

# CENTRAL ADMINISTRATIVE TRIBUNAL

## GUWAHATI BENCH

Original Application Nos. 042/00204/2018, 042/00205/2018,  
042/00206/2018, 042/00207/2018, 042/00208/2018 and  
042/00209/2018

Date of Order: This, the 18<sup>th</sup> day of December 2018

**THE HON'BLE SMT. MANJULA DAS, JUDICIAL MEMBER**

**THE HON'BLE MR. NEKKHOMANG NEHSIAL, ADMINISTRATIVE MEMBER**

1. **O.A. No. 042/00204/2018**

Ch. Debendro Singh  
Son of Late Ch Tomba Singh  
Kwakeithel Thounajam Leikai.  
Imphal West District, 795001.

**...Applicant**

By Advocate: Mr. M.G. Singh

**-Vs-**

1. BSNL represented by Chairman & Managing Director, Bhawan, Harish Chandra Mathur Lane, Janapath New Delhi, Pin – 110021.
2. Director (HR), BSNL Bhawan, Harish Chandra Mathur Lane, Janapath New Delhi, Pin – 110021.
3. General Manager (Pers.), BSNL Corporate Office, New Delhi, Harish Chandra Mathur Lane, Janapath, New Delhi, Pin – 110021.
4. GM (DPC), BSNL Corporate Office Harish Chandra Mathur Lane Janapath, New Delhi, Pin – 110021.

5. Chief General Manger, Telephone Circle, 2<sup>nd</sup> Floor, OCB Telephone Exchange, Dimapur – 797112.
6. GMTD, Manipur, BSNL Babupara Imphal, Pin – 795001.

**...Respondents**

By Advocate: Mr. B. Pathak, BSNL Advocate

2. **O.A. No. 042/00205/2018**

Th. Saratchand Meetei  
Son of Late Th Tomba  
Kongpal Chanam Leikai  
Porompat Imphal East District – 795005.

**...Applicant**

By Advocate: Mr. M.G. Singh

**-Vs-**

1. BSNL represented by Chairman & Managing Director, Bhawan, Harish Chandra Mathur Lane, Janapath New Delhi, Pin – 110021.
2. Director (HR), BSNL Bhawan, Harish Chandra Mathur Lane, Janapath New Delhi, Pin – 110021.
3. General Manager (Pers.), BSNL Corporate Office, New Delhi, Harish Chandra Mathur Lane, Janapath, New Delhi, Pin – 110021.
4. AGM (DPC), BSNL Corporate Office Harish Chandra Mathur Lane Janapath, New Delhi, Pin – 110021.
5. Chief General Manger, Telephone Circle, 2<sup>nd</sup> Floor, OCB Telephone Exchange, Dimapur – 797112.

6. GMTD, Manipur, BSNL Babupara  
Imphal, Pin – 795001.

**...Respondents**

By Advocate: Mr. B. Pathak, BSNL Advocate

3. **O.A. No. 042/00206/2018**

Yumnam Suraj Singh  
Aged about 48 years  
Son of Late Y. Ibochou Singh  
Uripok Bachaspati Leikai  
Near RIMS South Gate, Imphal West – 795001.

**...Applicant**

By Advocate: Mr. M.G. Singh

**-Vs-**

1. BSNL represented by Chairman & Managing Director, Bhawan, Harish Chandra Mathur Lane, Janapath New Delhi, Pin – 110021.
2. Director (HR), BSNL Bhawan, Harish Chandra Mathur Lane, Janapath New Delhi, Pin – 110021.
3. General Manager (Pers.), BSNL Corporate Office, New Delhi, Harish Chandra Mathur Lane, Janapath, New Delhi, Pin – 110021.
4. AGM (DPC), BSNL Corporate Office Harish Chandra Mathur Lane Janapath, New Delhi, Pin – 110021.
5. Chief General Manger, Telephone Circle, 2<sup>nd</sup> Floor, OCB Telephone Exchange, Dimapur – 797112.
6. GMTD, Manipur, BSNL Babupara Imphal, Pin – 795001.

**...Respondents**

By Advocate: Mr. B. Pathak, BSNL Advocate

4. **O.A. No. 042/00207/2018**

Heisnam Khogen Singh  
 Son of H. Yaiskul Singh  
 Sagolband Moirang Hanuba Leirak  
 Imphal West District, 795001.

**...Applicant**

By Advocate: Mr. M.G. Singh

**-Vs-**

1. BSNL represented by Chairman & Managing Director, Bhawan, Harish Chandra Mathur Lane, Janapath New Delhi, Pin – 110021.
2. Director (HR), BSNL Bhawan, Harish Chandra Mathur Lane, Janapath New Delhi, Pin – 110021.
3. General Manager (Pers.), BSNL Corporate Office, New Delhi, Harish Chandra Mathur Lane, Janapath, New Delhi, Pin – 110021.
4. AGM (DPC), BSNL Corporate Office Harish Chandra Mathur Lane Janapath, New Delhi, Pin – 110021.
5. Chief General Manger, Telephone Circle, 2<sup>nd</sup> Floor, OCB Telephone Exchange, Dimapur – 797112.
6. GMTD, Manipur, BSNL Babupara Imphal, Pin – 795001.

**...Respondents**

By Advocate: Mr. B. Pathak, BSNL Advocate

5. **O.A. No. 042/00208/2018**

N. Somajita aged about 45 years  
 Son of late N. Shanti Singh  
 Resident of Nigomthong tebiya Pundit  
 Leikai. Imphal East – 795008.

**...Applicant**

By Advocate: Mr. M.G. Singh

**-Vs-**

1. BSNL represented by Chairman & Managing Director, Bhawan, Harish Chandra Mathur Lane, Janapath New Delhi, Pin – 110021.
2. Director (HR), BSNL Bhawan, Harish Chandra Mathur Lane, Janapath New Delhi, Pin – 110021.
3. General Manager (Pers.), BSNL Corporate Office, New Delhi, Harish Chandra Mathur Lane, Janapath, New Delhi, Pin – 110021.
4. GM (DPC), BSNL Corporate Office Harish Chandra Mathur Lane Janapath, New Delhi, Pin – 110021.
5. Chief General Manger, Telephone Circle, 2<sup>nd</sup> Floor, OCB Telephone Exchange, Dimapur – 797112.
6. GMTD, Manipur, BSNL Babupara Imphal, Pin – 795001.

**...Respondents**

By Advocate: Mr. B. Pathak, BSNL Advocate

6. **O.A. No. 042/00209/2018**

Chaten Kumar Jain aged about 51 years  
 Son C.M. Jain, Super market Complex  
 C/O GMTD Nagaland 797112.

**...Applicant**

By Advocate: Mr. M.G. Singh

**-Vs-**

1. BSNL represented by Chairman & Managing Director, Bhawan, Harish Chandra Mathur Lane, Janapath New Delhi, Pin – 110021.
2. Director (HR), BSNL Bhawan, Harish Chandra Mathur Lane, Janapath New Delhi, Pin – 110021.
3. General Manager (Pers.), BSNL Corporate Office, New Delhi, Harish Chandra Mathur Lane, Janapath, New Delhi, Pin – 110021.
4. GM (DPC), BSNL Corporate Office Harish Chandra Mathur Lane Janapath, New Delhi, Pin – 110021.
5. Chief General Manger, Telephone Circle, 2<sup>nd</sup> Floor, OBC Telephone Exchange, Dimapur – 797112.

**...Respondents**

By Advocate: Mr. B. Pathak, BSNL Advocate

**ORDER (ORAL)****NEKKHOMANG NEIHSIAL, MEMBER (A):**

These six cases are analogous and similar question of law and facts are involved, thus, they are being decided by this common order.

2. In all these six cases, all the applicants prays to set aside and quash the impugned orders being No. 412-03/2017-Pers.I/III dated 06.06.2018, No. 412-03/2017-Pers.I/IV dated 06.06.2018 and

No. 56-04/2017-Pers (DPC)/Pt./06 dated 06.06.2018. Further prays for a direction upon the respondent authority to consider their grievances before issuing any orders for promotion and seniority.

3. Mr. M.G. Singh, learned counsel appearing on behalf of the applicants submits that the impugned orders having been issued without considering the relevant applicable rules i.e. The Telegraph Engineering Service (Group 'B' Posts) Recruitment Rules of 1981 (which was amended in 1986). The eligibility criteria of the RR 1981 i.e. "a Junior Engineer who has completed five years regular service in the grade on the first of January of the year shall be eligible for appearing in the LDCE" has been amended in the year 1986 as "Junior Engineers recruited in that grade against the vacancy of a year ordinarily for not less than five years prior to the year of the announcement of such examination". According to Mr. Singh, this aspect has not been considered by the BSNL authorities and therefore, the impugned orders are not sustainable in the eyes of law and hence, the same is liable to be quashed and set aside.

4. Mr. Singh further submits that said impugned orders having been issued without providing an opportunity to the applicants who have been adversely affected by the demotion to the lower post and lowering of his seniority position, virtually allowing his junior to steal a march are liable to be quashed and set aside. The impugned orders being a result of misinterpretation of the order passed by the

Hon'ble Court in the sense that the applicants along with 147 others have been made en-bloc juniors to the officers who have passed the DQE in 1991 despite clear observation of the Hon'ble Court that the applicants along with 147 others ought to be considered in the vacancies arising in 1994-95, 95-96, 96-97 and therefore the impugned orders are liable to be quashed and set aside. According to Mr. Singh, the impugned actions of the respondents which resulted from concealment of the applicable rules and misinterpretation of the order passed by the Hon'ble Court are prima facie illegal, arbitrary and violation of the provisions of the Constitution of India.

5. Mr. Singh further submits that the said impugned orders having been issued in absence of administrative exigencies inasmuch it would create an unhealthy office atmosphere due to demotion of the applicant to the lower post. The impugned orders have been issued in violation of the principles of natural justice such as not affording an opportunity to be heard before issuing the impugned orders thereby demoting one functional level posts (from AGM to SDE) and absence of administrative fairplay. Hence demoting the applicants by one functional level post after working in those posts for more than 8 years is by no stretch of imagination be considered as fair and just. There is no fault or foul play on the part of the applicants in getting those promotions from JTO to SDE to AGM. The applicants applied for the LDCE 2000/2003 as per the then



Notification of 1998/2003, was made eligible as per the RRs, and was allowed to sit for the said examination by the BSNL authorities. Having passed the said examination, he was promoted to those posts as per the then existing rules.

6. Learned counsel for the applicants Mr. Singh further submits that the BSNL authority has rightly interpreted the Court orders while assigning seniority and giving promotion to 300 plus SC/ST candidates who had cleared only the DQE Part of the combined DQE-cum-LDCE in the year 2000/2003, while not assigning seniority and giving promotion to 10 SC/ST candidates out of the 147 officers who had cleared both DQE and LDCE in the year 2000/2003. The impugned orders have been issued against the interest of corporation as well as applications and many others.

7. On the other hand, Mr. B. Pathak, learned BSNL counsel appearing on behalf of the respondents submits that the issue of seniority of 147 LDCE officials and their eligibility to appear for the competitive quota examination apropos the applicants have already been decided by the Hon'ble Apex Court by dismissing the SLP of one of the employees namely Shri Rupendra Pathak, challenging the order of Hon'ble High Court of Kerala dated 01.07.2013 on 12.12.2017 and even review petition filed by the petitioner was also dismissed on 14.03.2018. The present O.A. is

therefore barred under res-judicata as the issue raised has already been decided by the higher courts against the applicants.

8. We have heard the learned counsel for the parties, perused the pleadings and all the documents. The issue has been dealt with in detailed by the Co-ordinate Bench of CAT, Ernakulam Bench and also in detailed by the Hon'ble High Court of Kerala. After careful consideration and detailed examination, the plea of the applicants have already been rejected and dismissed. SLP filed in the Hon'ble Supreme Court of India has also been dismissed. Recently the same issue has been under consideration by the Principal Bench of CAT, New Delhi in respect of O.A. No. 2598/2018 and O.A. No. 2430/2018. In the order of said O.As of CAT, PB dated 13.07.2018, it is observed as under:-

*"We are not prepared to accept the contention of the learned counsel for the applicants that the judgment of Kerala High Court is per incuriam inasmuch as, it has taken a view contrary to specific amendment to Recruitment Rules of 1986. Firstly, there is nothing in the said amendment to suggest that the service of a candidate need not be regular. Once the amendment itself refers to the recruitment, the service arising out of such recruitment cannot be otherwise than 'regular'. Secondly, this was one of the main contentions raised before the Hon'ble Supreme Court, and once it was not accepted, the applicants cannot be permitted to raise this contention in the second innings, before the Tribunal."*

9. In view of the above facts and sequence of decisions taken by the Hon'ble Apex Court, Hon'ble High Court as well as CAT,

Ernakulam Bench and recently by CAT, Principal Bench, New Delhi, we find no merit in the present O.A. of the applicants. Hence O.A. is liable to be dismissed. Accordingly, O.A. stands dismissed.

10. No order as to costs.

**(NEKKHOMANG NEIHSIAL)**  
**MEMBER (A)**

**(MANJULA DAS)**  
**MEMBER (J)**

**PB**