

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

**Original Application No.180/00116/2016
& Original Application No.180/00366/2016**

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**

Original Application No.180/00116/2016

1. Praveen P,
S/o.P Preman Nair,
Telecom Technical Assistant,
Telephone Exchange, BSNL,
Kalarcode, Alapuzha – 688 004.
Residing at Devikripa, S.N.Puram P.O.,
Cherthala, Alappuzha – 688 524.
2. Maneesh K.P.,
S/o.Parameswaran Nair,
Telecom Technical Assistant,
SDE OFS Installation,
Telephone Exchange Building,
Palarivattom, Ernakulam.
Residing at Maneesha,
Maravanthuruthy, Vaikom – 686 608.
3. Venugopal.V.V.,
S/o.G.Vasudevan Nair,
Telecom Technical Assistant,
DE DTAX, Digital Tax Building,
Carrier Station Road, Ernakulam South.
Residing at Quarter No.A-19/76,
New Print Nagar P.O., Velloor, Kottayam – 686 616.
4. Denni E.P.,
S/o.Devassy E.P.,
Telecom Technical Assistant,
SDE, DTAX, EIOB Telephone Exchange,
Telephone Bhavan, Chembakkavu, Thrissur – 20.
Residing at Eluvathingal House, P.O.Naduvilkara,
Vatanappally, Thrissur – 680 614.

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5. Sujith Kumar G,
S/o.Gopi.P.G.,
Telecom Technical Assistant,
SDE Transmission Maintenance, Thodupuzha,
New Telephone Exchange, Thodupuzha.
Residing at Sunitha Nivas,
Onnam Mile, Kothamangalam College P.O.,
Kuthamangalam.
6. Anets Jose P,
S/o.Jose P,
Telecom Technical Assistant,
DE SAN, CTSD Complex,
STP, Kochi – 20.
Residing at Panthallookaran House,
P.O.Perambra, Thrissur – 680 689.
7. Vasant B Kunnam Kot,
S/o.Baby K Thomas,
Telecom Technical Assistant,
SDET (EXTL), BSNL,
Thodupuzha – 685 584.
Residing at Kunnamkatt House,
Idukki Road, Thodupuzha – 685 584.

...Applicants

(By Advocate – Mr.S.Sujin)

v e r s u s

1. Chief Managing Director,
BSNL Corporate Office,
Janpath Road, New Delhi – 110 001.
2. Director, Human Resources,
BSNL Corporate Office,
Janpath Road, New Delhi – 110 001.
3. General Manager, Establishment,
BSNL Corporate Office,
Janpath Road, New Delhi – 110 001.
4. K.Sasidharan,
Kaithamattathoor House,
Thorarinmala P.O., Manipalay,
Sulthanbatherty, Wayanad.

...Respondents

(By Advocate – Mr.George Kuruvilla)

Original Application No.180/00366/2016

1. Manoj.S.U., S/o.P.Sasidharan Nair,
TTA, O/o.DE MSC WLL,
BSNL Central Exchange, Statue,
Thiruvananthapuram.
Residing at Panpana, PURA 146,
Puthoorkonam, Melathumele,
Manikanteshwaram P.O.,
Thiruvananthapuram – 695 013.
2. Vineeth Adolph, S/o.Adolph Xavier,
TTA, O/o.SDE, Wimax, BSNL, Alappuzha.
Residing at Kallookalam, Sanathanapuram PO,
Alappuzha – 688 003.
3. Sajikumar R,
S/o.V.Ravindran,
TTA, O/o.SDE, Transmission Maintenance,
BSNL, Kaithamukku Telephone Exchange,
Thiruvananthapuram.
Residing at KRA 108, Kunnuvilakathu Veedu,
Konchiravila, Manakkad PO, Thiruvananthapuram.
4. Shamnas KA,
S/o.Aboobacker KB,
TTA, SDE External, BSNL,
Perinjanam, Trissur.
Residing at Koyani House,
Kathikkode, Koolimuttam, Trissur.
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6. Srigit K.G.,
S/o.Gopinathan KN,
TTA, Broadband, 3rd Floor,
E10B Building, BSNL, Tirunnakkara, Kottayam.
Residing at Sri Nilayam, Venmani P.O.,
Chengannur, Alappuzha.
7. Deleted
8. Jerin John,
S/o.John,
TTA, O/o.Junior Telecom Officer,
BSNL Telephone Exchange,
Marangattupally P.O., Kottayam.
Residing at Kuttilampel, Kozha P.O.,
Kuravilangad, Kottayam.

9. Vineetha VV.,
D/o.VV Vijayappan,
TTA, O/o.SDE, BSNL, SL Puram,
Cherthala, Alappuzha.
Residing at Sreeraj Bhavan,
Varanad PO, Cherthala,
Alappuzha – 688 539.
10. Ulkarsh S.R.,
S/o.K.Regghupalan,
TTA, O/o.SDE MLLN and DC,
Central Telephone Exchange,
Thiruvananthapuram.
Residing at Sauparnika Kizhakkumkara,
Kulathoor PO, Trivandrum – 695 583.
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13. Renjith M,
S/o.Muraleedharan Achari,
TTA, Telephone Exchange,
Kulakkada PO, Kollam.
Residing at Renjith Bhavan,
Njarakkad, Thalavoor PO, Kollam – 691 508.
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15. Abhishek V,
S/o.S.Vijayan,
TTA, Transmission Installation,
O/o.Divisional Engineer,
Transmission Installation and Planning,
Additional Administrative Building,
Manakkad, Thiruvananthapuram.
Residing at Puthiya Veedu,
Arumanoor, Poovar PO,
Thiruvananthapuram – 695 525.
16. Vineeth MI,
S/o.Manikanda Dev K,
TTA, Outdoor, BSNL, Poovar,
Thiruvananthapuram.
Residing at Melevilakath Veedu,
Pozhiyoor P.O., Thiruvananthapuram – 695 513.

17. Arun Mohan, S/o.Mohan VK,
TTA, MLLN, O/o.SDE MLLN,
Central Exchange, Thiruvananthapuram.
Residing at Kannan Vilakam,
Chempazhanthi PO, Thiruvananthapuram.
18. Vishnu.V.S., S/o.G.Sadanandan,
TTA, O/o.SDE External, BSNL, Vattiyoorkavu Exchange.
Residing at Kedaram, TC 35/2301, MVRA, 57,
Thoppumukku, Vattiyoorkavu PO, Thiruvananthapuram – 695 013.
19. George Joseph,
S/o.Joseph Varghese,
TTA, BSNL Telephone Exchange,
Arattupuzha, Kayamkulam.
Residing at Karukaparambil,
Kainakari P.O., Alappuzha.
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23. Binsi Mohan V, D/o.VR Mohanan,
TTA, Telephone Exchange, Kattur, Trissur.
Residing at Vazhakkulath, Nattika, Trissur – 680 703.
24. Lavanya MN, D/o.Nagarajan V,
TTA, Thiruvillvamala Exchange, BSNL, Trissur.
Residing at Adarsh Nivas, Moothedathu Padi Theruvu,
Mayannur PO, Trissur – 679 105.
25. Vimal Raj VA,
S/o/Anandarajan KV,
TTA, SDE Out Door,
BSNL, Cherthala, Alappuzha.
Residing at Vimal Nivas, Kannankara PO,
Thanneermukkam, Alappuzha – 688 527.
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27. Deepu Jayakumar, S/o.Jayakumar AS,
TTA, SDE Marketing, BSNL,
E10B Exchange, Thirunakkara, Kottayam.
Residing at Arreparambil House, Pala PO,
12th Mile, Kottayam – 686 575.

28. Sreekala S, D/o.Sasidharan KT,
TTA, O/o.SDE OCB, BSNL,
Pala, Kottayam.
Residing at Nandanam House,
Moosharikkavala, Chengaroor PO,
Mallappally, Pathanamthitta.
29. Dhanya M, D/o.M.Viswnathan,
TTA, CAF Section,
Mananchira Central Telephone Exchange, Calicut.
Residing at Panoly House, Marikkunnu PO, Calicut – 12.
30. Hena I K, D/o.Nanu IK,
TTA, Thiruvloor Telephone Exchange,
Vattakkara, Calicut.
Residing at Sukrutham, Balavadi,
Muttungal PO, Vadagara, Calicut – 673 106.
31. Sindhu KE, D/o.VP Devidasan,
TTA, SDE Extn.II, Kannur Phones,
Telephone Bhavan, Kannur.
Residing at Devi Kripa,
Pallikkunnu PO, Kannur – 670 004.
32. Sreesabari VP, D/o.Raman PT,
TTA, SRRC, Palayam Telephone Exchange,
Annie Hall Road, Calicut.
Residing at Vadakkeparambil House,
Chooloor, NIT Campus via, Calicut.
33. Rachana TV, D/o.TV Ravi,
TTA, SDE Indoor,
Kaniyapuram, Thiruvananthapuram.
Residing at Neelambari, Mullarikonam,
Kavuvilla, Andoorkonam PO, Thiruvananthapuram – 695 584.
34. Deepna B, D/o.Bhaskaran CK,
TTA at Atholi Telephone Exchange, Koylandi, Calicut.
Residing at Aiswarya, Nanminda PO, Kozhikode – 673 613.
35. Vishnu Amalendu, S/o.C.Narayanan,
TTA, Transmission Division,
Telephone Bhavan, BSNL, Alappuzha.
Residing at Kuthukallungal, Thathampally PO,
Alappuzha – 688 013.
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37. Sreejith S, S/o.K.Sivadasan,
TTA, SDE Out Door, BSNL,
Cherthala, Alappuzha.
Residing at Puthuveetuveli,
CMC 23, Cherthala PO,
Alappuzha – 688 524.
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(By Advocate – Mr.M.R.Hariraj)

v e r s u s

1. Union of India
represented by the Secretary to Government of India,
Ministry of Communication, New Delhi.
2. Bharath Sanchar Nigam Limited
represented by its Chairman and Managing Director,
Bharat Sanchar Bhavan, HC Mathur Lane,
Janpath, New Delhi – 110 001.
3. Chief General Manager, Telecom,
BSNL, Kerala Circle, Thiruvananthapuram – 695 003.
4. Venugopal, S/o.G.Vasudevan Nair,
Qtr. No.A-19/76, Newsprint Nagar P.O.,
Velloor, Kottayam – 686 616.
5. Paraveen P, S/o.P.Preman Nair,
Devi Kripa, S.N.Puram P.O.,
Cherthala, Alappuzha District.
6. Aneeshkumar T.A., S/o.Asokan P.V.,
Thottungal House, Chempu P.O., Vaikom,
Kottayam District – 686 608. ...Respondents

**(By Advocates – Mr.C.P.Ravikumar, ACGSC [R1],
Mr.George Kuruvilla [R2—3] & Mr.S.Sujin [R4-6])**

These applications having been heard on 3rd December 2018, the Tribunal on 17th December 2018 delivered the following :

ORDER

Per : Mr. ASHISH KALIA, JUDICIAL MEMBER

Since issue involved in both these O.As are identical in nature, we are disposing of the same through this common order.

2. The applicants in both these O.As are working as Telecom Technical Assistants (TTA) in the service of Bharat Sanchar Nigam Limited (BSNL). The next promotion post for TTA is Junior Telecom Officer (JTO). They are aggrieved by the application of JTO (Telecom) Recruitment Rules 2014 published on 14.10.2015 to fill up vacancies of JTO which occurred prior to the promulgation of the said Recruitment Rules and also by the action of the respondents in treating them unqualified due to lack of length of service by considering the vacancy year of the vacancies as 2013-14. It is submitted that by the aforesaid rules all vacancies available now will be filled up by absorption from qualified JTOs. It is only thereafter that the service candidates now included in the feeder category, namely, TTA, will be considered. Further a preference is given to the officiating JTOs to be absorbed in the available vacancies of JTOs. With regard to appointment of officiating JTOs, the applicants in O.A.No.180/116/2016, relied on the judgment of the Hon'ble High Court of Punjab and Haryana in W.P.(C) No.5608/2007 which has specifically held that all the eligible candidates under the 35% quota up to 31.8.1999 were permitted to appear and have become qualified under the JTO screening test will be sent on training only to the extent of vacancies available under 35% quota and remaining

qualified officials will have no claim whatsoever for training and appointment as JTO. It is submitted that by virtue of 2014 Recruitment Rules appointments were permitted to officiating JTOs to the 50% internal quota by absorption. Through this provision the internal candidates will be completely left out till the entire officiating JTOs are fully absorbed. It is submitted that the said rules is contrary to the judgment of the Hon'ble High Court of Punjab and Haryana wherein the Court has held that the officiating JTOs will have the claim for absorption only up to vacancies available on 31.8.1999 and not to the vacancies available after the said date and thus the rules framed cannot be sustained in the eye of law. It is submitted that the reason given by High Court cannot be set at not by framing rules in the form of an executive order or even in the form of a subordinate legislation.

3. The applicants in O.A.No.180/366/2016 submits that the vacancies of 2013-14 occurred prior to promulgation of the Recruitment Rules. Though the Recruitment Rules contemplate that it will apply to the future competitive examinations, it is clearly stipulated that the Rules will come into force only on the date of publication. Hence it cannot govern the recruitment to vacancies which occurred prior to its promulgation. The applicants submit that they were prevented from making application for the examination for lack of service qualification for which they have made representations. However those representations were not responded to.

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4. The reliefs sought by the applicants in O.A.No.180/116/2016 are as follows :

1. Declare that Annexure A-1 Rule for recruitment of JTOs is arbitrary, unconstitutional and invalid.
2. Issue a direction or appropriate order to quash Annexure A-3 and A-4.
3. To direct the respondents to depute the petitioners for training for the post of JTOs as required under Rules for appointing them to the existing vacancies available in the category of JTOs.
4. Grant such other and further reliefs as are just, proper and necessary as this Hon'ble Tribunal may deem fit to grant and
5. Award to the applicant the costs of these proceedings.

5. The reliefs sought by the applicants in O.A.No.180/366/2016 are as follows :

1. To quash Annexure A-1, A-2, A-3 and A-12 to the extent it treats the vacancies notified as of the vacancy year 2013-14 and 2014-15 and seeks to apply Annexure A-8 recruitment rules to fill the same.
2. To declare that the applicants are eligible to be considered for appointment as JTOs against the vacancies notified by Annexures A-1 to A-3 and A-12 and direct the respondents to consider the applicants for such appointment with all consequent benefits.
3. Grant such other reliefs as may be prayed for and the court may deem fit to grant, and
4. Grant the costs of this Original Application.

6. 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 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. They only chosen to challenge the application of the said Rule only on the eve of the present examination. Hence they are bound by the said Recruitment Rules and are legally estopped from raising such plea.

7. 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. Further the formulation of the new Recruitment Rules was part of such manpower quality improvement. Revision of Recruitment Rules of any cadre is also a routine process and has to be carried out every ten years as per the guidelines issued by DOPT in this regard. Also framing of new Recruitment Rules is a prerogative of the company, how it wants to recruit/promote officials under various quotas. The JTO Recruitment Rules, 2014 has been thus formulated keeping in view the suggestions of Unions and Associations and various court directions and was finally issued on 14.10.2015 after being approved by BSNL Board.

8. The respondents in O.A.No.180/116/2016 submitted that in pursuance to 2014 Recruitment Rules thousands of officiating JTOs have been sent for training and after completion of training hundreds of them have been already appointed as regular JTOs. They made the preliminary objection that only 4th respondent has been impleaded in the O.A in a representative capacity and no publication/advertisement in the newspaper regarding the O.A has been effected by the applicants so as to protect the interest of all such officiating JTOs. Further the applicants have not resorted to departmental remedies before approaching this Tribunal. With regard to judgment of the Hon'ble High Court of Punjab and Haryana is concerned

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they submitted that the Hon'ble High Court has set aside the diversion of direct recruitment quota vacancies of JTOs to the 35% promotion quota for accommodating the excess screening test qualified hands and ordered restoration of the said diverted quota vacancies. Hence they submit that the said judgment has no application in the present case.

9. The Respondent Nos.4 to 6 in O.A.No.180/366/2016 has also filed reply statement. They submitted that the applicants who are General candidates cannot claim the relaxation extended to SC, ST, minority or Ex-servicemen. They cannot seek extension of benefits to them when they don't have sufficient Group C service in the vacancy year 2013-14. It is stated that in the new recruitment rules, however, there is no such provision.

10. Heard Shri.S.Sujin and Shri.M.R.Hariraj, learned counsel appearing for the applicants in the respective O.As, Shri.George Kuruvilla, learned counsel appearing for Respondents and Shri.C.P.Ravikumar, learned counsel for the Respondent No.1 in O.A.No.180/366/2016. We have perused all the documents on record. Learned counsel for the respondents 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. (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.

11. The applicants in both these O.As claim that since the vacancies of 2013-14 occurred prior to promulgation of the JTO Recruitment Rules 2014, they shall be filled by the Recruitment Rules which were prevalent at that time. 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

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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.

12. The Tribunal found nothing wrong in the Recruitment Rules which are statutory in nature. Thus we find no merit on the side of the applicants and present O.As are liable to be dismissed. Accordingly, the O.As are dismissed. In view of the order in the O.As, M.A.No.180/1004/2016 in O.A.No.180/366/2016 is closed. No order as to costs.

(Dated this the 17th day of December 2018)

ASHISH KALIA
JUDICIAL MEMBER

E.K.BHARAT BHUSHAN
ADMINISTRATIVE MEMBER

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List of Annexures in O.A.No.180/00116/2016

- 1. Annexure A-1** – True copy of the Recruitment Rules for Junior Telecom Officer dated 4th October 2015.
- 2. Annexure A-2** – True copy of the judgment in O.P.No.5508/2007.
- 3. Annexure A-3** – True copy of the Circular dated 10.12.2015 issued by AGM, Kerala Circle.
- 4. Annexure A-4** – True copy of the list of scheduled candidates of the training.

List of Annexures in O.A.No.180/00366/2016

- 1. Annexure A-1** – True copy of the Notification No.Rectt./30-4/2016/12 dated 4.3.2016 issued by the 3rd respondent.
- 2. Annexure A-2** – True copy of the Notification No.Rectt./30-4/2016/17 dated 10.3.2016.
- 3. Annexure A-3** – True copy of the Letter No.12-1/2016-Rectt. dated 1.3.2016.
- 4. Annexure A-4** – True copy of the Junior Telecom Officers Recruitment Rules, 2001.
- 5. Annexure A-5** – True copy of the letter No.5-28/2009-Pers. IV dated 12.10.2009.
- 6. Annexure A-6** – True copy of the letter No.3-34/2016/Estt.-IV/ESM dated 22.3.2016.
- 7. Annexure A-7** – True copy of the letter No.AGM(R&E)/CON/LICE JTO 35% & 15%/71 dated 6.8.2015 issued for the 3rd respondent.
- 8. Annexure A-8** – True copy of the Junior Telecom Officer (Telecom) Recruitment Rules, 2014 published on 14.10.2015.
- 9. Annexure A-9** – True copy of the Order No.5-1/Gen/LICE/JTO(T)/2016/Estt.IV dated 12.4.2016.
- 10. Annexure A-10** – True copy of the representation dated 21.3.2016 submitted by the 2nd applicant.
- 11. Annexure A-11** – True copy of the representation dated 18.4.2016 submitted by the 2nd applicant.
- 12. Annexure A-12** – True copy of the Notification No.Rectt./30-4/JTO-LICE (VY 2014-15) 2016/3 dated 15.6.2016 issued by the 3rd respondent.

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13. Annexure A-13 – True copy of the list of some of the officiating JTOs (substantially TTAs) who were absorbed under the new Recruitment Rules under the Kerala Circle JTOs with educational qualification below graduation in Engineering.

14. Annexure A-14 – True copy of the list of candidate absorbed as JTOs who failed to clear the 2013 examination.

15. Annexure A-15 – True copy of the order dated 30.3.2016 in O.A.No.1734/2013 on the file of Principal Bench of this Hon'ble Tribunal.

16. Annexure R-1(a) – True copy of the DOPT guidelines issued vide letter No.AB-14017/12/97-Estt.(RR) dated 24.9.1997.

17. Annexure R-1(b) – True copy of the BSNL CO Letter No.5-1/GEN/LICE/JTO(T)/2016/Estt.(IV) dated 1.8.2016.
