

GAHC010213652018



THE GAUHATI HIGH COURT AT GUWAHATI
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)

Writ Petition (Civil) No.6967/2018

1.PRABHAT CHANDRA DAS AND 10 ORS.

H/R NO. 199309869, SON OF LATE PUSPA RAM DAS, OFFICE
SUPERINTENDENT (T), OFFICE OF THE GENERAL MANAGER, BSNL,
KAMRUP TELECOM DISTRICT, PANBAZAR, GUWAHATI-1, ASSAM.

2. DHIREN HAZARIKA

H/R NO. 19800476
SON OF SRI JADAV CH. HAZARIKA
SR. TOA (RETD.)
OFFICE OF THE SDE (CENTRAL) BSNL
P.O. AND DIST.- SIVASAGAR ASSAM- 785640

3. ABANI MOHAN DAS

H/R NO. 198210213M SON OF LATE PARIMAL DAS
OFFICE SUPERINTENDENT (P)
OFFICE OF THE SDE (CCN) PAGLASTHAN
PO AND DIST- BONGAIGAON ASSAM- 783380

4. JUGADHAR GOGOI

H/R NO. 198215745
S/O LATE BINDESWARH GOGOI
OFFICE SUPERINTENDENT (P)
OFFICE OF THE GMTD DIBRUGARH
PO AND DIST- DIBRUGARH ASSAM- 786001.

5. AMULYA KR. ROY

H/R NO. 199103348

S/O LATE BATIRAM ROY
OFFICE SUPERINTENDENT (G)
OFFICE OF THE SDE (GR.) PATHSALA
DIST- BARPETA ASSAM- 781325.

6. SALEH MD. MIZANUR RAHMAN
H/R NO. 199103205
S/O LATE REAZUDDIN AHMED
JTO (EXTL AND GROUP)
OFFICE OF THE SDE (EXTL AND GROUP)
PAGLASTHAN PO AND DIST- BONGAIGAON
ASSAM- 783380.

7. BIPLAB KR. DEB SINGHA
H/R NO. 199003107
S/O LATE PRADIP KR DEVSINGHA
OFFICE SUPERINTENDENT (G)
OFFICE OF THE GMTD BSNL BONGAIGAON
PO AND DIST- BONGAIGAON ASSAM- 783380.

8. NAGEN KR. SARMA
H/R NO. 199103221
S/O LATE RAMESH CH. SARMA
OFFICE SUPERINTENDENT (G) BONGAIGAON
OFFICE OF THE GMTD B.T. ROAD
PO AND DIST- BONGAIGAON ASSAM- 783380.

9. NIRANJAN BASUMATARY
H/R NO. 199208002
S/O LATE BIMAL CHANDRA BASUMATARY
LDC OFFICE OF THE SDE DHALIGAON
DIST- CHIRANG ASSAM- 783385.

10: RAMESH CHANDRA RAY
H/R NO. 199003123
S/O LATE SARBESWAR RAY
OFFICE SUPERINTENDENT (G)
OFFICE OF THE SDE (EXTT AND GR.)
PAGLASTHAN PO AND DIST- BONGAIGAON
ASSAM- 783380.

11: BAIKUNTHA RAM DAS
H/R NO. 199103231
S/O LATE RUPSING DAS
OFFICE SUPERINTENDENT (G)
OFFICE OF THE SDE (CCNI) BSNL
PO- BARPETA TOWN DIST- BARPETA
ASSAM- 781315.

..... **Petitioners**

-Versus-

1. THE UNION OF INDIA AND 25 ORS.

REP. BY THE CHAIRMAN CUM MANAGING DIRECTOR, BSNL CORPORATE
OFFICE, BSNL BHAWAN, JANAPATH, NEW DELHI-1.

2. THE BHARAT SANCHAR NIGAM LIMITED

DEPUTY DIRECTOR GENERAL (PER)
BSNL CORPORATE OFFICE
BSNL BHAWAN JANAPATH NEW DELHI-1.

3. THE CHIEF GENERAL MANAGER BSNL

ASSAM CIRCLE GUWAHATI
DISTRICT KAMRUP(M) ASSAM- 781001.

4. SANKAR DAS JTO

OFFICE OF THE GMTD SILCHAR
DIST. CACHAR ASSAM- 788001.

5. SASWATI SEN JTO

OFFICE OF THE GMTD SILCHAR
DIST. CACHAR ASSAM- 788001.

6. SURAJ BHATTACHARJEE JTO (RETIRED)

OFFICE OF THE GMTD BSNL BHAWAN
SILCHAR DIST. CACHAR ASSAM- 788001.

7. BIMAL BARMAN AO

OFFICE OF THE CGMT
BSNL BHAWAN PANBAZAR
DIST- KAMRUP(M) ASSAM- 781001.

8. RANJIT KR. DAS AO
OFFICE OF THE CGMT
ASSAM CIRCLE BSNL BHAWAN
PANBAZAR GUWAHATI
DIST- KAMRUP(M) ASSAM- 781001.

9. PABAN CH. MAHANTA JTO(PLG)
OFFICE OF THE CGMT
BSNL BHAWAN TEZPUR
DIST. SONITPUR ASSAM- 784001.

10:KAMAL CH. BARMAN
JTO (RECRUITMENT)
OFFICE OF THE CGMT
BSNL BHAWAN GUWAHATI
DIST- KAMRUP(M) ASSAM- 781001.

11. MRITUNJAY KUNDU AO
OFFICE OF THE GMTD BSNL
BONGAIGAON DIST- BONGAIGAON
ASSAM PIN- 783380.

12. INDRESWAR GOGOI JTO
OFFICE OF THE GMTD BSNL
TEZPUR DIST- SONITPUR ASSAM- 784001.

13. ARUN CH. GAYAN JTO
OFFICE OF THE GMTD BSNL
NAGAON DIST- NAGAON ASSAM- 782001.

14. ARUN KR. PUZARI
SR. TOA (G) RETIRED
OFFICE OF THE CGMT BSNL BHAWAN
GUWAHATI ASSAM- 781001.

15. BIPUL KR. DEB ROY JTO
OFFICE OF THE GMTD BSNL
NAGAON DIST- NAGAON ASSAM- 782001.

16:BINU BHUYAN

OFFICE OF THE CGMT

ASSAM CIRCLE BSNL BHAWAN

PANBAZAR DIST- KAMRUP(M) ASSAM- 781001.

17. ANUPAM CHAKRABORTY JTO

TERM CELL BSNL BHAWAN

PANBAZAR DIST- KAMRUP(M) ASSAM- 781001.

18: ASIMA DEVI JTO

OFFICE OF GMDT BSNL

SILCHAR DIST- CACHAR

ASSAM PIN- 788001.

19. SONESWAR BORO JTO

OFFICE OF CGMT

ASSAM CIRCLE BSNL BHAWAN

PANBAZAR DIST- KAMRUP(M) ASSAM- 781001.

20. SUMITRA BORO JTO

TELEPHONE EXCHANGE

PANBAZAR GUWAHATI

DIST- KAMRUP(M) ASSAM- 781001.

21. GAUTAM DAS AD

BORJHAR P.O- BORJHAR

DIST- KAMRUP(M) ASSAM PIN- 781015.

22. ANISUR RAHMAN KHAN

SDE(GROUP-II) OFFICE OF THE GMTD BSNL NAGAON

DIST- NAGAON ASSAM- 782001.

23:JYOTISH BAISHYA

ADT (WELFARE)

OFFICE OF THE CGMT

ASSAM CIRCLE BSNL BHAWAN

PANBAZAR DIST- KAMRUP(M) ASSAM- 781001.

24:AIZUDDIN AHMED SDE (CCN)

TELEPHONE EXCHANGE

NAYAPARA DIST- GOALPARA ASSAM- 783101.

25:BIKASH BARAN DEY

JTO (LEGAL)

OFFICE OF THE CGMT BSNL BHAWAN

ASSAM TELECOM CIRCLE

PANBAZAR DIST- KAMRUP(M) ASSAM- 781001.

26:MD. SAFIQUR RAHMAN

JTO (RETD.)

SADHI BORA PATH

NEAR RAIL GATE

NAGAON ASSAM PIN- 782001

.....**Respondents**

– **BEFORE** –

HON'BLE THE CHIEF JUSTICE MR. VIJAY BISHNOI

HON'BLE MR. JUSTICE KARDAK ETE

For the Petitioner(s) : Ms. S. Nath, Advocate.

For the respondent(s) : Mr. B. Pathak, Advocate for
respondent nos. 1 to 3

Date of Hearing & Judgment : 20.08.2024.

JUDGMENT & ORDER (ORAL)

[Vijay Bishnoi, CJ]

This writ petition is filed by the petitioners being aggrieved with the order dated 21.09.2017 passed by the Central Administrative Tribunal (CAT), Guwahati

Bench, Guwahati, (hereinafter to be referred as the "Tribunal") in Original Application No.328/2015, whereby the Original Application filed on behalf of the petitioners and some other similarly situated persons, has been dismissed. However, the Tribunal has observed that it is open for the official respondents to consider accommodating the petitioners against the vacant posts of Junior Telecom Officer (JTOs), if any, in the Assam Telecom Service Circle, in view of the fact that they have already served as JTOs for over nine years.

2. The brief facts of the case are that the petitioners were initially appointed as Telecom Operating Assistant (in short, "TOA") during the year 1982 to 1993 in the Department of Telecom. Subsequently, the petitioners were promoted to the post of Senior Telecom Operating Assistant (in short, "Sr.TOA").

Pursuant to the selections that took place in the year 2003, the petitioners were promoted to the post of Junior Telecom Officer (in short, "JTO") while granting relaxation against the carry forward vacancies of the year 1999 under 15% quota earmarked for the Departmental/in-service candidates. As per the petitioners, they have undergone Pre-Basic Training for 4(four) weeks, Phase-I training for 16 (sixteen) weeks and Field Training for 4(four) weeks which were followed by Phase-II Training on specialization for a period of 14 (fourteen) weeks and after completion of the said Training, the petitioners along with some other persons were appointed on the post of JTO at different places within the Assam Telecom Circle. Vide orders dated 01.06.2024, 04.06.2024 and 07.07.2024, respectively.

3. It appears that being aggrieved with the promotion of the petitioners, some employees working as Telecom Operating Assistant (TOA) have challenged their

promotion and other similarly situated persons by filing writ petition, being WP(C) No. 7423/2003, 7222/2003 and 8583/2003 before this Court. It is to be noticed that in WP(C) No.7423/2003, the petitioners and other similarly situated persons were also impleaded as respondent Nos. 4 to 26. However, despite service of notice of the writ petition, the petitioners have not appeared and have not contested the writ petition.

It is also to be noticed that the TOA's, who have filed the above referred writ petitions are the candidates who have participated in the process took place in the year 1999 for promotion to the post of JTO but could not be selected. They raised as grievance before the Writ Court that though the petitioners were granted relaxation as per the office circular dated 10.03.2003 but relaxation was not granted to them despite the fact that they are also entitled for relaxation as provided in the said office circular.

The learned Single Judge of this Court, vide judgment dated 15.05.2007, has disposed of the writ petitions filed by those persons, and issued a direction to the respondent authorities to apply the relaxed standards prescribed by the office Circular dated 10.03.2003, i.e. 30% uniform marks for both categories of candidates to the examination of the year 1999 and on that basis to determine the entitlement of the persons who would be eligible for promotion to the vacancies that existed at that point of time, which are stated to be 23 in number.

The learned Single Judge has further ordered that, if any of the respondent Nos.4 to 26, including the petitioners, are not found to be entitled for their promotional posts, orders will be passed by the respondents to the above effect.

4. It is to be noticed that the judgment dated 15.05.2007 has not been challenged by the petitioners or other similarly situated persons. However, the Bharat Sanchar Nigam Limited (in short, "BSNL") which was constituted in the year 2000, has challenged the said decision of the learned Single Judge by way of filing Writ Appeal No.353/2007 before the Division Bench of this Court.

This Court, vide order dated 23.06.2011, has refused to interfere with the order dated 15.07.2007 passed by the learned Single Judge and has dismissed Writ Appeal No.353/2007.

5. Being aggrieved with the same, the BSNL has filed an SLP before the Hon'ble Supreme Court. However, the same has also been dismissed vide order dated 08.02.2013.

6. After dismissal of the SLP, the BSNL has issued an order dated 19.07.2013, whereby the petitioners along with the similarly situated persons, were reverted back to the post of Telecom Operating Assistant.

7. Being aggrieved with the order dated 19.07.2013, the petitioners have approached the CAT by way of filing Original Application No. 301/2013. However, the said Original Application came to be disposed of vide order dated 27.03.2015, whereby the Tribunal has remanded the matter to the BSNL to take a decision as per the meeting held on different dates regarding absorption of the petitioners on the post of JTO.

8. Pursuant to the direction given by the Tribunal, the BSNL has considered the cases of the petitioners for their absorption on the post of JTO. However,

vide order dated 13.08.2015, the BSNL has declined to grant any relief to the petitioners.

The order dated 13.08.2015 is reproduced herein under:-

“Whereas, Shri Prabhat Chandra Das and 13 others filed an Original Application in the Hon'ble Central Administrative Tribunal, Guwahati Bench vide OA No. 301/2013. The Hon'ble Tribunal was pleased to pass an order on 27-03-2015 and thereby directed the authorities of BSNL to consider the case of the said applicants as per law and also in view of the discussion held by the GM(Estt), Corporate office on 5-02-2014 with live Sanchar Nigam Executive Association (India) (referred to as 'SNEA (1)'. ”

Whereas, the matter was examined and considered by the competent authority at Corporate Office, New Delhi and has decided not to accede to the claim of the petitioners for relaxation in qualifying standards for the limited departmental competitive examination under 15% quota held in Assam Circle in the year 2001 keeping in view the following facts and decisions:

- 1. For that the Hon'ble Guwahati High Court in WP(C) No. 7423, 7222 arc 8583/2003 dated 15.5.2007 has held that the relaxation shall be available only for the examination held in 1999 and riot for the examination held in 2001.*
- 2. For that the Hon'ble Supreme Court in SLP(C), CC 20410-20411/2012 dated 8-02-2013 has dismissed the SLP and directed the BSNL to implement the direction given by the Hon'ble High Court.*
- 3. For that the aforesaid Hon'ble Courts did not take the cognizance of the order of DE Branch dated 22-07-2003, in which it was conveyed that "the examination held by the Assam Circle in the year 2001 would qualify for the relaxation as no examination was held in the year 2000 by the Circle."*
- 4. For that DE Branch vide its even No. letter dated 10-03-2003 had conveyed that "the relaxation would be applicable to either of the examinations held in the year 1999 or in the year 2000, whichever is later but not to both the examinations." Accordingly, the direction given by the Hon'ble Guwahati High Court has been implemented.*
- 5. For that if the case of petitioners is considered as per the direction of the order of the Hon'ble Central Administrative Tribunal, Guwahati Bench as in OA No. 301/2013,*

than it would be contradictory to the order passed by the Hon'ble High Court as stated above and upheld by the Hon'ble Supreme Court.

6. For that there are similarly situated persons who had appeared either in the examinations held in the year 1999 or 2000 or 2001 may also claim for the relaxation for the examination for which they have appeared, which at this juncture (after 15 years) is not acceptable and would lead to various legal complications.

7. For that the meetings held by SNEA (I) on different dates (as mentioned by the Hon'ble Central Administrative Tribunal, Guwahati Bench with the GM(Estt.) were of routine nature and the Association was told that the matter would be examined as per the extant rules and Courts orders.

8. For that the Hon'ble Guwahati High Court in WP(C) No.7423, 7222 and 8583/2003 directed that:

a) The Examination held in the year 1999 only would qualify for relaxation in qualifying standards.

b) The examination held in the year 2001 would not qualify for relaxation in qualifying standards.

In view of the above facts and legal position, the case of the applicants in OA No. 301/2013 cannot be acceded to and accordingly this order has been passed.

That this issues with the approval of the Corporate office, New Delhi."

9. Being aggrieved with the order dated 13.08.2015 passed by the Tribunal, the petitioners had again approached the Tribunal by way of filing Original Application No.328/2015. However, the said O.A. was dismissed vide the impugned order dated 21.09.2017 and being aggrieved with the same, the petitioners have filed this writ petition.

10. The learned counsel for the petitioners has argued that the respondent

BSNL ought to have taken into consideration the fact that the petitioners have worked as JTO for a period of 9(nine) years and have acquired sufficient experience and, therefore, they are liable to be accommodated to the post of JTO. It is submitted that despite several vacancies being available in the cadre of JTO with BSNL, the cases of the petitioners for absorption to the post of JTO has been illegally rejected. It is contended that the learned Tribunal has also not taken into consideration this aspect of the matter and has illegally denied to grant relief to the petitioners. It is, therefore, prayed that the writ petition may kindly be allowed and the respondent BSNL be directed to absorb the petitioners on the post of JTOs which are lying vacant with them.

11. Per contra, the learned counsel appearing for the BSNL has vehemently opposed the writ petition and has argued that, as a matter of fact, the matter regarding promotion to the petitioners on the post of JTO has already attained finality with the decision passed by this Court as well as the Hon'ble Supreme Court in SLP. It is contended that the petitioners have chosen not to contest the case before the High Court or the Hon'ble Supreme Court and in such circumstances, the relief prayed for by them to absorb them on the post of JTO cannot be granted.

12. The learned counsel for BSNL has further submitted that as a matter of fact this writ petition is filed by 11(eleven) petitioners, out of which, one Shri Prabhat Chandra Das has already expired on 09.10.2019, whereas, petitioner No.2, Shri Dhiren Hazarika, has superannuated on 03.04.2015 and so far as, the other petitioners, namely, Shri Abani Mohan Das, Shri Jugadhar Gogoi, Shri Amulya Kr. Roy, Shri Biplab Kr. Deb Singha, Shri Nagen Kr. Sarma, Shri Niranjana Basumatary, Shri Ramesh Chandra Ray and Shri Baikuntha Ram Das are

concerned, they have already taken VRS in the year, 2019. It is submitted that the petitioner, Saleh Md. Mizanur Rahman, has already been granted promotion on the post of JTO on 22.05.2017 and therefore, practically in view of the above situation, no relief can be granted to the petitioners.

13. Heard the learned counsel for the parties and perused the materials available on record.

14. It is not in dispute that the matter regarding promotion of the petitioners on the post of JTOs while granting them relaxation was dealt with by this Court way back in the year, 2007. This Court has found that the promotion granted to the petitioners to the post of JTOs was not in accordance with law and therefore, a direction was issued to revisit the promotion exercise. In the said exercise, the petitioners were found not suitable for promotion to the post of JTOs in the year, 2003. It is also to be noticed that the decision of the learned Single Judge of this Court in the matter of promotion of the petitioners has attained finality up to the Hon'ble Supreme Court and the petitioners have not challenged the same at any point of time. Though, in the year, 2015, the Tribunal has issued a direction to the respondent BSNL to consider the representation of the petitioners for their absorption to the post of JTOs but the respondent BSNL has rejected the said prayer of the petitioners by passing the order dated 13.08.2015, which is reproduced in the earlier part of this order. Considering the said facts and circumstances of the case, the Tribunal has held that no fault could be found in the decision of the BSNL for not absorbing the petitioners on the post of JTOs.

15. Having gone through the material available on record, we do not find any illegality in the impugned order passed by the Tribunal. Hence, no interference is called for.

Otherwise also, all the petitioners except petitioner No.6, namely, Saleh Md. Mizanur Rahman has already retired from the service and Petitioner No.1, namely, Shri Prabhat Chandra Das, has already expired. It is also to be noticed that petitioner, namely No.6, Saleh Md. Mizanur Rahman has already been granted promotion on the post of JTO in the year, 2017.

16. In view of the above facts also no direction can be issued to absorb the petitioners on the post of JTO from retrospective effect. Resultantly, we do not find any merit in this writ petition and the same is, therefore, dismissed.

JUDGE

CHIEF JUSTICE

Comparing Assistant