

.1.

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

**Original Application No.180/00037/2016**

Tuesday, this the 11<sup>th</sup> 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**

S.Chandra Mohanan,  
Retired Sub Divisional Engineer,  
HR No.197000479, Staff No.6107004,  
Office of Sub Divisional Engineer (Internal), BSNL, Ochira.  
Residing at Parameswarathu Vadakkathil,  
Valiyakulangara, Ochira P.O., Kollam – 690 526. ....Applicant

**(By Advocate – Mr.Vishnu S Chempazhanthiyil)**

**v e r s u s**

1. The Chief General Manager, Telecom,  
Bharat Sanchar Nigam Limited,  
Kerala Circle, Thiruvananthapuram – 695 033.
  
2. The Chairman and Managing Director,  
Bharat Sanchar Nigam Limited, Corporate Office,  
Statesman House, New Delhi – 110 001. ....Respondents

**(By Advocate – Mr.M.Salim)**

This application having been heard on 6<sup>th</sup> December 2018, the Tribunal on 11<sup>th</sup> December 2018 delivered the following :

**O R D E R**

**Per : Mr. ASHISH KALIA, JUDICIAL MEMBER**

The applicant retired from service on 31.3.2008 and lastly he was working as JTO with the respondents. He has also been appointed on adhoc basis as Sub Divisional Engineer (SDE) with effect from 3.11.2007 onwards. During the service he appeared in Limited Departmental

.2.

Competitive Examination (LDCE) for promotion to the grade of SDE Telecom pursuant to notification issued by the respondents on 9.2.2007. As per the notification only 25% quota of vacancies was to fill up and the vacancies relate for the years 2001-02, 2002-03, 2003-04, 2004-05 and 2005-06. The applicant was declared successful in the said examination on July 2008 when the result was published by the respondents. He was placed at Sl.No.1353. Since the applicant had been retired from service his name was not included in the list published by the respondents by which the successful candidates were allotted to the respective vacancy year. The successful candidates up to Sl.No.1684 were included in the list of successful candidates. The applicant was also awarded with Sanchar Sree Award – 1990 in Kerala Circle and Sanchar Seva Padak Award for the year 2004-05. Highlighting this he has made representation that he should be considered for the post of SDE though he has been retired. The department has rejected the same vide Annexure A-7. The applicant has challenged the rejection and sought the following reliefs :

1. Direct the respondents to consider posting the applicant as SDE on a notional basis with reference to the eligibility year taking into account the fact that the applicant had passed the LDCE held on 15.7.2007 and those with lower rankings were promoted as SDE.
2. Call for the records leading to the issue of Annexure A-7 and set aside Annexure A-7.
3. Direct the respondents to grant notional promotion as SDE to the applicant and revise the pensionary benefits of the applicant accordingly and release the entitled arrears of pension at the earliest.
4. Any other further relief or order as this Hon'ble Tribunal may deem fit and proper to meet the ends of justice.
5. Award the cost of these proceedings.

.3.

2. Notices were issued. Respondents filed a detailed reply. It is submitted by the respondents that the officiating promotions as SDEs are granted to JTOs in order to meet the urgent short term requirement of employees in the SDE cadre. It is only a temporary arrangement. They denied that the result of the examination was published prior to his retirement. They submit that the result of the LDCE for promotion to the grade of SDE held on 15.7.2007 was declared by BSNL Corporate Office on 8.7.2008 whereas the applicant retired from service on 31.3.2008. As per the result the applicant had qualified in the examination. But since he had already retired from service at that time he could not be posted as SDE. It may be noted that the vacancy year is not a criteria for seniority of SDEs and only the date of joining is to be reckoned. Further they relied on decisions of the Hon'ble Bench of this Tribunal in Thomas Zacharia v. BSNL (O.A.No.16/2009) and Chandigarh Bench of this Tribunal in Devan Chand v. Union of India (T.A.No.84-11-R-2009) and connected cases the seniority is to be reckoned based on the date of joining in the cadre of SDEs based on the TES Group B Rectt. Rules 1996 and 2002. The decision in O.A.No.16/2009 of the Hon'ble Tribunal was upheld by Hon'ble High Court of Kerala in O.P.(CAT) No.335/2010 and later by the Apex Court in S.L.P(C) 21416/2013. Also the decision in T.A.No.84-11-R-2009 was upheld by Hon'ble Supreme Court in Civil Appeal No.7830/2014. With regard to extension of benefits of the DOPT order No.22011/4/98-Estt.(D) dated 12.10.1998 it is submitted that the DOPT vide order No.22011/1/2014-Estt.(D) dated 14.11.2014 had advised all

.4.

Ministries/Departments to ensure strict compliance of the instructions of the DOPT order mentioned earlier above regarding consideration of retired employees who were within the zone of consideration in the relevant years but are not actually in service when the DPC is held. The above order is applicable only to those who are considered for promotion by the DPC. In the instant case the applicant had appeared in the LDCE and he retired by the time the result was published. As already mentioned promotion through competitive examinations is a separate channel for promotion to the aspiring employees who are eligible as per the recruitment rules for which DPC is not conducted. The candidates who qualify through competitive examinations get regular promotion on a fast track basis thereby overlooking the seniority. The DOPT order referred above is applicable only to those employees who are promoted on seniority cum fitness method for which DPCs are conducted. In the instant case the applicant is not eligible for promotion on seniority cum fitness basis and hence he will not come under the consideration of the DPC. Hence Annexure A-6 representation has no merits. It is reiterated that applicant would not come in the eligibility list for promotionas SDE on seniority cum fitness basis. The DOPT OM referred by the applicant is applicable only to those employees who were denied promotion due to the delay in holding of the DPCs. In the instant case the applicant did not come under the seniority cum fitness method but appeared in the LDCE. As already submitted such fast track promotions overlooking the service seniority have no involvement of the DPCs. Thus the DOPT OM referred by the applicant is not at all

applicable in his case and the same was informed to the applicant vide Annexure A-7. Lastly it is submitted by the respondents that by getting Sanchar Sree and Sanchar Seva Padak Awards he is not eligible for regular promotion. Such awards are not a criteria for promotion and promotion is effected only as per the relevant recruitment rules.

3. Heard learned counsel for the parties and considered the pleadings and legal position. The grievance of the applicant in the present O.A is that he should have been considered by the department for the post of SDE under 25% LDCE quota being successful in the said examination for the vacancies for the year 2001-02 to 2005-06. However, the result of the examination was declared in the month of July 2017 and by that time the applicant was retired. So he has not been able to serve the department on this account. The applicant has relied upon OM issued by the DOPT, copy of which is available at Annexure A-8. The relevant part of the same reads thus :

“.....There is no specific bar in the aforesaid Office Memorandum dated April 10, 1989 or any other related instructions of the Department of Personnel and Training for consideration of retired employees, while preparing year-wise panel(s), who were within the zone of consideration in the relevant year(s). According to legal opinion also it would not be in order if eligible employees, who were within the zone of consideration for the relevant year(s) but are not actually in service when the DPC is being held, are not considered while preparing year-wise zone of consideration/panel and, consequently, their juniors are considered (in their places), who would not have been in the zone of consideration if the DPC(s) had been held in time. This is considered imperative to identify the correct zone of consideration for relevant year(s). Names of the retired officials may also be included in the panel(s). Such retired officials would, however, have no right for actual promotion. The DPC(s) may, if need be, prepare extended panel(s) following the principles prescribed in the Department of Personnel and Training Office Memorandum No.22011/8/87-Estt.(D) dated April 9, 1996.”

4. A plain reading of this O.M dated 14.11.2014 envisage that retired employee should be considered for promotion by the DPC. It states that it would not be in order if eligible employees who were in the zone of consideration but since the DPC was not constituted in time their juniors were considered. This O.M nowhere states that it would be applicable to the retired employees who were qualified in LDCE after the date of their retirement. As per this O.M even in the normal channel of promotion where seniority cum fitness is the criteria, the DPC is not to meet for years together and employee who is the senior most should be considered for the promotion if he is eligible for the post of the vacancy of that year. But retirement is not an impediment while considering the employee concerned for promotion to the next post. In the present case the applicant does not fall in the category of regular promotion to be considered by the DPC.

5. In fact the applicant claims the promotion in the 25% fast track promotion quota over and above his seniors in case he is qualified. The applicant can claim promotion as per the Recruitment Rules which says the date of joining of the post is the criteria for getting promotion. The respondents have also relied upon the judgment of the Chandigarh Bench of this Tribunal in Devan Chand v. Union of India (TA No.84-11-R-2009) and the order of this Tribunal in Thomas Zacharia v. BSNL (OA No.16/2009) which is upheld by the Hon'ble High Court of Kerala and Hon'ble Supreme Court in which the principle laid down was to the effect that seniority is to be reckoned based on the date of joining in the cadre of SDEs based on the

TES Group B Rectt. Rules 1996 and 2002. Thereby the applicant can claim seniority or promotion to the post of SDE only if he had joined the said post. Otherwise he is not eligible for promotional benefits. Respondents cannot be directed to give notional promotion and consequential benefits as SDE to the applicant for the reason stated above.

6. In the facts and circumstances narrated herein above, we find no merit in the O.A and the same is dismissed accordingly. No order as to cost.

(Dated this the 11<sup>th</sup> 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.180/00037/2016**

1. **Annexure A-1** – True copy of the notification was published vide letter No.5-4/2005-DE dated 9.2.2007 issued by the Corporate Office, BSNL.
2. **Annexure A-2** – True copy of the hall permit issued to the applicant.
3. **Annexure A-3** – True copy of the application dated 15.3.2007 submitted by the applicant.
4. **Annexure A-4** – True copy of Annexure A, in the SDE (T) Limited Departmental Competitive Examination held on 15.7.2007 (relevant portion).
5. **Annexure A-5** – True copy of the relevant portion of the list of successful candidates.
6. **Annexure A-6** – True copy of the representation dated 18.2.2015 to the 1<sup>st</sup> respondent.
7. **Annexure A-7** – True copy of the order No.Rectt/2-3/2015/5 dated 22.6.2015/12.5.2015 issued by the 1<sup>st</sup> respondent.
8. **Annexure A-8** – True copy of the O.M.No.22011/1/2014-Estt.(D) dated 14.11.2014 issued by the Department of Personnel & Training.

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