

-Versus-

1. Bharat Sanchar Nigam Limited
(A Govt of India enterprise)
Represented by the Chairman
And Managing Director, BSNL
Registered office-Statesman House
Barakhamba Road
New Delhi-1.
2. The Director, HRD, BSNL
Bharat Sanchar Bhawan
Janpath, New Delhi-1.
3. The Chief General Manager, Telecom
Assam Telecom Circle, BSNL
Administrative Building
Panbazar, Guwahati-1.

Advocate: Mr.M.R.Das

...Respondents

ORDER (ORAL)**MANJULA DAS, JUDICIAL MEMBER:**

At the outset, since the applicants have a common cause of action and the relief sought by them is also the same, therefore, their prayer for joining together in this OA is allowed under Rule 4(5) of the CAT (Procedure) Rules, 1987.

2. By this O.A., applicants make a prayer for setting aside and quash the impugned letter No.24-1/2014-Recft. Dated 13.11.2014 issued by the respondent no.4 whereby the advertisement was issued for Limited Departmental Competitive Examination (LDCE in short) for promotion to the grade of Sub-Divisional Engineer (Telecom) [SDE (T) in short] under 33% quota.

3. The briefly narrated case of the applicants is that they are working as JTO(T)s serving in BSNL. According to them, they are eligible to appear in the LDCE to be held by BSNL for the post of SDE(T). BSNL has issued the impugned letter dated 13.11.2014 proposing to hold LDCE by clubbing all the vacancies for the vacancy years 2010-11, 2011-12, 2012-13 and 2013-14. It was submitted by the applicant that action taken by the BSNL by inviting applications for the LDCE for promotion to the post of SDE (T) by clubbing the vacancies is in total violation of the orders passed by the Different Benches of this Tribunal as well as the Hon'ble Himachal Pradesh High Court at Shimla. It was stated by the applicants that since the eligibility for appearing for this LDCE is three years, therefore, some people who are not even born in the cadre of JTO(T) in 2010-11 can now appear for the LDCE for SDE(T), as such, action of the BSNL is totally illegal and prayed for interference of this Tribunal.

4. Respondents - BSNL vide their reply rebutted the averments made by the applicants and stated that no person who has not completed three years of continuous service in JTO cadre will be allowed to sit in the LDCE for SDE(T) and the vacancy position for the LDCE to be held on 15.02.2015 is not clubbed as alleged by the applicants. The vacancies were declared separately for four years i.e. for 2010-11, 2011-12, 2012-13 and 2013-14 and the year wise vacancies are specific as per notification. It was further submitted



therein vide OM dated 30.07.2007, existing quota of 25% earmarked for promotion of JTOs to the grade of SDE through LDCE is increased to 33%. There is no violation of Recruitment Rules and procedures laid down in inviting applications vide advertisement dated 13.11.2014 and there is no infirmity in publishing the advertisement dated 13.11.2014 as the advertisement itself shows the year wise vacancy position.

5. Mr.S.Dutta, learned counsel for the applicants submitted that action of the BSNL in proposing to hold the LDCE on 15.02.2015 in pursuance of advertisement dated 13.11.2014 is not at all sustainable in view of the settled position and court directions. On the issue of clubbing the vacancies, learned counsel has drawn our attention to the decision of the Chandigarh Bench dated 15.04.2011 rendered in OA No.505-HP of 2010 whereby the Chandigarh Bench directed the authorities to hold independent examination for each vacancy year i.e., separate examinations for the vacancy years 2006-07, 2007-08, 2008-09 and 2009-10. The said decision was challenged by the respondents-BSNL before the Hon'ble of Himachal Pradesh High Court in CWP No.6264/2011, wherein the Hon'ble High Court vide order dated 08.12.2011 passed the following orders:-

"... Therefore, without prejudice to the contentions available to the respondents, the application for modification is allowed permitting the BSNL to conduct

one examination for all the four vacancy years starting from 2006-07, subject to the following:-

- i) From the year 2010-11 the BSNL shall conduct a separate examination for each vacancy year and;
- ii) In case any prejudice has otherwise been caused to anybody in view of the conduct of examination in a bunch, as above, the conduct of examination will be subject to the result of the writ petition."

Learned counsel vehemently argued that by clubbing the vacancies for the long four years, some officers, who have not qualified for appearing before the LDCE for the vacancy year 2010-11, 2011-12 and 2012-13 may also appear in this examination to be held on 15.02.2015, thus thereby violated the Fundamental Rights of the present applicants guaranteed under Article 16 of the Constitution of India. It is not at all acceptable inasmuch as the persons are not qualified for the vacancy years 2010-11, 2011-12 and 2012-13 and qualified for vacancy year 2013-14 shall appear in the examination on 15.02.2015 and the applicants who are eligible for all four years, shall lose three chances in the event of their failure in the proposed examination.

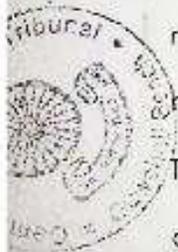


6. By countering the arguments advanced on behalf of the applicants, Mr.M.R.Das, learned counsel for the BSNL submitted that the advertisement already shows the year wise vacancy position i.e., 2025 for 2010-11, 273 for 2011-12, 323 for 2012-13 and 675 (vacancies are subject to change) for 2013-14, as such, there is no illegality done by the respondents- BSNL. Moreover, it was vehemently

argued that one who is not qualified for not having requisite three years of experience will not be allowed to sit in the examination. Learned counsel further submitted that advertisement was issued on 13.11.2014, however, the applicants approached this Tribunal belatedly and the department has spent lot of money in the proposed examination, and therefore, this Tribunal may not interfered with the process.

7. We have heard Mr.S.Dutta, learned counsel for the applicants and Mr.M.R.Das, learned counsel for the BSNL, perused the petition and reply of the BSNL and the precedents relied upon.

8. We have noticed that vide advertisement dated 13.11.2014 even though year wise vacancy position has been notified, a single examination for all the four years is proposed to be held on 15.02.2015. It is noted that the several Benches of this Tribunal like the Chandigarh Bench has already directed the BSNL authorities under the jurisdiction of Chandigarh Bench to hold independent examination for each vacancy year. The order of the Chandigarh Bench was challenged before the Hon'ble Himachal Pradesh High Court wherein vide order dated 08.12.2011 passed the orders, relevant portion of which has already been quoted at para 5 above. BSNL authorities, pursuant to advertisement dated 03.01.2012, had already held the examination on 04.03.2012 for promotion of JTO(T) to SDE (T) for the vacancy years 2006-07, 2007-



08, 2008-09 and 2009-10. Result of such examination has been published and accordingly, promotions were made.

9. Now, again the BSNL authorities is going to hold one single examination for the vacancy years 2010-11, 2011-12, 2012-13 and 2013-14. The question comes before us how the BSNL authorities will segregate the vacancies by holding one examination for four vacancy years. Persons who have not qualified for the vacancy years 2010-11, 2011-12 but qualified for 2013-14 will be allowed to sit in the examination along with persons who are qualified for all the four vacancy years. Moreover, by clubbing the vacancies for all four years into one LDCE, applicants all of whom have become eligible by 2010-2011 itself, will have only one opportunity to pass the LDCE instead of four opportunities that they are entitled to under the law. In other words, applicants will lose three chances to pass the LDCE which is violation of Article 16 of the Constitution of India. The Hon'ble Himachal Pradesh High Court vide its order dated 08.12.2011 while permitting the BSNL to conduct one examination for all the four vacancy years 2006-07, 2007-08, 2008-09 and 2009-10 directed the BSNL to conduct separate examination for each vacancy year from 2010-11. The direction to hold separate examination for each vacancy year from 2010-11 seems to have been disregarded by the BSNL authorities while again intending to hold one examination for the vacancy years 2010-11, 2011-12, 2012-13 and 2013-14 vide impugned advertisement dated 13.11.2014.



Therefore, the action of the respondents to hold one examination by clubbing the vacancies of four years is not at all sustainable. At the same time, we do not want to stall the process initiated by the BSNL Authorities vide advertisement dated 13.11.2014. Accordingly, we declare that the proposed LDCE to be held on 15.02.2015 shall be restricted for the vacancy year 2010-11 and make it clear that only those, who are eligible for having three years continuous experience in the JTO (T) for the vacancy year 2010-11, shall be allowed to sit in the examination to be held on 15.02.2015. For the remaining three vacancy years i.e., 2011-12, 2012-13 and 2013-14, BSNL authorities are directed to hold separate individual examination year wise as directed by the Hon'ble Himachal Pradesh High Court. The examination scheduled on 15.02.2015 is not interfered with subject to above directions.

10. O.A. stands disposed of accordingly at the admission stage. No order as to costs.

Sd/-
MANJULA DAS
HON'BLE MEMBER (J)
Sd/-
MD. HALEEM KHAN
HON'BLE MEMBER (A)

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Manu B
(Sd/-)
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