

**CENTRAL ADMINISTRATIVE TRIBUNAL
MADRAS BENCH**

Friday, the 24th day of June, Two Thousand Eleven

PRESENT

HON'BLE Dr. K.B.S.RAJAN, MEMBER (J)

&

HON'BLE Mr.R.SATAPATHY MEMBER (A)

MA 289 of 2011 &O.A.No.1358 of 2010

1.All India Graduate Engineers &
Telecom Officers Assn., (AIGETOA)
No.9, Sivasankaran Street,
Kamarajar Puram, Ambattur,
Chennai-53. Rep., by its
Circle President, Chennai Telephone
District, A.Kannan.

2.A.Kruba Sankar,
No.38, 7th Main Road,
Mahavir Nagar,
Lawspet,
Pondicherry 605 008.

... Applicants

Vs.

1.UOI, rep., by
its Secretary, Ministry of
Social Justice & Empowerment,
New Delhi.

2.The Chairman cum Managing
Director, BSNL Corporate Office,
Bharat Sanchar Bhavan,
Harish Chandra Mathur Lane,
Janpath, New Delhi 110 001.

3.General Manager (Personnel)
BSNL Corporate Office,
Bharat Sanchar Bhavan,
Harish Chandra Mathur Lane,
Janpath, New Delhi 110 001.

4.The General Manager (Recruitment)
Corporate Office, Eastern Court, Janpath,
New Delhi 110 001

5.Chief Liaison Officer (SCT)
BSNL Corporate Office
R No.221, 2nd Floor,
Eastern Court, Janpath,
New Delhi 110 001

6.V.Jayaraman,
4/244, Periyar Ambedkar Illam,
Duraismy Goundar Street,
Dharmapuri - 636 701



7.V.Nani
50/59, Kailash Sector,
Chinnameettupalayam 1st Street,
Kaladipet, Tiruvottiyur,
Chennai-19.

8.M.K.Veerapandian,
No.11, Kumarasamy Street,
Perambur, Chennai-11.

9.B.Karunanithy,
Old No.55, New No.30,
Pari Street, Avvai Nagar,
Choolaimedu, Chennai-94.

10.M.Ramalingam,
Plot No.1447, 2nd Main Road,
Poompuhar Nagar,
Kolathur, Chennai-99.

11.M.Gopinathan,
4/D, Sree Padmavathy Apartments,
Vadivelpuram, West Mambalam,
Chennai-33

Counsel for the applicants

Counsel for the respondents

.....
Respondents

... M/s R.Rajesh Kumar

... Mr. M.Govindarraj (R2-R5)
Mr.R.Saravana kumar (R6-R11)

ORDER

(Pronounced by Hon'ble Dr. K.B.S.Rajan, Judicial Member)

The brief facts of the case as contained in the OA are as hereinafter mentioned. The first applicant is a registered Association, a collective body of Graduate Engineers and Telecom Officers of BSNL which is said to be espousing the cause of Graduate Engineers and Telecom Officers of BSNL. The second applicant is a JTO and also a member of the first applicant's association.

2. The grievance of the applicants is that the respondents have not strictly adhered to the requirement of preparation of post based reservation roster as contemplated by the DOPT in their order dated 2.7.1997 (Annexure -II) which has been adopted by the BSNL. The result of non adherence to the preparation of post based roster is that many SC candidates have been deprived of their legitimate promotion to the higher grade of SDE. The applicants have therefore sought for the following relief:-

"To direct the respondents to implement OM No.36012/2/96-Estt(Res) by the first respondent and to prepare updated roster before conducting Departmental Promotion Committee (DPC) for promotion of Junior Telecom Officer (JTO) to Sub Divisional Engineer SDE(T) and to publish the same."

3. Respondents have contested the OA. According to them, the following are the material points:-

- (a) Respondents are following the rules of reservation in letter and spirit. The percentage of 15% for SC and 7.5% for ST is maintained. The process of preparation and adoption of roster in respect of SDE is under progress and is in the final stage. In view of the strength of the SDE cadre to the tune of twenty five thousand, naturally it takes some time for preparation of the post based roster.
- (b) As some vacancies arose in the past, three DPCs were conducted for seven vacancy years from 2002-03 to 2007-08 and one LDCE was conducted for five vacancy years from 2001-02 to 2005-06, over a period of six years from 2004.

(c.) The second applicant is not in the zone of consideration in any of the DPCs conducted earlier even after the adoption of the due relaxation and percentage of reservation for officers belonging to SC and ST categories. Such SC/ST officers would be considered for promotion in the future DPCs subject to their coming within the zone of consideration.

4. In addition to the above, the respondents have also referred to the information called for by the applicants under the RTI Act and the response thereof given by the respondents.

5. The applicants have filed rejoinder reiterating their contentions as raised in the OA. They have emphasised that the precise procedure contemplated in the years relating to post based roster had not at all been followed. Notwithstanding the huge strength of SDEs, there is no justifiable reason for the inordinate delay involved in the preparation of roster. The applicants have also ascertained that the percentage of reservation has not been scrupulously followed and the provisions of Article 16(4), 16(4a), 15(4), 385 and all inter-related Directive principles have not at all been kept in view by the respondents.

6. The applicants have filed MA No.289/2011 with the following prayer:-

"To issue an ad interim stay of all further proceedings consequent to the DPC like transfer of SDE, in lieu of order passed by Assistant General Manager (Personnel II), Corporate Office bearing Ref No.2-15/2001-Pers.II dated 30.3.2011 and further stay the order passed by Assistant General Manager (Personnel II), Corporate Office, bearing Ref No.2-15/2001-Pers.II dated 31.3.2011 until the pendency of the OA."

7. The respondents have filed their filed additional reply.

8. Initially, when the case was taken up for admission hearing, considering the facts and circumstances as set out in the application and submissions made thereunder, an interim order was passed restraining the

second respondent from conducting Departmental Promotion Committee meeting for promotion of Junior Telecom Officers to Sub Divisional Engineers till the next date of hearing.

9. The above said interim relief had been continued.

- A. The roster has not been prepared in the proforma specified by the Department of Personnel.
- B. The reservation roster point earmarked for SC category has been diverted/utilized to OCs. To substantiate, reference was made to first twenty pages containing 1061 records wherein as many as 133 cases of alleged violation had been indicated.
- C. Similarly, ST quota has also been not filled up but vacancies have been diverted to OC.
- D. Lack of information relating to date of birth, etc., in the roster is again illegal.
- E. Alphabetical order has been adopted in a number of pages of the roster and this cannot substitute the actual parameters defined by the DOPT.
- F. Data relating to HRMS staff number have not been provided at all in the roster.
- G. Without preparation of proper roster, exact vacancy for SC/ST employees cannot be determined which makes the SC/ST candidates suffer a lot.
- H. Reservation for SC was found to be 1.9% only against 15% and 0.42% only against 7.5%.

10. At the time of hearing, learned counsel for the respondents made available for our perusal two reservation rosters. The heading of the same indicated that one in respect of SDE cadre under seniority quota stream 67% followed by competitive quota stream 33% as on 31.3.2009. The second volume is also on the above style but as on 31.3.2010.

11. In the first volume, the respondents have indicated as many as 15,295 entries in respect of the promotee quota and in the summary they have stated that 3294 posts were vacant. The break up of vacant post has also been given. Similarly, in the competitive quota also details of total number of posts, their incumbency and vacant posts including the break up have also been reflected.



In the second volume, in respect of SDE seniority quota as many as 15845 names figured in and the vacancies under this quota had reduced to 3021 (Break up given). Likewise, under competitive quota, the figures denote 3341 entries (As against 3256 for the previous year and 3295 vacancies have been reflected with due break up.

12. A perusal of the roster maintained reflected that the second column thereof indicated "the roster point meant for". The same reflected that 400 point roster has been pressed into service and the cycle of 400 repeated in respect of entire roster. The points 7, 15, 20, 27,..... were meant for SCs and the points 14, 28, 40,..... were meant for STs and this cycle continues. Thus, in so far as the roster is concerned, the same has been prepared as per the requirement, vide order dated 2.7.97. The last column, reference to "the roster points utilized by". Since the earlier system pertained to vacancy based roster, the roster point utilized would not match the roster point meant for. Upto the vacancy year 2000-01, the roster was held on the basis of vacancy based roster. Subsequently also resort was to be made for filling up of the posts depending upon availability of candidates. It is the case of the respondents that there have been a number of vacancies and adequate representation of SC/ST was not available. The roster for 2010 indicates that available SC/ST candidates have already been promoted.

13. Notwithstanding the fact that the roster prepared appears to be in accordance with the procedure laid down, what puzzles is that there are still vacancies not only in SC/ST but also against the post tenable by OCs. The percentage worked out is exactly 15% and 71/2% respectively for SCs and STs. While this is the case of the respondents, as per the applicants, a number of reserved candidates are still awaiting their promotions. It is paradoxical that vacancies are available on the one hand and persons with the requisite qualifications are available on the other hand. The persons waiting for promotion should be considered within a reasonable time for filling up the vacancies.

Whether eligible candidates are available or not could not be ascertained from the post based roster. In order to ensure that none of the vacancies is left unfilled, especially when adequate SC/STs are available, an exercise must be carried out by referring to the seniority list and, if eligible candidates are available, respondents should hold the DPC meeting for filling up the vacant post.

15. The prayer in this OA is for a direction to prepare the post based roster in accordance with the procedure. The same having been found by a perusal of the post based roster, the grievance of the applicants gets substantially reduced. The violations indicated in the written submission by the applicants become dull and blurred when they are telescoped upon the post based roster prepared by the respondents.

16. Under normal circumstances, in view of the fact that the post based roster is already available, this OA would have been closed as having become infructuous. But since the undercurrent of the OA is that SC/ST candidates, eligible and waiting promotions as SDEs, should be given the due consideration, it is felt that by invoking the provisions of Rule 24 of the CAT Procedure Rules, 1987, it would be appropriate if the respondents undertake an exercise as hereunder:-

- (a) It must be ascertained from the post based roster as to how many SC candidates have been accommodated by virtue of their merit position against OC post.
- (b) The candidates as in (a) above should not be included for the purpose of calculating 15%/7 1/2% reservation for SC/ST candidates
- (c) After ascertaining the number of SC and ST candidates, the same should be compared with the minimum ceiling of 15% and 7.5% respectively for SC and ST candidate to find out whether there is deficiency or excess of reservation..
- (d) If there is any shortfall, the same should be treated as backlog; instead, if representation is more, adjustments against reserved points by accommodating OC should be resorted to.



17. After the above exercise is conducted, the exact vacancy position should also be ascertained and referring to the seniority list, those who are eligible for promotion should be considered against the vacant posts. Consideration may also be given for relaxation of the requisite years of experience so that the vacant post can be filled up as expeditiously as possible.

18. The OA is disposed of with a direction to the respondents to undertake the exercise as stated above. This drill shall be performed by the respondents within a period of six months from the date of communication of this order. Under the above circumstances, there shall be no order as to costs.

"Free Copy U/R 22 of
CAT (Procedure) Rules"

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M. J. Lakshmi
DEPUTY REGISTRAR

