

Corporate Office  
Personnel-IV Section

## Bharat Sanchar Nigam Limited

(A Government of India Enterprise)  
5<sup>th</sup> flr. Bharat Sanchar Bhawan  
Janpath, NEW DELHI-110001  
Website: [www.bsnl.co.in](http://www.bsnl.co.in)

No. 3-33/2013/Pers-IV

Dated: May 09<sup>th</sup>, 2013

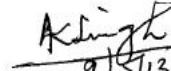
To

All Heads of Telecom Circles,  
Bharat Sanchar Nigam Limited.

**Subject: Inputs for defending the case filed by officiating JTO's for their regularisation  
-reg .**

It has come to the notice of this office that the TTA's who are officiating as JTO's have filed cases in different courts in different circles for their regularization and stay on holding of Limited Departmental Competitive Examination for the post of JTO(T) scheduled for 02.06.2013.

All such cases may be defended expeditiously as per the brief enclosed herewith and it may be ensured that Limited Departmental Competitive Examination for JTO scheduled for 02.06.2013 is not stayed.

  
9/5/13

(A.K. Singh)

Asstt. Gen. Manager (Pers. IV)  
☎: 011-23734152 & ☎: 011-23725255

Encl: Annexure-I alongwith copy of CAT Ernakulam Order dated 13.12.2012 and Punjab and Haryana High Court order 19.11.2008

## Annexure - I

### **The brief history of the case leading to promotion of Screening Test Qualified TTA's as Officiating JTO's:-**

(a)The JTO Recruitment Rules 1996 provided that eligible TTA's will have to qualify a screening test and will have to undergo phase-1 and field training before being promoted as regular JTO followed by phase-II training.

(b)The JTO Recruitment Rules 1999 provide that eligible TTA's will have to appear in the Limited Departmental Competitive Examination and will have to undergo phase-1 and field training for being promoted to the post of JTO(T) followed by Phase-II training.

(c)Since no screening test was conducted from 1996 till 1998. The screening test was conducted on 29-1-1999 & 30-4-2000 as per RR 1996 on the persistent demand of the association even when RR's of 1999 had come into being in which there was a provision of Limited Departmental Competitive Examination.

(d)Over and above the vacancies available under 35% quota, 6000 more officials qualified from all over India in the screening test held in the years 1999 and 2000. There were no vacancies to adjust the over and above screening test qualified officials. Thus, as a welfare measure, BSNL Board took a decision on 30.03.2001 to divert 500 vacancies from the Direct Recruitment quota to 35% quota on the year to year basis in order to adjust the screening test qualified officials. The diversion continued from 2001 to 2007 i.e. 3500 vacancies were diverted from the Direct Recruitment quota to Departmental quota.

(e)It may also be pointed out that since there was no vacancy to adjust these 6000 excess screening test qualified officials and thus while issuing the orders for sending these officials for JTO phase-I training, it was clearly stated that ***the officials so promoted on officiating basis will give an undertaking that they will have no claim for regular promotion. It was also mentioned therein that the regular promotion will continue to be governed by standing provisions.***

(f) The diversion of vacancies was challenged before the Punjab & Haryana High Court by way of a CWP No.5608/2007, which ordered on 30.05.2008 for re-diversion of the posts to the DR quota and this decision of the High Court was upheld by the Hon'ble Apex Court in (SLP) Nos.13220-13221/2009 filed by BSNL officers Association and others.

(g)Due to the above development, the BSNL management in its 104<sup>th</sup> meeting on 4.11.2008 decided to re-divert the 3500 posts to the DR quota with immediate effect. Thus the waiting list of 35% departmental quota was declared as cancelled. Since 3500 officials had been working as JTOs against the diverted vacancies from 2001 to 2008, it was decided by the BSNL management to create 3500 supernumerary posts to adjust them. By creation of supernumerary posts 3500 JTOs, who were working on officiating, continued to work as JTOs. **However, this creation of supernumerary posts was treated as illegal by the Punjab & Haryana High Court and during hearing in the contempt petition on 19.11.2008, the Punjab & Haryana High Court observed that "by creating supernumerary posts, the respondents have already created manpower & deliberately committed the contempt of this court". ( Copy enclosed)**

(h)The case is still being heard in the High Court of Punjab and Haryana (CWP No.5608/2007) and the next date of hearing is 16.07.2013.

(i)Earlier also notification for conducting LDCE for promotion to the post of JTO was issued in the year 2009 but due to the amendment in the RRs for reducing the length of service from 10 years to 7 years, it was challenged before the High Court of Ernakulam and a stay was granted on conduct of the examination. However, by proper handling of the case by BSNL, the court has allowed the modification of reduction of service from 10 years to 7 years with retrospective date (OP(CAT) No.3714/2011(Z) and process has been started to conduct the examination.

Since Contempt Petition is pending in Hon'ble High Court of Punjab and Haryana , it is not possible to regularize officiating JTO's till final outcome of the Contempt Petition.

Further it is mentioned that a case was filed in CAT Ernakulam by officiating JTO's and Hon'ble CAT has made the following remarks in the concluding part of the judgement that **"Getting qualified for promotion does not confer any indefeasible right to promotion.The applicants who qualified could not be promoted to the post of JTO for want of vacancies.Matter of Recruitment Rules and departmental examinations are absolutely within the domain of executive.Such matters have to serve the needs of the organization. The promotion to the post of JTO is now regulated by RR's of 2001.The applicants have to satisfy the conditions as per RR 2001 and will have to appear for the JTO exam.The applicants can not be regularized as per existing RRs."** (Copy enclosed)

**URGENT**  
**COURT CASE**

**BHARAT SANCHAR NIGAM LIMITED**

(A Government of India Enterprise)

5<sup>th</sup> flr. Bharat Sanchar Bhawan, Janpath,

NEW DELHI-110001

Website: [www.bsnl.co.in](http://www.bsnl.co.in)

**Corporate Office**

**Personnel-IV Section**

**Dy. No.3-15/2012 Pers-IV**

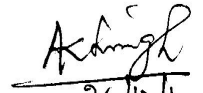
**Dated: Dec. 26, 2012**

To

All Heads of Telecom. Circles & Metro District,

**Subject:- Order in case of OA No 161 of 2012 of CAT Ernakulum  
Bench in favour of BSNL.**

The orders of Hon'ble CAT Ernakulum bench may be utilized in defending the cases in which Officiating JTO's (Regular TTA's) have filed OA's in different Courts to allow them to appear in LDCE for SDE or to promote them in the grade of JTO's against the vacancies pending from the year 2000-2010 based on the eligibility as on the date of occurrence of vacancies and to conduct further promotion as SDE, permitting those with 3 years notional service as on the date of occurrence of vacancies by taking into account their services of officiating period.

  
26/12/12  
(A K Singh)

Astt. General Manager (Pers- IV.)

☎: 011-23734152 & ☎: 011-23734051

Enclosure:- Copy of the Order

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

Original Application No. 161 of

Thursday, this the 13th day of December, 2012

CORAM:

2012

Original Application No. 177 of 2012

Hon'ble Mr. Justice P.R. Raman, Judicial Member  
Hon'ble Mr. K. George Joseph, Administrative Member

1. Original Application No. 161 of 2012 :

Pushaparajan K., S/o. Krishna Panicker T., aged 47 years,  
Junior Telecom Officer, O/o. AGM, (EP), Kaithmukku,  
BSNL, Trivandrum-23, residing at Ambady, Thundathil PO,  
Trivandrum-695 581. .... Applicant

(By Advocate - Mr. V. Sajith Kumar)

V e r s u s

1. The Bharath Sanchar Nigam Limited,  
represented by its Chairman, Managing Director,  
New Delhi-110 001.
2. The Chief General Manager, Bharath Sanchar  
Nigam Limited, Trivandrum-695 030.
3. C.V. Sudhakaran, aged 54 years, S/o. P.K. Vasu,  
Sub Division Engineer (Systems), O/o Divisional Engineer (Systems),  
Digital Carrier Station Building, Kaloor, Ernakulam, residing at  
Chalappillil House, Kaipattoor PO, Arakkunnam,  
Ernakulam-682 313.
4. V. Anilkumar, aged 49 years, S/o. K. Vikraman Nair,  
SDE (Officiating), Franchise Manager, Project Vijay,  
O/o Area Manager Telecom, Muvattupuzha residing at V/477,  
Revathy, Koothattukulam, Ernakulam District.
5. M.B. Sajitha, aged 35 years, D/o. M. Bhaskaran,  
Junior Telecom Officer, BSNL, Telephone Exchange,  
Mazhuvannur, residing at Maroottikkattuthadathil,  
Nellad PO, Ernakulam, Pin-686 669.

6. P.R. Krishna Kumar, aged 35 years, S/o. P.G. Rajappan,  
Junior Telecom Officer, (WiMAX), WiMAX Networking Operating

Center, Mobile Services, IIIrd Floor, Telephone Exchange,  
Boat Jetty, Ernakulam, residing at Placheril, Andoor,  
Palackattumala PO, Marangattupilly,  
Kottayam, Pin-686 635. .... Respondents

[By Advocates - Mr. George Kuruvilla (R1&2) &  
Mr. Shafik M.A. (R3-6)]

2. Original Application No. 177 of 2012 :

1. P.M. Michael, S/o. Mathew P.T., aged 40 years,  
JTO (O), Telephone Exchange, Poovathur,  
Pavaratty Post, Trichur-680 507, residing at Puthoor  
House, Anedath Road, Pavaratty Post, Trichur-680 507.
2. Subramanian G., S/o. Gopalan, aged 41 years, JTO(O),  
OCB Telephone Exchange, Mattancherry, Kochin-682 002,  
residing at H. No. 8/678 A, Murukkinthara Parambu,  
Kochi-682 002.
3. Sebi Louis M., S/o. M.I. Liou, aged 42 years,  
JTO(O), O/o. SED Central-1, BSNL CTO Buildings,  
Palakkad-678 001 residing at 16/219, Nehru Colony,  
Kunnathurmedu Post, Palakkad-678 013.
4. Rahamathullah Kottah, S/o. Late K. Aboobacker, aged 42 years,  
JTO (O), Telephone Exchange, Areacode, Malppuram-673 639,  
residing at Kinavu House, Puttalam, Areacode Post,  
Malappuram-673 639. .... Applicants

(By Advocate - Mr. V. Sajith Kumar)

V e r s u s

1. The Bharath Sanchar Nigam Limited,  
represented by its Chairman, Managing Director,  
New Delhi-110 001.
2. The Chief General Manager, Bharath Sanchar  
Nigam Limited, Trivandrum-695 030. .... Respondents

(By Advocate - Mr. George Kuruvi These applications having been heard on 21.11.2012, the Tribunal  
on

13.12.2012 delivered the following:

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O R D E R

By Hon'ble Mr. K. George Joseph, Administrative Member-

As common facts and issues are involved in these two cases they were heard together and are disposed of by this common order.

2. The applicants are Telecom Technical Assistants (TTA) officiating as Junior Technical Officers (JTO) for many years. They are aggrieved that respondents have decided to hold Limited Departmental Competitive Examination (LDCE) to the grade of Sub Divisional Engineer (SDE) (Telecom) under 33% quota on 4.3.2012 as per Annexure A7 without conducting regular promotion to the cadre of JTO from 2001 to 2010 thereby denying them the chance for competing for the post of SDE. If regular promotions to JTO were given with effect from the date of occurrence of vacancies notionally, they would fall within the zone of consideration. The applicants are qualified for promotion to the post of JTO as per 1996 Recruitment Rules. Out of 5500 qualified candidates, around 3500 were promoted by creating supernumerary posts as per Annexure A6 who are now eligible to appear for SDE exam. The applicants have been left out. The requirement for eligibility to compete for selection to SDE is only three years regular service as JTO. Hence, these Original Applications are filed for the following reliefs:-

- (i) To quash Annexure A7 and Annexure A8.
  - (ii) To direct the respondents to conduct promotions of TTA's as JTO's against the vacancies pending from the year 2000-2010 based on the eligibility as on the date of occurrence of vacancies and to conduct further promotion as SDE, permitting those with 3 years notional
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service as on the date of occurrence of vacancies;

(iii) Alternatively direct the 1st respondent to extend the benefit ordered in Annexure A6 to the applicants and similarly situated and permit him write SDE examinations conducted by the BSNL.

(iv) Grant such other reliefs as may be prayed for and as the Court may deem fit to grant.

3. The applicants contended that notional service can be counted for the purpose of regular service for promotion. If the direction given in OA No. 203 of 2010 and connected cases to conduct year wise selection is complied with, the applicants will be in a position to compete for the post of SDE. As per Annexure A10 settlement, those who passed departmental exam will en-bloc be placed as senior to the direct recruits. Since promotions from TTA to JTO for the last ten years were not given, majority of SDE posts will go to direct recruit JTOs. As majority of TTAs who have qualified against 35% departmental quota in the screening test could not be sent for training are permitted to write the exam for SDE, the same benefit should not be denied to the applicants.

4. Per contra, the respondents contended that the applicants who are TTAs merely officiating as JTOs, are not eligible to appear for the exam for SDE as they do not have three years regular service in the JTO cadre as per SDE (Telecom) Recruitment Rules, 2002. The applicants who are qualified in the screening test and empanelled for promotion as JTO in 2000, as per

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Recruitment Rules, 1996 for vacancies upto 31.8.1999 could not be given promotion for want of vacancies. The new JTO Recruitment Rules came into existence on 26.9.2001. If the applicants are eligible as per Recruitment Rules 2001 they can appear for future exams for promotion to the cadre of JTO. Out of 6000 persons who qualified in the screening test only 3500 persons were given promotion against vacancies diverted from the direct recruitment quota up to 2008. As the diversions were cancelled based on the order of the Hon'ble High Court of Punjab & Haryana that quota diversion is illegal, they were protected by creating 3500 supernumerary posts of JTO which were to be abolished on vacation of the posts by the incumbents. Owing to various court cases the LDCE for promotion to JTO as per Recruitment Rule of 2001, on 30.5.2010 was postponed. The Annexure A7 exam for SDE was held on 4.3.2012 itself wherein nearly 7000 JTOs appeared. The Annexure A10 settlement benefits only those who were selected against vacancies up to 31.8.1999 and does not cover the applicants who were not selected against vacancies up to 31.8.1999. The respondents further submitted that as per Recruitment Rules, 2001, 50% of JTOs are to be filled up by direct recruitment and the remaining 50% by promotion which is bifurcated into 35% for TTAs and Senior TOAs etc. and 15% for other Group-C staff, based on the relative merit in the competitive examination. The applicants have not cleared the competitive examination for promotion to the post of JTO. The direction given by this Tribunal in OA No. 224 of 2010 is stayed by the Hon'ble High Court of Kerala. The applicants have not completed the field training and second phase of training and as such not covered by Annexure A6. The claim of the applicants for regularization was

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dismissed by this Tribunal as per order dated 9.3.2010 in OA No. 712 of 2008.

5. We have heard the learned counsel for the parties and perused the records.

6. Getting qualified for promotion does not confer an indefeasible right to

promotion. The applicants who qualified could not be promoted to the post of JTO for want of vacancies. Matters of recruitment rules and departmental examinations are absolutely within the domain of the executive. Such matters have to serve the needs of the organization. The promotion to the post of JTO is now regulated by Recruitment Rules of 2001. The applicants will have to satisfy the conditions as per the Recruitment Rules, 2001 to appear for the

JTO exams. The applicants cannot be regularized as per the existing recruitment rules. As of now they have to get through the JTO exam first and on becoming eligible as per SDE Recruitment Rules, they can appear in the exam for SDE. Right now they are ineligible as per Recruitment Rules for appearing in the examination notified at Annexure A7. Annexure A7

examination scheduled on 4.3.2012 was originally notified as per Annexure A8 on 18.3.2010 which got postponed more than once. The applicants, should have challenged Annexure A8 in time. It is now barred by limitation.

The OA is bad for non-joinder of parties who are affected by the reliefs sought by the applicants. Annexure R7 exam was held in compliance of the directions of the Chandigarh Bench of this Tribunal and the Hon'ble High Court of Shimla. The said judgments are not challenged. Therefore the challenge against Annexure A7 is not sustainable.

7. As all the grounds raised by the applicants are not tenable in the eyes of law, the OAs are dismissed with no order as to costs.

(K. GEORGE JOSEPH)  
ADMINISTRATIVE MEMBER

(JUSTICE P.R. RAMAN)  
JUDICIAL MEMBER

ANNEXURE R-8

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.O.C.P. No. 1431 / 2008

In C.W.P. No. 5608 of 2007

1. Deepak Verma son of Sh. Joginder Singh Verma, Telecom Technical Assistant (TTA), o/o Sub Divisional Engineer(Computer), SSA-Faridabad, Bharat Sanchar Nigam Limited (BSnL), Faridabad(Haryana)
2. Virender Kumar Sharma S/o Sh. Duli Chand Sharma, Telecom Technical Assistant (TTA), O/o Sub Divisional Engineer(Transmission), SSA-Faridabad, Bharat Sanchar Nigam Limited (BSNL), Faridabad (Haryana)
3. Subhash son of Sh. Rohtash Singh, Telecom Technical Assistant (TTA), O/o Sub Divisional Engineer (Phones), SSA-Faridabad, Bharat Sanchar Nigam Limited (BSNL), Faridabad (Haryana)

..Petitioners

Versus

1. Sh. Kuldeep Goyal, Chairman-cum-Managing Director, Bharat Sanchar Nigam Ltd, 3<sup>rd</sup> Floor, Corporate Office,

Bharat Sanchar Bhawan, Janpath, New Delhi-110001.

2. Sh. P.M. Verma, Assistant Director General(Pers-IV),  
BSNL, Corporate Office, Personnel-V Section, 5<sup>th</sup> Floor,  
Bharat Sanchar Bhavan, Janpath, New Delhi-110001.

..Respondents

Contempt petition under Section 11 & 12 of the  
Contempt of Courts Act for violating and not  
complying with the decision dated 30.5.08 (P-1)  
passed by the Hon'ble High Court.

Present: Mr. R.B. Malik, Sr. Advocate with Mr. Vishal Malik,  
Advocate for the petitioner.

Mr. Madan Mohan, Advocate for respondent.

Respondent No. 2 is present in person.

Reply has been filed by the respondents. In the reply, it  
is indicated that BSNL Management has taken a decision to restore  
the direct recruitment quota earlier diverted to accommodate the  
waiting list candidates. In the Annexure R-1/2, it is stated that 3500  
posts of JTOs of direct recruitment quota will stand diverted to the  
interim quota with immediate effect. Further 3500 supernumerary

posts have been created for Circle wise break up of posts diverted earlier to adjust those officials who have already been promoted against the abovesaid promoted posts. Based upon aforesaid, it is argued on behalf of the respondents that by diversion of the 3500 posts for direct recruitment quota, the judgment stands complied with.

With the perusal of the judgment dated 30.05.2008, it appears that this Court clearly observed that any official who falls under 35% quota meant for JTOs shall have no right against the vacancies after 31.08.1991. By creating supernumerary posts, the respondents have already created the manpower. In this manner, the petitioners who might have become eligible between 1999 to 2000 and thereafter have been deprived of their consideration or to participate in the screening test. The entire exercise seems to have been made to circumvent the judgment of this Court. The respondents seems to have deliberately committed the contempt of the Court. In this view of the matter, prima facie the charge of contempt is made out. Both the respondents are directed to appear in person to enable this Court to frame a formal charge of contempt against them. Learned counsel for the respondents undertakes to cause the appearance of respondent No. 1 on the next date of hearing.

List this matter on 19.12.2008.

Respondent No. 2 shall also continue to remain present  
on all the hearings unless exempted.

November 19,2008.

Sd/-(Permod Kohli)

Judge

True Copy

Advocate