

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH**

ORIGINAL APPLICATION NO.170/00533-534/2018

DATED THIS THE 02nd DAY OF JULY, 2019

HON'BLE DR.K.B.SURESH, JUDICIAL MEMBER

HON'BLE SHRI C.V.SANKAR, ADMINISTRATIVE MEMBER

1. Sri.G.Kumareshan, 51 years
S/o. Sri.M.Govindraj
Assistant General Manager (RF Planning)
BGTD, O/o General Manager (Consumer Mobility)
5th Floor, Telephone House
Bengaluru: 560 001.
2. Sri Sathiyam D., 46 years
S/o.Sri Dorairaj
Divisional Engineer (MPLS) SD
Office of DGM, MPLS
Bengaluru East Exchange
Bengaluru: 560 005.

....Applicants

(By Advocate Sri P.A.Kulkarni)

Vs.

1. Union of India
to be represented by its Secretary
Ministry of Communications & IT
Sanchar Bhavan, 20 Ashoka Road
New Delhi-110 001.
2. Department of Telecommunications
to be represented by its Secretary
919, Sanchar Bhavan
20, Ashoka Road
New Delhi-110 001.
3. Bharat Sanchar Nigam Limited
by its Chairman and Managing Director
Corporate Office (Personnel Branch)
Bharat Sanchar Bhawan
4th Floor, Janpath, H.C.Mathur Lane
New Delhi: 110 001.

4. Chief General Manager Telecom
Karnataka Telecom Circle, BSNL
No.1, S.V.Road, Halasuru
Bengaluru-560 008.
5. Chief General Manager
Southern Telecom Region
11, Link Road, Ganapathy Colony
Guindy, Chennai: 600 032.

.....Respondents

(By Advocates Sri V.N.Holla for R1 & 2 and Shri Vishnu Bhat for R3-5)

O R D E R

(PER HON'BLE SHRI C.V.SANKAR, MEMBER (ADMN))

The applicants in this case have entered Telecom Service as Junior Telecom Officers(JTO) in the years 1996 & 1997 and came to be promoted as Sub-Divisional Engineers(SDE) in the year 2002. The first applicant earned next promotion as DE on adhoc basis w.e.f. 1.10.2010 vide order dtd.8.9.2010(Annexure-A1) and on regular basis vide order dtd.16.12.2014(Annexure-A2) notionally w.e.f. 25.10.2013 with actual assumption of charge. The second applicant stands promoted to DE cadre w.e.f. 8.10.2014 vide order dtd.4.10.2014(Annexure-A4) and since then working at Bengaluru under Southern Telecom Region Circle with its Headquarters at Chennai. Both the applicants are presently working in AGM/DE cadre at Bengaluru. They submit that as per office order dtd.6.6.2018(Annexure-A6) issued by Personnel Branch of BSNL Corporate Office, New Delhi, they are facing the threat of reversion from DE to SDE cadre.

2. The applicants submit that vide notification dtd.6.11.1998(Annexure-A9), DOT decided to hold Departmental Qualifying-cum-competitive Exam(DQE) for promotion to Telecom Engineering Service(TES) (Group 'B' posts) in compliance to the judgment dtd.25.10.1996 of the Hon'ble Apex Court and that of Hon'ble CAT,

Ernakulam Bench dtd.1.5.1998 to fill up the vacancies arising prior to 23.7.1996 as per the previous Recruitment Rules(RRs) of TES(Group 'B') of 1981. They submit that TES(Group 'B' posts) RRs 1996(Annexure-A10) came to be notified in the official gazette on 22.7.1996 replacing the TES 1981 Rules. Because of availability of more number of candidates who cleared the qualifying examination under the 1981 Rules and could not be accommodated in the promotional posts due to want of vacancies starting from the year 1990, the official respondents suspended the conducting of LDCE to fill up the competitive quota till such officers who had cleared the Departmental Qualifying Examination(DQE) were accommodated. In addition to that from 1992 the DQE was also not conducted by the department in view of expected notification of new rules i.e., 1996 Rules. Department was filling up the entire vacancies in the cadre of Assistant Engineer(now SDE) by officers who had cleared the DQE as per 1981 rules. This gave rise to litigations leading to department's suspending holding of both the examinations. Respondents reportedly were attempting to make promotions in accordance with new rules promulgated in 1996 which was resented by employees who filed litigation before the Hon'ble Apex Court and the respondents ended the litigation agreeing before the Apex Court to hold exercise of promotion in respect of the vacancies existing prior to promulgation of 1996 rules in accordance with 1981 rules(Annexure-A11). Resultantly, notification dtd.6.11.1998 at Annexure-A9 came to be issued by DOT.

3. The 1981 Rules state that there will be 66 2/3% of the promotion quota filled through selection on the basis of DQE conducted in accordance with provisions laid down in Appendix-I, Appendix-II and Appendix-III to the rules and 33 1/3% of the promotion quota filled through selection on the basis of LDCE conducted in accordance with provisions laid down in Appendix-I, Appendix-II, and Appendix-III

to the rules. 1981 Rules came to be amended in the year 1986 and in the year 1987 as per Amendment Rules 1986(Annexure-A12) & Amendment Rules 1987(Annexure-A13). In Appendix-I, paragraph 2(i) states that 66 2/3% filled by promotion by selection method by a duly constituted DPC from the officials who have qualified in the DQE. Likewise in clause (iii) of para 2 of Annendix-I of 1981 Rules, method of selection by the DPC on the basis of DQE is amended by 1987 rules substituting the word 'by the method of selection' by 'on the basis of seniority-cum-fitness'. DOT issued clarification on 11.1.1998(Annexure-A14) after issuance of the 1998 notification at Annexure-A9, as per which the eligibility for appearing for DQE as well as LDCE prescribed in 1981 Rules as “five years of regular service in the grade on the 1st of January of the year in which the examination is held” is amended as “Junior Engineers recruited in that grade against the vacancies of a year ordinarily not less than five years prior to the year of announcement of such examination”. DOT issued another clarification on 11.1.1999(Annexure-A15) with regard to queries on eligibility condition as laid down in 1986 & 1987 amendment rules to 1981 rules. DOT unequivocally stated that JE/JTOs appointed against the vacancies for upto 1993 are eligible for appearing in the examination. That is why applicants who came to be appointed as JTOs in 1996-97 with reference to the recruitment drive against a vacancy year 1993 were permitted to write the examination with reference to the notification dtd.6.1.1998 wherein vide para-5, it is made clear that for DQE, candidates of SC/ST only shall apply and for LDCE candidates of all communities may apply. The applicants belonging to SC quota wrote all six papers i.e. 1-3 papers meant for DQE and 4-6 meant for LDCE and came out successful. The exam was held on 27th & 28th November 2000 and results came to be notified on 4.2.2002(Annexure-A16) wherein 250 candidates were

declared successful in DQE and 16 candidates were declared successful in both DQE and LDCE i.e., 11 SC(which includes applicants) and 5 OC candidates are included. On 18.2.2002(Annexure-A17), the DOT issued promotion and posting orders to the 16 candidates where the applicants appear at Sl.Nos.2 & 13. Since none from unreserved community were permitted to appear for DQE in response to the notification dtd.6.11.1998, a litigation in this regard came up before the Ernakulam Bench of this Tribunal in OA.91/1999 which ended in a direction to the administration to hold special supplementary DQE in continuation of the one already conducted. The Special supplementary DQE was held in the year 2003 and those selected were appointed as SDEs in the year 2005. Eventhough the applicants' group of 16 came to be promoted in the year 2002, an attempt is being made to include them as a part of 147 group stated to be promoted in the year 2005 after announcement of the supplementary examination result. It is thus clear that the supplementary examination result is restricted to 131 promotions under the 1/3rd quota. Therefore, it is obvious that applicants' seniority issue cannot be clubbed with the seniority issue of the group of 131 officers. But administration is in factual error in including the applicants' group of 16 along with 131 successful candidates of the supplementary exam who came to be promoted after three years of applicants' promotion.

4. The applicants further submit that vide office order dtd.6.6.2018(Annexure-A6) issued by Personnel Branch of BSNL Corporate Office, New Delhi, it is stated that the seniority and subsequent promotion granted to the LDCE executives were challenged in various Courts. However, as there was an interim protection on disputed seniority of 147 group executives in the grade of SDE, they were granted subsequent promotions also with due respect to the pending litigation before

Hon'ble Courts, at that time. As the court cases on the seniority and promotions has attained legal finality having regard to the decision of Hon'ble Apex Court judgment dtd.12.12.2017(Annexure-A8) in CA.No.392/2017 whereby the Apex Court upheld the judgment dtd.1.7.2013 rendered by Kerala High Court in WP(C) No.5406/2010(Annexure-A7), the promotions granted earliler to 96 Executives(which includes the applicants) to the grade of AGM on 29.9.2008, 16.8.2010 and to the Grade of DGM on 3.5.2017 are sought to be cancelled and to revert them to SDE grade purportedly in the process of implementation of the above orders. The administration is now disturbing the applicants attributing its action erroneously that effect of Kerala High Court judgment after affirmation of the same by the Apex Court should subject the applicants also to the same fate as that of the officers promoted after passing the examination held in the year 2003 whereas the applicants wrote the said examination in the year 2000 itself. Thus it is clear that Kerala High Court's judgment may not have a direct impact on the group of 16 including the applicants promoted in the year 2002 with reference to the exam held in the year 2000. The applicants not only qualified in the qualifying examination but also in competitive examination as they wrote all the 6 papers meant for both the examinations simultaneously. The notification of 1998 itself said it is a departmental qualifying-cum-competitive examination and those who came to be promoted pursuant to 1998 notification and also the supplementary exam notification against the qualifying examination quota are unaffected and they are continued in the promotion post of AGM and so on. Para 47 of judgment dtd.1.7.2013 of Kerala High Court is crucial for deciding the various contentions of the applicants who have submitted that if they were to be promoted against the 1/3rd competitive quota out of their performance in respect of the exam held in the year 2000 with reference to the

notification dtd.6.11.1998 even though they have passed qualifying exam also, then they cannot be part of 147 candidates superficially indicated by the Kerala High Court and there cannot be any legal restriction for adjudging their promotion against the unfilled vacancies of the 1/3rd quota available in respect of 2000 examination pursuant to notification dtd.6.11.1998 and cannot be restricted to the 1/3rd quota vacancies of the year 1994-95, 1995-96 & 1996-97(up to 22.7.1996) only. Moreover, the applicants' eligibility issue for taking the examination with reference to the notification of 6.11.1998 cannot be raised by the administration now as it was never under challenge before any courts. BSNL Corporate office is under erroneous assumption that Kerala High Court's judgment directs them to go into applicants' eligibility issue at this juncture. Before issuing the impugned order, no show cause notice is issued to the applicants. Hence, the impugned order is in violation of principles of natural justice. The seniority of the applicants finalised by the DOT under order dtd.28.7.2008(Annexure-A18) wherein the applicants were erroneously clubbed with 147 group and their names are appearing at Sl.Nos.142 & 143, is not directly under challenge in any litigation. Unless the administration clears that against which recruitment year 1/3 quota vacancies their promotion to SDE grade is fitted in, it is not open for adjudication of the seniority issue of the applicants. In other words, with the said information only applicants' seniority position fixed under DOT order dtd.28.7.2008 will get affected or not can be dealt with. Accordingly, the impugned order dtd.6.6.2018 at Annexure-A6 passed by the BSNL Headquarters is liable to be set aside and quashed.

5. On the contrary, the respondents in their reply statement submit that both the applicants were appointed as Junior Telecom Officers(JTO) and were promoted as Sub Divisional Engineers(SDE) in the year 2002. They were further promoted as

Divisional Engineers(DE). As per the recruitment rules for TES Group B which were initially framed in 1981 and amended in 1986, there shall be 2 streams for promotion to the post of TES Group B through 66 2/3% by selection on the basis of Departmental Qualifying Examination(DQE)/Seniority Cum Fitness and 33 1/3% by Limited Departmental Competitive Examination(LDCE). Eligibility for both exams being Junior Engineer recruited in that grade ordinarily not less than five years prior to the year of announcement of the said examination. And both DQE and LDCE shall be held atleast once in a calender year. The DQE was held upto the year 1991 annually and LDCE upto the year 1989 annually. After framing of the new recruitment rules in the year 1996, the examination could not be held due to a variety of reasons, particularly numerous court cases by affected parties. In one SLP(C) No.2607/1996, the DOT has submitted before the Hon'ble Supreme Court that it would fill the vacancies, existed prior to 22.07.1996(before the new RRs) as per RRs of 1981 and vacancies arising after 22.07.1996 as per RRs 1996. Since the DOT did not hold DQE/LDCE till 1998, the employees filed cases before the Ernakulam Bench of this Tribunal which in turn gave directions to hold a Combined Qualifying Cum Competitive Examination(DQE cum LDCE) for filling the vacancies existed prior to 23.7.1996 vide judgment dtd.1.5.1998. In compliance, the DOT issued notification dtd.6.11.1998 in which the vacancy years mentioned were 1994 to 1997 (vacancies upto 22.7.1996) and the examination was held in the year 2000 in which only SC/ST candidates were allowed to appear in the DQE part since the DOT felt that already sufficient number of DQE qualified candidates in OC category were available to be promoted against 66 2/3% whereas for competitive part, candidates who had passed DQE upto 1991 were allowed to appear in the LDCE. Aggrieved by the same, certain OC candidates filed cases before the Ernakulam

Bench of this Tribunal which directed the DOT to hold a special Supplementary qualifying cum competitive examination in continuation with the one held in the year 2000. In September 2003, the above exam was held and totally 147 candidates came out successful in both the examinations held in the year 2000 and 2003. However, DOT did not promote and assign seniority to the 147 officials but later they were promoted but were not assigned seniority. Being aggrieved by the same, the 147 officials had approached the Hon'ble High Court of Kerala in OP CAT No.37134/2001 & 21656/2001 and vide order dd.13.7.2006, the High Court of Kerala directed DOT for merely assigning proper ranking/seniority to these officers by placing them over those who have been promoted to the vacancies occurred later than 22.7.1996. The said order was implemented and DOT assigned seniority to the 147 officers against the vacancy year 1994-95, 1995-96 & 1996-97(upto 22.7.1996). Being not satisfied with the seniority position assigned by DOT/BSNL, some of the officials belonging to 147 group of officers have filed CP.No.713/2007 before the Kerala High Court seeking seniority from vacancy year 1990 onwards instead of 1994 onwards. The High Court of Kerala dropped the CP observing vide order dtd.9.10.2007 that the seniority assigned by DOT/BSNL was in order. The DOT vide its order dtd.27.3.2008, revised the seniority position of 147 officers(33 1/3% LDCE) by assigning them seniortiy from the year 1990 onwards by taking a cue from the High Court's observation at para-11 of judgment dtd.9.10.2007. Accordingly, some of the 147 officers, by virtue of their higher seniority, were promoted to DE-Adhoc vide DOT's order dtd.29.9.2008. These two orders of DOT/BSNL were challenged before the CAT, Ernakulam Bench by the seniority quota officers who were already enjoying the seniority before 1994 by virtue of their appointment against 2/3rd quota and not permitted to appear in the combined

competitive examination along with 147 officers stating that assigning seniority to 147 group of officers from 1990 onwards while debarring them from appearing in the said examination held during the years 2000 & 2003 is discriminatory. Vide order dtd.5.2.2010, the CAT, Ernakulam Bench had quashed the seniority and promotion of the 147 candidates directing the respondents to recast the seniority list interpolating the seniority of the combined competitive exam qualified candidates(147) whose seniority has to be below to that of those who had passed in the qualifying examination prior to 1996. Against the said order of CAT, Ernakulam Bench, the BSNL and other private parties have filed Writ Petitions before the Hon'ble High Court of Kerala which passed orders on 1.7.2013 dismissing the claim and holding that "the 147 candidates ought to be considered for the 1/3rd vacancies in 1994-95, 1995-96 and 1996-97 (upto 22.7.1996) according to their merit as also their eligibility to appear for the combined examination. The eligibility year has to be considered since, one combined examination was held for 3 years. A candidate entitled to appear in 1996(by reason of completing five years of regular service in the feeder category on the 1st of the January of the year) cannot be placed in the vacancy of 1994-95; however, high his rank may be. If the seniority list requires any re-cast on the above lines, obviously, the official respondent ought to do so". The SLPs filed by some of the officials from the 147 group challenging the above order dtd.1.7.2013 were dismissed vide judgment dtd.12.12.2017. Review Petitions filed against the dismissal order was also dismissed. As a result, the order of the Hon'ble High Court of Kerala dtd.1.7.2013 holds the field in determining the seniority of 147 LDCE officials and their eligibility to appear for the competitive quota examination, including the applicants herein. Since the seniority and eligibility to appear for the competitive quota examination has already been decided upto the Hon'ble Supreme

Court and reached its finality, the present OA is barred by res-judicata. The applicants without exhausting the remedies available to them have approached the court and hence the OA is not maintainable and is liable to be dismissed.

6. The respondents submit that the OA is also barred by limitation as the prayer of the applicants being implementation of the order dtd.13.7.2006 sought in the year 2018 i.e. after a lapse of more than 11 years. Since the seniority of 147 LDCE officials and their eligibility to appear for the competitive quota examination including the applicants have now strictly to be governed only in accordance with the order passed by the Kerala High Court vide dtd.1.7.2013 as the SLPs filed against it have already been dismissed by the Hon'ble Apex Court, the prayer in the OA cannot be entertained by this Tribunal. Similar OAs filed before the Principal Bench and Cuttack Bench of this Tribunal is still pending without any order of stay. Therefore, the contention of the applicants that the above said judgments/orders directly or indirectly provide the scope of their reversion from AGM to SDE cadre and there is factual error in including the applicants' group of 16 along with 131 successful candidates of supplementary examination is not correct. Hence, the impugned order is fully in order and strictly in conformity with the orders of Hon'ble Supreme Court and High Court of Kerala.

7. The applicants have filed rejoinder reiterating the submissions already made in the OA and submit that as per the CAT, Ernakulam Bench's direction the special supplementary qualifying-cum-competitive examination was held on 23.9.2003 to 26.9.2003. Approximately 150 executives(commonly known as 147 group) were promoted against competitive quota vacancies meant with reference to 1998 notification and the Kerala High Court judgment dtd.1.7.2013 in WP(C)

No.5406/2010 concerned to 138 BSNL LDCE executives out of total 150 as 12 executives belong to MTNL. That out of 138 BSNL LDCE executives promoted with reference to the 1998 notification 42 executives were found eligible to take the examination and 96 executives were found ineligible to take the examination against vacancy year 1994-95 to 1996-97 in terms of the said Kerala High Court judgment. Two applicants herein are brought under this 96 group by the administration as per the impugned order. The seniority of the 147 candidates was fixed against the vacancy year 1994-95, 1995-96 and 1996-97 (upto 22.7.1996) in terms of Kerala High Court judgment in an earlier case in OP CAT No.37134/2001 and 21656/2001. According to the applicants, before the Kerala High Court, the only issue involved was ascertainment of seniority of 147 merit based candidates in the LDCE as against the candidates who have been promoted on the basis of their qualifying in the DQE held by the Department. Therefore, the averment that the Kerala High Court judgment is applicable in the matter of applicants' eligibility to take the LDCE with reference to 1998 notification is hereby denied. The applicants make it clear that the scope of the present OA is restricted against the impugned action of the BSNL under Annexure-A6 order dtd.6.6.2018 seeking to revert them from the position of AGM to SDE and the promotion granted in SDE grade is also being reviewed and till a decision is taken by competitive authority, applicants are allowed to work in SDE grade. On the contention of the respondents that OA is devoid of merit in challenging their reversion order since the matter stands covered by the Kerala High Court judgment after dismissal of the SLP against that order, the applicants submit that the Kerala High Court judgment never directed the authority for causing reversion of the applicants and direction is restricted to readjustment of the seniority which issue is not the subject matter of the present OA. According to

the applicants, the authority has misread the observation of the Kerala High Court and erroneously reached to the conclusion that applicants were ineligible to appear in the examination held in the year 2000 with reference to 1998 notification. As per the clarification of the DOT on 11.1.1999(Annexure-A15), the applicants were eligible to take the examination as per 1986 amendment rules. Thus there is no scope for understanding the observation of Kerala High Court's judgment detrimental to the interest of the applicants.

8. The applicants submit that in the case of *UOI & others vs. Sohan Lal Sayal & others*, Civil Appeal No.4389/2010 decided on 21.1.2015 read with its order dtd.14.12.2017(Annexure-RJ1 & RJ2), the Hon'ble Supreme Court has directed the parties to go before Expert Committee appointed by it and for re-listing the matter on receipt of the report from Expert Committee solely for the purpose of passing appropriate orders based on the report. Expert Committee constituted by the Hon'ble Apex Court gave its report on 28.10.2015. Then the Apex Court vide order dtd.14.12.2017(Annexure-RJ2) concluded that the judgment dtd.21.1.2015 will be treated as final between the parties on the principle of seniority and in the recommendation No.4 of para-5 of the said order, it is mentioned that 'the rights of the 147 LDCE officers would require consideration by this Court in the concerned SLPs and the objections of BSNL, the 45 DQE officers, the 270 officers and the 512 officers may kindly be considered while considering the concerned SLPs'. In terms of the above recommendation, it boils down that though it was left to the Apex Court to specifically deal with the seniority issue of 147 LDCE officers referred to in Kerala High Court judgment, Hon'ble Apex Court endorsed its earlier order at Annexure-RJ1 & RJ2. That means no specific observations are made with reference to the seniority issue of 147 LDCE officers. Thus the observation made under para-47 of

the Kerala High Court judgment at Annexure-A7 has to be the guiding factor in deciding the case on hand and Corporate Office reference made to Apex Court in the impugned order at Annexure-A6 is misleading.

9. We have heard the Learned Counsel for both the parties and perused the materials and written arguments note filed by both the parties in detail. The main issue in this case flows from the orders of the Hon'ble High Court of Kerala at Ernakulam in WP(C)No.5406/2010 & WP(C)No.26226/2010. In para-47 of their order, the Hon'ble High Court of Kerala at Ernakulam has held as follows:

47. Merely because the LDCE was not held from 1989 that does not create a vested right in the 147 candidates to be assigned seniority in the 1/3rd quota of LDCE from the year 1990 onwards. We have already found that the DQE and LDCE exams held in 2000-2003 were only to the vacancies of 1994-95, 1995-96 and 1996-97 (up to 22.7.1996). The promotion to the DQE quota can only be from the year in which a candidate qualified. The promotion on the basis of the LDCE can also be only to those 1/3rd available vacancies in the year of the LDCE. The distinction is in so far as the DQE is considered to the 2/3rd quota from the year in which he qualifies vis-a-vis the seniority among the DQE candidates; and on the basis of his qualification is considered in all the subsequent years. While the LDCE is considered only to the vacancies available in that year and the rank obtained by a candidate not entitling him to be considered in any subsequent years. Hence the 147 candidates ought to be considered for the 1/3rd vacancies in 1994-95, 1995-96 and 1996-97 (up to 22.7.1996) according to their merit as also their eligibility to appear for the combined examination. The eligibility year has to be considered since, one combined examination was held for three years. A candidate entitled to appear in 1996 (by reason of completing five years of regular service in the feeder category on the 1st of the January of the year) cannot be placed in the vacancy of 1994-1995; however, high his rank may be. If the seniority list requires any re cast on the above lines; obviously, the official respondent ought to do so. In the circumstances, we do not find any reason to differ from the decision of the Tribunal impugned in the writ petitions or interfere with the dismissal of the review applications impugned in the Original Petitions (CAT). The Writ Petitions and Original Petitions (CAT) are dismissed, however, with no costs.

10. The applicant No.1 has entered Telecom service as Junior Telecom Officer(JTO) on 17.1.1997 and applicant No.2 on 9.9.1996 as JTO. They appeared

for the Departmental Qualifying-cum-Competitive Examination for promotion to Telecom Engineering Services(TES)(Group-B) posts as called for on 6.11.1998(Annexure-A9). The qualification prescribed as per the Appendix-I paragraph 5 of TES (Group B Posts) Amendment Rules 1986 dtd.2.5.1986 is as follows:

(a) Departmental Qualifying Examination:

- (i) Qualified Junior Engineers recruited in that grade against the vacancies of a year ordinarily for not less than five years prior to the year of announcement of such examination.
- (ii) Ex-company officials, appointed as Junior Engineer (already qualified) or equivalent post ordinarily for not less than five years prior to the year of announcement of the said examination.

(b) Limited Departmental Competitive Examination:

- (iii) Qualified Junior Engineers recruited in that grade against the vacancies of a year ordinarily not less than five years prior to the year of announcement of such examination.
- (iv) Ex-company officials, appointed as Junior Engineer or (already qualified) equivalent post ordinarily for not less than five years prior to the year of announcement of the said examination.

11. The applicants who have appeared in the Departmental Qualifying Examination as well as Limited Departmental Competitive Examination taking all the six subjects prescribed as per Annexure-A9 were declared as having qualified in the examination conducted on 27th & 28th November, 2000 vide letter/proceedings dtd.4.2.2002(Annexure-A16) of the respondents. Subsequently on 18.2.2002 vide order at Annexure-A17, they were also promoted and posted to TES Gr.B service and thereon they earned certain promotions up to the level of AGM vide Annexure-A2, A4 & A5. Vide the impugned order at Annexure-A6, the respondents have considered 96 persons in the higher levels as ineligible and have reverted them to the level of SDE which is the first level for promotion to the post of JTO. The crux of the issue is whether the applicants would be covered by the judgment of the Hon'ble High Court of Kerala which has reached its finality based on the Hon'ble

Apex Court order vide Annexure-A8. The respondents would claim in their reply that the applicants are not entitled for appearing in the examination in terms of the Hon'ble High Court of Kerala order dtd.1.7.2013 which was upheld by the Hon'ble Apex Court. In this connection, we have to specifically see what the rules state relating to the eligibility for appearing in each part of the examination. As already seen, the qualification for appearing in the Departmental Qualifying Examination is that the persons should be qualified as Junior Engineers recruited in that grade against the vacancies of a year ordinarily for not less than 5 years prior to the year of announcement of such examination. A similar condition is there in the rule for being eligible for LDCE. The fact that is not in dispute is that the first examination for filling up the TES(Group B) vacancies for the years 1994-95, 1995-96 and 1996-97 (upto 22.7.1996) was notified on 6.11.1998 and the examinations were actually conducted on 27th & 28th November 2000. Based on the rules and the contentions of the applicants, it is seen that they were appointed as JTOs during the year 1996-97 and their appointment was against JTO vacancies of the recruitment year 1993. As per the condition in the rules, the Junior Engineers should have been recruited in that grade against the vacancies of a year ordinarily for not less than 5 years prior to the year of announcement of such examination. A simple explanation of the above rule would say that a person who has been recruited against the vacancies of a year which is ordinarily not less than 5 years prior to the year of announcement of the examination would be eligible to sit for these examinations. In this case, the year of announcement of the examination is November 1998. The vacancies against which the applicants have been selected as stated by them is 1993 even though they came to be appointed as JTOs in the years 1996 and 1997. This point of the applicants having been selected against the vacancies of 1993 for JTO's has

not been disputed by the respondents. The only contention of the respondents is that the applicants are not entitled for appearing in the examination in terms of the orders of the Hon'ble High Court of Kerala at Ernakulam dtd.1.7.2013 upheld by the Hon'ble Apex Court vide order dtd.12.12.2017. The Hon'ble High Court of Kerala had clearly mentioned in para-47 that the candidates ought to be considered for the 1/3rd vacancies in 1994-95, 1995-96 & 1996-97 (up to 22.7.1996) according to their merit as also their eligibility to appear for the combined examination. In other words, the only direction given by the Hon'ble High Court of Kerala is that since one combined examination was held for filling up the vacancies of TES Group-B posts and the point that there were no vacancies existing in the TES Group-B posts before 1994-95 having been accepted both by this Tribunal of Ernakulam Bench and the Hon'ble High Court of Kerala, the only issue left out was how to assess the eligibility of the persons who had cleared the examination vis-a-vis the rule position. The rule does not say that a vacancy of TES Group-B officer in a particular year should be filled up with Junior Engineers who had not less than 5 years of service. The rule clearly says that from the date of examination, the vacancy against which the Junior Engineers are recruited (i.e. in their lower posts) should be ordinarily not less than 5 years. This stipulation before 1986 was as follows:

'Departmental Qualifying Examination: Junior Engineers who have completed five years of regular service in the grade on the first of January of the year in which the examination is held.'

The same eligibility condition is prescribed in the case of Limited Departmental Competitive Examination.

12. We have already seen that the department had modified this condition stating that the year against which the Junior Engineers were recruited should be ordinarily not less than five years from the year of announcement of such examination. The

Hon'ble High Court of Kerala did not issue any order relating to the change of any eligibility condition as per the rules at that point of time. It was merely pointing out that the relative seniority of the individuals who passed the qualifying examination will have to be worked out based on not only ranking but also their eligibility in terms of writing the exam due to the fact that a combined examination was being held for the vacancies of three years and therefore, merely because of higher ranking, a person should not be placed above any person eligible to write the exam before him/her. The respondents have permitted the applicants to write the exam in the year 2000 based on the notification of 1998 clearly with the understanding that the applicants were eligible to sit in the examination. In fact vide Annexure-A15, this point has been further clarified in point No.4 & 5 that the JE/JTOs appointed against the vacancies available up to 1993 are eligible for appearing in the examination. The respondents would now contend that because of the order of the Hon'ble High Court of Kerala and that of the Hon'ble Supreme Court, this clarification dtd.11.1.1999 will no longer hold good. This cannot be accepted as the High Court ruling does not interfere in any way with the rule position. As we have already seen, the respondents themselves have modified the eligibility condition from being so many years of regular service to one which made it a little more liberal in the sense of considering new factors like the year of vacancies for which persons like the applicants were selected in the lower posts and the year of announcement of the examination and there was no linkage with the year in which the TES Group-B service vacancy arises. The order of the Hon'ble High Court of Kerala relates to the vacancies in the higher post namely TES Group-B posts and it does not alter the position relating to the rules. The rules were nowhere in discussion and no order in this regard is issued. It is also seen from para-24 of the Hon'ble High Court of

Kerala order that the controversy which arose in the cases dealt with is the ascertaining of the seniority of 147 merit based candidates who have earned their merit in the LDCE as against the candidates who have been promoted on the basis of their qualifying in the DQE held by the department. The issue of the rule was not discussed at any point of time and the order of the Hon'ble High Court of Kerala only wanted to ensure that the persons who may not be eligible because of the rule position in terms of the number of years between the year of vacancy against which they were appointed and the year of announcement of the examination would not get into the list merely because of their having passed in the DQE/LDCE. The case of the applicants clearly falls outside this particular dictum and they were found eligible to write the examination and they cleared examination based on which the promotions were also given to them and therefore citing the order of the Hon'ble Kerala High Court which was subsequently upheld by the Hon'ble Apex Court, the respondents should not have reverted the applicants from the promoted posts as at Annexure-A6. It is not clear as to how the applicants were brought into the list of 147 even though the respondents have consistently claimed that they are part of the list and this has gained legitimacy due to the applicants being part of the group in OA.Nos.2126/2009 before the Hon'ble Principal Bench of this Tribunal vide Document No.3 given with written arguments note by the applicants which of course, the applicants deny as being without their knowledge. The Hon'ble Principal Bench has gone by the orders issued by the Hon'ble High Court of Kerala and Apex Court and disposed of the OA. But as already seen the order of the Hon'ble High Court of Kerala was on a totally different perspective with respect to the conduct of the qualifying and competitive examination and the select list that had been drawn thereon. In their present proceedings, the respondents have clearly erred in taking

the vacancy year for the higher post and then calculating 5 years back service which is no longer the rule position. Vide Document No.1 given to a similarly placed individual in their letter dtd.25.9.2018, the respondents have held as follows:

'As per judgment dt.1.7.2013 of Hon'ble Kerala High Court, a candidate should complete 5 years of regular service in feeder cadre (JTO) as on 1st January of a Vacancy Year for making him/her eligible (Para 47) i.e. a candidate is entitled to be eligible in VY 1996-97 (upto 22.7.1996) must complete five years of regular service in the feeder category on the 1st of the January of the year 1996.'

13. This is clearly wrong since the rules were amended in the year 1986 and the issue of regular service etc. are no longer relevant. Therefore, we have to hold that the issue has been handled by an improper understanding of the orders of the Hon'ble High Court of Kerala which did not go into the rule position and the eligibility condition thereon. This is an interpretation interpolated by the respondents and this cannot come in the way of the promotion given to the applicants and therefore, the order at Annexure-A6 is quashed. The applicants are eligible for all the consequential benefits thereon. The respondents shall do so within a period of two(2) months from the date of receipt of this order.

14. The OA is allowed with the above direction. No costs.

(C.V.SANKAR)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ps/

Annexures referred to by the applicants in OA.No.170/00533-534/2018

- Annexure A1: Copy of the promotion and posting order dtd.8.9.2010 of applicant No.1 to AGM cadre on adhoc basis
Annexure A2: Copy of the regular promotion order dtd.16.12.2014 of applicant No.1 to AGM cadre
Annexure A3: Copy of the SDE promotion order dtd.21.3.2002 of applicant No.2
Annexure A4: Copy of the DE posting order dtd.4.10.2014 of applicant No.2
Annexure A5: Copy of the DE promotion order dtd.9.9.2014 of applicant No.2
Annexure A6: Copy of the impugned order dtd.6.6.2018 issued by BSNL Corporate Office New Delhi
Annexure A7: Copy of the Kerala High Court judgment dtd.1.7.2013 in WP(C) 5406/2010 (S) & connected matters
Annexure A8: Copy of the apex court order dtd.12.12.2017 in CA No.392/2017 & connected matters
Annexure A9: Copy of the notification dtd.6.11.1998
Annexure A10: Copy of the SDE R/Rs of 1996
Annexure A11: Copy of the SDE R/Rs of 1981
Annexure A12: Copy of the 1986 amendment rules
Annexure A13: Copy of the 1987 amendment rules
Annexure A14: Copy of the DOT communication dtd.16.11.1998
Annexure A15: Copy of the DOT clarification order dtd.11.1.1999
Annexure A16: Copy of the result sheet dtd.4.2.2002 of TES Gr.'B' examination held in November 2000
Annexure A17: Copy of the SDE promotion order dtd.18.2.2002 issued by DOT pertaining to the applicants
Annexure A18: Copy of the DOT order dtd.28.7.2008 regarding fixation of applicants' seniority

Annexures with reply statement:

-NIL-

Annexures with rejoinder:

- Annexure-RJ1: Copy of the Apex Court order dtd.21.2.2015 in Civil Appeal No.4389/2010
Annexure-RJ2: Copy of the Apex Court order dtd.14.12.2017 in Civil Appeal No.4389/2010

Documents with written arguments note filed by the applicant:

- Document No.1: Copy of the reply dtd.25.9.2018 furnished to Smt.K.Rajeshwari similarly situated like the applicants
Document No.2: Copy of the RTI reply dtd.23.10.2008 issued by the DOT
Document No.3: Copy of the Principal Bench order dtd.13.7.2018 in OA.2126/2009
Document No.4: Copy of the Principal Bench order dtd.13.7.2018 in OA.2589/2017 & 2430/2018
Document No.5: Copy of the Principal Bench order dtd.6.9.2018 in OA.3150/2018

Annexures with written arguments note filed by the respondents 3 to 5:

Annexure-1: Copy of the order passed in OA.2519/2017 & 2430/2018

Annexure-2: Copy of the order passed in MA.No.040/00114/2018 & connected cases
