

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/00072/2014
Original Application No. 180/00354/2014
Original Application No. 180/00735/2014
Original Application No. 180/00794/2014
Original Application No. 180/01007/2014
Original Application No. 180/01027/2014

&

Contempt Petition No. 180/00081/2015 in
MA No. 180/01003/2015 in
Original Application No. 180/00794/2014

Tuesday, this the 22nd day of March, 2016

CORAM:

Hon'ble Mr. Justice N.K. Balakrishnan, Judicial Member
Hon'ble Mrs. P. Gopinath, Administrative Member

1. **Original Application No. 180/00072/2014 -**

1. Shaji P.S., Senior TOA/Telephone Revenue Inspector,
Office of DGM (Telecom Revenue), BSNL, CTX Building,
Govt. Press Road, Statute, Thiruvananthapuram – 695 001,
Residing at Sree Rangan, Kudavoor PO,
Thiruvananthapuram – 695 313.
2. Ranjith Kumar V.V., Senior TOA(Tr.), Office of the SDE,
Customer Service Centre, Telecom Bhavan, Medical College PO,
Thiruvananthapuram – 695 011, Residing at Kallara Veedu,
Erichalloor, Plamooutukada PO, Thiruvananthapuram-695 128.
3. K. Nirmal Kumar, Senior TOA, Office of SDE (Customer Service
Centre), BSNL, Angamaly, Ernakulam – 682 572, Residing at
Manavakathu House, Chenathunadu, Chalakudy – 680 307.
4. Sudha Sasidharan, Senior TOA, Office of PGMT, BSNL,
Calicut – 673 001, Residing at 35, Sangeetha Sudha, Netaji
Nagar Colony, Kottooli, Calicut – 673 016.
5. M.V. Pushpavalli, Senior TOA, Office of GMTD, BSNL Bhavan,
Kannur – 670 002, Residing at Punnakara House, Near Harihar
Talkies, Pattuvam Road, Taliparamba,
Kannur – 670 141.

..... Applicants

(By Advocate : **Mr. Vishnu S. Chempazhanthiyil**)



Versus

1. The Chief General Manager, Telecom,
Bharat Sanchar Nigam Limited,
Kerala Circle, Thiruvananthapuram – 695 033.
2. The Chairman and Managing Director,
Bharat Sanchar Nigam Limited, Corporate Office,
Statesman House, New Delhi – 110 001.
3. The Assistant General Manager (R&E),
Office of the CGMT, BSNL,
Thiruvananthapuram – 695 033. Respondents

(By Advocate : Mr. Johnson Gomez)

2. Original Application No. 180/00354/2014 -

1. Unnikrishnan Nair, Accountant, Office of CGMT,
Thiruvananthapuram – 695 033, Residing at Sree Pathi, Mele
Kuzhivila Lane, Maruthankuzhi, Thiruvananthapuram-695 030.
2. Indulekha M.M., T.T.A., Regional Repair Centre,
Medical College PO, Thiruvananthapuram – 695 011,
Residing at Pavithram, T.C. 17/1817 (26),
Poojappura, Thiruvananthapuram – 695 012.
3. Sheeja V.S., T.T.A., Office of SDE, Ambalathara,
Thiruvananthapuram – 695 005, residing at F2, Palm Grove
Apartments, Nanthenode, Kowdiar,
Thiruvananthapuram – 695 003.
4. Vidya Rani V., Senior TOA (G),
Office of CGMT, Thiruvananthapuram – 695 033,
Residing at Vadakemadam, T.C. 8/1576, Kusalakode,
Thirumala PO, Thiruvananthapuram – 695 006.
5. Geetha S., Sr. TOA(P), O/o. SDE (Extl.), Poojappura,
thiruvananthapuram – 695 012, Residing at D 24/1,
Vrindavanam, Mythri Nagar, Valiyavila, Thirumala PO,
Thiruvananthapuram – 695 006.
6. Lekha V., Sr. TOA (G), Corporate Account Section,
O/o PGM, Statue, Thiruvananthapuram – 695 001,
Residing at CRA 139, Arappura Lane, Kannammoola,
Thiruvananthapuram – 695 011. Applicants

(By Advocate : Mr. Vishnu S. Chempazhanthiyil)



V e r s u s

1. The Chief General Manager, Telecom,
Bharat Sanchar Nigam Limited,
Kerala Circle, Thiruvananthapuram – 695 033.
2. The Chairman and Managing Director,
Bharat Sanchar Nigam Limited, Corporate Office,
Statesman House, New Delhi – 110 001. Respondents

(By Advocate : Mr. Johnson Gomez)

3. Original Application No. 180/00735/2014 -

1. Ravikumaran P.R., Officiating JAO (Refund),
Computer Section, BSNL Centre, 4th Floor, Post Office Road,
Thrissur – 680 001, Residing at C-6-1, BSNL Quarters,
Poothole, Thrissur – 680 005.
2. Paul M.J., JAO TR Accounting (Officiating), BSNL Centre,
4th Floor, Post Office Road, Thrissur – 680 001,
Residing at Moonjely House, Vyloppilly Nagar, East Fort PO,
Thrissur – 680 005.
3. Rathee Devi G., JAO (Officiating), Office of GMTD.,
BSNL, Alappuzha – 688 011, Residing at Sreyas, Karuvatta
North, Alappuzha – 690 517.
4. Ajitha S., JAO (Officiating), Office of GMTD,
BSNL, Alappuzha – 688 011, Residing at Anjali,
Near UP Junction, Kalarcode, Sanathanapuram PO,
Alappuzha – 688 003.
5. Subhadra K.M., JAO (Sales) (Officiating), TRA, 3rd Floor,
BSNL Centre, Thrissur – 680 001, Residing at S1,
Theertham, North Park Apartments, Block – 2,
Thiruvambady PO, Thrissur – 680 022. Applicants

(By Advocate : Mr. Vishnu S. Chempazhanthiyil)

V e r s u s

1. The Chief General Manager, Telecom,
Bharat Sanchar Nigam Limited,
Kerala Circle, Thiruvananthapuram – 695 033.
2. The Chairman and Managing Director,
Bharat Sanchar Nigam Limited, Corporate Office,
Statesman House, New Delhi – 110 001. Respondents



(By Advocate : Mr. Johnson Gomez)

4. **Original Application No. 180/00794/2014 -**

1. Omanakunjamma K.P., JAO (Officiating) (CRM),
Office of Accounts Officer (CRM), General Manager Telecom,
BSNL, Alappuzha, Residing at Vaisakham, Varanam PO,
Alappuzha – 688 555.
2. Swapna S., JAO (Officiating), Customer Service Centre,
BSNL, Mattancherry, Residing at Ananda Bhavan, Palluruthy,
Kochi – 682 006.
3. Girija M., JAO (Officiating), ERP & Pay Roll, BSNL Bhavan,
5th Floor, Kalathiparambil Road, Kochi – 682 016, Residing at
A6, Silver Castle, Thripunithura, Statute Junction,
Ernakulam – 682 301.
4. Annie Kuriakose, JAO (Officiating), PC Section,
Office of the Principal General Manager, BSNL Bhavan,
Kochi – 682 016, Residing at Arthungal House, AKG Road,
Thykoodam, Kochi – 682 019. Applicants

(By Advocate : Mr. Vishnu S. Chempazhanthiyil)

V e r s u s

1. The Chief General Manager, Telecom,
Bharat Sanchar Nigam Limited,
Kerala Circle, Thiruvananthapuram – 695 033.
2. The Chairman and Managing Director,
Bharat Sanchar Nigam Limited, Corporate Office,
Statesman House, New Delhi – 110 001. Respondents

(By Advocate : Mr. Johnson Gomez)

5. **Original Application No. 180/01007/2014 -**

Sunil A.S., Officiating JAO (Customer Care),
Customer Service Centre, Bharat Sanchar Nigam Ltd.,
Boat Jetty, Ernakulam – 682 011, Residing at Sadanam,
Ambadi Veliyil, Pattanakkad PO, Cherthala-688 531. Applicant

(By Advocate : Mr. Vishnu S. Chempazhanthiyil)

V e r s u s



1. The Chief General Manager, Telecom,
Bharat Sanchar Nigam Limited,
Kerala Circle, Thiruvananthapuram – 695 033.
2. The Chairman and Managing Director,
Bharat Sanchar Nigam Limited, Corporate Office,
Statesman House, New Delhi – 110 001. Respondents

(By Advocate : Mr. Johnson Gomez)

6. Original Application No. 180/01027/2014 -

1. K. Abdulla, Officiating JAO, OSP Section,
Office of General Manager Telecom, BSNL, Konnola Tower,
Down Hill, Malappuram – 676 519, Residing at Kiliyamannil House,
Peringottupalam, Pazhamallur PO, Malappuram-676 506.
2. A.S. Sudhir, Officiating JAO, OSP Section, Office of CAO (TR),
BSNL, Thodupuzha – 685 584, Residing at C-3, BSNL Staff
Quarters, Thodupuzha, Idukki – 685 584.
3. Jeevas Babu, Officiating JAO, TR OSP II, CTO Building,
BSNL, Ernakulam – 682 016, Residing at Panakkal House,
Guruvayur Road, Opp. Ammu Opticals, Kunnankulam,
Thrissur – 680 503.
4. V.P. Mini, Officiating JAO, Mobile Customer Care,
Thirunammara, Kottayam – 686 001, Residing at Valath House,
Aiswarya Gardens, Puthanangadi, Kottayam – 686 001.
5. P.S. Minimol, Officiating JAO, Establishment,
Office of PGM, BSNL, Kottayam – 686 001,
Residing at XLIV/329, Palaparambil, Nattakom PO,
Kottayam – 686 013.
6. Babu C. Nair, Officiating JAO, TR General,
Office of PGM, BSNL, Kottayam – 686 001,
Residing at Sankaramangalathu House, Madappally PO,
Chenganacherry – 686 546.
7. V.P. Surendran, Officiating JAO, Customer Service Centre (TR),
Office of GMT, BSNL Bhavan, Kannur – 670 002,
Residing at Valiyaparambath, Vellikulangara, Orkkatteri Post,
Vadagara, Calicut - 673 501.
8. E.P. Damodaran, Officiating JAO, Customer Retention Cell (TR),
O/o. GMT, BSNL Bhavan, Kannur – 670 002, Residing at Ushus,
H. No. 25/484A, Near Health Centre, Kandankali, Payyannur,



Kannur – 670 307.

9. P.P. Vineetha Satheesh, Officiating JAO (Sales), Office of GMT, BSNL, Calicut – 673 001, Residing at Kanangot, 33/4698A, Malaparamba PO, Calicut – 673 009.
10. V. Sreepriya, Officiating JAO, Office of CAO (Planning), BSNL Bhavan, Kalathiparambil Road, Kochi – 682 016, Residing at No. 78 Anand, Girinagar, Kadavanthra PO, Kochi – 682 020.
11. K.N. Vimala, Officiating JAO, Personal Claims Section, O/o. PGMT, BSNL, Sanchar Bhavan, Kovilakathu Padam, Thrissur – 680 022, Residing at Shankaran Nilayam, Palayoor Mana, T.C. 1/1331, J.P. Lane, Ponkunnam, Thrissur – 680 002. Applicants

(By Advocate : Mr. Vishnu S. Chempazhanthiyil)

V e r s u s

1. The Chief General Manager, Telecom, Bharat Sanchar Nigam Limited, Kerala Circle, Thiruvananthapuram – 695 033.
2. The Chairman and Managing Director, Bharat Sanchar Nigam Limited, Corporate Office, Statesman House, New Delhi – 110 001.
3. National Academy of Telecom Finance and Management, Represented by the Chief General Manager, (Apex Level Management Institute under BSNL Ltd.), BSNL, RTTC Campus, Gachibowli, Hyderabad – 500 032. Respondents

(By Advocate : Mr. Johnson Gomez)

7. **Contempt Petition No. 180/00081/2015 in MA No. 180/01003/2015 in Original Application No. 180/00794/2014 -**

Omanakunjamma K.P., aged 60, W/o. V. Umamaheswaran, JAO (Officiating) (CRM), Office of Accounts Officer (CRM), General Manager Telecom, BSNL, Alappuzha, Residing at Vaisakham, Varanam PO, Alappuzha – 688 555. Petitioner

(By Advocate : Mr. Ajith Mohan M.J.)

V e r s u s



Shri M. Soma Sundara Rao, (Age and Father's name not known to the petitioner), The Chief General Manager, Telecom, Bharat Sanchar Nigam Limited, Kerala Circle, Thiruvananthapuram – 695 033, Presently posted as Principal General Manager, RTTC, Kari, Thiruvananthapuram. **Respondent**

(By Advocate : Mr. Johnson Gomez)

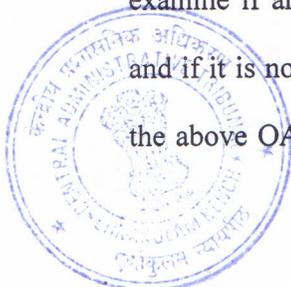
These applications having been heard on 23.02.2016, the Tribunal on 22nd. 03. 2016 delivered the following:

ORDER

Hon'ble Mrs. P. Gopinath, Administrative Member -

In these OAs the facts are common and the issue involved is the same. Hence, they were heard together and are disposed of by this common order.

2. Being the leading case the grievance of the applicants in OA No. 180/72/2014 is on account of the inaction on the part of the respondents to publish the result of notified vacancies of JAO Part-II Internal Competitive vacancies against 40% quota held in December, 2012 in Kerala Circle. On inquiry with the respondents as to the reasons for not announcing the result of 61 vacancies, the applicants were told that the same is on account of an SLP pending before the Hon'ble Supreme Court. The said litigation was in fact filed by candidates who wrote the JAO Part-II Internal Competitive Examination held in 2010 and failed in Paper-V and had filed OA No. 348/2010 and OA No. 603/2010 claiming revaluation. The above OAs were disposed of directing the respondents to take out a few sample papers and examine if answers based on Works Manual has been properly evaluated and if it is not so to evaluate papers of all those who failed in Paper-V. As the above OA have been confirmed by the Hon'ble High Court, the BSNL



filed SLP Nos. 27298, 27299 and 27300 of 2012, which was admitted and the operation of the impugned judgment was stayed. The stand of the respondent No. 1 as is reflected in Annexure A10 is totally unjustified. The notification at Annexure A1 had made clear that appointments in respect of unfilled carried over vacancies of JAO Part-II Internal Competitive Examination against 40% quota held from 4th to 6th January, 2010 shall be subject to the result of pending SLP Nos. 14956/2012, 15365/2012, 16345/2012 and 15743/2012 before the Apex Court. Having notified as such i.e. appointments would be subject to the result of the pending SLPs before the Apex Court, there is no justification in withholding the result against 61 vacancies. The pendency of SLP was known to the competent authorities even at the time of notification. As per Annexure A4 series the applicants have passed the JAO Part-II Internal Competitive Examination against 40% quota held in December, 2012. It is also clear from Annexure A1 that 101 vacancies were announced under the OC category. Further it is clear from Annexure A2 and A3 publication of results that the only results in respect of 40 vacancies were announced. It is also clear from Annexure A10 that the reason for not publishing the result in respect of the balance 61 vacancies according to the respondents is on account of pendency of SLPs, making the matter sub-judice. It can be seen from the Annexure A1 notification, Annexures A2 and A3 publication of results and Annexure A10 communication that the non-publishing of results has been attributed to the SLPs pending with regard to unfilled carried over vacancies of JAO Part-II Internal Competitive Examination against 40% quota held from 4th to 6th January, 2010. In the same examination, though 112 vacancies were



notified, only 51 could pass and therefore OA No. 348/2010 and OA No. 603/2010 was filed by candidates who failed in Paper-V and therefore, sought for revaluation. The Tribunal did not give any categoric direction other than to verify a few sample answer sheets to see if answers based on Works Manual has been properly evaluated and if not to revalue answer papers of those candidates who failed in Paper-V. Applicants contend that keeping 61 vacancies unfilled despite prior notification to the effect that appointments effected in respect of those vacancies would be subject to the outcome of SLPs, is illegal and arbitrary. Further 29 persons covered by Annexure A5 judgment have already been appointed under Annexure A1 notification. More importantly, litigations in respect of JAO Part-II Internal Competitive Examination against 40% quota held in January, 2010 have been filed not only in Kerala Circle but also in other circles like Tamilnadu and Maharashtra. The decision of the Hon'ble Supreme Court would therefore, have impact on an All India basis, if the SLPs are to be dismissed, which would sometimes warrant revaluation of Paper-V. But in all other circles, all the notified vacancies have already been filled up, except in Kerala Circle. The real reason for not filling up the balance 61 vacancies is to help out those who are at present officiating in the above 61 vacancies. The above vacancies are in fact manned by candidates who have qualified only in Part-I of JAO Examination held before 2009 and not qualified in Part-II of the Examination and Senior Accountants not qualified in JAO Examination. The interest of such candidates who did not qualify in Part-II is being taken care of by refusing to fill up the 61 notified vacancies on the plea of pendency of SLP. At any rate, when candidates who have passed



both Part-I and Part-II of the JAO examination, like the applicants are available it is unjust, to permit candidates who did not qualify in Part-II JAO examination to be permitted to continue as JAO on officiating basis. At least the applicants, who have passed both Part-I and Part-II examination should have been granted officiating promotion in preference to those who did not qualify. Hence, the applicants have filed this Original Applications seeking the following relief:

“1. Direct the respondents to publish the results in respect of the balance 61 vacancies notified as per Annexure A1 and consider the applicants against the above vacancies.

3. Direct the respondents to consider granting officiating promotion as JAO to the applicants.”

3. The respondents in their reply aver that JAO Part II internal Competitive Examination was conducted from 17th to 19th December, 2012 and the result of this examination was published on 24.6.2013. The vacancy announced for this examination was OC-101, SC-33 & ST-19. At the time of announcing the vacancy position of the examination it was made clear in Annexure I that appointment in respect of the unfilled carried over vacancies of the JAO Part II internal Competitive Examination against 40% quota held from 4th to 6th January, 2010 shall be subject to the result of pending SLPs Nos. 14956/2012, 15365/2012, 16345/2012 and 15743/2012 before the Apex Court as is notified in Annexure A1. Thus, the provisional result of only 40 OC candidates were published, as is evidenced by Annexure A2. Later result of 15 SC candidates were also published. The respondents aver that as per qualifying standards the applicants had passed in the examination. In the examination that was conducted in 2010, number



of candidates passed in the examination was 57 and in OC category 61 were unfilled. Some candidates of the above examination who wrote the examination in Kerala Circle, including the applicant Shaji (applicant No. 2 of OA No. 348/2010) of the present OA approached the Tribunal alleging some discrepancies in the evaluation of paper V. In OAs Nos. 348/2010 and in similar other cases, this Tribunal held that “the respondents shall take out a few sample answer sheets in paper V to ascertain whether the answers based on Works manual were properly evaluated and if so applicants accordingly informed. In case evaluation was not proper in that answers as per CPWD manual have been preferred to works manual then the respondents shall segregate those cases wherein the candidates had failed only in paper V. These paper be got evaluated by some other examiners and the results compiled and those who have qualified in all the papers be arranged on merit basis and accommodated against the balance of the vacancies out of 172 initial vacancies. The results of already qualified candidates shall not be disturbed. The results be declared to all the candidates as per the normal practice of declaration of result”.

4. Further in OP CAT Nos. 946, 953 and 966 of 2012 and 3428 of 2011, the Hon'ble High Court upheld the above judgment of the Tribunal by a common order. On appeal against this the interim stay has been granted by the Apex Court in SLP © CC Nos. 14956/2012, 15365/2012, 15743/2012 and 16345/2012 against the operation and execution of the order of the Tribunal. Due to the above reasons the result of only 40 vacancies in OC quota was published. Respondents also state that training of the selected



candidates is a normal procedure and therefore the allegations of discrimination against the applicants is unsustainable. The passing of the examination or otherwise is not a criterion for providing officiating promotions, hence contentions in this regard are also not sustainable. Since the subject matter of the dispute in the pending SLPs before the Apex court relates to vacancies pertaining to the 2010 examination the same cannot be appropriated for filling the successful candidates of the JAO Part-II LICE 2012 till the Apex Court takes a decision in the SLPs. The applicants further do not have a vested right for those vacancies as they pertain to carried over vacancies which is subject to adjudication by the Apex Court.

5. The respondents also submit that 42 candidates have passed the JAO Part II examinations. There are 19 Accountants working as JAO on local officiating basis, the total number being 61. Of this 11 candidates who have passed JAO Part II, has already been posted in furtherance to the orders of this Hon'ble Tribunal. The remaining 31 candidates will be posted immediately on getting vigilance clearance. At the same time the 19 Accountants already officiating as JAO, for whom reversion orders have been issued to accommodate the JAO Part II passed candidates, will now be allowed to continue.

6. Heard the counsel for applicant and respondents and the written submissions made.



7. The applicants are claiming prejudice on account of the fact that their colleagues who wrote the same examination are already due to complete their 3rd phase of training. The inter se seniority of Departmental JAOs is fixed on the basis of overall performance of the candidates in all three phases of induction training. Therefore, favouring 40 persons over and above the balance persons who have also come out successful in the very same examination, deprives candidates like the applicants the entitled seniority. The seniority of all the candidates who pass the examination is fixed not on the basis of performance in the competitive examination but on the basis of marks obtained by the candidates in all three phases of induction training. This is made clear in the appointment orders of such candidates. No irreparable loss will be caused to the respondents. On the other hand the loss caused to the applicants are irreparable. If the Hon'ble Supreme Court decides in favour of BSNL, the same would mean that the applicants would become entitled for appointment and the BSNL will not be able to compensate the loss of service, pay and allowances etc. to the applicants. Meanwhile it is expected that a few candidates will also retire. Therefore, the loss caused to the successful candidates is irreparable. On the other hand no prejudice will be caused to the Department, as the applicants are already officiating as JAO and the induction training will only improve and enhance their skill. The applicants also categorically state that they are willing to recoup the entire expenses which the Department has spent for the purpose of training, if ultimately, by virtue of Hon'ble Supreme Court's decision, the applicants would be compelled to vacate the posts.



8. The applicants have filed MA No. 180/548/2014 placing certain facts that despite the pendency of SLP there is no stay order interdicting announcement of results or even appointments. It is brought to our notice that there are clear vacancies available as the notified vacancy for the JAO 2012 Examination under the 40% quota was 153 (OC-101, SC-33, ST-19). Of these, results in respect of 40 candidates were announced in the first list and thereafter in the second list of SC candidates 15 were posted of which 14 joined duty. Thus, the total candidates posted is 54 and the balance vacancies which are clearly available is 99. The break up of available 99 vacancies are OC-61, SC-19, ST-19. The total number of candidates who passed the examination is 42 (i.e. 42 candidates are declared to have passed subsequent to the filing of the OA). Even if all the 42 are granted officiating promotion, 57 vacancies would still remain vacant. Hence, it is pointed out that there would arise no contingency to revert the 19 persons as indicated by the respondent. The only object achieved by reverting the 19 persons, is multiplication of litigation.

9. The respondents would argue that if the applicants are given permanent appointment against these vacancies for which a number of litigations are pending before the Apex Court, it would lead to irreparable loss to the respondents in several ways. If the applicants are given permanent appointment, they have to be sent for the induction training conducted in 3 phases. After permanent appointment of these applicants if the decision of the Apex Court in the 2010 vacancies goes against the respondents, these candidates will have to be reverted and fresh candidates



will have to be appointed against these vacancies. Apart from the above the exercise conducted without obtaining necessary permission from the Apex Court may be viewed very seriously and it may also be a reason for coercive actions against the respondents. It is also pointed out by the respondents that the induction training conducted in three phases at any of the Telecom Training Centres spread across the country involve a lot of expenditure and if the candidates are reverted at some date in future it would lead to loss of manpower, time and cause expenses for the respondents. In case the applicants are sent for training without considering the issues pending in Apex Court, it may lead to further legal complexities in various Courts/Forums. In these circumstances, the respondents are not in a position to give regular appointments, pending a final decision taken by the Apex Court in the appeals pending before that Court. We understand the apprehensions of the respondent. But at the same time we are also required to provide justice to applicants through any window of opportunity so that they are not subject to irreparable loss due to constrains of multiplicity of litigations.

10. The applicants had also approached the Bench, when it was notified that JTO induction training Phase-I was scheduled on 19.1.2015 at Hyderabad and it was notified that the said batch would be the last batch for JTO Phase-I training, for deputing them for the said training. Accordingly, orders were passed by the Tribunal directing that the applicants should be sent for pre-appointment training. Though the respondents filed OP (CAT) challenging the above orders, the same was dismissed. Accordingly, the



applicants were deputed for training at RTTC, Trivandrum. The applicants successfully completed JTO (Induction) Phase-I training of four weeks duration from 5.5.2015 to 30.5.2015 at RTTC, Trivandrum. In Annexure MA1 it was ordered that applicants would report back to their parent unit i.e. from the place the applicants were officiating, the respondents have later passed another order directing to join their substantive cadres. This would mean that the applicants will have to join as TOA. The consequence is that despite passing competitive examination for promotion and despite the facts that the applicants were officiating in the higher posts (JAO), the applicants are now compelled to join their substantive cadre i.e. the lower cadre of TOA. This is in total violation of the undertaking, which has been recorded by the Tribunal.

11. The applicants who were TOAs working in Kerala Circle have appeared for JAO Part II Internal Competitive Examination against 40% quota held in December, 2012. In Annexure A1 notification the applicants had been made aware that the appointments in respect of unfilled carried over vacancies of JAO Part II Examination will be subject to the result of pending SLPs before the Apex Court. Hence, applicants have been made aware of the implications of their appointment and no prejudice is caused to those filing SLP as the pendency is also notified to applicants as a consequence to be faced. The applicants have been declared successful in the examination and have also undergone training. The respondents have sent direct recruit appointees for training and they will post-training be appointed as regular JAO. This would mean that applicants who are of 2012



examination if not given appointment will become junior to the direct recruit JAO of the year 2015. The service of a JAO will count only after his appointment following the first phase of training. They will start earning increments only following such an appointment. Further time bound promotion to AO on completion of four years would also count from date of appointment as JAO. The current officiating placement is denying them of their legitimate service opportunities which accrues as a result of their qualifying in the JAO examination. The applicants in rejoinder filed on 10.11.2014 have also assured that they are willing to recoup the entire expenses of the respondent spent on their training if ultimately by virtue of the Hon'ble Supreme Court's decisions in the SLP's pending before them, the applicants would be compelled to vacate the posts. The applicants are also made aware by the examination notification that the appointments in respect of the unfilled carried over vacancies of the JAO Part-II Internal Competitive Exam against 40% quota held from 4th to 6th January, 2010 shall be subject to the result of pending SLPs Nos. 14956/2012, 15365/2012, 16345/2012 & 15743/2012 before the Apex Court. The applicants are therefore, seeking appointment with eyes open and aware of the above reservations.

12. Hence, the respondents are directed to appoint the 34 applicants of JAO, 2012 examination as JAOs subject to the outcome of SLP Nos. 14956/2012, 15365/2012, 16345/2012 & 15743/2012 pending before the Apex Court and subject to the conditions notified in the examination notification. But the applicant will submit undertakings before the



respondents (competent among them) undertaking that if the Hon'ble Supreme Court in the pending SLPs decides against the interest of the applicants and as a consequent of the same if any amount becomes refundable, the applicants will refund the same to the respondents.

13. All the Original Applications are allowed accordingly. No order as to costs.

14. Since OA No. 794 of 2014 itself is allowed no contempt survives. Hence, the Contempt Petition No. 180/81/2015 is closed.

sd/-
(P. GOPINATH)
ADMINISTRATIVE MEMBER

sd/-
(N.K. BALAKRISHNAN)
JUDICIAL MEMBER

“SA”

CERTIFIED TRUE COPY
Date: 24/3/2016
[Signature]
Section Officer (Jud.)

