

PRINCIPAL BENCH

61/35,  
Copernicus Marg, New Delhi  
Date:

116/J

From  
The Principal Registrar  
Central Administrative Tribunal  
Principal Bench, New Delhi.

To  
1. Sh. A.K. Behery Advocate  
CAT Bar Room, N Delhi  
2. Mr. Rajnish Prasad Advocate  
Ch No. 1, RK Ganga Blocky (Col/B/Block)  
Supreme Court of India N Delhi - 1  
3. CAT Library, N Delhi

Regn. OA No./TA No. 777/10  
W/TA 778/10  
B. Assan  
All India BSWL Executive Applicant

Versus


BSWL Respondents

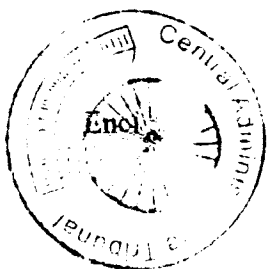
Sir,

I am directed to forward herewith a copy of Judgment/Order dated: 10-1-13  
passed by this Tribunal in the above mentioned case for information and necessary  
action, if any.

Please acknowledge the receipt.

Yours faithfully,

  
(Section Officer) I-II  
For Principal Registrar



**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH**

OA 777/2010  
MA 576/2012  
With  
OA 778/2010  
MA 577/2012

New Delhi this the 10<sup>th</sup> day of January, 2013

**Hon'ble Mrs. Manjulika Gautam, Member (A)**  
**Hon'ble Mr. A.K.Bhardwaj, Member (Judicial)**

**OA 777/2010**

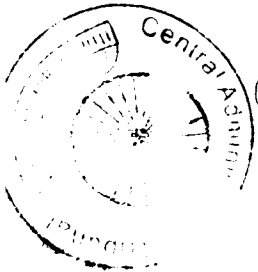
1. All India BSNL Executive's Association represented by Secretary, Ernakulam S.S.A Branch, Ernakulam, T.K.Mangalanandan, Sub Divisional Engineer O/o Principal General Manager, BSNL, Ernakulam.
2. P.Krishna Mohan, Sub Divisional Engineer (O), Telephone Exchanage, Manjapra, Angamaly, Ernakulam.
3. P.M.Damodaran, Sub Divisional Engineer (O), BSNL Mobile Service, Catholic Centre, Ernakulam, Kochi-31.
4. Shaji P.S. Senior Accounts Officer, BSNL, O/o PGMT, Catholic Centre, Ernakulam.
5. P.G. Suresh, Accounts Officer, O/o PGMT, BSNL, BSNL Bhavan, Kalathilparambil Road, Kochi-16
6. Biju Gopal, Junior Accounts Officer, B.S.N.L. O/o PGMT, Catholic Centre, Ernakulam.
7. Manoj C.Sekhar, Accounts Officer, BSNL, O/o PGMT, Catholic Centre, Ernakulam.
8. Muralidharan T.K.Senior Accounts Officer, B.S.N.L. O/o PGMT, Catholic Centre, Ernakulam.

... Applicants

(By Advocate Shri A.K.Behera )

**VERSUS**

1. Bharat Sanchar Nigam Limited, Represented by its Chairman and Managing Director, Statesman Building, New Delhi-110001
2. The Director, Human Resources Development, BSNL, Statesman Building, New Delhi-110001



3. The General Manager (Personnel),  
B.S.N.L. Statesman Building,  
New Delhi-110001.

... Respondents

(By Advocate Shri Rajnish Prasad )

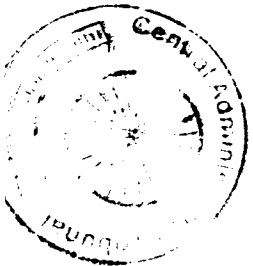
**OA 778/2010**

1. Sanchar Nigam Executives' Association (India)  
(SNEA (India),  
Represented by its Kerala Circle President  
K.D. Sebastian,  
Deputy General Manager (Net Work Operations-II),  
Consumer Mobility, 1st Floor,  
Telephone Exchange Building, Panampilly Nagar,  
Kochi-36,  
Residing at Kochukudy, Edappally PO,  
Kochi-24.
2. Sudeep Kumar V.P., S/o Sri Viswanathan Nair  
Sub Divisional Engineer, Regional Telecom Training Centre,  
BSNL, Kaimanon, Thiruvananthapuram-695040,  
Residing at TC 55/2313 (3), Mayookham,  
Pappanamcode-695 018.
3. Sudheer K., S/o the late K.V. Rajagopalan Nair,  
Sub Divisional Engineer,  
Optical Fibre System Outdoor Maintenance-I,  
BSNL, Microwave Station Building,  
Telephone Bhavan, Gandhi Road, Kozhikode-32,  
Residing at Sujatha Nivas, Nellikode Post,  
Kozhikode-673 016.
4. Sabu V.G., S/o the late K.K. Gopinathan Nair,  
Sub Divisional Engineer,  
Regional Telecom Training Centre, BSNL,  
Kaimanam PO, Thiruvananthapuram-695 040,  
Resident at D1/2, BSNL Quarters, RTTC Campus,  
Kaimanam PO, Thiruvananthapuram-695 040
5. Rajeev. B., S/o the late P. Balan Pillai,  
Sub Divisional Engineer, Mobile Services, BSNL-Complex,  
Silk Street, Calicut residing at Sree Bhavan,  
Kanholyparamba, Purhiyara PO, Calicut.
6. Harikrishnan K.S., S/o the late K. Sankarapilla,  
Sub Divisional Engineer, BSNL, Muttom,  
Thodupuzha, residing at Kizhakkhatt House,  
Kolani PO, Thodupuzha.
7. George Verghese S/o Sri Thomman Varghese  
Divisional Engineer (Officiating), Boradband,  
Telephone Exchange, Manjeri, residing at  
Alfa Towers, Mullanpara, Manjeri -676 121

... Applicants

(By Advocate Shri A.K. Behera )

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**VERSUS**

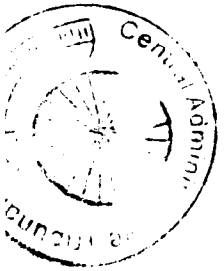
1. Bharat Sanchar Nigam Limited,  
Represented by its Chairman and Managing Director,  
Statesman Building, New Delhi-110001
  2. The Director, Human Resources Development,  
BSNL, Statesman Building, New Delhi-110001
  3. The General Manager (Personnel),  
B.S.N.L.Statesman Building,  
New Delhi-110001.
  4. Union of India  
Represented by its Secretary,  
Ministry of Communication and Information Technology,  
Department of Telecommunications,  
421 Sanchar Bhavan, 20 Ashoka Road,  
New Delhi-110001
- ... Respondents

(By Advocate Shri Rajnish Prasad )

**ORDER**

**(Hon'ble Mr. A.K.Bhardwaj, Member (J)):**

All India BSNL Executive Association and 7 others filed OA No. 690/2009 before Ernakulam Bench of this Tribunal questioning the provisions contained in column 6 & 12 of the Schedule and Appendix A to Schedule II (Annexure 1) of BSNL Management Trainee Recruitment Rules 2009 as also Circular No.2-2/2009-Recdt dated 3.09.2009 whereby the selection process for recruitment of 600 management trainee was set in motion to the extent that it excluded those who possessed B.Sc/B.Sc (Hons (with Physics and Mathematics as main/subsidiary/elective/optional subjects) with 60% marks in aggregate from the purview of the selection. They also sought a declaration to the effect that all the employees appointed as JTO/JAO and equivalent or above in BSNL are eligible to participate in the selection process for the post of Management Trainees in BSNL irrespective of their age and qualification. Likewise, Sanchar Nigar



Executive Association (India) (SNEA (India) and six others also filed OA No. 672/2009 before Ernakulam Bench only praying therein:-

- (i) To declare column 6 and 12 of the Schedule and the Appendix A to Schedule to Annexure A-7 BSNL MT Recruitment Rules, 2009 are illegal, arbitrary, unreasonable and ultra vires Articles 14 and 16 (1) of the Constitution of India;
- (ii) to call for the records leading to Annexures A-7 and A-9 and to quash the same to the extent they prescribe upper age limit and exclude those who possess B.Tech (Mechanical) and B.Sc/B.Sc Hons (with Physics and Mathematics as Main/Subsidiary/Elective/Optional Subjects) with 60% marks in the aggregate obtained in the examination of a recognized University;
- (iii) to direct the respondents to accept the applications made by the applicants in response to Annexure A-9 Notification for appearing for the departmental competitive examination for internal candidates for appointment to the grade of Management Trainee and to consider their candidature on merits without regard to the offending provisions which are impugned in this O.A. and to promote them to the grade of Management Trainee in the order of their merit;
- (iv) to grant such other reliefs which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case; and
- (v) to allow the above Original Application with costs."

In view of the order passed in PT Nos.338/2009 and 339/2009, the said Original Applications were transferred in Principal Bench. On transfer to Principal Bench, the OAs were re-numbered as 777/2010 and 778/2010. Since both the OAs raise common questions of law and facts, they are taken up together for disposal. The members of All India BSNL Executive Association (applicant No.1 in OA No. 777/2010) as well as other applicants in said OA were appointed in different cadres in the Posts and Telegraphs Department (Department of Telecommunication). Subsequently they got promotion as per relevant Recruitment Rules and were finally promoted to the grade above Jr. Telecom Officers and JAO. The Members of applicant No.1 in OA No.778/2010 including applicant No.2 to 7 were directly recruited as JE/JTOs in the Posts and Telegraphs



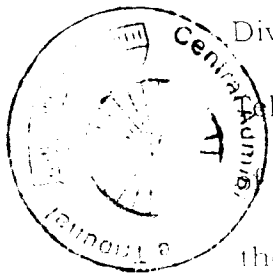
(Department of Telecommunication) on various dates during the years 1984 to 1997. After transfer of the OAs to Principal Bench, the applicants in both the OAs supplemented the pleadings by filing MAs No. 576 and 577/2012. As has been delineated in the said Misc. Applications, prior to formation of BSNL on 01.10.2000, the telecom services in the country except metropolitan cities of Delhi and Mumbai were provided by Central Government (Department of Telecommunication) and recruitment to the post of Junior Engineer was regulated in terms of Junior Engineers (Recruitment) Rules, 1980. As per these rules, 65% of the vacancies of Junior Engineer were filled by direct recruitment and the remaining 35% by promotion of various categories of employees in lower grades. The requisite educational qualification for direct recruitment prescribed in the Recruitment Rules was:-

“(a) Degree in Engineering, Mechanical, Electrical, Telecommunication, Electronics or Radio Engineering from a recognized University or equivalent qualification.

OR

(b) B.Sc/B.Sc (Hons) (with Physics and Mathematics as elective/subsidiary/additional/optional subjects) with 60% marks in the aggregate obtained in the examination of a recognized University.”

2. The post of Junior Engineer was subsequently re-designated/named as Junior Telecom Officer (JTO). The Central Government notified the Junior Telecom Officer (Recruitment) Rules, 1990 to regulate the recruitment to the re-designated post of JTO which were subsequently superseded by JTO (Recruitment) Rules, 1996. The post of Junior Engineer/JTO formed feeder grade for promotion to the post of Sub-Divisional Engineer (Group 'B' Gazetted), governed by Telecommunication Engineering Services (Recruitment) Rules, 1996. 75% of the posts of SDE were filled up by promotion based on seniority and the remaining 25% on the basis of Limited Departmental Competitive

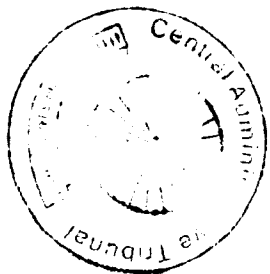


Examination (Promotion). In the Department of Telecommunication (P&T Department), recruitment was governed by the Indian Telecommunication Service (Group 'A') Recruitment Rules, 1992 consisting of following grades/categories:

- “ (a) Advisor,
- (b) Chief General Manager,
- (c) Senior Administrative Grade (General Manager)
- (d) Junior Administrative Grade (Selection Grade) (Additional General Manager),
- (e) Junior Administrative Grade (Deputy General Manager)
- (f) Senior Time Scale (Divisional Engineer), and
- (g) Junior Time Scale.”

The posts in Junior Time Scale with which we are concerned with, were filled by direct recruitment through Engineering Services Examination conducted by UPSC and by promotion of SDE (AE) with three years service in the grade in the ratio of 1:1. Department of Telecommunication called option from the officers and other employees for permanent absorption in BSNL w.e.f. 1.10.2000. On its formation, the BSNL published the Junior Telecom Officer Recruitment Rules, 2001 to regulate the recruitment to the post of JTO in terms of which 50 % posts were to be filled up by direct recruitment. The Recruitment Rules for the post of Sub Divisional Officer (SDO) in BSNL contain the provisions for promotion amongst JTOs. BSNL Management Services Rules, 2009 contain the provisions for recruitment to following grades/categories:-

- “ (a) Executive Director,
- (b) Chief General Manager,
- (c) Senior General Manager,
- (d) General Manager,
- (e) Additional General Manager,
- (f) Joint General Manager,
- (g) Deputy General Manager, and
- (h) Divisional Engineer/Assistant General Manager (Equivalent to Senior Time Scale).”



The respondents (BSNL) created another grade of Management Trainee (MT) equivalent to Junior Time Scale of the erstwhile Indian Telecommunication Service (Group-A). The recruitment to said grade is made in terms of the BSNL Management Trainee Recruitment Rules (MTRRs 2009). Applicants are aggrieved by column 6 and 12 of Schedule to said rules as well as by appendix A to said Schedule. For easy reference, relevant excerpts from the Schedule and Annexure A are reproduced hereinbelow:

**"SCHEDULE  
MANAGEMENT TRAINEES IN BSNL**

Age Limit

6

MT (External) 30 years MT (Internal) 36 years

Relaxable in case of reserved category  
Candidates as per Government Guidelines

Age limit to be reckoned as on 1st August of  
Year of Examination.

In case of recruitment by promotion/deputation/  
Transfer grades from which promotion/deputation/  
Transfer to be made.

12

All regular BSNL employees- at or above JTOs, JAO and equivalent levels and below Management trainee levels-possessing the prescribed eligibility conditions (on the last date of application) shall be eligible to appear in the assessment process.

Maximum three attempts shall be permitted to the Internal candidates."

Annexure-A

Schedule to the Recruitment Rules of MTs (MT RRs)  
Essential qualifications for Management Trainees, External &  
Internal

Educational Qualification

Functional Streams	External Candidates	Internal Candidates
Operations (Please see Note.1&2)	Bachelor Engineering/ Bachelor of Technology degree or equivalent Engineering Degree in any of the following disciplines:  1. Telecommunications 2. Electronics 3. Computer/IT	Bachelor of Engineering/ Bachelor of Technology degree or equivalent Engineering Degree in any of the following disciplines:  1. Telecommunications 2. Electronics 3. Computer/IT 4. Electrical





	PLUS Two years regular full time MBA	PLUS 4 years work experience within BSNL (On the last date of application)
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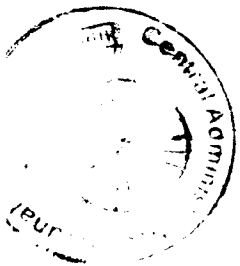
In sum and substance, the grievance of applicant is against the maximum age limit and educational qualifications prescribed to be satisfied by internal candidate to become eligible for the post of Management Trainee (MT). In terms of Rule 7 of BSNL Management Trainees Recruitment Rules, 2009, the posts of MT for the purpose of recruitment are divided as under:-

"50% of posts will be open for both external and internal candidates and will be filled based on merit.

Remaining 50% of posts will be reserved for internal candidates only."

In Rule 9.6 of MT RRs, it is mentioned that 50% posts of MTs are to be filled through merit regardless of internal/external candidates and remaining 50% should be reserved for internal candidates and should be filled up in decreasing order of merit from internal candidates appearing in merit list subsequently. The applicants have questioned the prescription of maximum age limit and educational qualifications on the following grounds:-

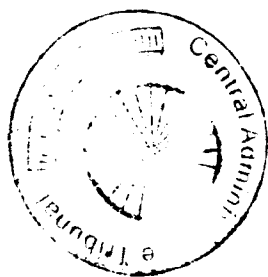
- (i) The working experience gained by an employees in the organization equate them to meet the job requirement of the promotional posts. In the MTNL, one of the two Corporations (MTNL & BSNL) carved out from DoT, the educational qualification prescribed for internal candidate in Telecom discipline for appointment/promotion to the posts of Senior Management Trainee includes B.Sc. Ist class, thus the applicants who were appointed as JTO/JAO/JE or to any equivalent posts either in DoT or BSNL with B.Sc. qualification should not be rendered ineligible for the grade of MT.
- (ii) Since after formation of BSNL, no promotion to Senior Time Scale has been made and even prior thereto also the FRs notified by the Central Government were kept in suspended



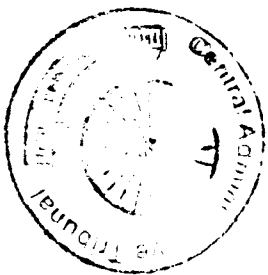
animation, the career prospects of eligible officers working as Sub Divisional Engineer (SDE) and JTO in DoT/ BSNL are jeopardized.

- (iii) With the introduction and operation of BSNL MTRRs, 2009, the SDE stands excluded from the zone of eligibility for appointment to MT because of prescription of lower age limit and educational qualification different from one prescribed for recruitment to the post of JE/JTO.
- (iv) All regular BSNL employees at or above JTO, JAO and equivalent level fulfilling the conditions mentioned in the RRs are eligible for appointment as MT as internal candidate with four years experience. The upper age limit for appointment to the post of JTO/JE is 27 years. The prescription of maximum age limit of 36 years for internal candidates to remain eligible for the post of MT is totally irrational, as such candidates remain eligible for appointment/promotion to the post in question only for 5 years and may not even get opportunity to avail the maximum opportunities i.e. 3 in number to participate in the selection process. Para 37 of the MA No.576/2012 filed by applicants in OA No. 777/2010 reads as under:-

"That even many of the Junior Telecom Officers recruited under the Recruitment Rules published by BSNL also cannot avail of the opportunity for appointment as Management Trainees on account of age limitations. A person applying for the post of Junior Telecom Officer at the age of 29-30 years and getting finally selected, becomes overage by the time he requires four years of working experience in BSNL. The gestation period for completion of the selection process is not less than one year. After selection, the person has to undergo training for a period of two years. In this manner, by the time the selected persons are actually appointed as Junior Telecom Officer, they have already attained the age of 32-33 years. To be eligible as Internal Candidates, a Junior Telecom Officer has to acquire working experience of 4 years in BSNL. This takes their age to 36-37 years. Thus such a Junior Telecom Officer is unable to avail of even a single chance for consideration for appointment as Management Trainee as Internal Candidate against three chances prescribed in the Rules."



- (v) Before formation of BSNL, B.Sc Degree with Physics and Mathematics with not less than 60 % marks was treated at par with Degree in Engineering for the purpose of recruitment to the post of JE/JTO and the candidates selected and appointed with such qualification could progress in their career in the organization they are appointed, but after absorption in BSNL with prescription of the qualification in Appendix A to Schedule to MTRRs, their career prospectus and promotional avenues are paralyzed.
- (vi) 50% quota in the grade of MT is earmarked for internal candidates to provide promotional avenues to JTO, JAO and equivalent level and below MT level, but with the Bachelor of Engineering/Bachelor of Technology degree or equivalent engineering degree in Telecommunication, Electronics, Computer/IT or Electrical being made sine qua non to remain eligible for appointment to said grades, the applicants with qualification of B.Sc. degree with Physics and Mathematics with not less than 60% marks are excluded from the zone of eligibility.
- (vii) Under the general guidelines issued by the Central Government, the age limit and educational qualifications applicable for direct recruitment (external candidates) may not be made applicable for promotion of internal candidates.
- (viii) BSNL, Government Company is bound by the policy guidelines of the Central Government.
- (ix) Though in terms of conditions for absorption/transfer, the absorbed/transferred executives were to be eligible for promotion upto the level of Deputy General Manager in a time bound manner, the SDE in BSNL having more than 17 years of

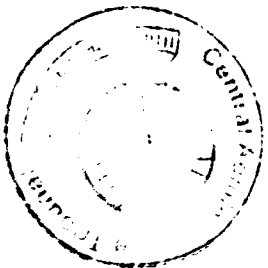


service, are waiting for promotion to the post of Divisional Engineer and with the present set of RRs for the grade of MT, their promotional avenues are further blocked.

- (x) With the qualification stipulated in Annexure A to MT RRs, the JTO/JAO and equivalent who joined the service after formation of BSNL, would be benefited while the senior incumbents shall be deprived of promotional avenue/opportunity.

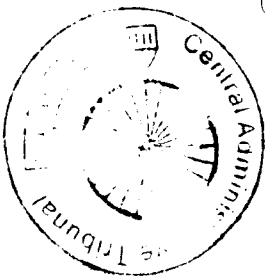
3. In their reply to Original Applications as well as Misc. Application No. 576/2012, respondents pleaded:-

- (i) BSNL MTRRs-2009 have been framed keeping in view the service requirement of the organization whereby requisite eligibility condition of age, educational qualification and experience are identified and formulated with a view to get best Managers for the organization at the middle level through fast track promotion for achieving the business goals in the changing business scenario.
- (ii) It is for the appointing authority to lay down the requisite educational qualification for recruitment to any particular posts as it pertains to the domain of policy. It is for the State to decide the set of educational qualification for any post and the Court cannot substitute the requirement of the same.
- (iii) In the case of **State of J&K Vs. Trilok Nath Khosa and Ors** (1974(1) SLR 536), Hon'ble Supreme Court found no fault in exclusion of diploma holder AE from feeder category to the post of Executive Engineer.
- (iv) The Management Trainee shall be recruited against 50% of equivalent Sr. Time Scale (STS) level posts as decided to be filled up by BSNL in each year. The rest 50% STS level posts will be



filled up by promotion from regular SDE/AO or equivalent grade of concerned stream who are engineering graduates/graduates from an Indian Institute/University recognized under Indian Laws, with total qualifying service of 7 years as on 1st January of the year as per the BSNL Management Service Recruitment Rules dated 14.07.2009 (BSNL MSRRs-2009).

- (v) The existing incumbents like the applicants holding the post of executives on regular basis on the date of Notification of BSNL (MSRRs-2009) shall continue to be eligible for promotion to the grade of DE/AGM/CAO, thus the career progression of the applicants and similarly placed persons is duly safe guarded by way of said Rule.
- (vi) BSNL is a leading Telecom company providing the telecomm services effectively throughout the length and breadth of the country and has to face stiff competition in the market.
- (vii) The MT RRs-2009 have been framed keeping in view the service requirements of the organization/organizational need whereby requisite eligibility conditions by way of age, educational qualification and experience are identified and formulated with the intention of getting the best Managers for the organization at the middle level through fast track promotion for achieving the business goals in the changing business scenario.
- (viii) The Applicants do not satisfy the conditions of educational qualification and age limit prescribed for promotion/appointment as MT, but their career progression is duly safeguarded by way of BSNL MS RRs-2009.

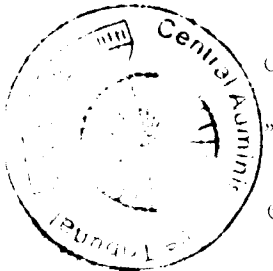


A

Mr. Rajnish Prasad, counsel for respondents relied upon an order dated 23.08.2012 passed by Division Bench of this Tribunal in which one of us (Mrs. Manjulika Gautam, Member (A)) was Member whereby challenge to BSNL RRs for the Management Trainees notified on 1.09.2009 (ibid) has been rejected.

4. In rejoinder, Mr. Behera, counsel for applicant submitted that various contentions put forth before it (ibid) were not dealt with by the Tribunal while deciding OA No.519/2010. He further submitted that a decision should be treated as per incuriam when it is given in ignorance of the terms of a statute or of a rule having the force of a statute. He also submitted that when no such argument as advanced in the present case was addressed to the Court in the aforementioned case, the order passed in the said case should be ignored as sub silentio.

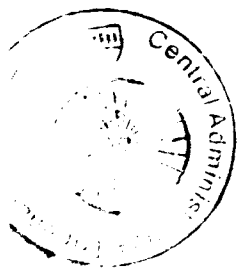
5. We have heard learned counsel for the parties and perused the record. In order dated 23.08.2012 passed in OA No.591/2010, this Tribunal viewed that since in terms of BSNL, MSRRs, 2009 operative from 11.06.2009 the existing incumbents holding the post of Executives on regular basis on the Notification of said RRs continued to be eligible for promotion to the grade of DE/AGM/CAO irrespective of their qualification and 50% of the posts in said grade were to be filled up by promotion from SDE/AO level executives on the basis of seniority-cum-fitness, the incumbents of said categories working in BSNL also had avenues of promotion, therefore, no injustice could be said to have been caused to applicants. In support of its view taken by it in the said OA, i.e. "it is not for judicial body to sit in judgment on the wisdom of the executive in choosing the mode of recruitment or categories on which the recruitment should be made", the Division



Bench also relied upon the judgment of Hon'ble Supreme Court in **State of Andhra Pradesh Vs. V.Sadananda and Others** (1989 Supp (1) SC 574) and also on judgment of Hon'ble High Court of Judicature, Andhra Pradesh in **P.Srinivasa Rao and Others Vs. BSNL and others** (Writ Petition No. 16753/2010). It could be an easy way for us to follow the said order and close the matter. However, this Tribunal being the court of first instance, should not normally ignore to deal with the relevant submissions put forth for its consideration by the litigant.

6. In **Municipal Corporation of Delhi Vs. Gurnam Kaur** (1989 (1) SC 101), Hon'ble Supreme Court viewed that the pronouncement of law, which are not part of the ratio decidendi, are classed as obiter dicta and are not authoritative. In the said case, it has also been ruled that a decision should be treated as given per incuriam when it is given in ignorance of the terms of a statute or of a rule having the force of a statute. Quoting Professor P.J.Fitzgerald, editor of the *Salmond on Jurisdiction*, 12<sup>th</sup> Edn., explaining the concept of sub silentio at page 153, their Lordships viewed that precedents sub silentio and without argument are of no moment. Paras 11 and 12 of the said judgment read as under:-

"11. Pronouncements of law, which are not part of the ratio decidendi are classed as obiter dicta and are not authoritative. With all respect to the learned Judge who passed the order in *Jamna Das* case and to the learned Judge who agreed with him, we cannot concede that this Court is bound to follow it. It was delivered without argument, without reference to the relevant provisions of the Act conferring express power on the Municipal Corporation to direct removal of encroachments from any public place like pavements or public streets, and without any citation of authority. Accordingly, we do not propose to uphold the decision of the High Court because, it seems to us that it is wrong in principle and cannot be justified by the terms of the relevant provisions. A decision should be treated as given per incuriam when it is given in ignorance of the terms of a statute or of a rule having the force of a statute. So far as the order shows, no argument was addressed to the court on the question whether or not any direction could properly be made compelling the Municipal Corporation to construct a stall at the pitching site of a pavement squatter. Professor P. J. Fitzgerald, editor of the



Salmond on Jurisprudence, 12th edn., explains the concept of sub silentio at p. 153 in these words :

"A decision passes sub silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the Court or present to its mind. The Court may consciously decide in favour of one party because of point A, which it considers and pronounces upon. It may be shown, however, that logically the Court should not have decided in favour of the particular party unless it also decided point B in his favour; but point B was not argued or considered by the Court. In such circumstances, although point B was logically involved in the facts and although the case had a specific outcome, the decision is not an authority on point B. Point B is said to pass sub silentio."

12. In *Gerard v. Worth of Paris Ltd. (K)*, (1936) 2 All ER 905 the only point argued was on the question of priority of the claimant's debt, and, on this argument being heard, the Court granted the order. No consideration was given to the question whether a garnishee order could properly be made on an account standing in the name of the liquidator. When, therefore, this very point was argued in a subsequent case before the Court of Appeal in *Lancaster Motor Co. (London) Ltd. v. Bremith, Ltd.*, (1941) 1 KB 675, the Court held itself not bound by its previous decision. Sir Wilfrid Greene, M. R., said that he could not help thinking that the point now raised had been deliberately passed sub silentio by counsel in order that the point of substance might be decided. He went on to say that the point had to be decided by the earlier Court before it could make the order which it did; nevertheless, since it was decided "without argument, without reference to the crucial words of the rule, and without any citation of authority", it was not binding and would not be followed. Precedents sub silentio and without argument are of no moment. This rule has ever since been followed. One of the chief reasons for the doctrine of precedent is that a matter that has once been fully argued and decided should not be allowed to be reopened. The weight accorded to dicta varies with the type of dictum. Mere casual expressions carry no weight at all. Not every passing expression of a Judge, however eminent, can be treated as an ex cathedra statement, having the weight of authority."

7. In **Divisional Controller, KSRTC Vs. Mahadeva Shetty and Another** (2003) 7 SCC 197), it has been held that a decision often takes its colour from the question involved in the case in which it is rendered. In terms of the view taken by Hon'ble Supreme Court in the said case, the scope of authority of a precedent should never be expanded unnecessarily beyond the need of a given situation. The only thing





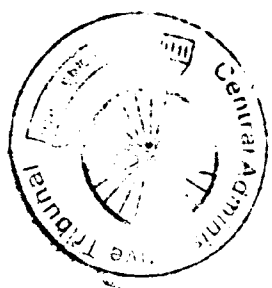
binding as an authority upon a subsequent Judge is the principle upon which the case was decided. Statements which are not part of the ratio decidendi are distinguished as obiter dicta and are not authoritative. The task of finding the principle is fraught with difficulty as without any investigation into the facts, it cannot be assumed whether a similar direction must or ought to be made as a measure of social justice. Paragraph 23 of the judgment reads as under:-

"23. So far as Nagesha's case (supra) relied upon by the claimant is concerned, it is only to be noted that the decision does not indicate the basis for fixing of the quantum as a lump sum was fixed by the Court. The decision ordinarily is a decision on the case before the Court, while the principle underlying the decision would be binding as a precedent in a case which comes up for decision subsequently. Therefore, while applying the decision to a later case, the Court dealing with it should carefully try to ascertain the principle laid down by the previous decision. A decision often takes its colour from the question involved in the case in which it is rendered. The scope and authority of a precedent should never be expanded unnecessarily beyond the needs of a given situation. The only thing binding as an authority upon a subsequent Judge is the principle upon which the case was decided. Statements which are not part of the ratio decidendi are distinguished as obiter dicta and are not authoritative. The task of finding the principle is fraught with difficulty as without an investigation into the facts, it cannot be assumed whether a similar direction must or ought to be made as measure of social justice. Precedents sub silentio and without argument are of no moment. Mere casual expression carry no weight at all. Nor every passing expression of a Judge, however eminent, can be treated as an ex cathedra statement having the weight of authority."

8. In **Babu Parasu Kaidadi (Dead) by Lrs Vs. Babu (Dead) through**

**Lrs** ( 2004 (1)SCC 681), it has been held thus:-

"18. Furthermore, this Court, while rendering judgment in **Dhondiram Totoba Kadam (supra)**, was bound by its earlier decision of Co-ordinate Bench in **Ramchandra Keshav Adke (supra)**. We are bound to follow the earlier judgment which is precisely on the point in preference to the later judgment which has been rendered without adequate argument at the bar and also without reference to the mandatory provisions of the Act."

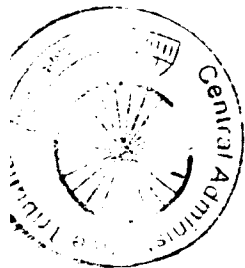


As per the view taken by Hon'ble Supreme Court in **Government of India Vs. Workmen of State Trading Corporation and Others** (1997)11 SCC 641), a decision which does not set out the facts or the reasons for

the conclusion or direction given cannot be treated as a binding precedent. Thus, the order passed by this Tribunal in OA No. 591/2010 can be followed as a precedent only to take the view:-

- (i) That the mode of recruitment and a category from which the recruitment to a service should be made are all matters which are exclusively within the domain of the executive and it is not for the judicial body to sit in judgment over the wisdom of the executives in choosing the mode of recruitment or the categories from which the recruitment should be made as they are policy decision falling exclusively within the purview of the executive.
- (ii) The BSNL, in order to maintain excellence in its operations, can choose its own policy of recruitment for absorbing efficient personnel to face the integrated/stiff competition from the private sector.
- (iii) The incumbents holding the post of executives on regular basis on the date of Notification of the BSNL MSRRs-2009 continued to be eligible for promotion to the grade of DE/AGM/CAC, irrespective of their qualification, thus their career progression was not totally blocked.

9. As per law laid down in **State of J&K Vs. Trilok Nath Khosa and Ors** (1974 (1) SLR 536) (ibid), it could be held that though persons appointed directly or by promotion were integrated in 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. The rule providing that graduate shall be eligible for such promotion and the exclusion of diploma holder does not violate the Articles 14 and 16 of the Constitution and must be upheld. Paras 39 and 56 of the judgment read as under:-

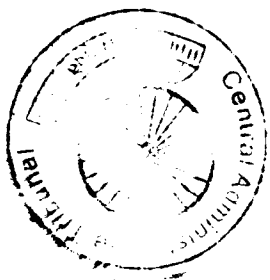


"39. Judged from this point of view, it seems to us impossible to accept the respondents' submission that the classification of Assistant Engineers into Degree-holders and Diploma-holders rests on any unreal or un-reasonable basis. The classification, according to the appellant, was made with a view to achieving administrative efficiency in the Engineering services. If this be object, the classification is clearly correlated to it a higher mental equipment. This is not to suggest that administrative efficiency can be achieved only through the medium of those possessing comparatively higher educational qualifications but that is beside the point. What is relevant is that the object to be achieved here is not a mere pretence for an indiscriminate imposition of inequalities and the classification cannot be characterized as arbitrary or absurd. That is the farthest that judicial scrutiny can extend."

56. We are therefore of the opinion that though persons appointed directly and by promotion were integrated into a common class of Assistant Engineers, they could, for purposes of promotion to the cadre of Executive Engineers, be classified on the basis of educational qualifications. The rule providing that graduate shall be eligible for such promotion to the exclusion of diploma holders does not violate articles 14 and 16 of the Constitution and must be upheld."

However, in the said case, it has also been held that the classification is fraught with the danger that it may produce artificial inequalities and therefore, the right to classify is hedged in with salient restraints; or else, the guarantee of equality will be submerged in class legislation masquerading as laws meant to govern well marked classes characterized by different and distinct attainment. Para 37 of the judgment reads as under:-

"Classification, however, is fraught with the danger that it may produce artificial inequalities and therefore, the right to classify is hedged in with salient restraints; or else, the guarantee of equality will be submerged in class legislation masquerading as laws meant to govern well marked classes characterized by different and distinct attainments. Classification, therefore, must be truly founded on substantial differences which distinguish persons grouped together from those left out of the group and such differential attributes must bear a just and rational relation to the object sought to be achieved."

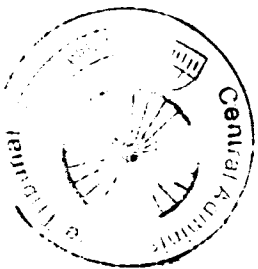


In **U. Joshi and others Vs. Accountant General, Ahmedabad and others** (2003 (2 SCC 632), it has been held thus:

“10. We have carefully considered the sub-missions made on behalf of both parties. Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of Policy and within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the Statutory Tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/substruction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing existing cadres/posts and creating new cadres/ posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a Government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service.”

Thus, in terms of the aforementioned view taken by this Tribunal as well as by Hon'ble Supreme Court and the stand taken by respondents we would also agree that:

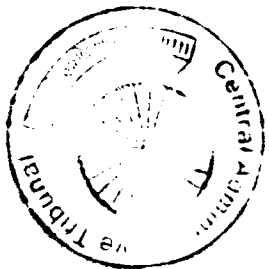
- (i) It is not for the Statutory Tribunal to direct the Government to have a particular method of recruitment or eligible criteria or avenue of promotion or impose itself by substituting its view for that of State;
- (ii) The MTRRs have not totally blocked the promotional avenues of applicants as in terms of BSNL MSRRs 2009 made operative on 11.06.2009, as the applicants have promotional



- (iii) The BSNL, in order to maintain excellence in operation, can issue its own policy of recruitment for absorbing efficient personnel to face the integrated/stiff competition from the private sector.

Nevertheless, we may not avoid considering several other arguments put forth on behalf of applicants ourselves or asking the respondents to examine the same. Beside as has been ruled by Hon'ble Supreme Court in **Special Land Acquisition Officer Vs. Karigowda and Others** ( 2010) 5 SCC 708), in view of maxim *boni judicis est lites dirimere, ne lis ex lite oritur, et interest reipublicae ut sint fines litium*", in order to give quietus to protracted litigations the view taken by highest court on a particular proposition of law needs to be followed promptly. Relevant excerpts of para 105 of the said judgment reads as under:-

*"105. An established maxim" boni judicis est lites dirimere, ne lis ex lite oritur, et interest reipublicae ut sint fines litium", casts a duty upon the court to bring litigation to an end or at least ensure that if possible, no further litigation arises from the cases pending before the court in accordance with law. This doctrine would be applicable with greater emphasis where the judgment of the court has attained finality before the highest court. All other courts should decide similar cases, particularly covered cases, expeditiously and in consonance with the law of precedents. There should be speedy disposal of cases particularly where the small landowners have been deprived of their small landholdings by compulsive acquisition. Any unnecessary delay in payment of the compensation to them would cause serious prejudice and even may have adverse effect on their living. In these circumstances, we consider it necessary to issue appropriate directions to the State authorities and request the courts, where cases are pending arising from the same notification to dispose of the pending proceedings without any further delay."*



10. In **Food Corporation of India and Others Vs. Om Prakash Sharma and Ors** (1998 (7) SCC 676), Hon'ble Supreme Court viewed that the validity of the classification has to be judged on the facts and circumstances of each case and the amendment to regulation making a differentiation between graduates and non-graduates in the matter of

promotion for the posts of AG I and AG II offend the equality clause and are therefore unconstitutional. Paras 21 to 33 and 37 of the judgment read as under:-

"21. Learned counsel for the petitioner in the writ petition and learned counsel for the Corporation have contended that the differentiation between a graduate and non-graduate in the matter of promotion is valid and in this case the same has been done by the impugned amendments in order to achieve higher administrative efficiency. Per contra the submissions made by a learned counsel for non-graduates are threefold :

(i) The amendments are arbitrary in the facts and circumstances of this case and violative of Articles 14 and 16 of the Constitution.

(ii) The amendments are invalid in so far as they are given retrospective effect so as to affect the promotion of non-graduates who became eligible for consideration for promotion by completing three years service as AG-III, Typist or Telephone Operator before the amendment of the regulations.

(iii) The amendments should be read down to apply only to non-graduates who are working as Typists or Telephone operators and not to those who were working as AG-III having been promoted as such category IV. The aforesaid second and third contention have been advanced only in the alternative to the first contention.

22. Our attention has been drawn to *S. L. Sachdev v. Union of India*, (1980) 4 SCC 562: (AIR 1981 SC 411). **It was held therein that once cadre is formed by recruiting persons drawn from different departments of the Government, there would normally be no justification for discriminating between them by subjecting one class to more onerous terms in the matter of promotional chances. It is observed that different tests should not be prescribed for determining their respective promotional opportunities and that too solely with references to the source from which they were drawn. It was found on the facts that the duties, functions and responsibilities of all the UDCs in the Saving Banks Control Organisation and Savings Bank Interval Check Organization were identical and they were all in the same cadre drawing the same pay in the same grade and therefore different tests should not be laid for their promotion.**

23. Learned counsel for the non-graduates referred to *Kumari Shrilekha Vidyarthi v. State of U. P.*, (1991) 1 SCC 212 : (AIR 1991 SC 537), wherein it was held that once it is shown that the impugned State action is uninformed by reason in as much as there is no discernible principle on which it is based, the burden would shift to the State to repel the attack by disclosing

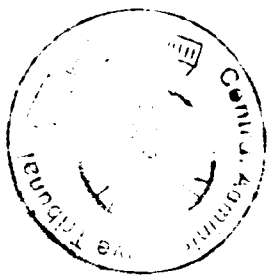


the material and reasons which led to the action being taken in order to show that it was an informed decision which was reasonable.

24. In *Roop Chand Adlakha v. Delhi Development Authority*, 1989 Supp (1) SCC 116 : (AIR 1989 SC 307), this Court considered all the earlier cases on the subject and held that prescription of a longer period of experience for the diploma holder to be eligible for promotion to a cadre to be made from graduates and diploma holders was not violative of equality class. On the facts it was found that a report of an Expert Committee was taken into consideration for prescribing the requisite qualification. **The Court took note of the fact that there may be cases where the differences in the educational qualification may not be sufficient to give any preferential treatment to one class of candidate as against another. The Court said that whether the classification is reasonable or not must necessarily depend upon facts of each case and the circumstances obtaining at the relevant time.**

25. In *N. Abdul Basheer v. K. K. Karunakaran*, 1989 Supp (2) SCC 344 : (AIR 1989 SC 1624), the Court held that ordinarily it is for the Government to decide upon the consideration which in its judgment should underlie a policy to be formulated by it. But if the considerations are such as prove to be of no relevance to the object of the measure framed by the government it is always open to the Court to strike down the differentiation as being violative of Articles 14 and 16. On the facts of the case it was found that the conditions of employment and the incidents of service recognised no distinction between graduate and non-graduate officers and for all material purposes they were effectively treated as equivalent. It was pointed out that the history of the evolution of the Kerala Excise and Prohibition Subordinate Service had shown no uniformity either in approach or in object and that a consistent or coherent policy in favour of graduates was absent. It was also pointed that the cadre was one and graduates and non-graduates were equal members of the same. **Their pay was found to be same and the nature of the duties whether graduate or non-graduate was identical. Hence, it was held that the prescription of ratio dividing the quota of promotion between graduates and non-graduates was invalid as it violated Articles 14 and 16 of the Constitution.**

26. In *P. Murugesan v. State of Tamil Nadu*, (1993) 2 SCC 340 : (1993 AIR SCW 1021), this Court pointed out that since the decision in *Triloki Nath Khosa*, (1974) 1 SCC 19 : (AIR 1974 SC 1) this Court had been holding uniformly that even where direct recruits and promotees were integrated into a common class, they could for purposes of promotion to the higher cadre be classified on the basis of educational qualifications. On the facts, it was found that the degree holders and diploma holders represented two different categories and since 1969 they were treated differently in the matter of pay, designation and in the matter of promotion though they were discharging identical functions and duties. It was also found that the ratio 3:1 had been in vogue between graduates and diploma holders since prior to 1965 and it was therefore



permissible to the rule making authority if it thought it necessary in the interest of administration to limit the promotional chances of non-graduates to one out of four vacancies on the basis of academic qualifications.

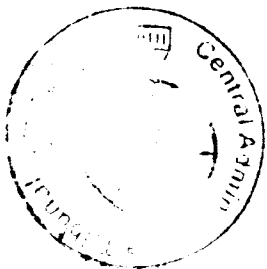
27. In *T. R. Kothandaraman v. Tamil Nadu Water Supply and Drainage Board*, (1994) 6 SCC 282 : (1994 AIR SCW 4367), this Court reiterated that higher educational qualification is a permissible basis of classification but the acceptability thereof will depend on the facts and circumstances of each case. In that case it was found that differentiation between degree holders and diploma holders was ancient and that the former were given different designation and Gazetted status and higher scale of pay whereas diploma holders did not have such benefits. In such circumstances the Court said (Para 22 of AIR) :

"The aforesaid shows that higher educational qualification has relevance insofar as the holding of higher promotional post is concerned, in view of the nature of the functions and duties attached to that post. The classification has, therefore, nexus with the object to be achieved. This apart, history also supports the differentiation sought to be made by the rule in question. We, therefore, uphold the classification as valid."

28. One of us (Justice Agrawal) spoke for the Division Bench which decided *Rajasthan State Electricity Board Accountants Association, Jaipur v. Rajasthan State Electricity Board*, (1997) 3 SCC 103 : (1997 AIR SCW 769). The entire case law was traced in the judgment and it was held that educational qualifications could be made the basis for classification of employees in State service in the matter of pay scales, promotion, etc. On the facts and circumstances of that case, the Court upheld a reservation of 25% vacancies for candidates possessing the prescribed additional qualifications and prescription of longer length of service for those who did not possess such qualifications for the purpose of promotion.

29. An analysis of the aforesaid rulings shows that the validity of the classification has to be judged on the facts and circumstances of each case. We have already pointed out that in the facts of the present case no material has been placed before us by the Corporation to justify the amendments introducing a classification between graduates and non-graduates. We have also referred to the conduct of the Corporation which chose to accept the judgment of Andhra Pradesh High Court and implement the same on the basis of which the Board decided to withdraw the amendments and representations were made to that effect in the High Courts of Kerala and Madras. As stated earlier, even in the affidavits filed in this Court, the Corporation has referred to the decision of the Board to withdraw the amendments.

30. In such circumstances we hold that the amendments to the Regulations making a differentiation between graduates and non-graduates in the matter of promotion of the posts of AG-I and AG-II offend the equality clause and are therefore unconstitutional.





31. In the view we have expressed above it is unnecessary for us to consider the alternative contentions put forward by the non-graduates with reference to the retrospective operation of the rule and the non-applicability of the rule to non-graduate holding the posts of AG-III. We would, however, for the sake of completion set out the list of decisions cited by learned counsel in support of the contention that the amendments are invalid insofar as they seek to have retrospective effect :

1. T. R. Kapur v. State of Haryana, 1986 (Supp) SCC 584 : (AIR 1987 SC 415).
2. P. D. Aggarwal v. State of U. P., (1987) 3 SCC 622 : (AIR 1987 SC 1676).
3. K. Narayanan v. State of Karnataka, 1994 Supp (1) SCC 44 : (1993 AIR SCW 3106).
4. Union of India v. Tushar Ranjan Mohanty, (1994) 5 SCC 450.
5. Chairman, Railway Board v. C. R. Rangadhamaiah, (1997) 6 SCC 623 : (1997 AIR SCW 3747).

32. The last of the above cases has been decided by the Constitution Bench in which one of us (Justice Agrawal) was a member and he spoke for the Bench. It will be advantageous to quote the following passage in that judgment (1997 AIR SCW 3747, Para 24) :

"In many of these decisions the expressions "vested rights" or "accrued rights" have been used while striking down the impugned provisions which had been given retrospective operation so as to have an adverse effect in the matter of promotion, seniority, substantive appointment, etc., of the employees. The said expressions have been used in the context of a right flowing under the relevant rule which was sought to be altered with effect from an anterior date and thereby taking away the benefits available under the rule in force at that time. It has been held that such an amendment having retrospective operation which has the effect of taking away a benefit already available to the employee under the existing rule is arbitrary, discriminatory and violative of the rights guaranteed under Articles 14 and 16 of the Constitution."

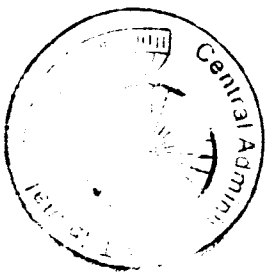
33. If the principle laid down in the above judgment is applied here, there is no doubt that the impugned amendments in the present case cannot operate retrospectively.

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37. In the result, the impugned amendments are struck down as unconstitutional. The appeal filed by the Corporation and the Writ Petition (C) No. 20 of 1992 fail and are hereby dismissed. In Writ Petition No. 174 of 1995 prayer A is granted. Prayer B is unnecessary and therefore negatived. The parties will bear their respective costs".

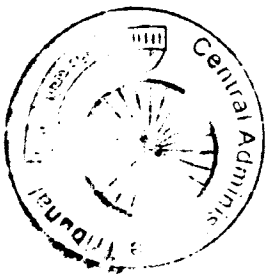


In **Mohammad Shujat Ali and Others Vs UOI and Ors etc.etc** ( 1975

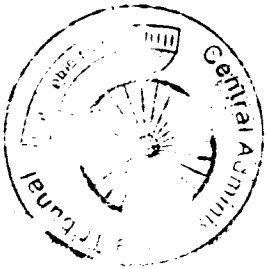
3SCC 76), Hon'ble Supreme Court viewed as under:-

"27. It is in the light of these principles that we must proceed to examine the constitutional validity of the Andhra Pradesh Rules. The complaint of the petitioners under the head of contention E is that the Andhra Pradesh Rules make unjust discrimination between graduates and non-graduates in the matter of promotion of Supervisors as Assistant Engineers. Now, whether we look at the unamended or the amended Andhra Pradesh Rules, it is clear that graduate Supervisors are given a preferential treatment over non-graduate Supervisors, in that two out of every three vacancies initially, and after the amendment, three out of every four vacancy in the posts of Assistant Engineers are reserved for promotion of graduate Supervisors and only the remaining one vacancies is left to be filled by promotion of non-graduate Supervisors. The question is whether this preferential treatment can be justified on the basis of any reasonable classification or it is arbitrary and irrational. The law as it stands today is clear that the burden is always on him who attacks the constitutionality of a legislation to show that the classification made by it is unreasonable and violative of Articles 14 and 16. Has this burden been discharged by the petitioners/appellants: have they shown that the classification of Supervisors into graduates and non-graduates for the purpose of promotion as Assistant Engineers is unrelated to the object of the Andhra Pradesh Rules, or in other words, it is arbitrary and unreasonable?"

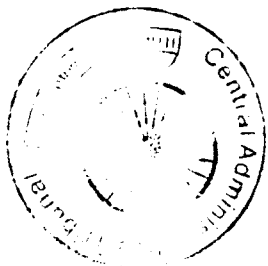
28. Now, there are three decisions of this Court where educational qualifications have been recognised as forming a valid basis for classification. In *State of Mysore v. Narasing Rao*, (1968) 1 SCR 407 : (AIR 1968 SC 349: 1968 Lab IC 360) this Court held that higher educational qualifications such as success in S.S.L.C. examination are relevant considerations for fixation of higher pay scale for tracers who have passed the S.S.L.C. examination and the classification of two grades of tracers in Mysore State one for matriculate tracers with higher pay scale and the other for non-matriculate tracers with lower pay scale, cannot be said to be violative of Article 14 or 16. So also in *Union of India v. Dr. (Mrs.) S. B. Kohli*, (1973) 3 SCC 592 : (AIR 1973 SC 811 : 1973 Lab IC 423) a Central Health Service Rule requiring that a Professor in Orthopaedics must have a post-graduate degree in particular speciality was upheld on the ground that the classification made on the basis of such a requirement was not "without reference to the objectives sought to be achieved and there can be no question of discrimination". A very similar question arose in (1974 1 SCC 19 : (AIR 1974 SC 1 : 1974 Lab IC 1 ) where a 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 and diploma holders shall not be eligible for such promotion, was challenged as violative of the equal opportunity clause. This Court repelled the challenge holding that "though persons appointed directly and by promotion were integrated into a common class of Assistant Engineers, they could, for the purposes of promotion to the cadre of Executive Engineers, be classified on the basis of educational qualifications" and "the



to the exclusion of diploma holders" was not obnoxious to the fundamental guarantee of equality and equal opportunity. But from these decisions it cannot be laid down as an invariable rule that whenever any classification is made on the basis of variant educational qualifications, such classification must be held to be valid, irrespective of the nature and purpose of the classification or the quality and extent of the differences in the educational qualifications. It must be remembered that "life has relations not capable always of division into inflexible compartments". The moulds expand and shrink. The test of reasonable classification has to be applied in each case on its peculiar facts and circumstances. It may be perfectly legitimate for the administration to say that having regard to the nature of the functions and duties attached to the post, for the purposes of achieving efficiency in public service, only degree holders in engineering shall be eligible for promotion and not diploma or certificate holders. That is what happened in (1974) 1 SCC 19 : (AIR 1974 SC 1: 1974 Lab IC 1) and a somewhat similar position also obtained in (1973) 3 SCC 592 : (AIR 1973 SC 811 : 1973 Lab IC 423), But where graduates and non-graduates are both regarded as fit and therefore, eligible for promotion, it is difficult to see how, consistently with the claim for equal opportunity, any differentiation can be made between them by laying down a quota of promotion for each and giving preferential treatment to graduates over non-graduates in the matter of fixation of such quota. The result of fixation of quota of promotion for each of the two categories of Supervisors would be that when a vacancy arises in the post of Assistant Engineer, which, according to the quota is reserved for graduate Supervisors, non-graduate Supervisor cannot be promoted to that vacancy, even if he is senior to all other graduate Supervisors and more suitable than they. His opportunity for promotion would be limited only to vacancies available for non-graduate Supervisors. That would clearly amount to denial of equal opportunity to him. When there is a vacancy earmarked for graduate Supervisors, a non-graduate Supervisor would be entitled to ask, "I am senior to the graduate Supervisor who is intended to be promoted. I am more suitable than he is. It is no doubt true that I am a non-graduate, but my not being a graduate has not been branded as a disqualification. I am regarded fit for promotion and, like the graduate Supervisor, I am equally eligible for being promoted. My technical equipment supplemented by experience is considered adequate for discharging the functions of Assistant Engineer. Then why am I being denied the opportunity for promotion and the graduate Supervisor is preferred?" There can be no satisfactory answer to this question. It must be remembered that many of these non-graduate Supervisors might not have been able to obtain degree in engineering because they came from poorer families and did not have the financial resources to pursue degree course in engineering and not because they lacked the necessary capacity and intelligence "Chill penury" might have "repressed their noble rage". It is of the essence of equal opportunity for such persons with humble and depressing backgrounds that they should have opportunity, through experience or selfstudy, to level up with the more fortunate colleagues who, by reason of favourable circumstances, could obtain the benefits of higher education, and if they prove themselves fit and more suitable than others, why



should they be denied an opportunity to be promoted in a vacancy on the ground that vacancy belongs to Supervisors possessing higher educational qualifications. As pointed out by Krishna Iyer, J., in (1974) 1 SCC 19:(AIR 1974 SC 1 : 1974 Lab IC 1) "the soul of Art. 16 is the promotion of the common man's capabilities, overpowering environmental adversities and opening up full opportunities to develop in official life without succumbing to the sophistic argument of the elite that talent is the privilege of the few and they must rule". To permit discrimination based on educational attainments not obligated by the nature of the duties of the higher post is to stifle the social thrust of the equality clause. A rule of promotion which while conceding that non-graduate Supervisors are also fit to be promoted as Assistant Engineers, reserves a higher quota of vacancies for promotion for graduate Supervisors as against non-graduate Supervisors would clearly be calculated to destroy the guarantee of equal opportunity. But even so, we do not think we can be persuaded to strike down the Andhra Pradesh Rules in so far as they make differentiation between graduate and non-graduate Supervisors. This differentiation is not something brought about for the first time by the Andhra Pradesh Rules. It has always been there in the Engineering Services of the Hyderabad and the Andhra States. The graduate Supervisors have always been treated as a distinct and separate class from non-graduate Supervisors both under the Hyderabad Rules as well as the Andhra Rules and they have never been integrated into one class. Under the Hyderabad Rules the pay scale of graduate Supervisors was Rs. 176-300, while that of non-graduate Supervisors was Rs. 140-300 and similarly, under the Andhra Rules the pay scale of non-graduate Supervisors was Rs. 100-250, but graduate Supervisors were started in this pay scale at the stage of Rs. 150/-so that their pay-scale was Rs. 150-250. Graduate Supervisors and non-graduate Supervisors were also treated differently for the purpose of promotion under both sets of Rules. In fact, under the Andhra Rules a different nomenclature of Junior Engineers was given to graduate Supervisors. The same differentiation into two classes also persisted in the reorganised State of Andhra Pradesh. The pay-scale of Junior Engineers was always different from that of non-graduate Supervisors and for the purpose of promotion, the two categories of Supervisors were kept distinct and apart under the Andhra Rules even after the appointed day. The common gradation list of Supervisors finally approved by the Government of India also consisted of two parts one part relating to Junior Engineers and the other part relating to non-graduate Supervisors. The two categories of Supervisors were thus never fused into one class and no question of unconstitutional discrimination could arise by reason of differential treatment being given to them. Contention E cannot, therefore, prevail and must be rejected."



In **Abdul Basheer and Others Vs. K.K.Karunakaran and Others** (1989 Supp (2) SCC 344), it is viewed that ordinarily it is for the Government to decide upon the considerations which in its judgments should underline a policy to be formulated by it. But if the considerations are such as

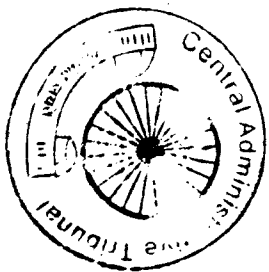
proved to be of no relevance to the object of the measure framed by the Government, it is always open to the court to strike down the differentiation as being violative of Articles 14 and 16 of the Constitution.

Paras 13 to 15 of the judgment read as under:-

"13. It seems to us that the history of the evolution of the Kerala Excise and Prohibition Subordinate Service has shown no uniformity either in approach or in object. The history has varied with the circumstances prevailing before and after the reorganisation of the State on 1 November, 1956. Originally when more emphasis was laid on the induction of graduates the ratio of graduate to non-graduate officers was maintained at 3: 1. But from 9 September, 1974 the ratio was changed inversely to 1 : 3. More non-graduates were now inducted into the Service. The trend shows, if anything, that it ran in favour of absorbing more non-graduates. The conditions pertaining to the service, and respecting which the constitution of the service varied from time to time showed fluctuations. A consistent or coherent policy in favour of graduates was absent. This is not a case where the cadre of officers was kept in two separate divisions. It was a single cadre they were all equal members of it. There is no evidence that graduate Preventive Officers enjoyed higher pay than non-graduate Preventive Officers. The High Court has noted that the nature of the duties of Preventive Officers whether graduate or non-graduate was identical, and both were put to field work. Non graduate Preventive Officers were regarded as competent as graduate Preventive Officers. There is no evidence of any special responsibility being vested in graduate Preventive Officers. Once they were promoted as Excise Inspectors there was no distinction between graduate and non-graduate Excise Inspectors.

14. In our opinion the learned Single Judge as well as the Division Bench are right in holding that the prescription of a ratio dividing the quota of promotion between graduate Preventive Officers and non-graduate Preventive Officers is invalid on the ground that it violates Arts. 14 and 16 of the Constitution.

15. The other contention raised before the High Court, namely that the ratio 1: 3 between graduates and non-graduates is supportable on the ground that the recognition of graduation is recognition of merit, and that more merit in the post of Excise Inspectors would be conducive to better administrative efficiency, is shortly disposed of. Ordinarily, it is for the Government to decide upon the considerations which in its judgment, should underline a policy to be formulated by it. But if the considerations are such as prove to be of no relevance to the object of the measure framed by the Government it is always open to the Court to strike down the differentiation as being violative of Arts., 14 and 16 of the Constitution. In the present case, we have already commented on the circumstance that the conditions of employment and the incidents of service recognise no distinction between graduate and non-graduate Officers and that for all material purposes they are effectively treated as equivalent. Accordingly, this contention must also be rejected".



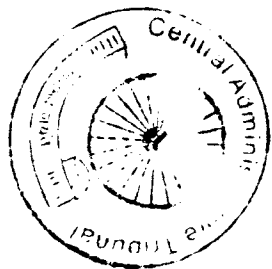
As has been noted hereinabove, in the present case, many members of applicant's association, i.e. regular employees of BSNL- at or above JTOs, JAO and equivalent levels and below MT level joined service as Junior Telecom Officer (JTO) in Department of Telecom between 1984 to 1997. At the relevant time, the educational qualification in terms of RRs for the post of JTO was:

(i) B.Sc. with mathematics and physics with 60% marks;

OR

(ii) Bachelor of Engineering (B.E.)

The persons appointed as JTO in DoT with either of the above qualification had the same duties and responsibilities with same status and pay scale and were interpolated in the common seniority list, irrespective of their qualification. They were to progress in their career with promotional avenues as SDE, JTS and STS etc. In terms of OM No 100-61/2004-Pers.1/308 dated 18.01.2007 (Annexure R-1) issued by BSNL, each year the BSNL Management was to decide about the total number of STS posts to be filled up from feeder cadre executives as well as from Management Trainees (both, internal as well as External). 50% of the total STS posts earmarked for filling up in any year were to be filled up by seniority-cum-fitness from amongst the feeder cadre executives and rest 50% by management trainees (with 50% reserved for Internal Executives and remaining 50% for External candidates), as per BSNL RRs to be notified. Para (x) of said OM reads as under:-



**“Induction of Management Trainees:** - Each year, the BSNL Management will decide about the total number of STS posts to be filled up from feeder cadre executives, as well as from Management Trainees (both, Internal as well as External). Fifty percent 50% of the total STS posts earmarked for filling up in any year be filled up by seniority-cum-fitness from amongst the feeder cadre executives and rest 50% by management trainees ( with 50% reserved for Internal Executives and remaining 50% for External candidates), as per BSNL RRs (to be notified). Thus, the induction of Management Trainees will be corresponding to STS level posts in the ratio of 50:25:25 through Departmental promotion,

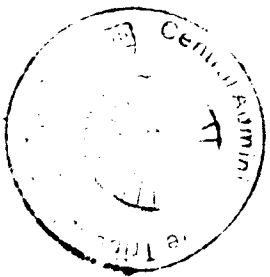
LDCE with internal candidates and Direct Recruits respectively.”

Apparently in the aforementioned OM, it was nowhere suggested that internal executives were to be further classified on the basis of age limit and educational qualification for the purpose of their induction as Management Trainee. Even Rule 7 of RRs of MT dated 1.09.2009 also provided for induction of internal candidates ( all regular employees of BSNL -at or above JTOs, JAO and equivalent level) as MT against 50% of

9.7. In order to ensure qualify talent for the posts, management reserves the right to specify minimum qualifying marks for selection at any stage (mentioned from 9.1. to 9.5) at a later date.

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However, with stipulation of age limit and educational qualification mentioned in the Schedule and Annexure A to Schedule to said RRs, the members of applicant's association were practically debarred from being inducted as Management Trainee in BSNL. In other words, the JTO/JAO etc. who formed common category, irrespective of the educational qualification they possessed at the time of their initial appointment in DoT, were divided in sub-classes. Wings of the JTOs who possessed B.Sc with Physics and Mathematics with 60% marks and treated together with those who possessed the degree of Bachelor in engineering (BE), were trimmed at a stage when they were struggling in career advancement on account of formation of BSNL and transfer of their services to said organization. The provisions of column 6 and 12 have shunned and shelved the career progress of the applicants not only vis-à-vis JTOs who joined DoT and BSNL with qualification of Bachelor degree in engineering but also in comparison to those who joined BSNL much after them and others who were absorbed in MTNL. As has been noted hereinabove, those JTOs and equal level who were absorbed in MTNL are eligible for induction as Senior Management trainee with the qualification of B.Sc (Ist class). The shelving of promotional opportunity of the applicants in comparison to their colleagues who joined the services of DoT and BSNL with graduation degree in different discipline, junior and those joined MTNL, may not be disregarded merely by saying that BSNL RRs-2009 have been framed keeping in view the requirement of the organization and with the intention of getting the best manager for



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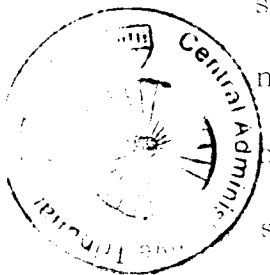


the organization at the middle level through fast track promotion for achieving the business goals in the changing business scenario.

11. Albeit, Court may not prescribe the qualification for recruitment to a post in any organization, the applicants do have opportunity for promotion to the post of STS to which Management Trainee are also promoted nevertheless, it needs to be examined as to how they are considered ineligible for induction as MT, i.e. one of the feeder grade to the post of STS

12. Besides the induction of internal candidates as MT in BSNL is subjected to mode of selection process prescribed in Rule 9 of MTRRs 2009. Thus, only such candidates who get through such selection process would be inducted as MT. It also appears bizarre that the executives with graduation degree (B.Sc with Physics and Mathematics with 60% marks ) are not considered good enough to be inducted as MT, but are considered suitable to hold the post for which the MT constitute feeder category. While prescribing the maximum age limit for induction as MT, the fact of formation of BSNL on 1.10.2000 and stagnation of the applicants for quite long time should have been taken care of.

13. The induction of talent at middle level with stipulation of maximum age limit of 36 years and the qualification mentioned in Annexure A to Schedule to MTRRs may prove to be indirect induction of subdued talent unable to get induction as external candidate, as the maximum age limit for the post of JTO is 27 years and with the period consumed in selection process, a fresh JTO may be able to join the service at the age of 29 years and with requirement of 4 years experience to become eligible for induction as MT, he may become eligible for the grade at the age of 33-34 years. In this way, only limited number of



candidates may attain eligibility to get induction against proportionally large number of posts i.e. 50% of total number of posts in the grade.

14. All these factors need to be looked at and addressed to by the respondents, as in view of the judgment of Hon'ble Supreme Court in **P.U.Joshi and Ors Vs. Accountant General, Ahmedabad and Ors** (2003 (2)SCC 632), it is not for the statutory Tribunal at any rate to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. In terms of the said judgment, it is well open and within the competence of the State to change the rules relating to a service and alter or amend any vary by addition, subtraction of the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate.

15. In the circumstances, OA is disposed of with direction to respondents to consider the various grounds raised by the applicants noted hereinabove and take a fresh view regarding the educational qualification and maximum age limit prescribed for induction as MT in BSNL in terms of MTRRs-2009. While doing so, respondents would also keep in view the judgments of Hon'ble Supreme Court quoted hereinabove. Outcome of such examination would be communicated to the applicants by way of speaking order.

The induction of applicants as MT against 50% internal quota in BSNL would remain subject to outcome of the decision to be taken by the respondents.

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(A.K.Bhardwaj)  
Member (J)

(Mrs. Manjulika Gautam)  
Member (A)

अनुभाग अधिकारी (न्या.)  
Section Officer (J)  
केन्द्रीय प्रशासनिक अधिकरण  
Central Administrative Tribunal  
प्रधान कार्यालय, नई दिल्ली  
Principal Branch, New Delhi

