICE conducted. The five years service condition in the Recruitment Rules was kept with the specific aim of allowing TTAs to contribute effectively as JTOs. It is emphasized that the spirit of the Recruitment Rules will get compromised by giving relaxation in this five year period. It is submitted that the new Recruitment Rules at Annexure A-3 came into force as early as on 14.10.2015 and as per the provisions of which the LICE was also notified on 4.3.2016. Clause I Sub Clause (iii) of Annexure A-3 clearly stipulates that it is the said rule that will be applicable to all the LICE to be notified and conducted in future. Further the applicants knew well that their eligibility would be determined as on 1st July of the concerned vacancy year they never bothered to agitate about their eligibility in view of the provisions in the Recruitment Rules till date. Hence they are bound by the said Recruitment Rules and are legally estopped from raising such plea.

5. With regard to the total number of vacancies it is submitted that vide letter dated 15.10.2015 screening test qualified officiating JTOs who were send for JTO phase I/field training as per the new scheme and syllabus were

.9.

regularized against vacancy year 2013-2014. Also the ex-servicemen candidates who have become qualified in the LICE JTO held on 2.6.2013 were sent for Phase I/Field training and posted as JTOs against the vacancies of 2012-2013. Hence the vacancy position was revised for the LICE JTO 2013-2014.

6. It is submitted that to tone up the efficiency in services, changes are constantly being made by the competent authority to improve the quality of manpower of the organization. Accordingly Recruitment Rules are also modified to meet the demands of the times. The recruitment rules are framed by the competent authority in the organization keeping in view the key competencies required for the job so that the organizational requirements could be met. Framing of the recruitment rules for the various cadres/roles in an organization is part of the human resource planning of the organization and is designed to meet the organizational and departmental requirements. The matters of recruitment rules and departmental examinations are absolutely within the domain of the management and such matters have to serve the needs of the organisation.

7. Heard Shri.P.K.Madhusoodhanan, learned counsel for the applicant and Shri.George Kuruvilla, learned counsel for the respondents. We have perused all the documents on record. The applicants questioned for not giving relaxation as Annexure A-9 cannot be found faulted with as these

relaxation was against the new Recruitment Rules. The earlier Recruitment Rules has seven years clause which was reduced to five years under the new Recruitment Rules. And it is the prerogative of the employer. The Recruitment Rules are having statutory rules cannot be relaxed unless amendment is done in the Recruitment Rules and applicants does not have the eligibility condition of five years residency period in the grade of Rs.13600-25420/- as on 1st July. Thus they cannot seek promotion to the post of JTO. On the other hand applicants knew about the eligibility condition of five years residency period in advance and they have never objected to it or challenged the same in the Court of Law. Now they are estopped raising this plea at this stage. Learned counsel for the respondents also relied upon the judgment of Hon'ble Apex Court in ***Union of India v. Pushpa Rani & Ors. (2008) 9 SCC 242*** in which it is held that the matter relating to creation/abolition of posts, formation/restructuring of cadres, sources/mode of recruitment, prescription of qualifications, selection criteria, evaluation of service records, are matters which fall in employer's domain. Judicial review comes into play only if State action is contrary to constitutional or statutory provisions, or is patently arbitrary or vitiated by malafides. He has also relied upon the judgment of the Hon'ble Apex Court in ***High Court of Delhi & Anr. v. A.K.Mahajan & Ors. (2009) 12 SCC 62*** which held that retrospective amendments affect chances to be considered for promotion and therefore was valid. Another judgment of the Hon'ble Apex Court in ***Deepak Agarwal & Anr. v. State of Uttar Pradesh & Ors.***

.11.

(2011) 6 SCC 725 held that appellants did not have any accrued or vested right for promotion which was taken away by the amendment. It is rules which are prevalent at time when consideration takes place for promotion, which would be applicable. There is no rule of universal or absolute application that vacancies are to be filled invariably by law existing on date when vacancy arises.

8. The Tribunal found nothing wrong in withdrawing the relaxation vide Annexure A-9 being contrary to the Recruitment Rules which are statutory in nature. Thus we find no merit on the side of the applicants and present O.A is liable to be dismissed. Accordingly, the O.A is dismissed. No order as to costs.

(Dated this the 17th day of December 2018)

ASHISH KALIA
JUDICIAL MEMBER

E.K.BHARAT BHUSHAN
ADMINISTRATIVE MEMBER

asp

List of Annexures in O.A.No.180/00890/2016

- 1. Annexure A-1** – True copy of the relevant extract of the provisional select list of the applicants based on common examination held on 8th and 9th of December, 2007, in all SSA's, published by the 4th respondent under No.Rectt./16-2/2007 dated 23.3.2008.
- 2. Annexure A-2** – True copy of the letter dated 2.6.2008 issued by the 4th respondent enclosing the revised list of seat allotment.
- 3. Annexure A-3** – True copy of the notification on October, 2015, publishing JTO (Telecom) Recruitment Rules, 2014 issued by the 1st respondent.
- 4. Annexure A-4** – True copy of the notification No.Rectt./30-4/2016/12 Trivandrum dated 4.3.2016 issued by the 4th respondent.
- 5. Annexure A-5** – True copy of the corrigendum dated 10.5.2016 issued by the 4th respondent.
- 6. Annexure A-6** – True copy of the letter dated 12.4.2016 issued by the 3rd respondent.
- 7. Annexure A-7** – True copy of the letter dated 13.4.2016 of the 1st respondent.
- 8. Annexure A-8** – True copy of the letter dated 8.7.2016 issued by the 1st respondent.
- 9. Annexure A-9** – True copy of the letter No.5-1/GEN/LICE/JTOC(T)/2016/Estt.IV/dated 1.8.2016 of the 3rd respondent.
- 10. Annexure A-10** – True copy of the representation dated 18.8.2016 submitted by the third applicant to the 1st respondent.
- 11. Annexure A-11** – True copy of the letter dated 20.6.2016 of the 3rd respondent.
- 12. Annexure A-12** – True copy of the Office Memorandum dated 25.3.1996 issued by the nodal ministry.
- 13. Annexure A-13** – True copy of the notification dated 28.1.2016 issued from BSNL.
- 14. Annexure A-14** – True copy of the Direct Recruitment TTA details regarding 2008 Appointment (2007 batch) of Alappuzha SSA.

15. Annexure A-15 – True copy of the Director Recruitment TTA details regarding 2008 Appointment (2007 batch) of Pathanamthitta SSA.

16. Annexure A-16 – True copy of the letter dated 2.6.2008 of the 4th respondent along with the seat allotment mentioned therein.

17. Annexure A-17 – True copy of the Office Memorandum dated 17.9.1998 issued by the Director (Establishment), Ministry of Personnel, PG & Pensions.

18. Annexure R-1(a) – True copy of the Telecom Technical Assistant Recruitment Rules 2001.

19. Annexure R-1(b) – True copy of the details regarding the completion of verification of documents by the Pathanamthitta SSA.

20. Annexure R-1(c) – True copy of the DOPT guidelines dated 24.9.1997.
