



W.P.No.2219 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:28.11.2023

Delivered on: 21.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HONOURABLE MR.JUSTICE P.DHANABAL

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and

W.M.P. No.2181 of 2017

1. M. Selvaraju S/o. S.E. Munusamy
2. C. Purushothaman S/o.Chokkalingam
3. J. Latha W/o. Jayachandran
4. S.K. Renganathan S/o. Krishnan
5. N. Shanmugam S/o. N. Narayanasamy
6. S. Soundararajan S/o. L. Srinivasan
7. M. Soundararajan S/o. M. Murugesan
8. K. Vijayalakshmi W/o. Udhayashankar
9. P. Sampath Kumar S/o. D. Palanisamy
10. S. Kannan S/o. Sathyamurthy
11. K. Rajaguru S/o. V. Krishnan

... Petitioners

Vs.

1. Union of India
represented by the Chairman and
Managing Director,
Bharat Sanchar Nigam Limited, Corporate Office,
Bharat Sanchar Bhavan,
Harish Chandra Mathur Lane, Janpath,
New Delhi – 110 001.



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2. The Director (HR),
Bharat Sanchar Nigam Limited, Corporate Office,
Bharat Sanchar Bhavan,
Harish Chandra Mathur Lane, Janpath,
New Delhi – 110 001.

3. The Director (Finance),
Bharat Sanchar Nigam Limited, Corporate Office,
Bharat Sanchar Bhavan,
Harish Chandra Mathur Lane, Janpath,
New Delhi – 110 001.

4. The Chief General Manager,
Bharat Sanchar Nigam Limited,
Tamil Nadu Circle, 7th Floor,
BSNL ADMN Building,
16, Greams Road, Chennai-600 006.

5. The Principal General Manager,
Bharat Sanchar Nigam Limited,
Tamil Nadu Circle, 7th Floor,
BSNL ADMN Building,
16, Greams Road, Chennai-600 006.

6. The Registrar,
Central Administrative Tribunal,
Chennai.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records of the 6th respondent in O.A. No.310/00668/2016 dated 18.10.2016 and quash the same.



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For Petitioners : Mr. A.R. Balaji
For Respondents : Mr. M.S. Velusamy [for R1 to R5]
Tribunal [for R6]

ORDER

(Order of the Court was made by P.DHANABAL,J.)

This Writ Petition has been filed by the petitioners to issue a Writ of Certiorari or any other appropriate order or direction as against the order in O.A. No.310/00668/2016 dated 18.10.2016 on the file of the 6th respondent / Central Administrative Tribunal and to quash the same.

2. According to the petitioners, the 1st petitioner is working as Senior Telephone Supervisor in the office of Accounts Officer, Bharat Sanchar Nigam Limited [BSNL], Vellore and the other petitioners are also working in various capacities in different SSAs of Tamil Nadu Circle. The petitioners have appeared in the Limited Internal Competitive Examination [LICE] Part-II held in the year 2012 under 40% quota. The respondents have declared vacancy position of Joint Account Officers as 48/23/17. There was no mention about the year wise vacancy details of OC/SC/ST. The respondents ignoring the existing recruitment rules, had issued a notification dated 12.10.2004 by informing that this examination would be the last examination under old syllabus.



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2.1. From the year 2001, the method of conducting the Junior Accounts Officer (JAO) examination is creating chaos and in that process, eligible candidates were kept out of their career advancement. The vacancies are announced unilaterally without considering the resultant vacancies. After formation of BSNL, new recruitment rules came into force in the year 2001. However, examinations were being held as per the old syllabus. In the year 2012, examination was conducted and the candidates were allowed to participate on the strength of the exemption obtained in the previous examinations. This had adversely impacted the genuine candidates who were appearing for the first time and those candidates who were appearing for all the subjects in the examinations. Owing to this, several deserving and meritorious candidates lost their career advancement.

2.3. Year wise vacancies position was never released and there was no effort made to fill up the backlog reserved vacancies. Clubbing of vacancies of different years had the effect of taking away the right of eligible candidates to participate in selection process at the right time. The eligible candidates are rendered ineligible due to the age limit when the



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examination is held for several years together. In the absence of declaration of year wise vacancies from the year 2009 in the categories of OC/SC/ST, the examination was conducted. If the recasting of vacancy has been done year wise from the inception of new JAO RRS of 2001, the vacancy would have been much more than 48/23/17 for the recruitment year 2012. Hence the vacancy declared is unilateral and not in tune with the existing rules and regulations which resulted infringement of applicants' rightful claim of promotion.

2.4. Moreover, 80 exempted candidates have been allowed to appear in the examination. All the applicants have given representations to the BSNL Management. Before resolving some of the vital issues haunting all these years from 2001, the BSNL management released the new Recruitment Rules, 2016 and announced the examination calendar for the year 2016-2017 vide letter dated 17.02.2016. If the proposed examination for 40% quota is allowed to be conducted, all the applicants would be deprived of their future prospects and the improper orders and decisions followed successfully all these years from 2001 will remain unchecked. Therefore notification of examination was declared vide BSNL letter No.9-



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1/2014-Rectt dated 01.03.2016. The order dated 17.02.2016 is to be withheld and in all probability, the order dated 01.03.2016 deserves to be set aside.

3. The respondents filed a counter stating that the posts of Junior Assistant Officers in BSNL are governed by the Recruitment Rules of JAO framed during the year 2001, after the formation of BSNL in the year 2000 vide which circle vacant posts of JAO are filled by 50% by direct recruitment, 40% by promotion from employees working in BSNL through Internal Competitive examination and 10% by promotion from Junior / Senior Accountants working in BSNL through Internal Competitive examination. Prior to these BSNL JAO Recruitment Rules, the JAO posts in Department of Telecommunications were governed by JAO service, Telecommunications Wing, Recruitment Rules, 1977. As per the Departmental examination for promotion, all the posts of JAO consisted of two parts Part-I and Part-II and any person who passes these two parts shall be eligible for appointment as JAO, after successful completion of Induction Training Programme.



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3.1. After the formation of BSNL, the scheme and syllabus for departmental examination was circulated vide Circular dated 13.08.2002. One JAO Part-II examination for 40% quota was conducted on 17 to 19 September 2003. Due to the administrative exigencies and requirements, the competent authority as a one time measure reviewed and declared new scheme and syllabus and circulated the same through Circular dated 12.10.2004. In the meantime, as per the decision of the competent authority, one JAO Part-II 40% examination was conducted from 23rd to 25th March 2006, based on old syllabus for the already Part-I qualified candidates. BSNL conducted a screening test on 27.05.2007 with relaxed standards in respect of pattern & syllabus, and educational qualification, on the basis of the decision of competent authority as a one time measure vide Circular dated 12.10.2004. The successful candidates in the JAO Part I / screening test, were allowed to participate in JAO Part-II Limited Internal Competitive Examinations against 40% quota, held during the years 2006, 2010 and 2012, in the pattern of exams prescribed in recruitment rules. On the basis of that qualification in the JAO Part-I exam conducted by DoT/Screening test conducted on 27.05.2007, all the applicants were allowed to appear in the JAO Part-II Limited Internal



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Competitive Examination against 40% quota held on 17th to 19th December 2012. Primarily based on the Scheme of BSNL dated 12.10.2004, they had acquired qualifying marks in the said examination. But they could not be promoted against the notified vacancies, since they could not come in the merit required to be promoted against the vacancies, as the examination was of competitive nature conducted for a limited vacancies. However, the number of vacancies mentioned in the applications are not correct. The results of exam conducted in December 2012 were declared on 26.03.2013. Having remained silent for all these years, the applicants with a malafide intention to stall the promotion process of JAOs, have filed the OA very belatedly.

3.2. The petitioners participated in the JAO Part-II examination in the year 2012, have now filed this petition. Based on the examination held in 2012, all the promotions were already issued and the promoted persons have already become the member of service of JAO grade against the notified vacancies and as such, reserved vacancies left out to consider the case of applicants. The applicants have already submitted to the jurisdiction of letter dated 12.10.2004 and now cannot object the



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exemptions / relaxation in age limit etc., stipulated in the same, at this stage. Though proposal was moved for filling up the vacancies in tenure circles, it was not considered in view of legal, administrative implications and the decision of the competent authority was communicated vide letter dated 28.03.2014. All the exams in JAO cadre till date are being held on progressive / accumulated vacancies existing on a crucial date. The procedure for de-reservation is resorted to only in case on non-availability of SC/ST candidates.

3.3. Since inception of BSNL, 5 departmental examinations have been held and 3 Direct Recruitment examinations have been held on the basis of accumulated / progressive vacancies. Therefore, the demand of applicants for declaration of year wise vacancies is ill conceived. The LICEs were held strictly in accordance with the provisions of recruitment rules and there was no violation of rules. The applicants have filed this petition to stall the process of promotion to JAO grade through the LICE 2016, as 6 of the 11 applicants have already crossed the age limit specified in the recruitment rules and 3 among them have already participated in the exam submitting to its jurisdiction. Though the applicants got minimum



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qualifying marks prescribed for the examinations, they could not be declared successful in the examination due to the competitive nature of the exams and non-availability of vacancies in their home circle. Those who have come meritorious in the exams were only declared successful.

3.4. Moreover, after submitting to the jurisdiction of JAO Recruitment Rules 2001 and the scheme and syllabus circulated on 12.10.2004 by appearing in the examinations conducted till 2012, the applicants cannot raise any objection either in the pattern or in the scheme of the exams, merely owing to their ineligibility and the changed syllabus for the LICE conducted during 2016, at this belated stage. Hence the action of the applicants are hit by the principles of laches and estoppel and barred by limitation. The applicants 9 to 11 have already applied in pursuance of the notification for the said examination wherein the examination was also conducted on 17.07.2016 in all over the circles in All India basis and as such, the petition is not maintainable. Considering the above said facts, the Tribunal has dismissed the O.A.

4. The learned counsel appearing for the petitioners would contend



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that these petitioners are working under BSNL department. They appeared in JAO Part-II Competitive Examination held in the year 2012 and all are qualified but they have not been promoted due to want of vacancy. Thereafter, they represented to the authorities stating that if the vacancies are calculated as per the administrative procedure, they can be promoted to those vacancies. Their request for officiating was also turned down. But the Part-I qualified JAOs as per the old Recruitment Rules, 1977 were given officiating chance with monetary benefits, when Part-II qualified officials are available. There are many JAO posts still vacant after completion of appointment formalities of the qualified candidates in neighbouring circles. This vacancies can be filled up by the qualified officials from other circles. But the request of the applicants have not been considered. If the vacancies are calculated year wise, all the applicants and other qualified officials in the year 2012 examination, can be promoted as JAO. If without calculating the year wise vacancies for previous recruitment years, the eligible candidates may lose their promotional opportunities. The petitioners had given representations and since the representations of the petitioners are not considered by the department, they filed the OA in 668 of 2016 on the file of the Central Administrative



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Tribunal and the same was dismissed. The Tribunal has not considered that the respondents have completed the examination process pending disposal of the main application. The Tribunal failed to consider that the petitioners have challenged the validity of the exemption order dated 20.09.2012 and sought for consequential direction to announce year wise vacancies from the year 2001 to 2015. The Tribunal failed to consider that the respondents have committed serious illegalities in filling up the vacancies without declaring the actual vacancy position. When the rules were framed in the year 2001, the unilateral announcement of conducting JAO Part-II competitive examination in the old syllabus is illegal. The above said facts have not been considered by the Tribunal and erroneously dismissed the application. Hence the order of Central Administrative Tribunal is liable to be set aside by allowing this Writ petition.

5. The learned counsel appearing for the respondents would contend that the department based on the request of various associations and individuals, as a one time measure, conducted examination on the old syllabus and thereafter issued Circular dated 12.10.2004 by informing the syllabus and exam pattern. Thereafter the department conducted



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examinations and the petitioners also participated in those examinations.

In the year 2012, all the petitioners appeared for examinations and acquired qualified marks, but due to non-availability of vacancies and the exam is competitive in nature, they could not be accommodated. After participating in the examination, now they cannot challenge the pattern of examination at belated stage. Now some of the petitioners have crossed the age limit and thereby, only to stall the selection process of JAO, they filed this petition. The action of petitioners is hit by the principles of laches, estoppel and barred by limitation. The petitioners 9 to 11 have attended the examination and the examination was also held on 17.07.2016 in all over the circles in All India basis and as such, the petition is not maintainable. The petitioners having remained silent for all these years, now, with a malafide intention, filed the O.A. And the Hon'ble Tribunal also after analysing all the aspects dismissed the application. Therefore the order of Tribunal is in accordance with law and hence the present Writ petition is liable to be dismissed.

6. Heard both sides and perused the entire materials available on record.



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7. The main contention of the petitioners is that 1st petitioner is working as Senior Telephone Supervisor in the office of Accounts Officer, BSNL. After formation of BSNL, the new recruitment rules came into existence with effect from 31.08.2001. The respondents department conducted examination in the year 2012 without declaring the actual vacancies and further another Internal Competitive Examination for recruitment of Junior Accounts Officer (JAO) was also conducted without announcing the number of vacancies for OC/SC/ST. In the year 2009, another JAO Part-II Internal Competitive Examination against 40% quota was announced through letter dated 04.08.2009. In that examination also, year wise vacancy was not declared for OC/SC/ST. In 2012, the schedule of examination in Tamil Nadu, the vacancy for OC was notified as 48, for SC as 23 and for ST as 17. The Recruitment Rules, 2016 for JAO 40% quota and the proposed examination to be held in the month of July 2016 is completely different pattern. The year wise vacancies were not announced separately. These petitioners have appeared in the JAO Part-II Competitive Examination held in the year 2012 and all are qualified. But they have not promoted due to want of vacancy. Now the BSNL management released the new Recruitment Rules, 2016 and announced the



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examination calendar for the year 2016-17 vide letter dated 17.02.2016. If the 40% quota proposed examination is allowed to be conducted, all the applicants would be deprived of their future prospects. Therefore they filed the impugned OA for the relief to direct the respondents not to conduct JAO Part-II examination under 40% quota and withheld the Competitive exam and to set aside the exemption order passed by the 4th respondent through letter dated 20.09.2012 and other relieves.

8. The contention of the respondents is that already the rules were framed and based on the representations from the Units and individuals as the syllabus was tough and more academic in nature, the competitive authority as one time measure, reviewed and declared new Scheme and syllabus and circulated the same vide Circular dated 12.10.2004 for filling up JAO vacancies. These petitioners also participated in the exam conducted in the year 2012. All the petitioners had secured minimum marks. They have not been given promotion due to non-availability of vacancies and since it was a Competitive examination. Thereafter, these petitioners have not challenged either the Circular or the competitive exams conducted by the respondent department. Now in order to stall the



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filling up of vacancies of JAOs, the petitioners filed this petition, since most of the petitioners crossed the age limit.

9. In this case, it is an admitted fact that the BSNL framed rules in the year 2001 and thereafter on one time measure, the Limited Competitive Department Examination was conducted under old syllabus. Further it is also an admitted fact the department issued Circular on 12.10.2004 about the pattern of examination and they conducted examinations in the year 2012 and these petitioners also participated in that examination. Thereafter in the year 2016, the BSNL Department released new recruitment rules and based on the said rules, examination was also conducted on 17.07.2016 and the petitioners 9 to 11 also participated in the said examination. The respondents also vehemently argued that the petitioners accepting the rules and the circular issued by the department and participated in the examination in the year 2012 without challenging the above said rules, circular and notifications and after participating in the examination, now after a long considerable period, they cannot challenge the rules. Further, the department also issued Circular dated 27.02.2014 along with Corrigendum dated 28.02.2014 that exemptions are not allowed from this



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Limited Internal Competitive Examination against departmental quota, which is being conducted as per revised Scheme and syllabus for JAO.

The above said Circular has not been challenged by the petitioners and moreover, among 11 applicants, 6 of them already crossed their age limit as per the recruitment rules and 3 of them have already participated in the examination. Therefore, now the petitioners, after participating in the examinations, cannot challenge the proceedings.

10. As far as the exemptions granted by the respondents are concerned, already these petitioners themselves availed the above said exemptions for age relaxation for the examination conducted during the year 2010 and 2012. In the year 2010 and 2012, similar notifications issued by the respondents and thereby, the applicants are estopped from raising all these issues, since they participated in the exam by admitting the above said exemptions. Therefore, the petitioners are not entitled to the relief as prayed for in the application.

11. The Central Administrative Tribunal also in the order, has categorically held that the parties have not produced the recruitment rules



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and the respondents have always been conducting the Limited Internal Competitive Examinations after bunching the vacancies for several years as per their convenience and the respondents have followed the same practice in the year 2016. Further, the recruitment has to be made in terms of Recruitment Rules, 2001 and the applicants had never agitated their grievance all these years and even after 2012, when they qualified but were unsuccessful in securing the rank in the merit list within the number of vacancies available, they failed to seek any remedy between 2012 and 2016 till the filing of this petition. Therefore, as discussed above, this Court is of the view that the Tribunal has passed a reasoned order and no any infirmity or perverse found in the order of the Tribunal.

12. In view of the above said discussions, this Court is of the opinion that this Writ petition has no merits and deserves to be dismissed.

13. IN THE RESULT, this Writ Petition is dismissed. No costs. Connected miscellaneous petition is closed.

(D.K.K.J) & (P.D.B.J)
21..12.2023

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D.KRISHNAKUMAR, J.,
and
P.DHANABAL,J

(mjs)

To

The Registrar,
Central Administrative Tribunal,
Chennai.

Pre-delivery judgment in
W.P.No.2219 of 2017

21.12.2023