

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

**Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)**

- OA 716 of 2016 Chandra Mohan Soren, aged about 46 years, S/o Kamo Soren, Vill – Bheshrakocha, PO – Gorumahisanim, Dist- Mayurbhanj, at present working as Senior Telecom Office Assistant (G), in the office iof the SDO (Phones), BSNL Rayagada, Telecom Bhawan, At/PO/Dist – Rayagada, Odisha.
- OA 717 of 2016 Arjun Soren, aged about 44 years, S/o Kamo Soren, Vill – Bheshrakocha, PO – Gorumahisanim, Dist- Mayurbhanj, at present working as Senior Telecom Office Assistant (G), in the office iof the SDO (Phones), BSNL Rayagada, Telecom Bhawan, At/PO/Dist – Rayagada, Odisha.
- OA 718 of 2016 Muralidhar Jaypuria, aged about 55 years, S/o Duba Jaypuria, Vill – Banmundadaffai, PO – Birmitrapur, PS – Birmitrapur, Dist. – Sundergarh, at present working as SO in the office of General manager, Telecom District, Rourkela, Dist – Sundergarh.

.....Applicant

VERSUS

1. Union of India represented through the Chairman-cum-Managing Director, Telecom, BSNL Bharat Sanchar Bhawan, H.C.Mathur Lane, Janpath, New Delhi – 110001.
2. The Chief General Manager, Telecom, BSNL Odisha Circle, Bhubaneswar, BSNL Bhawan, Unit-II, Near I.G.park, Bhubaneswar, Dist. – Khurda.
3. The General Manager (Operation-cum-CPIO)Office of CGM, BSNL, Odisha Circle, Bhubaneswar, BSNL Bhawan, Unit-II, Near I.G.park, Bhubaneswar, Dist. – Khurda.
4. Asst. Director, Telecom, BSNL (R&E), Odisha Circle, Bhubaneswar, BSNL Bhawan, Unit-II, Near I.G.park, Bhubaneswar, Dist. – Khurda.
5. General Manager, Telecom District, BSNL Koraput, New Administrative Building, DNK Road, Near TV Centre, Korapur, PO/Dist. – Koraput – 764020.
6. Assistant General Manager (HR), Odisha Telecom Circle, Bhubaneswar, BSNL Bhawan, Unit-II, Near I.G.park, Bhubaneswar, Dist. – Khurda.

.....Respondents.

For the applicant : Mr.G.N.Rout, counsel

For the respondents: Mr.K.C.Kanungo, counsel

Heard & reserved on : 9.7.2019

Order on : 30.7.2019

O R D E R**Per Mr. Gokul Chandra Pati, Member (A)**

Since the nature of the dispute and reliefs sought in these OAs are similar and same question of law is to be decided in all these OAs, these OAs were taken up for consideration together. All three OAs are disposed of by this common order. The applicants in these OAs belong to the category of ST/SC employees who had appeared in a Departmental Competitive Examination (in short DCE) in the year 1999 for promotion to the post of Junior Telecom Officers (in short JTO) under the respondents. They are aggrieved because the respondents had not declared the result for SC/ST category of candidates for the said examination after applying relaxation of the qualifying standard as applicable for the ST/SC category of candidates in accordance with the judgment of Hon'ble Madhya Pradesh High Court dated 6.8.2014 in W.P. No. 10540/2013 in the case of R.D. Choudhury and others vs. Union of India and others (Annexure-8 of the OA). It is the case of the applicants that the facts and circumstances of their case are squarely covered by the aforesaid judgment dated 6.8.2014 for which, they should be allowed the same benefits.

2. For the purpose of this order, the OA No. 716 of 2016 is taken as the leading OA. Before we proceed to examine this OA, we take note of the facts in all the OAs.

3. In OA No. 716/2016, the applicant, while working as Telecom Office Assistant, appeared in the DCE for the post of JTO on 15th and 16th May, 1999 in response to the advertisement dated 15.12.1998 (Annexure-4 of the OA) for selection of candidates for promotion to JTO under 15% quota. On 7.12.1999 (Annexure-5 of the OA), the result for other category candidates was declared, but that of the applicant belonging to ST category, was not declared. Thereafter, taking into account the vacancies for reserved category posts, the respondents issued the circular dated 10.3.2003 (Annexure-6 of the OA) to relax qualifying criteria for the ST/SC category of candidates for the aforesaid examination. It was stipulated in the said circular that in respect of the results of the examination declared between 27.7.1997 and 3.10.2000, these relaxed criteria for ST/SC candidates will not apply. It is stated in the OA that although there were 13 vacancies available in respect of the ST/SC candidates, the authorities did not apply these relaxed norms for the examination held in May, 1999 due to wrong interpretation of the circular.

4. The facts in OA No. 717/2016 and OA No. 718/2016 are similar except for some minor difference. In OA No. 717/2016, the applicant is a candidate belonging to ST category and he had also appeared in the DCE held in 1999 for promotion as JTO. In OA No. 718/2016, the applicant also appeared in above

examination as a candidate belonging to SC category. All the applicants in these OAs are aggrieved due to non-application of relaxed qualifying criteria for ST/SC candidates for the DCE held in 1999.

5. Being aggrieved by the decision of the authorities not to apply the relaxed norms for the DCE held in 1997, some of the similarly placed candidates as the applicants, approached the CAT Jabalpur Bench in OA No. 347/2009, which was dismissed. This order was challenged before Hon'ble Madhya Pradesh High Court in the case of R.D. Choudhury (supra) and it was held that the benefit of the relaxation was available for the ST/SC candidates of the DCE, 1999 in view of the circular dated 5.6.1997 (Annexure-8 of OA). The judgment dated 6.8.2014 was challenged by the Government in the SLP before Hon'ble Apex Court and the said SLP was dismissed vide order dated 31.7.2015 (Annexure-9). Thereafter, the authorities declared the result of the ST/SC candidates of M.P. circle applying relaxed criteria.

OA No. 718/2016

6. The applicants' case in these OAs is that the respondents are not extending the same benefit allowed to the employees of M.P. circle to them. Hence, one OA was filed after no action was taken on the applicant's representation dated 25.11.2015 (Annexure-11) to extend the benefit of the judgment dated 6.8.2014 to him. That OA was disposed of with direction to consider the representation of the applicant by passing a speaking order. Accordingly, the respondents have passed the order dated 4.8.2016 (Annexure-14 of the OA), rejecting the representation of the applicant. This OA has been filed challenging the order dated 4.8.2016, with prayer for following reliefs:-

“(i) The respondents be noticed to show cause and after hearing the parties quash the impugned order dated 4.8.2016 passed by the Asst. General Manager (HR&A) BSNL Odisha, Bhubaneswar at Annexure – 14;

(ii) The respondents be directed to consider the grievance of the applicant and declare the result of the Departmental Competitive Examination for promotion as Junior Telecom Officer (15% quota of vacancies) held on 15th and 16th May 1999 in respect of the applicant and give promotion to the post of JTO by extending the benefit of relaxation in keeping with the decision of the Hon'ble High Court of MP passed in WP No. 10340/2013 and the confirmation of the Hon'ble Supreme Court in SLP No. 13292/2015 with effect from the date similarly situated employees under the Department get the promotion.

(iii) Further the respondents be directed to extend the all consequential benefits in favour of the applicant within a stipulated time;

(iv) To pass any other order(s) as this Hon'ble Tribunal deems fit and proper in considering the facts and circumstances of the original application."

7. The Counter filed by the respondents relied mainly on three grounds to oppose the OA. Firstly, it is averred that the applicant's OA is barred by limitation in the light of the law decided by Hon'ble Apex Court in different cases as cited in the Counter. It is stated that the applicants, after the DCE was held in 1999, did not raise the issue of relaxation of qualifying criteria till 2015, i.e. after about 16 years and hence, the case is barred by limitation. Secondly, it is stated that the relaxation as per the circular dated 10.3.2003 (Annexure – 6 of the OA) was not applicable to the DCE held on 1999, but it was applicable for the DCE held in Odisha circle in the year 2000 which was held subsequent to the DCE held in 1999. Accordingly, the respondents had applied the relaxed norms for the DCE, 2000 and declared one candidate qualified as per the relaxed norms. Thirdly, it is averred that the judgment dated 6.8.2014 of Hon'ble M.P. High Court is not applicable to the present case as in that case the facts were different.

8. The applicant has filed the Rejoinder broadly reiterating the averments in the OA and stating that the examination held in the year 2000 was held for the vacancies for the year 1999 and it was illegal and not sustainable as per the extant rules [para (viii) of Rejoinder]. It is further stated that the respondents should have applied the relaxed norms as per the circular dated 5.6.1997 for the result of the DCE held in the year 1999 and declared the result of the applicant after applying the relaxed norms. The decision not to allow the benefit to the applicant is stated to be discriminatory as per the judgment of Hon'ble Apex Court in the case of Union of India vs. Hemraj Singh Chauhan reported in A.I.R. 2010 S.C. 1682. Regarding the issue of limitation, it is stated in the Rejoinder that the cause of action in this case arose when the respondents rejected the grievance of the applicant (i.e. on 4.8.2016 i.e. the date of passing of the impugned order) and hence, it is submitted that there is no delay.

9. Heard learned counsel for the applicant, who emphasized the point that the applicant's case deserves to be considered as per the relaxed norms in accordance with the circular dated 5.6.1997 applying the ratio of the judgment dated 6.8.2014 (Annexure-8) of Hon'ble M.P. High Court. A written note of submission was filed by the applicant's counsel enclosing the following judgments:-

- i) S.S.Rathore –vs- State of M.P. [AIR 1990 SC 10]
- ii) Rohtas Bhankhar & Others –vs- Union of India & Another [Civil Appeal No. 6046-6047 of 2004 passed by Hon'ble Supreme Court]

The written note filed by the applicant's counsel reiterated the averments in the OA, stating that the benefit of relaxation in the aggregate marks to 20% for SC/ST candidates has not been allowed by the respondents as per the circular dated 5.6.1997 and the judgment dated 6.8.2014 (Annexure-8) of Hon'ble M.P.High Court in which similar issue has been decided. But the respondents have rejected the claim of the applicants which is in accordance with the order at Annexure-8 of Hon'ble M.P.High Court.

10. Learned counsel for the respondents was heard and he also filed his written note of submissions enclosing the following judgments in support of his case:-

- i) Judgment dated 1.3.2019 in CA No. 2425/2019 (Govt. of India & Anr. -vs- P.Venkatesh)
- ii) Judgment dated 2.9.1996 in State of Karnataka & Ors. -vs- S.M.Kotrayya & Ors.
- iii) Judgment dated 24.3.2014 in SLP(C) Nos. 6609-6613 of 2014 (Brijesh Kumar & Ors. -vs- State of Haryana & Ors.)

The written note filed by the respondents' counsel argued that the claims/reliefs prayed for in OA are delayed and stale and disposal of representation will not be a fresh cause of action as per the judgment in the case of P.Venkatesh (supra), S.M.Kotrayya (supra) and Brijesh Kumar (supra). It is also stated that as per circular dated 10.3.2003 (Annexue-6 of the OA0. The relaxation claimed is not applicable for the results finalized between 27.7.1997 and 3.10.2000 (vide Clause 3(iii) of the said circular). It is pointed out that the circular dated 10.3.2003 has not been challenged in the OA.

11. Learned counsel for the applicant has cited the judgment dated 6.9.1984 of Hon'ble Apex Court in the case of S.S.Rathore (supra) in which it was held that the cause of action arises first when the higher authority passes order on appeal or representation. It was a case of disciplinary proceeding and the issue was whether the limitation will apply from date of the order of the disciplinary authority or from the date of order of the appellate authority. The cited judgment is distinguishable since for disciplinary matters, there is statutory provision for appeal. Further, respondents have stated that the applicants remained silent for about 16 years after appearing in the DCE in 1999 before approaching authorities. Clearly, the cited case is factually distinguishable.

12. Learned counsel for the applicant has cited the judgment dated 15.7.2014 of Hon'ble Apex Court in the case of Rohtas Bhankar (supra) in which the OM dated 22.7.1997 withdrawing relaxed criteria for SC/ST candidates was declared illegal. In that case, the examination in question was held in 1996 and it was held that the relaxation is qualifying criteria for SC/ST candidates will be applicable for such examination in view of the amendment of the Constitution of India. In this case, the affected employees had approached the Tribunal within stipulated time and there was no delay on the part of the employees.

13. Learned counsel for the respondents cited the judgment of Hon'ble Apex Court in the case of P.Venkatesh (supra) in which it was held that there was delay when application for compassionate appointment was made and subsequent orders of the Tribunal to consider and dispose of the representation cannot obliterate the effect of initial delay. In the case of Brijesh Kumar (supra), the issue considered was the delay of about 10 years in filing appeal under the Land Acquisition Act. It was held that when a person approaches belatedly for grant of similar benefit allowed in another case, the question of delay and laches have to be considered with reference to the grounds furnished and in the cited case, such grounds were not found sufficient to condone delay.

14. We have considered the pleadings and submissions by both the parties and also perused the judgments cited by the learned counsels for the parties. In this case, the applicant had appeared in the DCE held in 1999, in which the stipulations did not include any relaxation in qualifying criteria for SC/ST candidates. As per law at that time, there was no provision for such relaxation. Hence, the applicant cannot be blamed for not moving the authorities for relaxation in qualifying criteria. But when Hon'ble M.P. High Court allowed such benefit to other similarly placed candidates, vide judgment dated 6.8.2014, the applicant got a scope to move. It was held by Hon'ble M.P. High Court that SC/St candidates were entitled for relaxed criteria as per the

circular dated 5.6.1997. The applicant moved the authorities for similar benefit. It will not be fair to say that applicant had a cause of action in this regard to move the authorities for relaxed norms prior to 6.8.2014. Hence, we consider that for the applicant, the cause of action arose on 6.8.2014 after passing of the judgment of Hon'ble M.P. High Court. The applicant had moved a representation dated 28.4.2016 (Annexure-12 of the OA) to the authorities. As stated in Annexure-9 of the OA, the respondents filed Review petition before Hon'ble High Court and then SLP before Hon'ble Apex Court challenging the order dated 6.8.2014 (Annexure-8). Hon'ble Apex Court vide order dated 30.7.2015, dismissed the SLP on the ground of delay as well as on merit. In view of facts above, the applicant cannot be termed as a fence sitter since prior to orders dated 6.8.2014 and 30.7.2015, he did not have any legal provision under which he could have moved the authorities. Hence, we are unable to agree with the contention of the respondents that this OA is barred by limitation or delay.

15. In the cases cited by learned counsel for the respondents, the concerned persons had necessary remedies under law to pursue their respective claims within the stipulated time, but they had delayed for no satisfactory reason. The facts and circumstances in the present case are different since the applicant had no legal recourse available to him to move the authorities for extending the benefit of relaxed criteria till the judgment dated 6.8.2014 was passed by Hon'ble High Court which was upheld after dismissal of SLP on 30.7.2015. Hence, we are of the view that the present OA is not barred by limitation.

16. The other argument of the respondents was that the applicant did not challenge the circular dated 10.2.2003, which stipulated that the relaxed criteria will apply to the examination held in the year 2000. There is no explanation in the said circular as to why the relaxation will be applicable only for 2000 examination and not 1999 examination. The respondents have also averred that the facts in the case before Hon'ble M.P. High Court are different from the present OA. But how the facts are different in two cases have not been

explained in the counter. In the case before Hon'ble M.P. High Court, the issue was applicability of relaxed norms for SC/ST candidates who had appeared in the DCE held in 1999 for promotion to the post of JTO. The issue in this OA is also the same. Hence, we are of the view that the order dated 6.8.2014 of Hon'ble M.P. High Court (Annexure-8) will be squarely applicable to the present OA, which is not barred by limitation as discussed earlier. Accordingly, the applicants are entitled for similar relief as allowed by Hon'ble M.P. High Court vide order dated 6.8.2014 (Annexure-8).

17. In the circumstances as discussed above, order dated 4.8.2016 (Annexure-14) rejecting the representation of the applicant is set aside and quashed and the respondents are directed to consider the case of the applicant with regard to the performance in the DCE held on 1999 by applying the relaxed qualifying criteria in accordance with the order dated 6.8.2014 of Hon'ble M.P. High Court in the case of R.D.Choudhury & Others -vs- Union of India & Others (Annexure-8 of the OA) and consider grant of promotion to the applicant if found eligible subject to availability of vacancies in reserved category and pass consequential order as per law.

18. The OA No. 716/2016 alongwith other two linked OAs are allowed to the extent as mentioned above. There will be no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

I.Nath