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1.
**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.185/2013
& Original Application No.1081/2013

FRIDAY this the 16th day of JANUARY, 2015

C O R A M :

HON'BLE Mr.U.SARATHCHANDRAN, JUDICIAL MEMBER
HON'BLE Mr.P.K.PRADHAN, ADMINISTRATIVE MEMBER

Original Application No.185/2013

1. S.Sahcer,
S/o.Sainulabdeen,
Junior Telecom Officer,
O/o.the General Manager,
BSNL Mobile Service, Thiruvananthapuram.
Residing at Farhan, TC 48/955(7), ATRA C18,
Ambalathara, Poonthura P.O., Thiruvananthapuram - 26.
2. Joshi Das Y.S.,
S/o.late G.Yesudas,
Junior Telecom Officer,
Office of the GM Mobile,
BSNL Mobile Service, CITC Complex,
RTTC, Kaimanam, Thiruvananthapuram.
Residing at Bethel, TC 11/920 (5),
Nanthancode, Thiruvananthapuram - 3.
3. Ansal Mohammed C.H.,
S/o.C.H.Mohammed,
Junior Telecom Officer, BSNL,
Office of the CGMT, Kerala Circle, Thiruvananthapuram.
Residing at Than-com, Aaramalakkunnu Street,
Thrikodithanam P.O., Changanacherry,
Kottayam - 686 105.
4. Shineeth.T.,
S/o.O.Thankappan,
Junior Telecom Officer,
Office of the GM Mobile,
BSNL Mobile Service, Thiruvananthapuram.
Residing at Plot No.24, Esteem Villa,
Karapparambu, Kozhikode.



5. Sony George,
S/o.T.V.George,
Junior Telecom Officer,
Transmission, BSNL, Kottayam.
Residing at Thalakkulam, Cheevanchira,
Chunganacherry.

...Applicants

(By Advocate Mr.Shafik.M.A.)

Versus

1. Bharath Sanchar Nigam Limited,
Corporate Office, Eastern Court Building,
Janpath, New Delhi - 110 001.
2. Chairman and Managing Director,
Bharat Sanchar Nigam Limited,
Harish Chandra Mathur Lane,
Janpath, New Delhi - 110 001.
3. Senior General Manager (Personal),
Bharath Sanchar Nigam Limited, 4th Floor,
Bharath Sanchar Bhavan,
Janpath, New Delhi - 110 001.
4. Smt.Savithri.V.,
Sub Divisional Engineer, Call Center Chennai,
Office of CGMT, BSNL, Chennai - 600 003.
5. Sri.Kumar Anil S,
Junior Telecom Inspector,
Office of AGM, Establishment,
CGM Inspection, BSNL, Jabalpur - 482 002.
6. K.S.Sreekumar,
S/o.late K.Sreedharan Nair,
Working in the substantive cadre of Junior Telecection Officer,
Presently working as Sub Divisional Engineer (Phones),
(on looking after basis), Telephone Exchange,
Ayyappankavu, Ernakulam - 18.
Residing at Kaniyattil House, Mamala P.O.,
Thiruvankulam, Ernakulam.
7. Sheela.G.,
D/o.K.K.Gopalan,
Working in the substantive cadre of Junior Telecection Officer,
Presently working as Sub Divisional Engineer (Broad Band).

- (on looking after basis), Telephone Exchange,
Boat Jetty, Ernakulam - 11.
Residing at 37/1202A, Panackal House,
Fathima Church Road, Ernakulam - 20.
8. Rajamony.M.A.,
D/o.late M.C.Achuthan,
Working in the substantive cadre of Junior Telection Officer,
Presently working as Sub Divisional Engineer (Computer),
(on looking after basis), Telephone Exchange,
Boat Jetty, Ernakulam - 11.
Residing at Slavath, Anaswara, Kotheri Road,
Vaduthala, Ernakulam - 682 023.
9. Kamala Sivan,
D/o.Sri.Narayanan Nair,
Working in the substantive cadre of Junior Telection Officer,
Presently working as Sub Divisional Engineer,
(on looking after basis), Office of the PGMt,
BSNL Bhawan, Kochi - 16.
Residing at Souparnika, Temple Road,
Post Thaikattukara, Aluva - 683 106.
10. Anilkumar.V.,
S/o.Sri.K.Vikraman Nair,
Working in the substantive cadre of Junior Telection Officer,
Presently working as Sub Divisional Engineer (Project Vijay),
(on looking after basis), Muvattupuzha.
Residing at Revathy, Koothattukulam P.O.,
Ernakulam - 686 662.
11. Remadevi.K.S.,
D/o.late Sreedhara Menon,
Working in the substantive cadre of Junior Telection Officer,
Presently working as Sub Divisional Engineer (Project Vijay),
(on looking after basis), Ernakulam, BSNL Bhawan,
Kalathiparambil Road, Ernakulam South.
Residing at Thripty, CLRA-24, SN Junction,
Thrippunithura P.O., Ernakulam - 682 301.
12. M.B.Geetha,
D/o.late M.K.Balakrishna Warriar,
Working in the substantive cadre of Junior Telection Officer,
Presently working as Sub Divisional Engineer,
(on looking after basis), Kolenchery, Ernakulam.
Residing at Krishnakripa, Mulanthuruthy, Ernakulam.



13. Prusanna Rajan,
D/o.Sri.Parameswaran Potty,
Working in the substantive cadre of Junior Telection Officer,
Presently working as Sub Divisional Engineer,
(on looking after basis), Vennala Telephone Exchange,
Alinchuvadu - 682 308.
Residing at Harisree Fort, Opp. Kishat Study Circle,
Thripunithura - 682 301.
14. A.V.Sarala,
D/o.Sri.A.K.Velayudhan,
Working in the substantive cadre of Junior Telection Officer,
Presently working as Sub Divisional Engineer,
(on looking after basis), Choondy, Aluva,
Office of the PGMT, BSNL, Ernakulam.
Residing at Chakkungal House, Chakkungal Road,
Palarivattom, Kochi - 25.
15. Padmini.K.,
D/o.Sri.N.Karunakara Menon,
Working in the substantive cadre of Junior Telection Officer,
Presently working as Sub Divisional Engineer,
(on looking after basis), (Cable Planning),
Office of the PGMT, BSNL Bhavan, Ernakulam.
Residing at Kottappurath Madam,
Temple Road, Thiruvankulam - 682 305.
16. All India B.S.N.L. Executives' Association,
Kerula Circle, Thiruvananthapuram,
represented by its Secretary T.K.Mangalanandan. ...Respondents

(By Advocates Mr.K.Ramakumar,Sr along with Mr.George Kuruvilla
[R1-3], Mr.O.V.Radhakrishnan,Sr. along with Mrs.K.Radhamani Amma &
Mr.Antony Mukkath [R4-15] & Mr.R.Ramdass [R16])

Original Applicaton No.1081/2013

1. Madhumohan.H.,
Junior Telecom Officer, BSNL,
Office of the CGMT, Kerala Circle, Thiruvananthapuram.
Residing at Harindram, MRA-A 97,
Kanjirampara P.O., Thiruvananthapuram - 30.
2. Sameer Abdul Latif,
A/T, INSPN, Circle, BSNL,
Telephone Exchange, Thirunakkara, Kottayam.
Residing at Pallickasseril House, Palaprambu,
Vadapuram P.O., Mumpad, Malappuram District. ...Applicants

These applications having been heard on 14th November 2014 this Tribunal on 16 January, 2015 delivered the following :

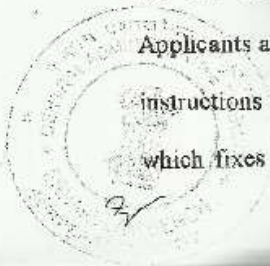
ORDER

HON'BLE Mr.U.SARATHCHANDRAN, JUDICIAL MEMBER

Applicants in these two cases challenge the All India Eligibility List of Junior Telecom Officers (JTOs for short) for considering them to the next higher post, Sub-Divisional Engineer(SDE) under promotion quota issued by the Corporate Office of Respondent No.1 of the BSNL on 11th May, 2012. For the purpose of convenience the documents produced and relied on in O.A.No.185/2013 are taken as the lead documents in this common order.

2. Applicants are JTOs directly recruited from the open market during the years 2001-2002 (direct recruits). The posts of JTOs are filled up by direct recruitment and through promotion of departmental candidates in the ratio of 1:1, i.e. 50% by direct recruitment and 50% by promotion/transfer from the departmental candidates (promotees). According to applicants, the aforesaid All India Eligibility List of JTOs prepared by the Corporate Office of Respondent No.1 on 11th May, 2012 (hereinafter referred to as Annexure A-7) is not prepared in accordance with the 1:1 ratio of direct recruits JTOs and departmental candidates.

Applicants are aggrieved by the non-compliance of the Government of India instructions issued by the DoPT vide O.M dated 3.7.1986 (Annexure A-4) which fixes 1:1 ratio for direct recruits and promotees wherein rota-quota



principles have been laid down for fixation of seniority between direct recruits and departmental candidates, further clarified by another O.M of the DoPT dated 3.3.2008 (Annexure A-5). According to applicants, out of around 10,000 JIOs listed in Annexure A-7, around 7,500 are promotees and only 2,500 are direct recruits. Applicants state that Annexure A-7 as a graduation list of the JIOs to be taken into consideration for the purpose of promotion to the post of SDEs on seniority basis. According to applicants, promotees who joined service subsequent to the joining of the applicants have been placed in Annexure A-7 much higher than applicants. Applicants contend that all India cadre seniority has to be reckoned on the basis of the date of joining of the candidate.

3. Applicants had preferred representations against Annexure A-7 all India eligibility list. As there was no response, they approached this Tribunal along with some other direct recruits with O.A.No.712/2012 wherein this Tribunal directed the respondents to consider the representations on merits and in accordance with law in the light of the decisions of this Tribunal on the subject matter. It was also directed that till such time the representations are disposed of, the provisional seniority list shall not be finalised and promotions effected. In response to the representation respondents issued Annexure A-13 order dated 7.12.2012, which is also under challenge in these two O.As.

4. Respondents contend that prior to the formation of the BSNL, its

predecessor i.e. Department of Telecom (DoT for short) was in control of the affairs of the telecommunications. The Recruitment Rules governing the post of JTO had been framed by the DoT in 1996 which prescribe 50% of the vacancies to be filled by direct recruitment and 50% to be filled by promotion. 50% promotion quota has been further divided into 35% from the Group C feeder cadres like the Transmission Assistant/Wireless Operators/Auto Exchange Assistants/Phone Inspectors and Telecom Technical Assistants and 15% by promotion of departmental candidates through competitive examination from Group C employees born on the regular establishment and working in the Telecom Engineering Branch including those working in the office of the Chief General Manager Telecommunication Circles/Districts other than Transmission Assistant/Telephone Inspectors/Auto Exchange Assistants/Wireless Operators and Conservancy Inspectors having passed High School/Matric examination. After formation of the BSNL, the BSNL framed the JTO Rules in 2001 wherein 50% of the posts are to be filled by direct recruitment and 50% by promotion through limited internal competitive examination. Out of 50% meant for promotion, 35% of the posts are to be filled by internal candidates from amongst Group C employees below 50 years of age and 15% to be filled from other Group C employees of Telecom Engineering Branch without any age restriction on the basis of limited departmental competitive examination. Respondents further point out that JTOs both by direct recruitment and by promotion will have to undergo a pre-appointment training before their actual appointment. Only those who

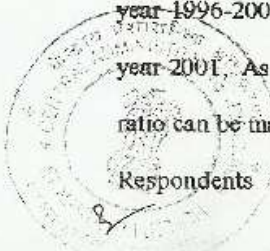


are successful in the training will be given appointment. The pre-appointment training is conducted in batches in a phased manner according to the accommodation available in the training centers. The seniority of JTOs is determined on the basis of the marks obtained at the training center and the recruitment year. The Circle Seniority List of JTOs are finalized by the Chief General Manager of the respective circles. The post of SDE is all India post based on the all India seniority position. The gradation list of JTOs is prepared on the basis of the merit position as per the training center marks of the candidates of a particular year of recruitment following rotation between direct recruitment and promotee. The finalisation of the list is reached only on the completion of the training process of a particular recruitment year. The cadre of SDE is governed by SDE Recruitment Rules, 2002. The method of recruitment for SDE is entirely by promotion : 75% quota of the promotion on the basis of seniority-cum-fitness and 25% quota by Limited Departmental Competitive Examination. The quota was subsequently modified as 67% on the basis of seniority-cum-fitness and 33% by Limited Departmental Competitive Examination. 67% seniority-cum-fitness quota is filled from the eligible JTOs selected by the DPC on the basis of All India Eligibility List, which is prepared on the basis of the Circle Eligibility List of the respective recruitment years of all the Telecom Circles. According to the official respondents, the date of completion of training and appointment as JTOs depend on fortuitous circumstances and therefore the date of joining cannot be taken into consideration for the purpose of determining the seniority. Being a technical cadre, training has



great importance and marks obtained in the pre-appointment training is a determining factor for fixing the seniority of the JTOs. Respondents contend that they follow the inter-se seniority of each category of recruits of a particular recruitment year i.e. direct recruits and promotees in the ratio of 1:1 and rotation of quotas. The seniority of direct recruits and promotees was linked with vacancy/year of vacancy. Under the DoT, Telecom Circles made promotion in the cadre of JTOs up to the vacancy year 1999 based on JTO Recruitment Rules, 1996. After that there was no selection process of direct recruits till the 2001 Recruitment Rules were framed. Applicants except applicant No.3 in O.A.No.185/2013 have been appointed as JTOs in the year 2002 and have been allotted recruitment year 2001. Applicant No.3 in O.A.No.185/2013 was appointed in 2003 and has been allotted recruitment year of 2002. Therefore, applicants cannot claim previous recruitment years by claiming rotation of vacancies. Moreover, the applicants had given an undertaking that they would rank juniors to any JTOs who have been appointed by the erstwhile DoT or BSNL or any other employee of promotional cadre who have already qualified in the JTO examination but not appointed as JTO by the BSNL so far. Respondent No.4 was allotted the year of recruitment as 1996 as a consequence of the order in O.A.No.1293/2000 of the Madras Bench of this Tribunal and by virtue of judgment of the Madras High Court in W.P.No.30023 dated 23.7.2002. The aforesaid judgment has become final and cannot be assailed now. Respondents further contend that the cadre of JTO is a circle cadre and the appointments are made by the Chief General Manager of the circles

concerned. The merit in the examination is relevant only for the allotment of a particular circle. The circle gradation list of JTO of Kerala Circle was published on 17.12.2007 and none of the applicants had raised any objection and the same has become final. Because of the transition period from 1995 to 2000 for the formation of BSNL, during the period between 1995 and 2000 only departmental candidates were promoted as JTOs leaving the direct recruitment quota vacant. After 2001 direct recruitment took place. There was less recruitment by promotion and more direct recruitment took place after 2001. The ratio of seniority has been fixed as 1:1. Respondent Nos.4&5 in O.A.No.185/2013 are promotees who qualified in the 15% Limited Competitive Examination held during the 1999/2000 under the provisions of JTO Recruitment Rules, 1996. As a large number of vacancies remained unfilled at a time when the BSNL came into existence, BSNL took a decision to fill up the vacancies under 15% JTO quota by granting relaxation in qualifying marks. Such candidates selected as JTOs were allotted the recruitment year 1998-1999 as per the provisions of the Recruitment Rules, 1996 because they had applied and appeared for the vacancies of 1998-1999 against the 15% Limited Departmental Competitive Examination quota examination conducted in 1999-2000. Annexure A-7 Eligibility List consists of JTOs of recruitment year 1996-2001 out of which the direct recruitment took place only in the year 2001. As there was both direct recruitment and promotion in 2001, the ratio can be maintained in 2001 alone and the same has been done correctly. Respondents further contend that Madras Bench of this Tribunal in

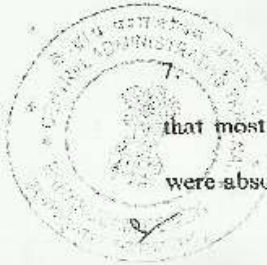


O.A.No.36/2011 was not inclined to upset the seniority of JTOs. Official respondents pray for rejecting the O.A.

5. Additional Respondent Nos.6-15 were impleaded as per order in M.A.No.1053/2013 and Additional Respondent No.16 was impleaded as per order in M.A.No.1221/2013 on 18.11.2013. Reply statement was filed by Respondent No.4, 6 to 15 and Respondent No.16.

6. O.A.No.1081/2013 has been filed by the direct recruit JTOs for reliefs similar to the prayers in O.A.No.185/2013. They are also aggrieved by the afore said provisional seniority list of JTOs (Annexure A-7 in OA 185/13) prepared by the BSNL for promoting to the post of SDEs. They too had made representations against the said seniority list and were parties in O.A.No.712/2012 filed before this Bench wherein vide Annexure A-11 order dated 11.9.2012 respondents were directed to consider their representations on merits and in accordance with law and not to finalise the provisional seniority list and not to effect promotion till the disposal of the said representation. Accordingly Annexure A-13 order was passed by the respondents on 7.12.2012 which is the impugned order in O.A.No.1081/2013.

The main contentions of the applicants in O.A.No.1081/2013 are that most of the JTOs who were promoted from departmental candidates were absorbed as JTOs in the BSNL only from 2004 onwards and therefore



their seniority can be reckoned only from the date of their absorption. Their service in the Department of Telecom will not count and since they were absorbed in BSNL only in 2004 their seniority ought to be reckoned only from the date of absorption in the BSNL. It is further submitted by the applicants that if vacancies earmarked for direct recruitment have not been filled up due to unavailability of candidates, the said vacancies in the quota of direct recruits should be filled up during the subsequent years maintaining the 1:1 ratio as per the DoPT guidelines. As there has not been promotion to the post of SDE through DPC from direct recruits among the JTOs, there is a back log of direct recruits liable to be promoted, which are to be carried forward. Therefore, the gradation list should contain more direct recruits among the JTOs than the promotee JTOs. It is further pointed out by the applicants that the decision of the Madras Bench of this Tribunal in O.A.No.36/11 is against the practice hitherto followed and is against the DoPT instructions which has been consistently applied since 1986. The gradation list of seniority in the post of JTO for promotion to the post of SDEs is prepared on all India seniority basis which is to be reckoned on the basis of the date of joining of the candidate in the said cadre of JTO. The applicants further refers to the decision of the Chandigarh Bench of this Tribunal in *Dewan Chand and others v. Union of India and others* (T.A.No.84-HR-2009 & connected cases) which has been followed by this Bench in *Thomas Zachariah v. BSNL* (O.A.No.16/2009) and a similar decision of the Bombay Bench which has been upheld by the Bombay High Court in *BSNL v. Sadasivam* (W.P.(C) No.3725/2011). All these decisions

hold that the inter-se seniority of the incumbents are to be determined on the basis of the date of their actual joining and not on notional basis by allotment of slot. Therefore, the applicants contend that their seniority ought to be considered on the basis of date of their joining the post of JTO and the vacancies are to be filled by 1:1 ratio as per the instructions of the DoPT. They further point out that the respondent Nos.7 and 8 who were appointed on promotion only on 2003 and 2004 respectively have been granted a higher seniority above the applicants in the provisional gradation list. According to them, respondent Nos.7 and 8 are two among the several promotee JTOs who have been illegally placed in the provisional gradation list above the applicants who are appointed prior to both of them as direct recruits. According to applicants the action of the respondents in proceeding to finalize seniority list on the basis of circle seniority without fixing seniority on the basis of actual date of joining the cadre of JTO is illegal. Applicants further state that in *R.Bijoy and others v. Union of India* (O.A.No.35/2010) this Tribunal had held that both regular promotions as well as adhoc promotions to the post of SDEs are to be from the all India seniority based on the recruitment year and that for loss of seniority on transfer from one unit to another has application only for determining the interse seniority within the circle and it has no application to all India seniority for the cadre promotion from JTO to SDE.

Respondents BSNL filed a detailed reply contentions of which are akin to those in their contentions in O.A.No.185/2013.



9. A rejoinder was filed by the applicants pointing out that the circle gradation list of 2007 of JIOs have been quashed by this Tribunal in *R.Bijoy's case* (O.A.No.35/2010) which was confirmed by the High Court in O.P.(CAT) No.421/2011. Most of the other contentions in the rejoinder are reiteration of the pleadings in the O.A.

10. An additional reply statement also was filed by the respondents to which an additional rejoinder was filed by the applicants.

11. We have heard Shri.Shafik.M.A., learned counsel for the applicants in O.A.No.185/2013, Shri.K.Ramakumar, Senior Advocate and Shri.George Kuruville, learned counsel for the respondent Nos.1-3, Shri.O.V.Radhakrishnan, Senior Advocate for respondent Nos.4-15 and Shri.R.Ramdas for respondent No.16. In O.A.No.1081/2013 Shri.Nagaraj Narayanan, learned counsel for the applicant, Shri.K.Ramakumar, Senior Advocate and Shri.George Kuruville, learned counsel for the respondent Nos.1-5 were heard. We have carefully perused the records and pleadings.

12. Shri.O.V.Radhakrishnan relied on *Karam Pal v. Union of India and others* (AIR 1985 SC 774), *K.H.Straj v. High Court of Kerala and others* (2006) 6 SCC 395, *The Direct Recruit Class II Engineering Officers' Association and others v. State of Maharashtra and others* (AIR 1990 SC 1607) (five Judges Bench). Shri.Nagaraj Narayanan cited *A.Janardhana v. Union of India and others* (1983) 3 SCC 601 and *General Manager, South*

Central Railway and another v. AVR Siddhanti and others (1974) 4 SC 335, *BSNL and others v. S.K. Dubey and others* (C.A.No.7830/2014, *BSNL and others v. S.Sadasivan and others* (S.L.P.No.35756/2012 and connected S.L.Ps).

13. It appears that the gravamen of the dispute in both these cases is the grievance of the applicants that they have been pushed down in the Annexure A-7 all India eligibility list of JTOs, placing them much below the promotee JTOs like the respondent Nos.4 and 5 in O.A.No.185/2013 (respondent Nos.7 and 8 in O.A.No.1081/2013). Applicants in both these O.As challenge this and contend that persons like the aforesaid promotees who were assigned a seniority with reference to their year of vacancy to which they are promoted should be assigned a proper seniority on the basis of their date of actual joining.

14. It appears from the contentions of the official respondents' BSNL that the aforesaid party respondents were recruited under the 1996 Rules for recruitment of JTOs under the quota of promotees. BSNL contends that between 1996 and 2002 no direct recruitment took place for the post of JTOs under the 1996 Rules. 1996 Rules for recruitment to the post of JTOs were framed by the Department of Telecom at a time when the telecommunications were under that Government Department. Thereafter, the Government was contemplating separation of the telecommunication wing from the Government control and entrusting it to a corporate body

which ultimately took the shape of BSNL in the year 2000. Operations of the telecommunication wing of Department of Telecommunications were handed over to the newly formed BSNL from 1.10.2000. The existing employees in the telecom section were handed over to the BSNL on deemed deputation with an option to get themselves absorbed in the new dispensation. According to the official respondents, new Recruitment Rules were framed under the BSNL for recruiting JTOs allotting 50% quota to the direct recruits and 50% to the departmental candidates. BSNL contends that the applicants joined as JTOs in the year 2002 and 2003 and they can be considered as JTOs of the recruitment year 2001 and 2002 only.

15. Respondents further contend that as per the decision dated 2.5.2012 of the Madras Bench of this Tribunal in O.A.No.36/2011, the question of seniority of direct recruits vis-a-vis promotees in the Chennai Circle after the formation of BSNL in 2000 was considered. Party respondent Nos.4 and 5 in O.A.No.185/2013 (respondent Nos.7 and 8 in O.A.No.1081/2013) were respondent Nos.6 and 12 in the aforesaid case of the Madras Bench of this Tribunal. In that decision the Madras Bench of this Tribunal after an elaborate consideration of the topic and the manner in which the prescribed 1:1 ratio for the direct recruits and departmental candidates was dealt with during the period 1996-2000 and observed as

follows :

13. The facts in the case before us are that the erstwhile Department of Telecommunication under the Government of India did not resort to any



recruitment for the post of JTOs on direct recruits basis between the period 1996 and 2000 since the Government was mulling the idea of formation of Corporation to hive off the Government Department of Telecom to a separate legal entity. When a reference was made by the Government to the UPSC, it was replied by the UPSC that it may not be possible to recruit people on the eve of formation of Corporation. Be that as it may be, we are now concerned with the recruitment that took place between the period 1996 and 2000. The details of recruitment of JTO by promotion from 1996 in the TOT in Chennai Telephone District are as follows:

Recruitment Year	Departmental (D)	Direct Recruit/ Outsiders (OS)	All India Outsider (OS) (Approx)
1996	30	0	0
1997	32	0	0
1998	27	0	0
1999	135	0	0
2000	0	0	0

The details of recruitment of JTOs from 2001 in HSNL, Chennai Telephone District are as follows:

Recruitment Year	Departmental (D)	Direct Recruit/ Outsider (OS)	All India Outsiders (OS) (Approx)
2001	7	63	3500
2002	8	65	3500
2003	8	0	0
2004	14	0	0
2005	15	48	3500
2006	8	0	3
2007 *	8	29	3000
2008	0	27	3000

From the above statement it is seen that there was no direct recruitment of JTO during period 1996 to 2000 and direct recruitment has taken place only during the year 2001. Therefore, it is clear that the applicants have joined service only after 2001 whereas the private respondents have been working as JTO much earlier to 2001. The ranking of the promotee JTOs have been made as per the Recruitment Rules applicable to them at the time of their selection.

14. It is an admitted fact that the applicants are not borne in the cadre of JTO prior to 2001. As such, it was not possible to grant seniority to the applicants prior to a date when they were not borne in the cadre. On the other hand the private respondents have been promoted before 2001 and their promotions were also governed by the relevant Recruitment Rules exist at that time. It is not the case of the applicants that ineligible persons have been appointed in the JTO cadre under the promotion quota. The private respondents have been recruited as per the relevant rules and instructions which are applicable at the relevant point of time. All the applicants before us have joined service only in the year 2001 as per the Notification published in the year 2000. Therefore, the applicants who joined service in the year 2001 and afterwards cannot be given ranking above the private respondents who were recruited by

promotion in the earlier years. Another point that has been raised by the learned senior counsel for the applicants is that the quota rota rule has not been followed. It is true that under the relevant Recruitment Rules of DOT 1996, 1999 and the BSNL Recruitment Rules of 2001, the method of recruitment is 50% by direct recruitment and 50% by departmental candidates. However, since the Government has taken a policy decision to corporatise the erstwhile DOT as BSNL, no direct recruitment took place. It is also on record that on 7.1.2000, the Deputy Director General(P) DOT has written a letter to the UPSC (Annexure R 42-Additional reply filed by R.8-12) with regard to the conduct of the JTO Examination by direct recruitment to which the UPSC has replied on 4.2.2000 (Annexure R-43) that in view of the proposal to corporatisation of the Department, the matter may be re-looked carefully with due regard to all relevant aspects and a decision may be taken to have the direct recruitment or not.

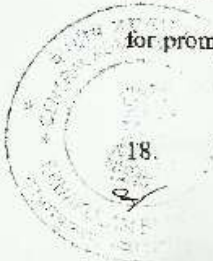
15. From the above facts, it is seen that direct recruitment of JTO could not take place in view of the fact that corporatisation of the Department was very much under the active consideration of the Government and hence the filling up of the 50% direct recruitment got postponed. However, after a gap of 5 years, direct recruitment took place from 2001. The official respondents state that in view of large scale recruitment in the direct recruit category it was practically not possible to follow the quota rota rules. We are in agreement with the submission of the learned counsel for the respondents 1 to 5 that in view of special circumstances leading to the formation of BSNL, the instructions contained in OM which we have extracted earlier in the order could not be adhered to. The applicants have not been able to substantiate that any of their service rights has been affected as they have been recruited only in the year 2001 and accordingly they have been arranged in the Seniority List which was published in the year 2004 and 2009. From the facts of the case we find that the applicants have not been able to prove that any prejudice has been caused to them by issuing the Seniority List of JTO of 2004 and 2009 and also the impugned order of eligibility for the purpose of promotion to the post of SDE. Seniority List once finalised should be interfered with to unsettle a settled position.

[Emphasis supplied]

16. Accordingly, the aforesaid O.A was dismissed by the Madras Bench.

17. It is worth noticing that the aforementioned party respondent Nos.4 and 5 have later joined the Kerala Circle on loss of seniority but seems to have regained their original seniority when they were considered for promotion to the post of SDE.

18. Shri. Shafik M.A and Shri. Nagaraj Narayanan, learned counsel



appearing for the applicants submitted that while considering the all India seniority for promotion to the post of SDE, the eligibility list of JTOs should reflect the 1:1 ratio contemplated in Annexure A-4 instructions of the DoPT. Annexure A-4 reads as follows :

SENIORITY OF DIRECT RECRUITS AND PROMOTEES

2.1 The relative seniority of all direct recruits is determined by the order of merit in which they are selected for such appointment on the recommendations of the U.P.S.C or other selecting authority, persons appointed as a result of an earlier selection being senior to those appointed as a result of a subsequent selection.

2.2 Where promotions are made on the basis of selection by a D.P.C., the seniority of such promotees shall be in the order in which they are recommended for such promotion by the Committee. Where promotions are made on the basis of seniority, subject to the rejection of the unfit, the seniority of persons considered fit for promotion at the same time shall be the same as the relative seniority in the lower grade from which they are promoted. Where, however, a person is considered as unfit for promotion and is superseded by a junior such persons shall not, if he is subsequently found suitable and promoted, take seniority in the higher grade over the junior persons who had superseded him.

2.3 Where persons recruited or promoted initially on a temporary basis are confirmed subsequently in an order different from the order of merit indicated at the time of their appointment, seniority shall follow the order of confirmation and not the original order of merit.

2.4.1 The relative seniority of direct recruits and of promotee, shall be determined according to the rotation of vacancies between direct recruits and promotees which shall be based on the quota of vacancies reserved for direct recruitment and promotion respectively in the Recruitment Rules.

2.4.2 If adequate number of direct recruits do not become available in any particular year, rotation of quotas for the purpose of determining seniority would take place only to the extent of the available direct recruits and the promotees.

In other words, to the extent direct recruits are not available the promotees will be bunched together at the bottom of the seniority list below the last position upto which it is possible to determine seniority, on the basis of rotation of quotas with reference to the actual number of direct recruits who become available. The unfilled direct recruitment quota vacancies would, however, be carried forward and added to the corresponding direct recruitment vacancies of the next year (and to subsequent years where necessary) for taking action for direct recruitment for the total number according to the usual practice. Thereafter in that year while seniority will be determined between direct recruits and promotees, to the extent of the number of vacancies for direct recruits and promotees as determined according to the quota for that year, the additional direct recruits selected against the carried forward vacancies of the previous year would be placed en-bloc below the last promotee (or direct recruit as the case may be), in the seniority list based on the rotation of vacancies for that year. The same principle holds good for determining seniority in the event of carry forward, if any, of direct recruitment or promotion quota vacancies (as the case



20. Applicants in both the O.As contend that the promotee JTOs cannot be given the facility of antedating their promotion to the year in which the vacancy arose in supersession of the direct recruits. In support of this contention they rely on a decision of the Chandigarh Bench of this Tribunal, a decision of this Bench in *Thomas Zachariah's* case (O.A.No.16/2009) and *Sadastvan's* case (*supra*). In those cases it was held that for the purpose of fixing the seniority, the date of promotion should be the criterion to be taken into consideration.

21. BSNL, on the other hand, contend that the date of appointment cannot be taken into consideration in view of the special nature of the technical functions prevailing in the Telecom Department/BSNL because promotion to the post of JTO is not the sole criteria for final posting to the promoted post. Respondents contend that training is an essential ingredient of the recruitment process and only after the completion of the training the finalised posting will be given to both the promotees and direct recruits, on the basis of the marks they obtained in the training. In other words the date of appointment of both the direct recruits and promotees is based on the fortuitous circumstance of completion of training and on the marks obtained by the selected JTOs in the training; not based on the calendar dates of their posting.



Therefore, it can be seen that the selection to the post of JTOs under the Department of Telecom and under the BSNL is totally different

Direct Recruit Class-II Engineering Officers' Association's case (supra)

wherein the Apex Court ruled as follows :

(D) If it becomes impossible to adhere to the existing quota rule, it should be substituted by an appropriate rule to meet the needs of the situation. In case, however, the quota rule is not followed continuously for a number of years because it was impossible to do so the inference is irresistible that the quota rule had broken down.

(E) Where the quota rule has broken down and the appointments are made from one source in excess of the quota, but are made after following the procedure prescribed by the rules for the appointment, the appointees should not be pushed down below the appointees from the other source indicated in the service at a later date.
[Emphasis supplied]

24. Shri. Radhakrishnan had also referred to *Karam Pal's case (supra)*

wherein it was held by the Apex Court :

13. In the absence of challenge to the Rules and the Regulations, resultant situations flowing from compliance- of the same are not open to attack.....

14.

15. The Rules have held the field for 22 years now. During this period direct recruitment had not been made only in two years 281 being 1966 and 1970. Though in the writ petitions of general stand had been adopted that direct recruitment had not been made in several years, after the counter affidavit was filed and it was emphatically asserted that excepting in these two years direct recruitment had been made in other years, there has been no challenge to that assertion. We agree with the contention that quota and rota have got to go hand in hand and if the quota is not properly adhered to, the rota system must fail. In fact, the scheme is such that it can operate in an appropriate way only when recruitment is effected through both the processes as envisaged.

25. Shri.K.Ramakumar, Senior Advocate appearing for the BSNL pointed out that what is important is quota whereas Annexure A-7 is only a preparatory exercise. He pointed out that principles of quota relates to a particular vacancy year whereas Annexure A-7 is a preparatory list of eligible JTOs prepared for the JTOs selected during different years on all India seniority basis. Shri.Ramakumar submitted that the applicants have

from the mode of selection of officials in other Government Department where Annexure A-4 instructions issued by the DoPT for determining the interse seniority of direct recruits and promotees could be easily applied. But in a technical department like the DoT/BSNL though the principles contained in Annexure A-4 instructions of DoPT ought to be ideally followed, strict adherence to the date of actual joining of the JTOs in service is impracticable as the same is quite difficult to predict. Assigning of the date of joining to the promoted post is thus depends on the fortuitous circumstance of securing the required marks in the training process. Annexure R-4 (e) is the relevant authority relied on by the respondents issued by the DGP&T on 28.2.1963, which appears to be being followed by the BSNL also as the principles for determination of seniority of non-gazetted staff in the Telegraph Engineering and Traffic Branches.

23. It can be seen that there was no direct recruitment to the post of JTO occurred between 1996 and 2001. The aforementioned order of the Madras Bench of this Tribunal abundantly shows the circumstances under which no direct recruitment could take place either under the DoT or BSNL till 2000. Thus, the rota-quota principle as per Annexure A-4 instructions of the DoPT for determining the interse seniority of direct recruits and promotees could not be followed in *stricto sensu*. Shri.O.V.Radhakrishnan submitted that it is true that the quota of unfilled vacancies of direct recruits were not transferred to BSNL to be filled up at the time of making direct recruitment. He referred to a Five Judges decision of the Apex Court in *The*

not impleaded all other promotees except the two party respondents in these two cases.

26. Shri.O.V.Radhakrishnan argued that applicants are estopped from taking the plea that they should be considered senior to the promotee JIOs in view of the undertaking they had given at the time of recruitment that "I understand that if appointed, I would rank junior to any JIO who had been appointed earlier by the erstwhile DoI/DTS/DTO or BSNL or any other employee of promotional cadre who had already qualified in the JIO examination but not appointed as JIO by BSNL so far." Therefore, he submitted that the applicants claim that the date of appointment can only be the criterion for seniority and not the year of vacancy or selection or marks secured in the examination conducted during or at the end of the training is totally baseless and unfounded.

27. Shri.O.V.Radhakrishnan argued that the present O.As are bad for non-impleadment of other candidates in the light of the Apex Court ruling in *K.H.Straj's* case (supra). The Apex Court in that case held :

"75. The writ petitions have also to fall on the ground of absence of necessary parties in the party array. Though the appellant-petitioners contend that they are only challenging the list to a limited extent, acceptance of their contention will result in a total rearrangement of the select list. The candidates will be displaced from their present ranks, besides some of them may also be out of the select list of 'U'. It was, therefore, imperative that all the candidates in the select list should have been impleaded as parties to the writ petitions as otherwise they will be affected without being heard....."



Shri.Nagaraj Narayanan, on the other hand, relied on *Siddanti's*

case (*supra*) and submitted that when impeaching the constitutional validity of a policy decision of the Railway Board containing the administrative rules of general application, particular individuals who are affected by the fixing of seniority, such individual persons are not necessary parties, though they may be proper parties and their non-joinder could not be fatal to the petitioners. According to Shri.Nagaraj Narayanan, in these O.As the applicants are challenging the policy of the BSNL in allowing the promotees to have their seniority with reference to the date of arising of vacancy and therefore it is not necessary to implead all the promotee JTOs in these OAs. According to him, the Madras Bench's decision is not based on a sound legal principles. Shri.Nagaraj Narayanan referred to *R.Bijoy's* case - a decision rendered by this Tribunal in O.A.No.35/2010. According to him, the circle seniority list maintained by Kerala Circle has been implicitly quashed by this Tribunal in that case.. However, in that case the order dated 16.11.2010 of this Bench, what has been held is as follows :

"14. In view of the discussion above, following the decision of this Tribunal in O.A.No.1278/2000, we declare that the applicants in the instant O.A. are to be considered for local officiating promotions as SDEs in TES Group-B with reference to their position in the combined seniority list of JTOs on the basis of the year of recruitment as specified in A-2 and A-4. The 3rd respondent is directed to prepare such a combined seniority list of JTOs in the circle as per their year of recruitment for making local officiating promotions as SDE within a period of 60 days of receipt of this order."

29. In fact *Bijoy's* case was relating to his adhoc/officiating promotion to the post of SDE based on the seniority of the JTOs who joined Kerala Circle from outside circle as per Rule 38 of the P&T Manual Vol.IV. The said case was relating to officiating promotion to the post of SDE from the

cadre of JTOs especially in relation to those JTOs who have come to Kerala Circle from outside. While upholding the decision of this Bench in *Bijoy's* case, Hon'ble High Court of Kerala in O.P.(CA1) No.421/2011 observed as follows :

"3 In the aforesaid view of the matter, while we do not find any illegality in the findings of the learned Tribunal in Ext.P1, the order impugned before us in this original petition, all that needs to be clarified is that the establishment shall take immediate action to ensure that there is no appreciable time lag in the matter of making promotions on regular basis as against vacancies. If admittedly promotions are made on regular basis, that will obviously take away the complaint on promotions on local officiating basis. While we say that the establishment may be justified in saying that delay in administration may lead to some overall delay in the matter of regular promotion, we do not see any reason why that is reduced and promotions are made having due regard to the directions contained in the aforesaid judgment O.P.Nos.29044/00 and 30644/00 dated 5.12.2001. Further, we may indicate that if there is an integrated list that has to be operated upon, refusal to do so would even result in consequences which may indicate violation of Articles 14 and 16 of the Constitution of India. The impugned order Ext.P1 of the Tribunal is clarified as above and this matter is ordered accordingly."

30. Thus, we can see that *Bijoy's* case is not really helpful to the applicants because the same was dealing with the seniority for ad hoc promotions to the post of SDEs.

31. In the above context we do take note that as per the SDE Recruitment Rules of 2002 (Annexure A-6 in O.A.No.1081/2013), it is 100% by way of promotion from the cadre of JTO. 75% of the posts are reserved on the basis of seniority-cum-fitness and 25% by limited departmental competitive examination. It is for the 75% promotion on the basis of seniority-cum-fitness quota, Annexure A-7 list was prepared. It is pertinent to note the title of Annexure A-7. It is a communication dated 11.5.2012 issued from the Corporate Office of the BSNL under the subject

"Preparatory exercise for All India Eligibility List of JTOs (T) – Errors and omissions – regarding". It further reads :

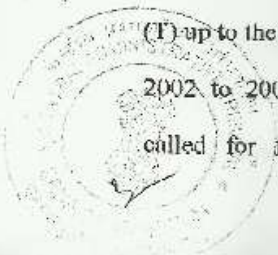
A preparatory exercise has been undertaken for drawing up an All India eligibility list of JTOs (T) i.r.o the following Recruitment years for promotion to STP (T) grade for the future promotion under seniority quota.

Recruitment Year	Remarks
Upto year 1994	Name of JTOs(T) : 1. Who have not been promoted under seniority quota in earlier DPCs due to absorption process/disciplinary cases/criminal prosecution being pending.
Year 1995 to 2001	1. All left out OC JTOs (not covered in earlier DPC) of 1995 + new JTOs from 1996 to 2001. 2. Left out SC JTOs (not covered in earlier DPC) up to 1996 + new SC JTOs of 1997 to 2001.
Year 2002 to 2005	1. Left out ST JTOs. (not covered in earlier DPC) up to 2002. 2. All new ST JTOs of recruitment year 2003 to 2005.

All the Concerned circle are accordingly requested to endorse this list to the SSAs under their jurisdiction to provide access to the individual JTOs whose names are appearing in the list in order to have details w.r.t any errors/omission therein so that they can submit their representation in time. This may be given top priority and necessary correction if any may be brought to the notice of this office within 45 days from the issue of this letter. The information such as Category/IIR No./date of joining & completion of JTO training/training marks/attempt/Dept./external JTO/date of appt. as JTO/rectt Circle/present circle etc. are not provided earlier by the circle due to which the relevant columns in the enclosed list have remained blank, be also furnished by the concerned circle by duly filling up the said blank columns. Adequate care be taken to ensure accuracy of inputs/details to be given i.r.o the said list. The soft copy of errors/omission etc. may be sent to following e-mail address :- agmpers2@gmail.com

Sd/-
(V.K.Sinha)
Asstt. General Manager (Pers.II)
Ph.011-23037191
Fax-01123734156

32. Two things are clearly perceivable from Annexure A-7. Firstly, it is only a preparatory exercise. Secondly, it consists of names of the JTOs (T) up to the recruitment year 1994 and 1995 to 2001 and also from the year 2002 to 2005. Communications pointing out the errors/omission were called for from the concerned persons. Therefore, apprehension of



applicants that Annexure A-7 is a list which is to be challenged as the same is not reckoning their grievances is quite misplaced. We further take note that applicants attack Annexure A-1 order rejecting their representations on Annexure A-7. In the Annexure A-1 speaking order respondents categorically states the basis on which Annexure A-7 list was prepared. It is made clear that the list was prepared on the basis of circle seniority list from different circles. In this context, the aforequoted decision of the Madras Bench of this Tribunal also has to be taken into consideration for understanding the circumstance under which the promotee JTOs were given senior position in the gradation list due to want of proper recruitment and the resultant situation of breaking down of the quota rule. As pointed out in *Direct Recruit Class-II Engineering Officers' Association's case (supra)* by a Full Bench of the Apex Court, in such circumstances the appointees should not be pushed down below the appointees from the other source inducted in the service at a later date. Obviously, in the instant case, the applicants were inducted in the service as JTOs only in 2002 and thereafter.

33. Shri.George Kuruvilla, learned counsel appearing for the BSNL has pointed out that the applicants have not challenged the year of recruitment nor have they challenged the circle gradation list. He further submitted that only from 2001 the rotation of quotas became possible.

34. After considering the pleadings and arguments of the parties in these two cases, we are of the view that the applicants in both these O.As

have no legally valid reasons to challenge Annexure A-7, which is only a provisional list of eligible JTOs, made as a preparatory exercise for all India eligibility list of JTOs. In Annexure A-7 it is made clear that the information such as Category/HR No./date of joining & completion of JTO training/training marks/attempt/Deptt./external JTO/date of appt. as JTO/rectt. Circle/present circle etc. are not provided earlier by the circle due to which the relevant columns in the enclosed list have remained blank, be also furnished by the concerned circle by duly filling up the said blank columns.

35. Adequate care has to be taken to ensure accuracy of inputs/details to be given in respect of the the said list. Only after a final list is made which would reflect the seniority position of all JTOs under the BSNL throughout the country, the applicants would get a ground for grievance if they are not assigned correct position in such list. We also note that since the formation of BSNL was in contemplation of the Government, there was no direct recruitment to the cadre of JTOs and that only the departmental candidates were appointed as JTOs as promotees. Since admittedly the unfilled quota of direct recruits have not been carried forward when fresh recruitment of direct recruits were made after the formation of BSNL, we find that there was a collapse of the rotation of quota system. In view of the large number of promotions given to the departmental candidates as JTOs throughout the country during the interregnum, we are not inclined to issue any specific direction that 1:1 ratio has to be followed in the matter of



preparing the final all India eligibility list of JTOs for promotion to SDE (T) Grade for future promotion under seniority quota as per the SDE (T) Recruitment Rules, 2002. We observe that applicants who are direct recruits are entitled to be considered in the seniority list only after their joining date and that they cannot make any claim to the unfilled quota of direct recruits during the period between 1996 and 2001 because the quota system had failed to be operational during that period as no direct recruitment was made for any of the vacancy years occurred during that period.

36. Therefore, in the light of the above discussion, we are of the view that O.As are only to be dismissed. Ordered accordingly. The interim order granted on 18.4.2014 in O.A.No.185/2013 stands vacated.

(Dated this the 16th day of JANUARY, 2015)

sdl
P.K.PRADHAN
ADMINISTRATIVE MEMBER

sdl
U.SARATHCHANDRAN
JUDICIAL MEMBER

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CERTIFIED TRUE COPY

Date 20/1/2015

Pedra Unishu
Section Officer (Judl)