

(OA.No.334/PB/2013 alongwith 23 Linked OAs)

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ORDER

BY HON'BLE MRS. RAJWANT SANDHU, MEMBER (A)

1. All these OAs are disposed of through a common order as the relief sought and grounds for the same are similar in these OAs. However, facts are taken from OA No.334/PB/2013.
2. This Original Application has been filed under Section 19 of the Administrative Tribunals Act, 1985, seeking the following relief:-
 - *8 (ii) Respondents be directed to produce complete record of the case with noting with reference to Annexure A-2, A-3 etc. for perusal of this Tribunal.
 - (iii) That respondent no.1 be directed to issue modification in order (A-3) dated 12.10.2009 for reducing the regular service to 3 years qua applicants who possess Degree in Engineering in respective disciplines as per JTO RRs 2001(A-4) and incorporate the same in Column No.12 of the Schedule of Recruitment Rules, 2001, as the regular service of 7 years in post is in fact meant for TTA who possess three years Diploma in respective discipline of Engineering.
 - (iv) Respondent no.1 be directed to treat the case of the applicants possessing Degree in Engineering in respective discipline at par with direct recruit who have been ordered to be eligible against direct quota of 50% and possess Degree in Engineering in respective discipline without prescribing any experience as per Article 14 and 16 of the Constitution of India as direct recruit and the departmental applicants are equated as per their qualification is concerned and post is same and identical as JTO (T) so that the inequality and discrimination be taken out as per provisions of the Constitution."
3. Brief facts of the case are that the 17 applicants in this OA had filed joint application under Rule 4(5)(a) of the C.A.T. (Procedure) Rules, 1987, having common interest, point involved and relief prayed for. All the

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applicants possess Degree in the disciplines of Electrical Engineering / Computer Science / Electronics and Instrumentation. It is claimed that all the applicants on the basis of their higher qualification of Degree in Engineering were selected and appointed as Telecom Technical Assistants and after completing requisite training, they were appointed as such in July, 2009. Thus, most of the applicants have been continuing as regular TTAs for more than three years. Under the JTO Recruitment Rules, 2001, direct recruits are required to possess Degree in Engineering in the disciplines indicated and the departmental candidates working as TTA are permitted to appear in the Limited Internal Competitive Examination (LICE) against 35% quota if they have completed 7 years as TTA. The 7 years experience required was necessary for TTAs who possess 3 years Diploma in respective discipline, whereas the applicants possess higher qualification of Degree in Engineering / B.Tech / M. Tech in their respective disciplines. Therefore, they had full knowledge of the duties of JTO at par with direct recruits who were not required to have any experience for appointment as JTO. Consequently, modification was required in the JTO Recruitment Rules, 2001 in favour of TTAs who possess Degree in Engineering in the respective disciplines to reduce the qualifying service for appearing in the LICE from 7 years to 3 years. *M*_____

4. In the grounds for relief, it has been stated as follows:-

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- (i) It is on the record that all the applicants possess Degree in Engineering viz. B.Tech. In Computer Science, M.Tech. In IT, Degree in ECE, B.Tech In Computer Science, B.Tech in Electrical, Electronics and Instrumentation etc. which is required qualification as prescribed in Column No.8 of the JTO Recruitment Rules, 2001 (Annexure A-4) and the same qualification of Degree in Engineering is required for direct recruitment without any experience for appointment to the post of Junior Telecom Officer. Hence, there is 100% equality amongst direct recruit candidates and the applicants for departmental examination, as such there cannot be any inequality amongst equals by any sort of any action whatsoever. Therefore, whole action on the part of the respondents in not treating the applicants at par with direct recruit candidates is illegal, arbitrary and non-est in law.
- (ii) The Department of Telecom vide order No.27-2/94-TE-II dated 13th December, 1994 (Annexure A-7), which is on the subject "Promotion of Telecom Technical Assistant in the cadre of JTOs through qualifying screening test against 35% quota", and in this order, Telecom Communication allowed all the Telecom Technical Assistants (TTAs) to appear at JTOs qualifying Screening Test alongwith other cadres irrespective of their length of service against 35% quota, meant for them. As this order (A-7) was issued by the Ministry of Communication and Information Technology, Department of Telecom, then in such a situation, imposing the regular service of TTAs as per Annexure A-3 is wholly unlawful and contention made by the applicants with reference to A-3 under facts of the case is synonymous to the order of DOT; (A-7) where to appear in JTO examination, no length of service has been prescribed. Hence, contention made by the applicants in the body of the OA are legal, valid and in accordance with the DOT order (A-7). As such, relief(s) prayed be allowed straightway.
- (iii) It is on the record that applicants working as TTA having Degree in Engineering in respective discipline have to appear in the departmental examination and are required to secure high marks for appointment to the post of Junior Telecom Officer, whereas on the other hand the direct recruits having Degree in Engineering at par with the applicants are neither to appear in the examination nor they require any experience whatsoever. Hence, it is clear case of inequality amongst

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equals and rather case of the applicants is on better footing as they have to pass Departmental Competitive Examination for promotion and it will not be in dispute with the BSNL Punjab Circle that more than 500 vacancies sanctioned for 50% departmental quota are lying vacant in which hardly 50 to 100 candidates would be eligible to appear for the post and even then number of vacancies will remain unfilled. Therefore, it would be in the interest of the department to allow the relief(s) prayed by the applicant straightway in the interest of justice."

5. It is further stated that the applicants have no statutory remedy available to them and hence the applicants have moved the Tribunal for justice and relief.

6. In the written statement filed on behalf of the respondents, it has been stated that the Recruitment Rules for any post are framed by the competent authority to induct fresh talent from the open market by way of direct recruitment and also to provide promotional avenues to the departmental employees by way of Limited Internal Competitive Examination (LICE). In the case of JTOs, 50% quota has been reserved for direct recruitment for candidates having Engineering Degree in relevant discipline and 50% quota has been reserved for departmental promotions to lower cadres like TTAs and Sr. TOAs having sufficient experience and basic educational qualification as per the qualification prescribed for their direct recruitment. For TTA, the basic qualification for direct recruitment was Diploma in the relevant discipline as such all the employees in the cadre of TTA as per Recruitment Rules having the basic qualification of

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Diploma or B.Sc. with Physics and Mathematics were eligible to appear in the LICE and the Degree holders amongst the TTAs were also eligible to appear in LICE. The Degree holders also had the option to compete for direct recruitment as JTOs. Regarding the case of Sumit Kumar (OA No.275/PB/2013) cited in the OA, in the written statement it is stated that claim for relief in this OA was not similar as claimed in the present OA. In the case of Sumit Kumar, Diploma in a specific trade (Instrumentation) was sought to be included in the eligible list of trades for LICE while in the present OA, the eligibility criteria of experience of regular service as TTA was sought to be diluted. Earlier, regular service requirement was reduced from 10 years to 7 years not just for Diploma holders but for all persons in the cadre of TTAs.

7. In the rejoinder filed on behalf of the applicants, the preliminary objection has been taken regarding the reply statement being filed on behalf of the respondents by Assistant General Manager (Legal), O/o respondent no.2 (Chief General Manager, Telecom, Punjab Circle, Chandigarh). It is stated that only respondent no.1, Corporate office, BSNL Headquarters, was competent to take decision in the matter and hence competent to file reply to the OA as the challenge in the OA was qua the Junior Telecom Officers Recruitment Rules, 2001 (Annexure A-4) and hence the Corporate office of BSNL should have filed the written statement. It is further stated that in OA No.275/PB/2013 titled "Sumit

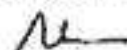
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Kumar & Ors. Vs. UOI & Ors.", Corporate Office issued the necessary clarification regarding LICE against 35% quota for promotion to the cadre of JTO treating the Diploma in Instrumentation and Technology as equivalent to Diploma in Telecommunication / Electronics / Radio / Computer / Electrical for this examination which showed that it is the competent authority to take decision in the matter and the reply should have been filed by the Corporate office.

8. Arguments advanced by the learned counsel for the parties were heard. Sh. N.P.Mittal, learned counsel for the applicants reiterated the points and grounds taken in the OA and asserted that it was the Corporate Office of BSNL, respondent no.1, that should have filed the reply in the matter and hence the written statement on record was to be treated as having been filed by authorities not competent to do so. In this regard, he referred to the order of the Jurisdictional High Court in CWP No.6464 of 2013 decided on 03.04.2013 (Annexure A-9), whereby penalty was imposed upon the petitioners (BSNL) for concealing facts related to the matter under consideration. Learned counsel stressed that the amendment of the JTO Rules, 2001, was not necessary to be effected for allowing relief as sought by the applicants since earlier also, the respondent BSNL had made changes in the eligibility criteria for appearing in LICE through order dated 20.10.2009 (Annexure A-3) without issuing a proper notification regarding amendment of the JTO Rules. Another



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modification was issued in respect of the JTO Rules through order No.250-41/2001-PERS.-III, dated 05.11.2001, whereby the BSNL Board conveyed the incorporation of Instruments Technology as one of the qualifications as contained in Column 8 and 12 under sub para (ii) under clause (A) of the Recruitment Rules, 2001. Learned counsel for the applicant also stressed that since there was a quota of 50% for direct recruitment of JTOs from amongst candidates who possess the Degree of Engineering and no experience requirement was there in respect of persons who applied under direct recruitment quota, the experience qualification as TTA should be reduced and special dispensation made for the applicant TTAs who were Degree holders so that they could also have opportunity to get promoted as JTOs.

9. Learned counsel for the applicant also referred to the decision of the C.A.T. Allahabad Bench in OA No.492/2013 delivered on 06.05.2013 relating to the quashing of the provision in para (1) (B) (ii) of column 12 of the Schedule of the Recruitment Rules, 2001 of the Junior Telecom Officers, including the amendment thereafter dated 12.09.2010, which after modification provides 7 years regular service required in the post of Group 'C' for appearing in LICE under 35% quota for promotion to the grade of JTO whereby the OA was rejected. Learned counsel sought to distinguish this order dated 06.05.2013 from the issues in the present OA. He stated that in OA No.492/2013 the contention of the applicants

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that the impugned rules were violative of Article 14 & 16 was rejected as discrimination is always between same category and similarly situated persons which was not the case of the applicants in the OA. Besides, in the operative part of the order reference has been made to the IAS and the situation of direct recruits vis-à-vis the promotees which was not relevant to the pleas in the present OA. Learned counsel stated that in respect of selection of Junior Accounts Officers, the BSNL had reduced the qualifying service required for candidates appearing in the LICE for this category and the same treatment should be afforded in the case of JTOs. Learned counsel further stated that the LICE was last conducted in the year 2000 and thereafter in 2013 and hence clubbing of vacancies had taken place, thus, vitiating the spirit of the Rules and principles that required that selection examination for promotions as well as direct recruitment should be held on yearly basis. Moreover, the relaxation clause in the JTO Rules could be invoked by the respondents for allowing the applicants to be considered for selection as JTOs, since the vacancies in this cadre were much higher than the number of posts advertised for being filled. The applicants were also fully competent to perform the work of JTO since they possessed Degrees in Engineering and technical duties of TTAs and JTOs were similar, while the JTOs also had some additional supervisory administrative duties. Having already served for 4 to 5 years, the Degree holder TTAs selected through the competitive exams held in 2008 and

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2009, had adequate experience to perform satisfactorily as JTOs. Moreover, the Degree holder TTAs were within the upper age for selection as direct recruit JTOs but the BSNL was not regularly holding the selection test for JTOs through direct recruit of Degree holders and hence this option was also closed to the applicants. Hence, he pressed for respondent no.1 to be given direction to treat the applicants who had appeared in LICE 2013 on provisional basis as being eligible for selection as JTO if they cleared the examination.

10. Mr. Rohiteshwar Singh, learned counsel and Mr. Gaurav Jindal, proxy counsel on behalf of Mr. Rajesh Bansal, stated that they were adopting the arguments put forth by Mr. N.P. Mittal, and did not wish to add anything further.

11. Sh. G.C.Babbar, learned counsel for the respondents stated that for direct recruitment to the post of JTO, the standard of examination was of Degree level In Engineering while for LICE, the standard of paper In Part 'A' – General English and General Studies (50 Marks) was of the CBSE 10th standard. For Part 'B' – Technical Paper (Specification), (100 Marks) was of the standard of an Engineering Diploma. The two examinations were not comparable and TTAs who were Degree holders could not be considered at par with direct recruits to the post of JTOs and if they considered that they were adequately qualified for selection through

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direct recruitment to the post of JTO, they had the option for appearing in the examination for such selection. Regarding the qualifying service for the LICE examination for selection of TTAs for promotion as JTOs, learned counsel stated that the quota of 35% was meant for such persons who had the basic qualification for direct recruitment as TTA which was Diploma in the relevant subjects and the experience qualification was 7 years (which had been reduced from 10 years prescribed earlier). Learned counsel distinguished the case of Sumit Kumar & Ors. Vs. UOI & Ors in OA No.275/PB/2013 which was regarding educational qualification and not regarding eligibility criteria with reference to the regular service experience in which the relief sought by Sh. Sumit Kumar was allowed. Learned counsel stated that a person who did not fulfill the eligibility criteria for examination, whether for promotion or for direct recruitment, was not eligible to appear in the same. Recruitment Rules could not be modified to suit individual cases or a group of employees and the Tribunal did not have jurisdiction to direct the modification of Rules in this manner.

12. Learned counsel cited judgment in Civil Appeal No.5122 of 2007 titled "Dilip Kumar Garg & Anr. Vs. State of UP & Ors." decided on 03.03.2009, wherein it had been observed as follows:-


- *9. The submission of Shri Bobde is that Rule 5(ii) of the 2004 Rules violates Article 14 of the Constitution, because it makes unequals as equals by completely divesting the requirement for the Junior Engineers who are only diploma holders either of acquiring the requisite technical qualification or passing a qualifying examination for promotion as Assistant Engineer. It

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is submitted that Article 14 can be violated not only by treating equals as unequals, but also by treating unequals as equals.

10. In State of Jammu & Kashmir Vs. Triloki Nath Khosa & Ors. AIR 1974 SC 1, the rule which provided that only degree holders in the cadre of Assistant Engineers shall be entitled to be considered for promotion to the next higher cadre of Executive Engineers while the diploma holder Assistant Engineers were not eligible for such promotion was challenged as violative of Article 14. However, the Constitution Bench of this Court repelled this challenge and observed that though the persons appointed directly and by promotion were integrated into a common class of Assistant Engineers, they could, for the purpose of promotion to the cadre of Executive Engineers, be classified on the basis of educational qualifications.
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14. In J. Ranga Swamy Vs. Government of Andhra Pradesh and Ors. AIR 1990 SC 535 and in State of Rajasthan and Ors. Vs. Lata Arun. AIR 2002 SC 2642, this Court observed that the eligibility qualification for admission to a course or for recruitment or promotion in service are matters to be considered by the appropriate authority, and not by the Courts.
15. In the present case, what we find is that Rule 5(ii) of the 2004 Rules has done away with the requirement of passing a qualifying examination for the diploma holder Junior Engineers for promotion as Assistant Engineers, and they have been placed at par with degree holder Junior Engineer for this purpose. We see no unconstitutionality or illegality in the same. It is entirely for the authorities to decide whether the degree holders and diploma holders should be treated at par or not for the purpose of promotion from the post of Junior Engineer to the post of Assistant Engineer.
16. xx xx xx xx 



17. In our opinion Article 14 should not be stretched too far, otherwise it will make the functioning of the administration impossible. The administrative authorities are in the best position to decide the requisite qualifications for promotion from Junior Engineer to Assistant Engineer, and it is not for this Court to sit over their decision like a Court of Appeal. The administrative authorities have experience in administration, and the Court must respect this, and should not interfere readily with administrative decisions. (See Union of India Vs. Pushpa Rani & Ors. 2008 (9) SCC 242 and Official Liquidator Vs. Dayanand & Ors. 2008 (10) SCC 1.
18. The decision to treat all Junior Engineers, whether degree holders or diploma holders, as equals for the purpose of promotion is a policy decision, and it is well-settled that this Court should not ordinarily interfere in policy decisions unless there is clear violation of some constitutional provision or the statute. We find no such violation in this case.
19. In Tata Cellular Vs. Union of India AIR 1996 SC 11, it has been held that there should be judicial restraint in administrative decision. This principle will apply all the more to a Rule under Article 309 of the Constitution.
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13. In "Umesh Chandra Vs. Govt. of NCT of Delhi & Ors." in OA

No.1947 of 2010, decided on 15.03.2011, it was held as follows:-

"After all, if respondents felt Diploma Holder AE should also be made eligible for further promotion, Degree Holder AEs cannot have any valid objection to it. In any case it is not within the domain of courts to decide how RRs should be framed. It is the job of the Department or the UPSC to decide how best RRs can serve the purpose of the department:

In P.U. Joshi and Ors. Vs. Accountant General, Ahmedabad and Ors. reported in 2003 (2) Supreme Court Cases 632 the Hon'ble Supreme Court has, inter alia, observed that determination of conditions of service, alteration thereof by amending rules, constitution, classification or abolition of

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posts, cadres or categories of service, amalgamation, bifurcation of departments, reconstitution, restructuring of the pattern etc. all pertain to executive policy and within exclusive discretion of the State, subject to limitations and restrictions envisaged in the Constitution. Government servants have only right to safeguarding rights of benefits already earned, acquired or accrued but they cannot challenge the authority of State to make such amendments or alterations in rules.

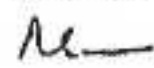
Challenge to RRs cannot be sustained in law simply because it does not suit one individual. We, therefore, find no merit in the second contention also. No other point was argued. The OA is accordingly dismissed being devoid of any merit. No costs."

14. In "Uday Pratap Singh & Ors. Vs. UOI & Ors." in OA No.591/2010, pronounced on 16.08.2012, it was held as follows:-

"It is for the employer to prescribe the eligibility criteria and the competence of the employer cannot be questioned by the petitioners so long as the criteria prescribed is uniform and with the object of absorbing more efficient and talented people for effective functioning of the organization. It is not open for the petitioners to contend that there is no nexus between the criteria prescribed and the object sought to be achieved and further there is no force in the contention that the impugned recruitment rules are arbitrary, illegal and discriminatory and violative of Articles 14, 16 and 21 of Constitution of India."

Learned counsel stressed that there could be no differentiation regarding qualifying service between the Degree holder and Diploma holder TTAs appearing in LICE keeping the provisions of the JTO Rules, 2001 in view.

15. Regarding the issue raised by the learned counsel for the applicants that the reply in the OA should have been filed by the Corporate Office, learned counsel stated that in the opening para of the written statement, it was stated as follows:-



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"I, Bhajan Singh working as Assistant General Manager (Legal) in the office of CGMT, Punjab Circle, BSNL, Chandigarh, do hereby declare that I am well conversant with the facts of the case, competent and authorized to file the reply / written statement on behalf of respondents no.1 to 6."

He further stated that Resolution was passed by the Board of Directors of BSNL in their 74th Meeting held on 03.03.2006 regarding authorization for verifying, signing and filing the legal documents and matters connected therewith and this reads as follows:-

"RESOLVED THAT in supercession of all the existing instructions and decisions on the subject, Chief General Managers (CGMs), Principal General Managers (PGMs), General Managers(GMs), Telecom District Managers (TDMs), Divisional Engineers (Des), Deputy General Managers(DGMs), Assistant General Managers (AGMs) and equal ranking officers of the Company, by whatever name or designation they are called and wherever they are performing duties, such as, Corporate office, Telecom Circle, Telecom Projects, Telecom Factory etc., of the Company, are authorized severally, on behalf of the Company, to sign, notify and present any plaint, written statement, petitions, tabular statement(s), memo of appeal or other documents, vakalatnamas etc., and to represent and appear to give statement, evidence, for Company before any court(s), tribunal(s), statutory authority (ies), regulatory authority (ies) in and outside the Union of India and whether civil, criminal revenue or otherwise and other judicial, quasi-judicial and before revenue authorities in which such action or suits proceedings may be brought or other proceedings taken, as may be necessary in the paramount interest of the Company."

Further, vide letter dated 04.04.2013, issued by the Corporate Office it had been conveyed to the Chief General Manager, Telecom, Punjab Telecom Circle, Chandigarh that the reply prepared by the defending counsel in OA No.334/PB/2013 was in order and it may be filed in the C.A.T. Chandigarh

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Bench. This communication also made it clear that Corporate Office had approved the written statement filed in the present OA. Regarding the judgment at (Annexure A-9) passed by the Jurisdictional High Court and reference at (Annexure A-10), learned counsel stressed that these had no nexus with the present case. He further stated that the judgment of the Allahabad Bench of C.A.T. in OA No.492 of 2013 covered all aspects raised in the present OA and hence being a judgment of a Coordinate Bench was binding upon the Chandigarh Bench of CAT.

16. Supplementing the arguments put forth by Mr. G.C.Babbar, Sh. D.R.Sharma, learned counsel for the respondents in some of the OAs stated that the clubbing of vacancies had indeed taken place regarding which the LICE was held in 2013 but the selections would be made on the basis of year wise vacancies and eligibility of the candidates who had appeared in the examination for that year's vacancies. Learned counsel further stated that the applicants had only joined service in 2008, 2009 and therefore they had no claim in any case prior to vacancies of 2008. Moreover, even if the Recruitment Rules for JTO were to be modified and eligibility criteria for appearing in LICE regarding regular service in the grade of TTA reduced, such modification of the rules would only have prospective effect and the applicants would not be benefited from the same in any manner. Hence there was no merit in the OA. *As*

17. We have carefully considered the pleadings of the parties, the material on record and heard the learned counsel for the applicants as well as the respondents at length. It is evident from the material on record that the applicants do not fulfill the qualifying service of 7 years as TTA for appearing in the LICE held in 2013 and thus were ineligible in terms of the JTO Rules, 2001. It is the BSNL Management that is the authority to take decision regarding any changes to be effected in the Recruitment Rules and as has been stated time and again by way of judicial pronouncements, the Courts / Tribunals do not have a role in the matter. Moreover, although it has been argued at length by the learned counsel for the applicants that the applicants being Degree holders should be treated at par with direct recruit JTOs and should not be required to have 7 years qualifying service as TTA before being allowed to participate in LICE, the fact remains that they were recruited as TTAs and if they wish to avail opportunity for promotion as JTO under the 35% quota, they have to perforce fulfill the eligibility criteria of 7 years regular service prescribed in this regard. This eligibility criteria cannot be diluted without there being an amendment of the JTO Rules. Even if such amendment is effected, it could have only prospective effect and LICE 2013 held as per the JTO Rules of 2001 cannot be impacted in any manner.

18. Although the applicants have been allowed to appear provisionally in the LICE, 2013, their candidature for the examination has

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to be rejected in view of the provisions of the JTO Rules, 2001. We are supported in the views expressed above by the judgment of Allahabad Bench of C.A.T. in OA No.492 of 2013 decided on 06.05.2013. We therefore conclude that there is no merit in these OAs and the same are rejected. No costs.



(RAJWANT SANDHU)
ADMINISTRATIVE MEMBER.

(DR. BRAHM A. AGRAWAL)
JUDICIAL MEMBER

Place: Chandigarh
Dated: 30.01.2014

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Certified True Copy of the order as per the original
अनुसंधान आयोग (आर.आर.टी.)
केन्द्रिय प्रशासनिक आयोग (सी.आर.आर.टी.)
Central Administrative Tribunal
चण्डीगढ़ (केन्द्र) Chandigarh Bench
चण्डीगढ़ / Chandigarh

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