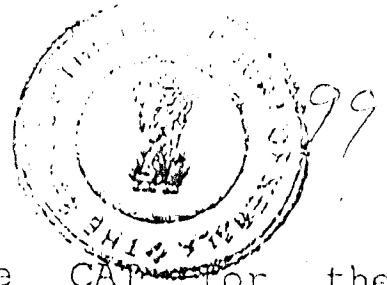


was construed by the Department as applicable only in respect of SC and ST candidates. This resulted the first respondent filing O.A.No.91/99 before the CAT. The CAT taking note of the aforesaid order of the Supreme Court and its own order in O.A.1497/96 and connected cases, directed the Telecom Department to conduct a qualifying cum competitive examination for the candidates like the applicant before the tribunal, namely first respondent herein, for being considered against the vacancies that had arisen before 22.7.96, in accordance with the quota set apart in Annexure-1. It is that order which is impugned in O.P.No.21656/01 by the Union of India and Telecom Department.

2. Same question arises in respect of two incumbents in BSNL: One filed O.A.No.1633/98 which resulted in, similar direction. That is being assailed by the General Manager of the BSNL in O.P.No.37134/01.

3. It is contended on behalf of the petitioners that by reason of the conduct of the test directed



in the impugned orders of the CAT for the respective incumbents being considered against the vacancies that had arisen before 22.7.96, several others would be adversely affected, if in that test the persons who had not yet been promoted or who had been promoted later happened to be considered against the 33.1/3rd of the vacancies that had arisen before 22.7.96. Therefore, the CAT was not justified in directing a test, in their absence.

4. Annexure-A1 in O.A.No.91/99 is the recruitment rules originally framed providing the method of recruitment to the Group-B post in Telecom Engineering Service. As per the said rule 66.2/3% of the vacancies had to be filled up based on seniority and merit depending upon the qualifying examination and the remaining 33.1/3 shall have to be filled up based on merit alone, depending upon a performance in a competitive examination. Only those person who had passed in qualifying examination alone could have appeared

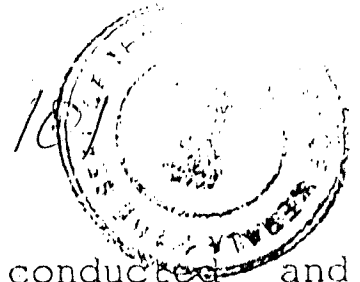
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for the competitive examination for appointment to the 33.1/3rd of vacancies. It was at that time Annexure-A3 amendment was enforced with effect from 22.7.96 dispensing with the competitive examination and to fill up of the entire vacancies based on the qualifying examination, the method of promotion being seniority cum merit alone. The department did not conduct a competitive examination even in respect of the vacancies that had arisen prior to this amendment effected on 22.7.96. This resulted in several litigation which finally culminated in the order of the Supreme Court mentioned above, wherein it was submitted on behalf of the Union of India that Annexure-A3 would be implemented only in respect of vacancies that had arisen after its enforcement namely 22.7.1996. Thus the vacancies that had arisen prior to the enforcement of Annexure-A3 ought to have been filled up in the manner provided in Annexure-A1 with slight modification in Annexure-A2. Even in spite of the order of the Supreme Court the



competitive examination was not conducted and appointments were being effected even to the vacancies that had arisen prior to the enforcement of Annexure-A3 depending upon the performance in qualifying examination which could have been made use of to fill up 66.2/3% of the vacancies alone. This resulted in O.A.No.1497/96 and connected cases in several cases before several benches of the CAT including O.A.91/96 and connected cases in the Ernakulam Bench of the CAT. Those were also disposed of in line with the order of the Supreme Court. But the department took the view that the order in O.A.1497/96 and connected cases could apply only to the scheduled caste and scheduled tribe candidates. This resulted in yet another run of litigation including in O.A. No.91/99 in which Ext.P2 order has been passed, which is impugned in these Original Petitions.

5. The tribunal below found that in the light of the order of the Supreme Court, the department could not have avoided a competitive examination

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for filling up of 33.1/58 of the vacancies that had arisen before 22.7.96 and that in the light of the order contained in O..No.1497/96 and connected cases department could not have contended that directions therein were confined to SC and ST candidates. As the matter was thus concluded by the pronouncement of the Supreme Court as well as the Central Administrative Tribunal, it was directed that a qualifying cum competitive examination should be conducted for the candidates like the applicants before the tribunal below for being considered against the vacancies that had occurred before the enforcement of Annexure-A1, namely 22.7.1996. A qualifying and competitive examination was directed because a competitive examination could have been undertaken only by those who have passed the qualifying examination. In the light of the pronouncement of the Supreme Court as well as the tribunal referred to in the impugned order of the CAT, it cannot any more be contended that the impugned order would affect any one else, because,