

136. P.S. Parmar, SDE,
through CGMT BSNL,
Gujarat Circle, Ahemdabad
137. Sathiyam D, SDE,
through CGMT BSNL,
Tamil Nadu Circle, Chennai
138. Kumareshan G, SDE,
through CGMT BSNL,
Karnatak Circle, Bangalore
139. Rajeshwari K, SDE,
through CGMT BSNL,
Tamil Nadu Circle, Chennai
140. Sivagama Sundari S, SDE,
through CGMT BSNL,
Tamil Nadu Circle, Chennai
141. Jitesh Kumar, SDE,
through CGMT BSNL,
Punjab Circle, Chandigarh
142. J K. Patel, SDE,
through CGMT BSNL,
Gujarat Circle, Ahemdabad

..... Respondents

All the respondents be served
through Bharat Sanchar Nigam Ltd.
Bharat Sanchar Bhuwan,
4th Floor Janpath, New Delhi-110001

**AN APPLICATION UNDER SECTION 19 OF THE
CENTRAL ADMINISTRATIVE TRIBUNAL ACT, 1985**

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To

Hon'ble Chairman and his other
Companion Members of the
Central Administrative Tribunal.

The humble Application of
the applicants above named.

MOST RESPECTFULLY SHOWETH:

1. Particulars of the Order against which the Application is filed:-
 - i. That the Applicants are aggrieved by the order issued by the Department of Telecommunication vide letter No.2-32/2001-STG-II dated 28.07.2008, by which the official Respondent assigned seniority to the SDEs, the private Respondents mentioned at Sl.No. 4 to 142 much before they qualified Departmental Qualifying Examination (in short DQE) and Limited Departmental Competitive Examination (in short LDCE) and who are much junior in service to the applicants and are promoted as SDEs much later than applicants, and also by the promotion order issued in respect of 52 Private respondents in STS Grade of ITS Group 'A' (Divisional Engineer) vide BSNL Corporate office letter No.412-25/2008-pers-I dated 29.09.2008 which are illegal, unconstitutional and violates the fundamental rights guaranteed to the Applicants and members of the Association namely All India Bharat Sanchar Nigam Limited Executive Association under Articles 14 and 16 of the Constitution of India.

- (a) Passed by : Respondent Nos. 1 to 3.
- (b) Passed on : 1.2.2007, 28.07.2008 and 29.09.2008.
- (c) Subject in relief : To quash the said letters No. 2-32/2001-STG-II dated 28.07.2008 and 412-25/2008-pers-I dated 29.09.2008 and assign the seniority to the said respondents only when they become eligible after passing the Departmental Qualifying Examination, in short DQE & Limited Departmental Competitive Examination, in short LDCE.

2. JURISDICTION OF THE TRIBUNAL

That by the Notification No. P 13030/5/2008/VI dated 31.10.2008 passed by Department of Personnel and Training under Section 14(2) of the Central Administrative Tribunal Act, all the services under Bharat Sanchar Nigam Limited (hereinafter referred to as BSNL) have come under the jurisdiction of the Central Administrative Tribunal. All the Applicants are working in the BSNL and are filing an Application under Section 25 of the Central Administrative Tribunal Act so that the present petition be heard by the Principal Bench.

3. LIMITATION.

The Applicants submit that the impugned orders/letters are dated 28.07.2008 and 29.09.2008, which are very much within the limitation prescribed in Section 21 of the Central Administrative Tribunal.

4. **FACTS OF THE CASE.**

- 4.1 That the Applicants belong to Telecom Engineering Service Group B Cadre (hereinafter referred in short as TES Group B in BSNL) and presently they have been working as SDEs/Officiating Divisional Engineers at different stations.
- 4.2 That, the Recruitment to the SDE cadre (Formerly Assistant Engineer in short AE now designated Sub Divisional Engineer in short SDE) i.e. in TES group 'B' Service was made from the feeder cadre of the Junior Engineers in short JEs (now designated as Junior Telecom officers, in short JTOs) on the basis of Telegraph Engineering Service Group-II Recruitment Rules, 1966 in short TES group -II RR- 1966.
- 4.3 That, Telegraph Engineering Service Group -II Recruitment Rules, 1966 were superseeded on 7th May, 1981 by Telegraph Engineering Service Group 'B' Recruitment Rules, 1981. Photo Copy of TES group 'B' RR- 1981 is annexed as **Annexure A-1** to this application.
- 4.4 That, as per TES group 'B' RR- 1981, mode of filling up of TES group 'B' post was on promotion basis amongst the Junior Engineers in short JEs (now designated as Junior Telecom officers, in short JTOs) as detailed below: -

As per column 12 of schedule in above RR-

- (i).66 2/3 percent of the TES group 'B' (now Sub Divisional Engineer in short SDE) post by selection amongst the JEs (now JTOs) on the basis of Qualifying Examination conducted by department in

accordance with the provisions laid down in appendix-I, appendix-II and Appendix-III to these Rules.

(ii). 33, 1/3 percent of the TES group 'B' posts by selection amongst the JEs (now JTOs) on the basis of Limited Departmental Competitive Examination, in short LDCE, conducted by department in accordance with the provisions laid down in appendix-I, appendix-II and Appendix-III to these Rules.

Rule 2 of Appendix I to the rule provided as follows: -

2. (i) 66-2/3 per cent by a duly constituted Departmental Promotional Committee from the officials who have qualified in the Departmental Qualifying Examination in short DQE.

(ii) 33-1/3 per cent through Limited Departmental Competitive Examination on the basis of relative merit.

(iii) The inter-se seniority of the officials who have qualified in the Departmental Qualifying Examination and those who have qualified in the Limited Departmental Competitive Examination shall be in the ratio 2:1 starting with the officers selected by the method of selection by the Departmental Promotion Committee on the basis of Departmental Qualifying Examination", in short DQE."

As per Rule 5 of Appendix-I eligibility of JEs (Now JTOs) for appearing in each part of the examination was five years regular service in the grade of JE /JTO on the 1st January of year in which the examination is held.

Rule 4 of Appendix III provided that candidates shall have the option to take both the examination together or to take Departmental Qualifying Examinations initially and then Limited Departmental Competitive Examinations in subsequent years. But for appearing in the Limited Departmental Competitive Examinations it shall be obligatory to qualify in the Departmental Qualifying Examinations. In other words if a candidates takes both the examinations together and fails in the qualifying part, he will not be considered for the competitive examinations of that year or till qualifies in the qualifying examination.

Rule 5 of Appendix III further stated that those who had qualified in the examinations held before the commencement of the 1981 Rules, shall be deemed to be qualified in the Departmental Qualifying Examinations for the purpose of appointment against 66-2/3 per cent quota

4.5 There were some amendments to the Recruitment Rules 1981 which further clarified that minimum marks in competitive examination specified in 1981 Rules would be in each paper and

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it was also stipulated that method of selection of candidates for promotion against 2/3rd quota of vacancies from amongst those who have qualified Departmental Qualifying Examination on the basis of seniority cum fitness.

4.6 That the Recruitment Rules, 1981 were amended by a Notification dated 2nd May, 1986 only to change the name of the service from Telegraphs Engineering Services to Telecommunications Engineering Services and Rules were also renamed as Telecommunication Engineering Services Group 'B' Recruitment Rules Further more, there was a change in the composition of the Departmental Promotion Committee for recommending promotion and also the eligibility criteria for appearing in the qualifying and competitive examination. This condition amended from time to time and as per amendment in May 1986, eligibility condition became JEs (Now JTOs) recruited against the vacancies of a year ordinarily not less than 5 year prior to the year of announcement of such examination.

4.7 & 4.8 That recruitment of all applicants in the feeder cadre falls between the years 1978 to 1984, and had taken their Departmental Qualifying Examination way back from 1985 to 1991 and had joined on the post of TES Group 'B' from 1994 to 1998 as per Recruitment Rules 1981 against 2/3rd quota of Departmental Qualifying Examination.

The detail of Recruitment year and promotion year of applicant is annexed with this application as Annexure A-2.

4.9 That in the year 1996, Recruitment Rules 1981 stood superseded by new Telecommunication Engineering Service Group B Recruitment Rules, 1996 which came into force on 23.07.1996. Under the said Rules, 75% quota was to be filled up amongst the JTO on seniority cum fitness basis and 25% quota was to be filled

up on the basis of LDCE. A true and correct copy of TES Recruitment Rules, 1996 is annexed with this petition and marked as **ANNEXURE A-3**.

- 4.10 That since no LDCE was held, therefore some JTOs of SC/ST and also Other Category, who could not have been passed the Departmental Qualifying Examination held in 1985, 1987, 1988, 1989, 1990 and 1991 filed cases before the Central Administrative Tribunal, Ernakulam, Kerala including O.A.No.1497 of 1996 seeking direction for conducting Qualifying cum Competitive Examination for the vacancies available prior to coming into force of Recruitment Rules, 1996. In fact, the DOT submitted affidavit before Hon'ble Supreme Court on 25.10.1996 in SLP (Civil) No. 26071/1995 that the vacancies are to be filled up according to the Rules in existence upto the date of vacancies. Accordingly Hon'ble Supreme Court passed judgment dated 25.10.96. Taking advantage of this order passed by the Hon'ble Supreme Court, the SC, ST and OC categories submitted that since the vacancies under LDCE quota falling upto 22.07.1996 prior to the commencement of Recruitment Rules, 1996 were not filled, therefore the direction be issued to the department accordingly.
- 4.11 That the Central Administrative Tribunal, Ernakulam, Kerala vide its order dated 1.5.98 in O.A.No.1497/1996 and in other connected cases directed the Department of Telecommunication to hold a combined Qualifying cum Competitive Examination with the following directions.

"Para 35- In sum, we direct that the Department shall fill up the vacancies arising up to 22.07.96 only with the officials of JEs/JTOs cadre who have qualified and may qualify themselves at the Qualifying Examination part of the DE, one combined Departmental Examination for the quota of SC/ST vacancies for the TES Group -B cadre earmarked for the Qualified Officers and fill up 1/3rd quota earmarked for the competitive Officers who have qualify themselves or may qualify themselves at the same combined Departmental cum Competitive Examination. The posts earmarked for SC/ST in the promotional cadre of TES Group 'B' are directed to be filled up appropriately with the qualified SC/ST officials from the feeder cadre of JEs/JTOs based on the results of this Examination. As we have already directed, that the Combined Departmental Examination shall be held by the DOT within six months from the date of receipt of a copy of this order."

- 4.12 That 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. The said examination was held in November, 2000 and result of LDCE was declared on 4.2.2002 for 16 candidates and on 11.11.2002 for six candidates.

- 4.13 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 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 earlier 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. A true

and correct copy of the Order dated 28.1.2002 is annexed hereto and marked as ANNEXURE B-4.

- 4.14 That 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 1992 would have been eligible to appear, but the department allowed the candidates who were recruited against the recruitment year 1992, 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 were 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. In fact the respondents did not allow the TES group B Officers Promoted against vacancies prior to 1994 as is even clear from one of the representatives submitted to the respondents and the reply given by respondent treating them ineligible. A true copy of the representative alongwith reply of respondent is annexed as Annexure 4A. 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.

- 4.15 That, 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 their 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 misleading the other senior SDEs.
- 4.15 That 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 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. A true and correct copy of the judgment and order dated 13.7.2006 passed by the Hon'ble High Court of Kerala is annexed with this petition and marked as **ANNEXURE A-5**.
- 4.17 That 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. A true and correct copy of the seniority list issued on 1.02.2007 vide BSNL letter dt. 13.2.2007 is annexed hereto with this application and marked as **ANNEXURE A-6**.
- 4.18. That 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 22011/7/86-Estt (D) dated 03.07.1986 of the Govt. of India, Deptt. of Personnel 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. If on the other hand LDCE quota appointee is also treated for all purposes a promotee, then appointments against vacancies in the quota meant for LDCE candidates is to be Governed by Departmental Promotion Committee procedure as mentioned in paragraph 2.4.4 of OM 22011/5/86-Estt (D) dated 10.03.1989 and in paragraph 6.4.4 of DOP&T OM No. 22011/5/86-Estt(D) dated 10.04.89 as

amended by O.M. No. 22011/5/91 Estt. D dated 27.3.97 of the Govt. of India, Deptt. of personnel and Training, which state that promotions will have only prospective effect even in case vacancies relate to earlier years. Further as a fundamental rule, that seniority starts after date of appointment on the post, is being adopted by Department in case of promotions against 2/3 quota of vacancies in TES Group 'B' cadre. Which is clear from the facts that no consequential benefits like ante dated seniority, back wages or notional date of promotion etc are given to such promotees from the date, vacancies arise against which they are promoted even after the officer fulfills the all eligibility conditions (like DQE passed) for promotion on the date of vacancies arise and vacancies could not be filled up due non-conduction of DPC in that year. Photo Copy of OM dated 03.07.1986 and dated 10.03.1989 is annexed as Annexure A-7 and Annexure A-8 respectively to this application.

- 4.19. That it is also not out of place to mention that Rule 4 of Appendix III of recruitment rule of 1981 provided that candidates shall have the option to take both the examination together or to take Departmental Qualifying Examinations initially and then Limited Departmental Competitive Examinations in subsequent years. But for appearing in the Limited Departmental Competitive Examinations it shall be obligatory to qualify in the Departmental Qualifying Examinations. In other words if a candidate takes both the examinations together and fails in the qualifying part, he will not be considered for the competitive examination of that year or till qualifies in the qualifying examination.

Hence, as per Rule 4 of Appendix III of TES Group 'B' RR 1981 passing of DQE and LDCE was must for promotion against 1/3rd quota of vacancies. In the instant case the respondents mentioned at sl. No. 6, 7, 9, 10, 11, 12, 13, 14, 16, 17, 20, 23, 24, 56, 59, 110, 136, 137, 138, 139, 140 and 141 passed the LDCE held in 2000 and result of that was declared in 2002, hence they have right for seniority against 1/3rd quota only after 2002 and the rest respondents passed DQE and LDCE held in September 2003 and result of that was declared in 2004 and as per TES Group 'B' RR 1981 they have right for seniority against 1/3rd quota only after they passed the LDCE, But their seniority was assigned before 22.07.96, which is wrong in eyes of law. A chart of all candidates including private respondents showing the detail is annexed here to and marked as **ANNEXURE A-9**.

- 4.20. That, 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.
- 4.21. That, 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