

In the High Court of Judicature at Madras

Reserved on: 09.03.2015
Delivered on: 26.03.2015

CORAM:

The Hon'ble Mr.Justice V.RAMASUBRAMANIAN

and

The Hon'ble Mr.Justice P.R.SHIVAKUMAR

W.P.Nos.15509, 20660 and 22162 of 2014
and all connected pending MPs

1. Sanchar Nigam Association of Telecom
Technical Assistants, Tamil Nadu Circle
rep. by its President.

2. D.Selva Ganesan, Vice President,
Sanchar Nigam Association of
Telecom Technical Assistants,
Tamil Nadu Circle.

... Petitioners in WP.No.
15509/2014; R4 & R5 in
WP.No.20660/2014; & R6
& R7 in WP.22162/2014

3.Poongodi
4.S.Manuel Paulraj
5.S.C.Rajeswaran
6.S.Prabhakaran
7.A.Kaliya Perumal
8.R.Rangarajan
9.K.Vijayakumar
10.S.Saravana Murthy
11.G.Ravikumar
12.R.N.Ramanujam

... Petitioners in WP.No.
22162/20914

Vs

1. The Union of India rep. by its Chairman &
Managing Director, Bharat Sanchar Nigam
Limited, New Delhi - 110 001.

2. The Chief General Manager, Tamil Nadu
Circle Bharat Sanchar Nigam Limited,
No.80, Anna Salai, Chennai-600 002.

3. The General Manager,
Bharat Sanchar Nigam Limited,
Dharmapuri Division, Dharmapuri 636 701. ... Respondents 1 to 3 in
WP.Nos.15509 & 22162/
2014 & Petitioners 1 to 3
in WP.No.20660 /2014
- 4.R.Ramasundaram
5.P.Chennan ... Respondents 4 & 5 in
WP.Nos.15509 & 22162/
2014 & Respondents 1 & 2
in WP.No.20660/2014.
6. The Registrar, Central Administrative
Tribunal, Chennai Bench, Chennai. ... R6 in WP.15509/2014;
R3 in WP.20660/2014; &
R8 in WP.22162/2014

Writ Petitions filed under Article 226 of the Constitution of India:

Prayer in W.P.Nos.15509 & 22162/2014 is: for the issue of a Writ of Certiorarified Mandamus, calling for the records relating to the order dated 2.5.2014 in O.A.No.587 of 2013 on the file of the Central Administrative Tribunal, Chennai Bench, quash the same and consequently direct the respondents 1 to 3 herein to publish the results pursuant to the examination conducted on 2.6.2013 vide notification dated 28.2.2013 in Notification No.RET/74-11/2013 and grant appointment orders to (i) the Members of the first Petitioner Association (in WP.No.15509 of 2014) and (ii) the petitioners (in WP.No.22162 of 2014) as JTOs as per the results in the examination.

Prayer in W.P.No.20660/2014 is: for the issue of a Writ of Certiorari, calling for the records of the third respondent culminating in the impugned order dated 2.5.2014 in O.A.No.587 of 2013 and quash the same.

For Petitioners in both
WP.Nos.15509 & 22162 of 2014 : Mr.AR.L.Sundaresan for
M/s.AL.Gandhimathi

For Respondent - 1 in both
WP.Nos.15509 & 22162 of 2014 : Mr.N.Ramesh, CGSC

For Respondents-2 & 3 in both
WP.Nos.15509 & 22162 of 2014 &
Petitioners in WP.No.20660 of 2014 : Mr.M.Vaidyanathan,
Standing Counsel

For Respondents-4 & 5 in both
WP.Nos.15509 & 22162 of 2014 : Mr.C.K.Chandrasekar

For Respondents 1 & 2 in
WP.No.20660 of 2014 : Mr.S.Vijay Narayan, S.C.
Mr.G.B.Saravanabhavan

For Respondents 4 & 5 in
WP.No.20660 of 2014 & : Mr.S.Vinothsathiyalazer

RR6 & 7 Service awaited
R8 - Tribunal in WP 22162/14

R6 - Tribunal in WP 15509

COMMON ORDER

V.RAMASUBRAMANIAN, J

These writ petitions arise out of a common order passed by the Central Administrative Tribunal, Madras Bench, Chennai, in a batch of Original Applications filed by persons holding the substantive posts of Telecom Technical Assistants (TTA) (hereinafter called the TTAs), but who are officiating in the post of Junior Telecom Officers (hereinafter called the JTOs).

2. We have heard Mr.AR.L.Sundaresan, learned Senior Counsel appearing for the Association of Telecom Technical Assistants of the Tamil Nadu Circle, Mr.N.Ramesh, learned Central Government Standing Counsel appearing for the Union of India, Mr.M.Vaidyanathan, learned Standing Counsel appearing for the BSNL and Mr.C.K.Chandrasekar, learned counsel appearing for the contesting respondents, who were applicants before the Tribunal.

3. What was once the Department of Telecommunications, was split and a Public Sector Undertaking by name Bharat Sanchar Nigam Limited (hereinafter called the BSNL) was created from out of the said department with effect from 1.10.2000. Persons, who were employees of the Department of Telecommunications, were given the option to join the newly created company, subject to certain terms and conditions.

4. Before the creation of the BSNL, the Department of Telecommunications had several categories of employees, who were classified into four groups namely Groups-A, B, C and D. While posts in Group-A and B were executive posts, the posts in Group-C and D were non-executive posts. The post of Junior Telecom Officer was a Non-Gazetted Non-Ministerial Group-C post and the recruitment to the

said post was earlier governed by a set of rules known as Junior Telecom Officers Recruitment Rules, 1996, published on 8.2.1996 in the Gazette of India. These Rules were issued in exercise of the powers conferred by the Proviso to Article 309 of The Constitution.

5. As per the Schedule to those 1996 Rules, recruitment to the post of JTOs was both by the method of direct recruitment as well as by the method of promotion/transfer. 50% of the posts were to be filled up by way of direct recruitment and we are not concerned with the same.

6. As per the 1996 Rules, promotion/transfer of departmental candidates under the 50% quota for recruitment to the post of JTOs was regulated as follows:-

(a) 15% by promotion of departmental candidates through a limited departmental competitive examination; and

(b) 35% by promotion/transfer of Transmission Assistants/Wireless Operators/Auto Exchange Assistants/Phone Inspectors/Telecom Technical Assistants.

7. In other words, 50% quota reserved for departmental candidates was to be filled up partly by conducting a limited departmental competitive examination and partly by way of promotion, after undergoing a screening test.

8. The 1996 Rules were repealed and new set of rules known as Junior Telecom Officers Recruitment Rules, 1999 were issued and published in the Gazette of India on 31.8.1999. They came into effect on 1.9.1999.

9. Under the 1999 Rules, 50% of the posts of JTOs had to be filled up by way of direct recruitment and 50% had to be filled up by way of promotion. Out of the quota intended for promotion, 35% was to be filled up through a limited departmental competitive examination from amongst certain categories of Group-C employees possessing certain qualifications such as Bachelors Degree in Engineering or Science or a three year Diploma in certain branches of Engineering with 10 years of regular service. The remaining 15% was to be filled up through a limited departmental competitive examination from amongst certain other categories of Group-C employees possessing a different set of qualifications such as Higher Secondary Course, a three year Diploma in Engineering and 10 years of service.

10. In other words, the most important amendment made in the 1999 Rules was to introduce a departmental competitive examination even for the 35% quota by way of promotion.

11. It appears that despite the issue of the 1999 Rules prescribing a competitive examination for promotion both under the 35% quota and under the 15% quota, the Department conducted a screening test on 23.4.2000. It also appears that the contesting respondents herein, who were allowed to take the screening test, were made to give an undertaking in writing that they would be considered only as against the vacancies that arose prior to 31.8.1999. The contesting respondents participated in the screening test after, admittedly, executing letters of undertaking.

12. On 1.10.2000, the BSNL was born. The contesting respondents exercised option to be absorbed in the newly created company. However, the exercise of option and their absorption into the BSNL were followed by a series of discussions held between the Management of the BSNL and three Federations of employees' union. The Board of Directors of the BSNL, by its decision dated 9.11.2000, empowered the Management to negotiate with the Trade Unions. Accordingly, a meeting was held between the representatives of the Management and the Office Bearers of the federations of the trade unions on 2.1.2001. It was agreed in the said meeting that the Service Rules of the absorbed employees will be finalised in the context of the Standing Orders issued under the Industrial Employment (Standing Orders) Act, 1946 and that till the Service Rules are framed, the existing Service Rules would apply, in tune with Rule 13B of the Standing Orders.

13. Thereafter, a set of Rules known as Junior Telecom Officers Recruitment Rules, 2001 was issued by the BSNL, on 26.9.2001. As per these Rules, the post of JTOs was to be filled up both by way of direct recruitment and by way of promotion. A quota of 50% each was prescribed for direct recruitment and for promotion. Promotion under the 50% quota was regulated almost on identical lines as was done under the 1999 Rules. 35% was to be filled up by promotion through limited internal competitive examination from amongst those working in Group-C posts with certain qualifications and experience. The remaining 15% was to be filled up by promotion through limited internal competitive examination from amongst another set of Group-C employees.

14. In other words, even the 2001 Rules made it mandatory to hold a limited internal competitive examination for selection of candidates both under the 35% quota and under the 15% quota. This prescription was in tune with what was provided in the 1999 Rules.

15. But unfortunately, no limited departmental competitive examination was ever conducted for a full period of 14 years, either after the issue of the 1999 Rules on 31.8.1999 or after the issue of the 2001 Rules with effect from 26.9.2001. No direct recruitment also

took place. Therefore, the Department started granting officiating promotions, only on the basis of seniority.

16. The contesting respondents in these writ petitions were made to officiate as JTOs, from the year 2005-06. As if to drive home the point that it was only an officiating arrangement, the Management gave them a break for one day once in 180 days. But, the officiating arrangements continued for a period of more than 7 years.

17. All of a sudden, the Management issued a circular dated 28.2.2013, proposing to conduct a limited departmental competitive examination on 2.6.2013 for filling up the 35% as well as 15% quota intended for promotion/transfer. Therefore, fearing the possibility of reversion in the event of their failure to pass the limited departmental competitive examination, a group of persons officiating in the post of JTOs filed a batch of Original Applications before the Central Administrative Tribunal, Madras Bench, Chennai. All the applications were allowed to a limited extent by a common order dated 2.5.2014. The limited relief granted by the Tribunal to the applicants before the Tribunal was that persons officiating as JTOs may be absorbed only as against vacancies that arose before 26.9.2001, the date of issue of the fresh Recruitment Rules. Aggrieved by the said common order, the Management of the BSNL has come up with one writ petition. The association of TTAs has come up with another writ petition and a few individuals have come up with the third writ petition.

18. The main plank of the argument of the writ petitioners is (i) that after the advent of the 1999 Recruitment Rules issued on 31.8.1999, the post of JTOs cannot be filled up, except after holding a limited departmental competitive examination, in so far as 50% quota for promotion is concerned; (ii) that the screening test conducted on 23.4.2000 was only for the purpose of filling up vacancies that arose before the issue of the 1999 Recruitment Rules and hence, the original applicants before the Tribunal, who had given an undertaking not to lay a claim for the vacancies that arose after 1.9.1999, cannot turn around and lay a claim in respect of the vacancies that arose during the period from 1.9.1999 to 26.9.2001; and (iii) that officiating arrangement in a post, however long it may be, will not confer a right for regularization, especially when the Recruitment Rules prescribe a particular method of recruitment.

19. However, the contentions of the original applicants before the Tribunal, (who are the contesting respondents herein) are (i) that the employees of the erstwhile Department of Telecommunications, whose terms and conditions of service were originally governed by the Statutory Rules, issued in exercise of the power conferred by the

Proviso to Article 309 of The Constitution, became employees of a company and hence, their terms and conditions of service had to be determined on the basis of the bipartite settlement and the Model Standing Orders; (ii) that in the joint meetings held between the federations of the trade unions and the Management, an agreement was reached on 2.1.2001 to safeguard the interests of the employees and hence, the Recruitment Rules cannot be put against these employees; (iii) that this was a case where the quota rota system failed, as highlighted by the decision of the Punjab and Haryana High Court and hence, the long officiating arrangement would confer a right upon these employees at least to seek absorption against vacancies that arose prior to 26.9.2001; and (iv) that in any case, the association of TTAs and a few individuals, who have come up with the writ petitions, were not even in service before 2001, so as to lay a claim against the vacancies that arose prior to 26.9.2001.

20. We have carefully considered the rival submissions.

21. Before proceeding to consider the rival contentions, it is necessary to take note of certain fundamental aspects. They are as follows :

(a) The original applicants before the Tribunal, who are the contesting respondents herein, until 1-10-2000, were the employees of the Department of Telecommunications of the Government of India. Therefore, their right, eligibility and entitlement to promotion to the post of JTOs, were governed by a set of rules issued on 8.2.1996 in terms of the Proviso to Article 309 of The Constitution. As per these rules, 50% of the post of JTOs was to be filled up by the method of direct recruitment. The remaining 50% is to be filled up partly through a limited departmental competitive examination and partly by the method of promotion. To be precise, 15% out of the 50% quota for promotion, could be filled up through a departmental competitive examination. The remaining 35% is to be filled up only by way of promotion, subject only to a screening test. The relevant portion of the 1996 Rules reads as follows :

"(1) 50% by promotion/transfer of departmental candidates referred to in item (ii) column 11 will be regulated as under :

(ii) 15% by promotion of departmental candidates through a competitive examination;

(ii) 35% by promotion/transfer of Transmission Assistants/Wireless Operators/Auto Exchange Assistants/Phone Inspectors/Telecom Technical Assistants." and

"35% transfer/promotion from amongst -

(a) the Phone Inspectors/Auto Exchange Assistants/Transmission Assistant/Wire Operator,

who possess the qualification prescribed in column 8 and have completed 5 years regular service in the cadre of Phone Inspector/Auto Exchange Assistant/Transmission Assistant/Wireless Operator

(b) the Phone Inspectors/Auto Exchange Assistant/Wireless Operators/Transmission Assistant/ Telecom Technical Assistants, who possess the High School/Matriculation qualification and who have completed 6 years of regular service through a qualifying screening test, unless he has already passed such test."

(b) The 1996 Recruitment Rules were replaced by a set of rules published on 31.8.1999. Under these rules, the quota for direct recruitment and promotion remained just the same. But, in so far as the 50% quota for promotion is concerned, the 1999 Rules made even the selection under the 35% quota subject to a limited departmental competitive examination. In other words, persons, who were eligible under the 1996 Rules, to be considered under the 35% quota for promotion, on the basis of just a screening test, became ineligible under the 1999 Rules, unless they came out successful in a limited departmental competitive examination;

(c) But unfortunately, the Department conducted a screening test, instead of a departmental competitive examination, on 23.4.2000. It is true that the screening test conducted after the issue of the 1999 Recruitment Rules, was confined only to the vacancies that arose upto 31.8.1999. The original applicants before the Central Administrative Tribunal, who passed the screening test held on 23.4.2000, could not be accommodated against the vacancies that arose upto 31.8.1999;

(d) In the meantime, the BSNL was formed on 1-10-2000 as a Public Sector Undertaking registered under the provisions of the Companies Act, 1956. Therefore, options were called for and all those who exercised the option, ceased to be holders of civil posts, but became employees of a company;

(e) Thereafter, pursuant to the discussions held between the Management of the company and the Office Bearers of three federations of trade unions, an understanding was reached. It was recorded in the form of minutes on 2.1.2001. It is seen from paragraph 1 of the Record of Discussions that the Model Standing Orders under the Industrial Employment Act, 1946 was to apply to the employees. Paragraph 6 of the Record of Discussions is of significance and hence, it is extracted as follows :

"SIX PROMOTIONAL AVENUES :

After absorption, there will be negotiations with the newly formed recognized union regarding promotional avenues. Pending adoption of Standing Orders of promotional policy, the present OTBP/

BCR/ACP (whichever is applicable), etc., will continue to be followed by BSNL."

(f) Paragraph 11 of the Record of Discussions dated 2.1.2001 gave an assurance to the employees. It reads as follows :

"The Group C & D employees, who appear for any promotional examination whether direct or departmental and qualify in such examinations/outsiders coming through direct recruitment process, would rank junior to all the other employees in the promotional cadre who had already been qualified in earlier examinations even though they get absorbed in BSNL subsequently."

(g) In the light of the assurance given in the Record of Discussions dated 2.1.2001, the very application form for direct recruitment of graduate engineers as Junior Telecom Officers 2002 contained a declaration from the candidates applying for the post. This declaration, which was part of the application form, reads as follows :

"I also understand that if appointed, I would rank junior to any J.T.O., who had been appointed earlier by the erstwhile DoT/DTS/ DTO or BSNL or any other employee in the promotional cadre, who had already qualified in the JTO examination, but not appointed as JTO by BSNL so far." and

(h) Therefore, (1) despite the fact that the 1999 Recruitment Rules abolished the screening test for promotion under the 35% quota and introduced a limited departmental competitive examination; and (2) despite the fact that the screening test held on 23.4.2000 made it clear that it was for vacancies that arose upto 31.8.1999, the Management of the BSNL, which was born on 1.10.2000, reached an understanding with the trade unions that conferred certain rights upon the employees. This fact has to be kept in mind, especially in the light of the legal argument advanced by Mr.C.K. Chandrasekaran, learned counsel for the contesting respondents that the holders of civil posts, whose service conditions were regulated in terms of Articles 309 and 311 of The Constitution, became industrial employees, from 1.10.2000, paving the way for the application of Model Standing Orders.

21. Let us now take a look at the post 2000 scenario. In the post 2000 scenario, a fresh set of recruitment rules were issued on 26.9.2001. But, no direct recruitment took place. Therefore, it appears that throughout the country, TTAs, who had earlier passed the screening tests either before or after 31.8.1999, were appointed as the JTOs. What is worse is that many of them, especially in the other

parts of the country, were appointed even as against the 50% quota reserved for direct recruitment. Thus, there was a complete failure of the quota rota system.

22. While in certain circles such as Punjab and Haryana, the TTAs, who had passed the screening tests, were appointed even against the vacancies intended for direct recruitment, the other circles such as Tamil Nadu Circle exhibited a mere respectful conduct. In the Tamil Nadu Circle, the TTAs, who had passed the screening tests either before or after 31.8.1999, were given only officiating arrangements in the post of JTOs and that too, as against the 35% quota meant for promotion. Nevertheless, it was made clear in every order granting officiating promotion that it was only a local officiating arrangement and that the employee will have to eventually give way for those, who come through the main door. In other words, as against the persons in the other circles, who encroached into the direct recruitment quota, the TTAs in Tamil Nadu were better off in the sense that they occupied only those vacancies intended for promotion.

23. Therefore, a writ petition came to be filed in Civil Writ Petition No. 5608 of 2007 by a group of employees in Dalbir Singh Vs. BSNL on the file of the Punjab and Haryana High Court. The prayer in the said writ petition was to quash a waiting list of 3338 candidates kept for promotion as JTOs against the 35% quota prepared in pursuance of the screening test held on 23.4.2000. In the course of hearing of the said writ petition, it was found by a Division Bench of the Punjab and Haryana High Court that the Board of Directors of the BSNL had taken a decision on 30.3.2001 to divert 500 posts per year from the direct recruitment quota to admit TTAs, who had qualified in the screening test. Though the diversion of the posts intended for direct recruitment, to the 35% quota for promotion, was with the object as well as a promise to restore the direct recruitment quota in future, it did not happen. The High Court found that repeatedly the Management diverted 500 posts intended for the direct recruitment quota, to the 35% quota meant for promotion.

24. Therefore, the High Court of Punjab and Haryana frowned upon the said practice and allowed the writ petition with a direction to the Department to restore the posts diverted from the direct recruitment quota, by taking action against those who got promoted on the basis of the screening test conducted on 23.4.2000. It will be of interest to note that the original prayer of the writ petitioners before the Punjab and Haryana High Court had a completely different dimension from the relief ultimately granted.

25. Paragraph 1 of the decision of the Punjab and Haryana High Court dated 30.5.2008 reads as follows :

"In this petition filed under Articles 226/227 of The Constitution of India, the prayer made is for issuance of a Writ in the nature of Certiorari to quash the waiting list of 3338 candidates for promotion as Junior Telecom Officers (hereinafter referred to as 'J.T.Os.' in Bharat Sanchar Nigam Limited (hereinafter referred to as 'B.S.N.L.'), against 35% quota prepared in pursuance of the screening test held on April 23, 2000. The petitioners have also prayed for issuance of a writ in the nature of Mandamus directing the respondents to hold the departmental competitive examination for promotion as J.T.Os afresh so that the claim of the eligible candidates could be considered."

26. The operative portion of the order of the Punjab and Haryana High Court is as follows :

"For the aforesaid reasons, this writ petition is disposed of with a direction to the respondents to restore the posts diverted from direct recruitment quota to 35% departmental quota to admit Telecom Technical Assistants, who had qualified the screening test held on April 23, 2000, to direct recruitment quota as stated by them in the written statement."

27. In other words, the High Court of Punjab and Haryana focused its attention only on the validity of the diversion of vacancies intended for direct recruitment, to the 35% quota intended to be filled up by way of promotion through limited departmental competitive examination. The High Court of Punjab and Haryana did not decide whether those, who had passed the screening test on 23.4.2000, had a right to be considered at least for vacancies that arose after 31.8.1999, but before 26.9.2001, against the quota for promotion.

28. Before proceeding further, we should also place on record one more fact namely that despite the positive direction given by the High Court of Punjab and Haryana to restore the vacancies diverted from the direct recruitment quota, the Department has not reverted those employees. Even the contempt petition filed by the writ petitioners before the Punjab and Haryana High Court is said to have been closed. The result is that persons, who are similarly placed like the contesting respondents before us, who had only passed the screening test conducted on 23.4.2000, but who had been accommodated

as against the vacancies intended for direct recruitment, continue to hold the posts despite the direction given by the Punjab and Haryana High Court to restore those vacancies.

29. What is worse is that the Department has bent over backwards to retain those persons by creating 502 supernumerary posts. Not stopping at that, the department has gone to the extent of granting further higher promotions also to those persons.

30. In other words, persons, who passed the screening test held on 23.4.2000 and who were accommodated against the vacancies intended for the direct recruitment quota, continue to occupy the posts and have also gained further higher promotions despite the judgment of the Punjab and Haryana High Court. But, the Management is now making all out efforts to revert identically placed persons, who are working only in the posts intended for the 35% quota for promotion. This is completely unjustified and unfair. It is in the background of this fact that we have to consider the rival contentions.

31. As we have stated earlier, the first contention of the writ petitioners is that after the advent of the 1999 Recruitment Rules, the post of the JTOs cannot be filled up except through a limited departmental competitive examination, in so far as the 35% quota out of the 50% quota intended for promotion is concerned.

32. This contention, on a stand alone basis, is perfectly correct. The Recruitment Rules of the year 1996 provided two methods, by which, 50% quota for promotion could be filled up. While 15% is to be through a limited departmental competitive examination, the balance 35% was to be only on the basis of a screening test. We have already extracted the relevant portions of the 1996 Rules. In fact, this screening test is a qualifying test and not a competitive test. This is why the relevant portions of the rules that we have extracted earlier, make it clear that a person, who had already passed the screening test, need not write it once again.

33. It is also true that the Recruitment Rules of 1999 made the selection even for the 35% quota, to be made only through a limited competitive examination. Therefore, in normal circumstances, two consequences would have followed out of the 1999 Rules. They are (a) that any post that remained vacant as on the date of issue of the Recruitment Rules, 1999 would become liable to be filled up only in accordance with the new Rules; and (b) that the benefit of the screening test, if any conducted up to 31.8.1999, would not enure to anyone after 31.8.1999, the date of issue of the 1999 Recruitment Rules.

34. But unfortunately, the Department itself took steps to erase the aforesaid two consequences. At the outset, the Department conducted a screening test on 23.4.2000, after the advent of the 1999 Rules. If we strictly go by the fundamental principles of Service Jurisprudence, a vacancy that remains unfilled as on a particular date, can be filled up only in accordance with the Statutory Rules that are in force as on date of filling up of the vacancy. It is not permissible, in normal circumstances, to fill up a vacancy by applying the Statutory Rules that were in force at the time when the vacancy arose. It is only the Recruitment Rules that are in force as on the date of filling up of a vacancy that would apply in normal circumstances. Therefore, on a fundamental principle, the Department had no business to divide the vacancies into two categories namely those, which arose before 31.8.1999 and those, which arose thereafter.

35. We would have understood and perhaps even accepted, if the Department, instead of conducting a screening test after 31.8.1999, merely filled up the 35% quota with persons, who had passed the screening test before 31.8.1999. What the Department did was that they conducted a screening test on 23.4.2000, without the sanction of the Statutory Rules of 1999, on the pretext that they wanted to fill up the vacancies that fell under the 35% quota prior to 31.8.1999.

36. The action of the Department in attempting to fill up vacancies that arose upto 31.8.1999 by holding a screening test on 23.4.2000, cannot even be seen as a single isolated instance of violation of the rules. After the advent of the Statutory Rules of 1999, the Department never conducted a limited competitive examination until they made a first attempt through the circular dated 28.2.2013, which came to be challenged before the Tribunal in the batch of cases, out of which, the present writ petitions arise. What the Department did for 14 years namely from the date of issue of the 1999 Rules (31.8.1999) upto the date of issue of the impugned circular namely 28.2.2013 was only to grant officiating promotions to those, who had passed the screening test after 31.8.1999 and to accommodate them either against the direct recruitment quota or against the quota for promotion. In other words, the first ever attempt made by the Department to act in accordance with the Rules and to hold a limited competitive examination, was only in the year 2013, after a slumber for 14 years. The Department had, thus, implemented the 1999 or 2001 Rules more in their breach than in their compliance.

37. Even when they issued the circular dated 28.2.2013, the Department did not choose to set things right. As seen from Annexure A to the circular dated 28.2.2013, the Department notified the

vacancies year-wise from the year 2000 upto the year 2012. In other words, all the vacancies intended for the 35% as well as 15% quota for promotion right from the year 2000 upto 2012 were sought to be filled up not en bloc, but year-wise by the circular dated 28.2.2013. The vacancy position shown in Annexure A to the circular dated 28.2.2013 is as follows :

35% & 15% vacancy from 2000 to 2012								
	35% vacancy				15% vacancy			
Vacancy as on	ST	SC	OC	Total	ST	SC	OC	Total
31.3.2000	15	8	44	67	1	0	9	10
31.3.2001	17	57	294	368	12	28	137	177
31.3.2002	5	11	56	72	3	4	23	30
31.3.2003	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil
31.3.2004	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil
31.3.2005	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil
31.3.2006	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil
31.3.2007	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil
31.3.2008	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil
31.3.2009	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil
31.3.2010	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil
31.3.2011	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil
31.3.2012	2	3	15	20	0	1	8	9

38. Interestingly, a careful look at the eligibility criteria indicated in the circular dated 28.2.2013 shows that persons with prescribed qualifications and seven years of service were declared eligible for promotion under the 35% quota. Since there was no indication as to how the candidates, who are selected in the limited departmental competitive examination, would be accommodated, it was possible for a person with just seven years of service as on 28.2.2013 to make a claim to be accommodated against the vacancy of the year 2001 or 2002, on the basis of the mark secured or the rank obtained. In other words, the circular impugned before the Tribunal gave scope for persons (may be meritorious) to claim promotion as against the vacancies that arose even before the date of their first appointment.

39. Therefore, we are of the considered view that (i) by their very conduct in conducting a screening test on 23.4.2000, despite the

issue of the 1999 Recruitment Rules, (ii) by their very conduct in not conducting a limited competitive examination from 1.9.1999 till 28.2.2013 and (iii) by their conduct in granting officiating promotions throughout the country to all persons, who had passed the screening test and by accommodating them either against the direct recruitment quota or against the promotion quota, the Department had made the prescription contained in the 1999 Recruitment Rules a dead letter upto 28.2.2013. Hence, it is not open to the writ petitioners to contend that after the advent of the 1999 Rules, the promotion to the post of JTOs cannot be granted except by way of limited departmental competitive examination. Therefore, we reject the first contention of the petitioners.

40. The second contention of the petitioners is that the screening test conducted on 23.4.2000 was specifically for the purpose of filling up the vacancies that arose upto 31.8.1999 and that therefore, persons, who took the screening test after giving an undertaking, cannot go back on the same.

41. As in the case of their first contention, the second contention of the petitioners is also theoretically correct, if we look at it de hors the facts. If the Department, after the conduct of the screening test on 23.4.2000, had accommodated the candidates, who had passed the screening test to the extent of the vacancies available upto 31.8.1999 and if the Department had thereafter conducted limited departmental competitive examination periodically, we would have had no hesitation in non suiting the original applicants before the Tribunal.

42. As a matter of fact, the original applicants before the Tribunal took part in the screening test conducted on 23.4.2000 and they did not seek promotion under the 35% quota against the vacancies that arose after 31.8.1999. The original applicants before the Tribunal simply kept quiet. But, it was in the year 2004 that the Department itself chose to give officiating promotions to those applicants, after finding that they had passed the screening test. The original applicants before the Tribunal neither made a demand before the Department nor made any claim before any court of law or tribunal to appoint them against the vacancies that arose after 31.8.1999, on the basis of their passing the screening test on 23.4.2000. It was the Department, which gave them officiating arrangement in the year 2004 and continued the same upto 28.2.2013. Therefore, the Department cannot raise a contention that the only purpose of conducting the screening test on 23.4.2000 was to fill up the vacancies that arose upto 31.8.1999. Hence, the second contention is devoid of merits and it is rejected.

43. The third contention of the petitioners is that a mere officiating arrangement in a post for a long duration of time will not confer any right for absorption. According to the petitioners, the original applicants before the Tribunal are actually seeking regularisation in the post, in which, they were officiating for quite some time. Such a claim, according to the petitioners, is unsustainable, especially since it is contrary to the prescription contained in the Statutory Rules.

44. There is no quarrel with the proposition that a mere officiating arrangement will not confer a right upon a person to seek regularisation in the post, in which, he is officiating. But, unfortunately, the said principle of law born out of Service Jurisprudence, may have to be applied with circumspection to Industrial Law, as rightly contended by Mr.C.K. Chandrasekaran, learned counsel for the contesting respondents. Even in Service Jurisprudence, courts have held in certain circumstances that if a person had officiated in a post for a fairly long period of time and the quota rota has failed, such a person acquires a right.

45. In the case on hand, the Rules issued on 8.2.1996 and 31.8.1999 under the Proviso to Article 309 of The Constitution, fixed a quota for direct recruitment and promotion. This quota itself failed and the Department of Telecommunications was broken and the BSNL was created on 1.10.2000. The Rules that were issued on 26.9.2001 were not in exercise of the power conferred upon the Proviso to Article 309. The principles of Industrial Law were set in motion by the Record of Discussions that took place between the Management of the company and the three federations of the trade unions. From the year 2000 upto the year 2012, all posts intended both for direct recruitment and for promotion were filled up by the Department only by giving officiating arrangement on the basis of the screening test held on 23.4.2000. But, by the circular dated 28.2.2013, an attempt was made to fill up the vacancies year-wise by conducting an examination.

46. Therefore, the case on hand is not one where an employee is attempting to take advantage of an officiating arrangement given to him due to exigencies of service. There has been a total failure of the quota rota system for 14 years. Neither a direct recruitment was undertaken nor a limited departmental competitive examination was conducted from 2000 to 2013. Even now, the attempt is to fill up the vacancies year-wise from the year 2000. Therefore, we are of the view that this is not a simple case of a person, who gained officiating arrangement under fortuitous circumstances, due to exigencies of service, making an unjust claim for regularisation in the officiating post. Hence, we have no hesitation in rejecting the third contention.

47. As we have pointed out earlier, the Department has not chosen to do anything even with respect to persons, who were accommodated against the direct recruitment quota, despite a positive direction by the Punjab and Haryana High court. Not only those persons have been retained by creating supernumerary posts but some of them have also been given further higher promotions. If the department had treated them as mere officiating arrangements, they should have been reverted immediately after the judgment of the Punjab High court and there was no question of further higher promotions. But the department had stood by them. Therefore, it is unfair and unjust to discriminate against the original applicants before the Tribunal. The Central Administrative Tribunal has actually taken note of this and granted relief to the contesting respondents. We find no illegality in the view taken by the Tribunal and hence, the writ petitions deserve to be dismissed.

48. In the result, the writ petitions are dismissed. No costs. Consequently, all connected pending MPs are also dismissed.

Sd/-
Assistant Registrar

//True Copy//

GR/RS
To

Sub Assistant Registrar

1. The Chairman & Managing Director,
Bharat Sanchar Nigam Limited, New Delhi - 110 001.
2. The Chief General Manager, Tamil Nadu Circle Bharat Sanchar Nigam Limited, No.80, Anna Salai, Chennai-600 002.
3. The General Manager, Bharat Sanchar Bharat Sanchar Nigam Limited, Dharmapuri Division, Dharmapuri 636 701.
4. The Registrar, Central Administrative Tribunal,
Chennai Bench, Chennai.

+3cc's to M/s.A.L.Ganthi Mathi, Advocate, S.R.No.17216 to 17218
+2cc's to M/s.M.Vaidyanathan, Advocate, S.R.No.17261 & 17262
+1cc to M/s.C.K.Chandrasekar, Advocate, S.R.No.17032

W.P.Nos.15509, 20660
and 22162 of 2014 & all connected pending MPs

CA(CO)
CA(07/04/2015)