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Nov. 2000

Examination shall be held by the DOT within six months from the date of receipt of a copy of this order."

In compliance with the directions of the Hon'ble Central Administrative Tribunal, Ernakulam, Kerala dated 1.5.98, the Department held DQE and LDCE for SC/ST candidates and Limited Departmental Competitive Examination for eligible OC category candidates who had already passed DQE held in previous years i.e. 1989, 1990 and 1991 as per TES Group 'B' Recruitment Rules, 1981 to fill up the LDCE quota vacancies arose between 1994-95 to 22.7.1996 and 2/3rd quota vacancies against SC/ST quota for 1994-95 to 22.7.1996.

That, Original Petition No. 21656 of 2001 and O.P. No.37134/01 were also filed before the Hon'ble High Court of Ernakulam, Kerala to stay the order passed by Central Administrative Tribunal Ernakulam Bench in OA No. 91/1999 and 1633/98 respectively in which DOT was directed to conduct the DQE and LDCE for the candidates like the applicants of aforesaid OA, against the vacancies that had arisen before 22-7-1996. Hon'ble High Court of Ernakulam, Kerala in Interim application No.35256 of 2001 in O.P.No.21656/01 vide its order dated 28.1.2002 passed an interim order during pendency of O.P.No.21656/01 directing the Department to conduct the supplementary Qualifying cum Competitive Examination LDCE for all candidates who were not allowed to appear in examinations held in November, 2000 and eligible for appearing in the above said examination according to Recruitment Rules, 1981 for vacancies of TES group B

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posts for the years 1994-95 and 1995-96 upto 22.7.96 i.e. before the promulgation of Recruitment Rules, 1996. In the order dated 28.1.02 it was stated that the employees similarly placed like him who applied for appearing in the special supplementary Qualifying-cum-Competitive Examination shall be considered for promotion against the 33, 1/3 percent limited Departmental Competitive Examination quota of vacancies. In other words, the petitioners shall conduct special supplementary Qualifying-Cum-Competitive Examination in continuation of the one conducted as per Annexure A7 in the O.A. in compliance with the impugned order of the Tribunal. The results also shall be published. However, the question of considering them for promotion against the 33 1/3% quota will be decided while disposing of the original petition.

Sept. 2003

In compliance with the order of the Hon'ble High Court dated 28.1.2002, a supplementary examination to Qualifying cum Competitive Examination held in the year 2000 for vacancies, against 1/3rd quota of TES group 'B' posts for the years 1994-1995 and 1995-96, (up to 22.07.96) was held in September, 2003 for the candidates of OC category. In the said examination JTOs recruited against the vacancies of a year ordinarily not less than 05 year prior to the year of announcement of such examination, were eligible. It will be worth to mention here that if the said examination would have been held in 1996, only the JTOs recruited against the recruitment year 1991 would have been eligible to appear, but the department allowed the candidates who were recruited against the

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recruitment year 1993 & 1994 and in this manner DOT allowed the private respondents whose names are mentioned at Sl. No. 123 to 142, who were not eligible to appear in the examination held in November 2000 & September, 2003. Further, in the said examination, some of the private respondents whose names are mentioned at Sl. No. 4,5,6,8 and 9 ere neither eligible for appearing in the said examination held in November 2000 and September, 2003 nor they had applied in the year 1998 because they had already been promoted in 1994 and the said LDCE was held for the vacancies arose between 1994-95 to 22.07.96. All the private respondents declared successful in the said examinations in parts further vide BSNL office letter No. 5-3/2004-DE(C) dated 13.12.2004 for 141 candidates and dated 13.9.2006 for three candidates.

13.04.2005 Vide BSNL Corporate Office letter No.2-10/2004-Pers-II dated 13.04.2005 promotion order of 116 private respondents in SDE cadre, were issued. However, all these candidates had been already promoted as SDE in 2000 or 2001 as per TES Group B Recruitment Rules 1996. By these Orders their staff no. were also changed but there date of promotion was treated the same as per order issued in 2000 & 2001. The new staff no. was in series of 37,000 and 38,000, however that was wrong and misguiding the other senior SDEs.

2006 The said Original Petition No.21656 of 2001 finally came up for hearing before the High Court of Kerala in 2006 and by its final judgment and order dated 13.07.2006, the

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Hon'ble High Court of Kerala directed the official respondents to assign the seniority to the private respondents against the vacancies arisen before 23.7.1996.

In compliance of the above order dated 13.7.2006, the Department of Telecommunication issued a provisional seniority list vide letter No.2-32/2001-STG-II dated 27.9.2006 and final seniority list vide DOT letter dated 01.02.2007. The said final seniority list was circulated by BSNL HQ letter F.No.15-8/2006 Pers-II dated 13.2.2007. According to the said seniority list, Private respondents were assigned seniority against the vacancies for the year 1994-95, 1995-96 and upto 22.07.1996 which was absolutely contrary to the law laid down by the Hon'ble Apex Court in catena of decisions. It is further submitted that the Respondents appeared in the DQE and LDCE examination held either in the year 2000 or 2003. They should not have been assigned the seniority from the date of occurrence of vacancies. The Hon'ble Supreme Court in catena of decisions has laid down that if quota and rota Rules are broken then the persons who have become eligible later on, could not be given seniority from the date prior to their promotion for that post as they are not borne in the cadre on the date of occurrence of the vacancies but they have lien and right in the cadre from the date they had officiated or promoted on the said posts and not prior to that. No retrospective seniority could have been assigned to them from the date of occurrence of the vacancies and it is also clearly explained in paragraph 2.4.2 of OM

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22011/7/86-Estt (D) dated 03.07.1986 of the Govt. of India, Deptt. of Personne and Training that para unfilled vacancies should be carried forward in subsequent years and accordingly seniority should be fixed in subsequent years only. Further, it will be worth to mention here that LDCE is a form of direct Recruitment, Limited to Departmental Candidates only. Therefore, in their case also any candidates appointed on the basis of LDCE can not have retrospective appointment.

Since the persons who were already promoted on the post in the years 1994 and 1998 were aggrieved by the seniority assigned to the PRIVATE respondents, therefore, they had filed objections to the seniority list dated 1.2.2007 issued by the Department of Telecommunication.

21.08.2007

Aggrieved from the impugned seniority list by which the said private Respondents were assigned seniority from the date of occurrence of vacancies, some SDEs of BSNL Orissa Telecom Circle filed a Writ Petition bearing No.9256/2007 before the High Court of Orissa challenging the assignment of seniority to the said 147 SDEs from the date of the occurrence of the vacancies retrospectively. The said Writ Petition came up for hearing before the Hon'ble High Court of Cuttuck at Orissa and vide order dated 21.8.2007 stayed the seniority list dated 1.2.2007 subject to the result of the Writ Petition. The said Writ Petition is still pending consideration before the Hon'ble High Court of Cuttuck at Orissa.

The said private respondents again represented to the Department of Telecommunication for re-fixing of their

seniority and official respondents no. 01, the DOT again issued a provisional seniority vide DOT letter No.2-32/2001-STG.II dated 27.3.2008 and circulated vide BSNL Corporate office letter No. 15-8/2006-Per.II dated 7.4.2008 again allotting seniority retrospectively from the year 1989 to 1996. The first private respondent who qualified LDCE in 2000 allotted seniority no. 5759.1 against the vacancy of 1989, While he passed Limited Departmental Competitive Examination held in 2003, in 2004.

On the provisional seniority list dated 27.3.2008 again objections were called and several objections were sent to DOT by SDEs. The Applicant Association also submitted a detailed objections relying upon repeated judgments passed by the Hon'ble Apex Court in which Apex Court had clearly prohibited for assigning seniority retrospectively from the date of occurrence of the vacancies. The Applicants also relied upon the judgment and order dated 02.04.2008 passed by the High Court of Madras in Writ Petition No.21961/2001 in which similar kind of dispute arose and the Hon'ble High Court of Madras held that seniority can be assigned from the date of appointment/promotion to the post and not prior to the date of appointment/promotion.

The Official Respondents no.1 and 2 completely ignored the law laid down by the Hon'ble High Court of Madras in similar kind of dispute and further the objections raised by the Petitioners, without application of mind illegally declared provisional seniority list as final seniority list vide

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DOT letter no. 2-32/2001-STG.II dated 28.7.2008 in most arbitrary and illegal manner.

02.04.2008 Seniority list issued by the DOT was completely contrary to the directions and judgment passed by the Central Administrative Tribunal, Madras Bench in the case of SDEs. In fact 270 SDEs who had passed LDCE and whose seniority was fixed vide DOT Order dated 1.2.2001 in similar manner with retrospective effect was challenged before the Central Administrative Tribunal, Madras and Central Administrative Order vide its order dated 29.09.2001 in O.A.No.305 of 2001 titled as T.Nagrajan and others Vs. Govt. of India and others quashed the seniority with the following observations:-

"For the foregoing reasons, we set aside the seniority assigned to the candidates covered by the impugned order dated 1.2.2001 but excluding the applicant in the O.A.961/99 before the Bangalore bench and the officials respondents are directed to recast the seniority list dated 20.3.2001 within a period of six weeks from the date of receipt of copy of the order by assigning to these candidates seniority with reference to their actual date of promotion in LDCE quota. We however, make it clear that if the seniority position which they enjoyed with reference to their promotion under the 66-2/3% quota is more favorable to them than the assignment of seniority under the LDCE quota effective from 1.2.2001, then, it is open to them to

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retain their seniority with reference to their promotion under the 66-2/3% quota."

28.7.08

Against the said judgment and order of the Central Administrative Tribunal, Madras, Govt. of India had filed Writ Petition No.21961/2001 in the Hon'ble High Court of Madras and the Hon'ble High Court of Madras vide judgment and order dated 2.4.2008 dismissed the Writ Petition of the Govt. of India and upheld the judgment of the Central Administrative Tribunal, Madras and it was clearly mentioned that promotion cannot be ante dated to the date of the holding of such competitive examination.

Under the teeth of the orders of the Hon'ble High Court of Madras, official the Respondents have still committed the same mistake and had assigned seniority retrospectively not from the date of the promotion but from the date of the occurrence of the vacancies.

Issuance of seniority list dated 28.7.2008 is illegal and arbitrary and is not only contrary to the judgment of the Madras High Court but the law laid down by the Hon'ble Supreme Court in catena of decisions specially in the case of Suraj Prakash Gupta Vs State of J&K and others reported in 2000 (3) SCC Page 637.

On the final seniority list dated 28.07.2008 again objections were sent to DOT as well as to BSNL on 19.08.08 by Applicant Association by relying upon repeated judgments passed by the Hon'ble High Court/Apex Court in which Hon'ble Courts had clearly prohibited for assigning seniority retrospectively from the date of occurrence of the vacancies.

29.09.2008

The official Respondents further passed orders for promotion of 52 SDEs, the private respondents, of impugned seniority list dated 28.07.08 in STS grade of ITS group 'A' vide order dated 29.9.2008.

The said seniority list dated 28.7.2008 as well as the promotion order passed in favour of 52 SDEs, the private respondents, are illegal, unjustified, contrary to law and are in violation of fundamental rights guaranteed to the Petitioners under Articles 14 and 16 of the Constitution of India in as much as the Applicants are much senior to these respondents who were not eligible to be appointed and/or promoted on the basis of even feeder cadre and they have been assigned seniority above the Petitioners when the private Respondents were not eligible for promotion on the post of SDE as per TES Group 'B' RR 1981.

Being aggrieved and dissatisfied with the seniority list dated 28.7.2008 as well as order dated 29.09.2008 by which promotions are given to 52 private respondents, the Applicants are left with no option except to approach this Hon'ble Court by way of the present petition.

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
ORIGINAL APPLICATION NO.....OF 2009

IN THE MATTER OF:

1. All India Bharat Sanchar Nigam Limited,
Executive Association, through Prahlad Rai
S/o. Sh. Keshar Lal, its General Secretary,
aged about 51 years, Registered Office
at A-4/6, M.S. Flats, Peshwa Road Apartments,
New Delhi-01.
2. C.K. Gupta S/o. P.N. Gupta aged about 56 years,
R/o 833, Rasta Churukon Charura Rasta 128, J&K Block,
Laxmi Nagar, Delhi Post held AGM(CMS-I),Wireless O&M
3. Prem Chand S/o. Sh. Des Raj aged about 48 years
R/o CD/28A, DDA Flats, Hari Nagar, New Delhi,
Post held Manager(IT) IT Cell BSNL, Bharat Sanchar
Bhawan, Janpath New Delhi
4. S.V. Patel S/o Sh. Vishrambhai Patel aged about 55 years
R/o 3145/1 W.H.S. Kirati Nagar New Delhi Post held
AGM(CMTS-CE) BSNL, Bharat Sanchar Bhawan,
Janpath New Delhi
5. Tilak Raj Jhamb S/o Sh. Kushal Chand aged about 50 years
R/o F-200 B, Dilshad Garden, Delhi-95
Post held Manager, AGM(CMTS) BSNL, Bharat Sanchar
Bhawan, Janpath New Delhi

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6. Braham Prakash S/o Sh. Dayakishan aged about 50 years
R/o 473, Laxman Vihar Ph.II, Gurgaon
Post held Dy. Manager, AGM(CMTS) BSNL,
Bharat Sanchar Bhawan, Janpath New Delhi
7. Rajesh Kumar Sharma S/o Late Sh M. Sharma aged about 59
years R/o 29-C DDA Flat Taimur Enclave, New Delhi-65
Post Held AGM(ML), BSNL, Bharat Sanchar
Bhawan, Janpath New Delhi
8. Satish Chander S/o Late Sh Ram Sarup aged about 50 years
R/o H.No.142, Sector No 29, Faridabad
Post held Manager, (ML-II) O/o GM (NM) BSNL,
Bharat Sanchar Bhawan, Janpath New Delhi
9. R.P. Goyal S/o Kalyan Lal Gupta aged about 53years
R/o P No 24, Vinoba Nagar, Near Sector-11,
Malviya Nagar, Jaipur-17 Post held SDE(MM)
O/o CGM(NTP) Eastern Court, N.Delhi
10. Sohan Lal Sharma S/o Late Sh Radha Krishnan Sharma
aged about 50 years R/o. Vivekanand Nagar, Bahadur Garh
Post held AGM(CMTS) BSNL,
Bharat Sanchar Bhawan, Janpath New Delhi
11. Jeet Singh S/o. Late Sh Khacheru Singh aged about 50 years
R/o RZ-38, Kamal Park, Palam Colony, N.D.-45
Post Held Manager (CMTS) BSNL,
Bharat Sanchar Bhawan, Janpath New Delhi
12. Rajesh Krishna Sharma S/o S.K. Sharma aged about 54 years
R/o 289, Hathroi Garhi, Ajmer Road, Jaipur-001
Post held AGM(VAS), BSNL,
Bharat Sanchar Bhawan, Janpath New Delhi

13. Tej Pal Singh S/o Prem Singh aged about 50 years
R/o 6/109, F-2 Sector-6, Vaishali, Ghaziabad-201010
Post Held AGM(CMTS-Infra), BSNL,
Bharat Sanchar Bhawan, Janpath New Delhi
14. S.N. Seth S/o P.N. Seth aged about 50 years
R/o 204, Guru Jambheshwar Nagar 'A' Vaishali JP-21
Post Held Manager (Vigilance), BSNL,
Statesman House New Delhi
15. Naveen Prakash S/o Shri B.B. Sharma
aged about 51 years, R/o 198/1, Jagrati Vihar Meerut (UP)
posted as AGM (Estt.) O/o CGMT UP (W) Circle,
1st floor MDA bldg. Meerut-250003
16. Munna Lal Gupta S/o Shri Shyam Lal
aged about 51 years, R/o16/1 Kozy colony opposite, Defence
colony, Mawana road posted as AD(PG), O/o CGMT UP
(W) BSNL Circle 111rd floor MDA bldg. Meerut-250003
17. Aziz Ahmad S/o Late Shri Noor Mohammad
aged about 48 years, R/o 478/30 Jhabjhali Mohalla Lucknow
posted as Sr SDE TAX ,under GMM,
Lucknow, NTR, Circle
18. Ashok Kumar Chaubey S/o Shri Ganga Narain
aged about 53 years, R/o, 9B, Gayatripuram Kursi Road, Lucknow
posted as Sr SDE OFC Mtce Lucknow, NTR, Circle
19. Anjani Krishna S/o Late Shri Jagjiwan Krishna
aged about 54 years, R/o 347/412, 20
Tikait Rai Bara Talab Lucknow
posted as Sr SDE OFC Mtce Lucknow, NTR Circle

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20. Alok Shrivastava S/o Late Shri Kaushal Kishore Srivastava aged about 46 years, R/o Type-IV/03, Telephone exchange Compound, Kaiserbagh Lucknow, posted as Sr SDE OFC Mtce, under GMM, Lucknow, NTR, Circle
21. A.K. Jain S/o Late Shri Chaiman Lal Jain aged about 48 years, R/o Type-IV Q- Telephone Exch. Colony Shuklaganj, Distt. Unnao (UP) posted as Sr.SDE (CCN) O/o TDM Unnao UP(E) Circle
22. Chandrama Yadav S/o Late Shri Sandhu Yadav aged about 48 years, R/o 7/555, Vikas Nagar Lucknow posted as Sr SDE OFC Mtce, under GMM Lucknow, NTR Circle
23. C.S.Mishra S/o Late Shri R.N. Mishra aged about 51 years, R/o D-1/62, Sector-F Jankipuram, Lucknow posted as Sr SDE (Tech), under GMM Lucknow, NTR Circle
24. Dinesh Prasad Singh S/o Late Shri Ram Ajore Singh aged about 47 years, R/o 28, Preet Vihar Colony, Kamta Surendra Nagar Lucknow posted as Sr SDE Fault Control under GMM Lucknow, NTR Circle
25. Lala Ram S/o Late Shri Ganstham aged about 50 years, R/o 2/48 Vijaiant Khand Gomati Nagar Lucknow posted as Sr SDE Of C Mtce under GMM Lucknow, NTR Circle
26. Raquim Ali S/o Late Shri Alemun aged about 49 years, R/o C-2828, Rajajipuram Lucknow posted as Sr SDE (TT) o/o GMM Mtce Lucknow,, NTR, Circle
27. Suresh Prasad Mishra S/o Late Shri Ram Narayan Mishra aged about 52 years, R/o Qtre No.90, Type-IV Telecom Colony Aliganj Lucknow posted as Sr SDE Ofc Lucknow, NTR, Circle

28. Shyam Kishore S/o Late Shri P.D. Dixit
aged about 48 years, R/o 538K/449B, Triveni Nagar-III Sitapur
Road Lucknow posted as Sr SDE (Plg) O/o PGMT Lucknow,
under CGMT UP (E) Circle
29. U.P.Singh S/o Late Shri Bahal Singh
aged about 54 years, R/o 13/17, Vikas Nagar, Lucknow
posted as Sr SDE Trans Lucknow (TT) O/o PGMT
Lucknow, under CGMT UP (E) Circle
30. Ram Prasad S/o Late Shri Raghu Nath Singh
aged about 50 years, R/o 117/408 O Block geeta Nagar Kanpur –
25 posted as Sr. SDE, OFC Route Kanpur under
GMM Lucknow, NTR Circle
31. S.P.S. Rathore S/o Late Shri Puttar Singh
aged about 46 years, R/o 390 Shivpura Naveen Nagar kanpur
(UP) posted as Sr. SDE, OFC Route Kanpur under
GMM Lucknow, NTR Circle
32. S.N. Yadav S/o Late Shri Rameshwar Prasad
aged about 47 years, R/o Q No. 3, New CTO Compound Colony
Mall Road, Kanpur (UP) posted as Sr. SDE, MUX Kanpur under
GMM Lucknow, NTR Circle
33. B. K. Tripathi S/o S.D. Tripathi R/o 117/113,
EM Block Kakadev Kanpur. aged about 44 years,
Posted as Sr. SDE(OFC) Route Kanpur under GMM
Lucknow, NTR Circle
34. Rajesh Pratap Singh S/o Shri Sankatha Prasad Singh
aged about 48 years, R/o C-66, Sarvodaya Nagar Lucknow
posted as Sr SDE (Admn) o/o GMM Lucknow, NTR, Circle

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35. Satish Chand Sharma S/o Shri Om dutt Sharma
aged about 47 years, R/o Q-No.4 Telecom Officer Colony Sector
19 Noida (U.P.) posted as AGM (MM) O/o CGMT UP (W) Circle
MDA Building Meerut,UP (W) Circle
36. Ashok Kumar Sharma S/o Shri Ishwari Prasad Sharma
aged about 49 years, R/o Q-326, Pallavpuram Phase-II Meerut
250101 posted as DE (phone) Boundary road Lalkurti Telephone
Exchange Meerut,UP (W) Circle
37. Dharmendra Kumar Jain S/o Shri S.L. Jain
aged about 51 years, R/o 67-C Jain Nagar Meerut
posted as AGM (plg) O/o GMTD BSNL GPO Compound Meerut
Cantt.-25001,UP (W) Circle
38. Manoj Sharma S/o Shri V.C. Sharma
aged about 48 years, R/o 232 Purva Ahiran Budana Gate Meerut
City 250002 posted as AGM (Rural & Vig.) O/o GMTD Meerut
GPO compund Meerut Cantt 250001, UP (W) Circle
39. B.S. Bhadauria S/o Shri Maujam Singh Bhadauria
aged about 50 years, R/o 89, Greater Ganga, Ganga Nagar
Mawana road Meerut (UP) posted as AGM (Admn.) O/o GMTD
Meerut, UP (W) Circle
40. S.K. Pandey S/o Shri Sita Ram Pandey
aged about 56 years, R/o Q-2 Type IV Sanchar Colony D-Pocket
Ganga Nagar Meerut UP posted as DE (vig.) O/o CGMT UP (W)
Circle, Meerut
41. A.K.S. Pundir S/o Shri Rukam Pal singh
aged about 48 years, R/o Deen Dayal Puram near Purani Chungi
Nadarai Gate Kasganj (UP) posted as DE (A&P) O/o TDM
Badaun, UP (W) Circle

.....Applicants