

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

&

THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH

TUESDAY, THE 5TH DAY OF JUNE 2018 / 15TH JYAISHTA, 1940

OP (CAT).No. 25 of 2015

AGAINST THE ORDER IN O.A.No.1081/2013 of CENTRAL ADMINISTRATIVE
TRIBUNAL, ERNAKULAM BENCH

PETITIONERS/APPLICANTS

1. MADHUMOHAN.H
JUNIOR TELECOM OFFICER, BSNL,
OFFICE OF THE CGMT, KERALA CIRCLE,
THIRUVANANTHAPURAM, RESIDING AT HARINDRAM,
MRA-A 97, KANJIRAMPARA P.O., THIRUVANANTHAPURAM-30.
- 2 SAMEER ABDUL LATIF
A/T, INSPN, CIRCLE, BSNL, TELEPHONE EXCHANGE, THIRUNAKKARA,
KOTTAYAM, RESIDING AT PALLICKASSERIL HOUSE, PALAPRAMBU,
VADAPURAM P.O., MAMPAD, MALAPPURAM DISTRICT.

BY ADVS.SRI.NAGARAJ NARAYANAN
SRI.SAIJO HASSAN
SRI.PRATHAP PILLAI
SRI.BENOJ C AUGUSTIN
SMT.J.KASTHURI
SRI.VISHNU BHUVANENDRAN

RESPONDENTS/RESPONDENTS:

1. BHARATH SANCHAR NIGAM LTD.
CORPORATE OFFICE, EASTERN COURT BUILDING,
JANPATH, NEW DELHI-110 001
REPRESENTED BY ITS DIRECTOR (HR).
2. CHAIRMAN AND MANAGING DIRECTOR
BHARAT SANCHAR NIGAM LIMITED,
HARISH CHANDRA MATHUR LANE, JANPATH,
NEW DELHI-110 001.
3. DIRECTOR (HR),BHARATH SANCHAR NIGAM LIMITED,
CORPORATE OFFICE,EASTERN COURT BUILDING, JANPATH,
NEW DELHI-110001.
4. SENIOR GENERAL MANAGER (PERSONAL)
BHARATH SANCHAR NIGAM LIMITED, CORPORATE OFFICE,
DEPARTMENT OF EXAMINATION BRANCH, ROOM NO.222,
2ND FLOOR, EASTERN COURT BUILDING, JANPATH,
NEW DELHI-110001.
5. THE DEPARTMENTAL PROMOTION COMMITTEE
REPRESENTED BY ITS CHAIRMAN, SENIOR GENERAL MANAGER
(PERSONAL), BHARATH SANCHAR NIGAM LIMITED, CORPORATE
OFFICE, DEPARTMENT OF EXAMINATION BRANCH, ROOM NO.222,
2ND FLOOR, EASTERN COURT BUILDING, JANPATH,
NEW DELHI-110001.

6. UNION OF INDIA, REPRESENTED BY THE SECRETARY,
DEPARTMENT OF TELECOMMUNICATIONS,
MINISTRY OF TELECOMMUNICATIONS,
SANCHAR BHAVAN, NEW DELHI-110001.
7. SAVITHRI V., SUB DIVISIONAL ENGINEER,
CALL CENTER CHENNAI, OFFICE OF CGM,
BSNL, CHENNAI-600003.
8. KUMAR ANIL S., JUNIOR TELECOM INSPECTOR,
OFFICE OF AGM, ESTABLISHMENT,
CGM INSPECTION, BSNL, JABALPUR-482002.

R1-R5 BY ADV. SRI.GEORGE KURUVILLA (ALAPPUZHA)
R1-R5 BY ADV. SRI.R.D.AGARWALA (SR.)
R1-R5 BY ADV. SRI.SHALINI KUMAR
R6 BY ADV. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL
R7-R8 BY ADV. SRI.O.V.RADHAKRISHNAN (SR.)
R7-R8 BY ADV. SMT.K.RADHAMANI AMMA
R7-R8 BY ADV. SRI.ANTONY MUKKATH
R7-R8 BY ADV. SRI.C.P.ANIL RAJ
R7-R8 BY ADV. SRI.JOS LEO JOSE

THIS OP (CAT) HAVING BEEN FINALLY HEARD ON 05-06-2018, ALONG
WITH O.P.(CAT)NOS.45 & 126 OF 2015, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS:

- EXT.P1: TRUE COPY OF O.A.1081/2013 FILED BY THE PETITIONERS DATED 5.11.2013.
- EXT.P2: TRUE COPY OF THE REPLY STATEMENT DATED 28.01.2014 WITH ANNEXURES FILED BY RESPONDENTS 1 TO 5 IN O.A.NO.1081/2013.
- EXT.P3: TRUE COPY OF REJOINDER DATED 26.05.2014 WITH ANNEXURES FILED BY THE PETITIONERS TO EXHIBIT P2 REPLY STATEMENT.
- EXT.P4: TRUE COPY OF THE COMMON ORDER DATED 16.01.2015 IN O.A.185/2013 & O.A.1081/2013 OF THE LEARNED TRIBUNAL.

RESPONDENTS' EXHIBITS:

- EXT.R1(a): TRUE COPY OF THE INTERIM ORDER OF THE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM IN OA.185/2013.
- EXT.R1(b): TRUE COPY OF THE COMMUNICATION DATED 20/2/15 ISSUED BY THE BSNL CORPORATE OFFICE ALONG WITH THE RELEVANT PAGES OF THE FINAL ELIGIBILITY LIST.
- EXT.R1(c): TRUE COPY OF THE JUDGMENT OF CHANDIGARH BENCH OF THE CENTRAL ADMINISTRATIVE TRIBUNAL IN TA.NO.95-CH-2009.
- EXT.R1(d): TRUE COPY OF THE OM DATED 4/3/2014 ISSUED BY THE DoPT.
- EXT.R1(e): TRUE COPY OF THE OM DATED OM DATED 30/9/2000.
- EXT.R1(f): TRUE COPY OF THE ADDITIONAL REPLY STATEMENT FILED BY THE RESPONDENTS IN OA 1081/13, WITHOUT THE ANNEXURES THEREIN.
- EXT.R1(g): TRUE COPY OF THE COMMUNICATION DATED 7/1/2000 ISSUED BY THE DoT TO THE UPSC.
- EXT.R1(h): TRUE COPY OF THE COMMUNICATION DATED 4/2/2000 ISSUED BY THE UPSC TO THE DoT.
- EXT.R1(i): TRUE COPY OF THE COMMUNICATION DATED 27/3/2000 ISSUED BY THE DoT TO THE UPSC.
- EXT.R1(j): TRUE COPY OF THE COMMUNICATION DATED 6.7.2000 ISSUED BY THE UPSC TO THE DoT.
- EXT.R7(a):PHOTOCOPY OF THE RELEVANT EXTRACT OF THE KERALA TELECOM CIRCLE GRADATION LIST OF JUNIOR TELECOM OFFICERS AS ON 01-01-2002 ALONG WITH LETTER NO.ST-III/2-15/2003 DATED 28.09.2004 OF THE CGMT.
- EXT.R7(b):PHOTOCOPY OF THE RELEVANT EXTRACT OF CIRCLE GRADATION LIST OF JUNIOR TELECOM OFFICERS AS ON 30-06-2006 ALONG WITH LETTER NO.ST-III/2-15/2006/VOL.II DATED 03-12-2007 OF THE CGMT, TVM.
- EXT.R7(c):PHOTOCOPY OF THE JUNIOR TELECOM OFFICERS RECRUITMENT RULES, 1990 AS PER NOTIFICATION DATED 08-02-1996 WITH JTO (AMENDMENT) RULES 1996 AS PER NOTIFICATION DATED 04.10.1996.

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- EXT.R7(d):PHOTOCOPY OF THE OFFICE MEMORANDUM NO.2-29/2000-RESTG.
DATED 30-09-2000 OF THE MINISTRY OF COMMUNICATIONS, GOVT.
OF INDIA.
- EXT.R7(e): PHOTOCOPY OF THE EXTRACT OF ANNEXURE TO THE D.G.P&T
LETTER NO.1/28/60-NCG DATED 28.02.1963.
- EXT.R7(f): PHOTOCOPY OF THE ORDER IN TA.NO.95-CH-2009 DATED
03-06-2010 OF THE CAT, CHANDIGARH BENCH.
- EXT.R7(g): PHOTOCOPY OF THE OFFICE MEMORANDUM NO.20011/1/2012-ESTT-
(D) DATED 04-03-2014 OF THE 6TH RESPONDENT.
- EXT.R7(h): PHOTOCOPY OF THE ORDER IN O.A.NO.1293 OF 2000 DATED
16-08-2001 OF THE CAT, MADRAS BENCH.
- EXT.R7(i): PHOTOCOPY OF THE JUDGMENT IN W.P.NOS.30121 & 30122/2002
DATED 24-07-2002 OF THE HON'BLE HIGH COURT OF MADRAS.
- EXT.R7(j): PHOTOCOPY OF THE RELEVANT PAGES OF THE MEMO NO.RE/12-
01/COMP/96-98/4 DATED 23-02-2004 OF THE DY.GENERAL MANAGER
(ADMN), M.P.TELECOM CIRCLE, BHOPAL.
- EXT.R7(k): PHOTOCOPY OF THE MEMO NO.RE/12-03/96-98/10 DATED 04-03-
2004 OF THE CHIEF GENERAL MANAGER TELECOM, BHOPAL.
- EXT.R7(l): PHOTOCOPY OF RELEVANT EXTRACT OF THE FINALISED ALL INDIA
ELIGIBILITY LIST OF JTOs PUBLISHED AS PER PROCEEDINGS NO.2-
18/2007-PERS.II(P.T.I) DATED 20.02.2015 OF THE ASST. GENERAL
MANAGER (PERS.II).

// TRUE COPY //

TKS

Sd/-
P.S. TO JUDGE

**C.T.RAVIKUMAR &
K.P.JYOTHINDRANATH, JJ.**

O.P.(CAT)Nos.25, 45 & 126 of 2015

Dated 5th June, 2018

JUDGMENT

Ravikumar, J.

The puzzling question for resolution in these original petitions is the fixation of *inter se* seniority between directly recruited Junior Telecom Officers (JTOs) and promotees to that post, in Bharat Sanchar Nigam Limited (for short `BSNL'). The unsuccessful applicants in O.A.Nos.185 & 1081 of 2013 and 553 of 2015 who are directly recruited JTOs, have filed the captioned original petitions challenging the orders passed in their respective Original Applications moved before the Central Administrative Tribunal, Ernakulam Bench. O.A.Nos.185 and 1081 of 2013 were dismissed by a common order dated 16.1.2015 and evidently, order of dismissal was passed in O.A.No.553 of 2015 referring to the said common order dated 16.1.2015 and also the pendency of Original Petitions filed against it before this Court. Applicants 5, 2 and 4 in O.A.No.185 of 2013 have filed O.P.(CAT).No.45 of 2015, applicants in O.A.No.1081 of 2013 have filed O.P.(CAT).No.25 of 2015 and applicants in O.A.No.553 of 2015 have filed O.P.(CAT).No.126 of 2015. In the aforesaid circumstances, the captioned

original petitions were heard jointly and they are being disposed of by this common judgment. Hereafter in this judgment, for convenient sake, the documents are referred to in the order they are set out in O.P. (CAT)No.126 of 2015 arising from O.A.No.553 of 2015, unless otherwise specifically mentioned. In this context, it is also relevant to note that in the said O.P. the true copy of O.A.No.185 of 2013 along with Annexures, the reply statement filed therein by the official respondents along with Annexures, the reply statement filed by respondents 4 and 6 to 15 and such other documents are also produced along with the copy of O.A.No.553 of 2015.

2. All the petitioners are JTOs in BSNL and they were directly recruited as such, from open market on different dates in different years, spanning from 2001 to 2010. Applicants in O.A.Nos. 185 and 1081 of 2013 are direct recruits of the years 2001-2002 and they challenged Annexure-A7 of Ext.P1, the provisional All India Eligibility List of JTOs circulated vide Lr.No.2-18/2007-Pers.II (Pt.I) dated 11.5.2012, drawn up in respect of different recruitment years specified therein for promotion to the post of Sub Divisional Engineer (SDE) under seniority quota. They are aggrieved by the non-compliance with the Government of India instructions issued by the Department of Personnel & Training (DoPT) as per Annexure-A4 O.M. dated 3.7.1986

and Annexure-A5 O.M. dated 3.3.2008. Annexure-A3 is a circular dated 5.1.2004 issued by the first respondent intimating the parties, addressed thereunder, that pursuant to the revision of percentage quota for departmental candidates and outsider candidates from 35:65 to 50:50 the combined seniority of the JTOs belonging to both categories was also prepared by rotation of vacancies in accordance with the revised percentage viz., 1:1. They were also required to dispose of representations, if any, received against fixation of seniority, accordingly. The method of fixation of seniority of JTOs, based on 1:1 ratio between direct recruits and promotees in the matter of promotion to the post of SDE, has been fixed as per Annexure-A4 O.M. dated 3.7.1986. After considering the consolidated instructions in Annexure-A4 a clarificatory memorandum viz., Annexure-A5 O.M. dated 3.3.2008 was issued by the DoPT, in the matter of determination of seniority. To be precise, their grievance is that in the All India Eligibility list of JTOs circulated vide letter dated 11.5.2012 (Annexure-A7 of Ext.P1), out of about 10000 JTOs enlisted therein, 7500 are promotees and there are only 2500 direct recruits. They contended that promotee JTOs who joined service later to them had been assigned higher ranks therein. According to them, the All India Cadre seniority list for the purpose of promotion to the post of SDE ought to have been prepared based on

the date of joining in the cadre of JTO. In O.A.Nos.185 and 1081 of 2013, besides challenging Annexure-A7 of Ext.P1, they had also challenged Annexure-A1 order dated 7.12.2012. The said document was produced as Annexure-A13 in O.A.No.1081 of 2013. The said order came to be passed pursuant to an order of the Tribunal in O.A.No.712 of 2012. The said applicants preferred representations against Annexure-A7 All India Eligibility List and inaction on such representations constrained them to file O.A.No.712 of 2012. The said O.A. was disposed of with a direction to the official respondents to consider those representations on merits and in accordance with law, in the light of the decisions of the Tribunal on the subject matter. It was also directed not to finalise the provisional eligibility list and effect promotions till the disposal of the representations. The representations directed to be disposed of, as per the said order, were rejected as per Annexure-A1 order. It was in the said circumstances that challenge was also made against Annexure-A1, in both the said original applications. They would further contend that based on Annexures-A4 and A5 rotation policy there would be no backlog vacancies for the promotees to be carried forward whereas there are several backlog vacancies to be filled up in the case of external candidates. It was also their contention that the provisional All India Eligibility List of JTOs was prepared without

adhering to the order of the Tribunal in **Thomas Zachariah v. BSNL (O.A.No.16 of 2009)** rendered following the decision of the Chandigarh Bench of the Tribunal in **Dewan Chand and others v. Union of India and others (T.A.No.84-11-R-2009 and connected cases)**. The decision in O.A.No.16 of 2009 was upheld by this Court as per the judgment in O.P.(CAT)No.175 of 2010, it is submitted. A similar decision rendered by the Bombay Bench of the Tribunal was upheld by the Bombay High Court in **BSNL v. Sadasivam (W.P.(C)No.3725 of 2011)**, it was further submitted. They also got a further case that the provisional circle level seniority list of Kerala Circle which was earlier quashed by this Court as per judgment in O.P.(CAT)No.421 of 2011 that arose from O.A.No.35 of 2010 (**R.Bijoy and others v. Union of India**), has been adopted for drawing the All India Eligibility List. For all these reasons, Annexure-A7 as also **Annexure-A1** are illegal and unsustainable, it is contended.

3. The official respondents contended that the predecessor of BSNL viz., Department of Telecommunications (DoT) had framed recruitment rules relating the post of JTO in the year 1996 prescribing filling up of 50% of the vacancies by direct recruitment and 50% by promotion. The 50% quota was split up into 35% and 15% and 35% set apart for promotion from Group `C' feeder cadres like Phone

Inspectors/ Auto Exchange Assistants/Wireless operators/Transmission Assistants/Telecom Technical Assistants etc. and 15% was set apart for promotion of departmental candidates through limited departmental competitive examination from Group `C' employees of the regular establishment working in the Telecom Engineering Branch and having passed High School/Metric examination. Engineering graduates and graduates in Physics and Mathematics were eligible for direct recruitment under JTO Recruitment Rules and as such, persons with such qualifications were given appointment till the amendment of the said Rules, in the year 1999. As per JTO Recruitment Rules, 1999 the provision for recruiting science graduates, was deleted. The qualifications prescribed for direct recruitment were inapplicable for promotion. However, no direct recruitments/promotions had been made under the JTO Recruitment Rules, 1999, it was further stated by the official respondents in their reply affidavit, filed before the Tribunal. On formation of the BSNL with effect from 1.10.2000 it framed JTO Recruitment Rules in 2001 and going by the same, 50% of the posts are to be filled up by direct recruitment and 50% by promotion through Limited Internal Competitive Examination. Out of the 50%, 35% of the said promotion quota was to be filled up by conducting Limited Internal Competitive Examination from internal candidates belonging to Group

`C' below the age of 50 years and the balance 15% was to be filled up from other Group `C' employees of Telecom Engineering Branch without age restriction based on Limited Internal Competitive Examination. They contended in O.A.Nos.185 and 1081 of 2013 that the applicants therein viz., appellants in O.P.(CAT)Nos.25 & 45, of 2015 were directly recruited by BSNL as per JTO Recruitment Rules, 2001 and being persons borne in the cadre in the year 2002 and afterwards they got no locus standi or authority to question the recruitments made by the DoT. The respondents further contended that irrespective of the source of recruitment viz., direct recruitment or promotion JTOs are to undergo a pre-appointment training before actual appointment. Only those who came out successful in the training would be given appointment. The said training is being conducted in batches in a phased manner according to the accommodation available in the training centres. It is also the contention of the official respondents that seniority of JTOs is to be determined based on the marks obtained in the pre-appointment training and also taking into account the recruitment year. They would further contend thus:-

The post of SDE is an All India post and recruitment to the said post is governed by SDE Recruitment Rules, 2002. Going by the said Rules, 75% of the quota has to be filled up based on seniority-cum-

fitness and 25% has to be filled up by Limited Departmental Competitive Examination. The quota was subsequently modified as 67%:33% respectively. 67% seniority-cum-fitness quota is to be filled up from eligible JTOs selected by the DPC from the All India Eligibility List. The date of completion of training and appointment as JTO depend upon fortuitous circumstances and therefore, the date of joining the post of JTO cannot be taken as the basis for determination of seniority and therefore, the sole common criterion that can be followed in respect of all the candidates appointed either under direct recruitment quota or departmental quota, is reckoning of marks obtained in the pre-appointment training, by candidates of a particular year of recruitment. Even after taking up such contentions as above they claimed that they had followed the *inter se* seniority of direct recruits and promotees in the ratio of 1:1 and on rotation of quotas. According to them, there was no direct recruitment till 2001 and applicants except applicant No.3 in O.A.No.185 of 2013 had been appointed as JTOs in the year 2002 and were allotted the recruitment year as 2001. In the case of applicant No.3 therein, though he was appointed in the year 2003 as JTO he was allotted the recruitment year 2002. They would further contend that the applicants therein had given undertaking that they would take rank below the JTOs who had been appointed by the

erstwhile DoT or BSNL or any other employee of the feeder cadre who had already qualified for JTO examination but not appointed as on the relevant date. The official respondents would also state the fact that the 4th respondent therein was allotted the year of the recruitment as 1996 pursuant to an order of the Madras Bench in O.A.No.1293 of 2000 which was affirmed by the Madras High Court as per judgment in W.P.No.30023 dated 23.07.2002 and it had become final and further that the impugned Annexure-A7 of Ext.P1 All India Eligibility List consists of JTOs allotted the recruitment years 1996-2001 and in fact, during the said period direct recruitment took place only in the year 2001.

4. Additional respondents 4 and 6 to 15 would contend that they were recruited within the quota in terms of the recruitment rules then in vogue while they were working in DoT and that the relief sought for in O.A.No.185 of 2013 for assignment of seniority in Annexure-A7 All India Eligibility List in consonance with Annexures-A3 and A5 was rightly declined by the Tribunal. They would also contend that Annexure-A5 instructions dated 3.3.2008 was declared as nullity by the Hon'ble Apex Court in the decision reported in **Union of India and others v. N.R.Parmar and others ((2012) 13 SCC 340)**. It is submitted that based on the said decision Annexure-A5 O.M. dated

3.3.2008 was withdrawn as per Ext.R7(g), produced as such in O.P. (CAT)No.25 of 2015. It is also their contention that the only prayer in O.A.No.185 of 2013 that survives for consideration is prayer No.3 viz., for a direction to prepare a combined list of JTOs on All India basis maintaining the ratio of 1:1 between directly recruited JTOs and promotee JTOs based on the date of joining in the cadre of JTO and the date of absorption into BSNL. According to them, in the light of Annexure-MA1 order in O.A.No.35 of 2010 combined seniority list of JTOs in the circle was to be prepared according to the year of recruitment, for making local officiating promotions as SDEs. The interim order passed thereon on 13.1.2010 not to act upon Annexure-A1 gradation list, referred as such in the original application, for grant of local officiating promotion was made absolute as per the said order. The orders in O.A.No.35 of 2010 was challenged before this Court in O.P.(CAT)No.421 of 2011. The said original petition was disposed of as per Annexure-MA2 judgment dated 27.2.2012 whereby the order in Annexure-MA1 was clarified. This Court held that the findings in Annexure-MA1 order, referred to as Ext.P1 in Annexure-MA2 order, is not infected with illegality and what is required only the clarification of the position that the establishment, despite the said order should take immediate action to ensure that there would be no appreciable time lag

in the matter of making promotions on regular basis as against the vacancies. It was also observed therein that the integrated list could be operated upon and refusal to do so would result in consequences that could be indicated as violative of Articles 14 and 16 of the Constitution of India. It is submitted that Annexure-A7 of Ext.P1 list is only a preparation to achieve that end and therefore, it requires no intervention and the Tribunal had rightly declined to interfere with the same.

5. The Senior Counsel appearing for BSNL additionally contended thus:-

No interference whatsoever is required with the finding of the Tribunal that there occurred a breaking down of the quota-rota rule. Preparation of an eligibility list of JTOs on All India basis maintaining the ratio of 1:1 between direct recruitee JTOs and promotee JTOs based on the date of joining as JTO and date of absorption in BSNL, as required by the applicants in O.A.No.185 of 2013, was rightly declined by the Tribunal and that the methodology of fixation of seniority in the cadre of SDE is different from that of JTO as the recruitment rules governing the said cadres are different and incomparable. The cadre of SDE is filled up entirely by promotion and the judgments relied on by the petitioners are not at all relevant to the issue of fixation of seniority in the cadre of

JTO and that the ratio has been maintained in the eligibility list as 1:1 not as alleged by the petitioners and it was maintained within a recruitment year. That apart, it is contended that the decisions relied on by the petitioners including the decisions in **Thomas Zacharia's** case and **R.Bijoy's** case (supra) are not relevant for the purpose of deciding the issue of fixation of seniority in the All India Eligibility List of JTOs. They sought to explain the situation as to how the number of direct recruits came to be less in number than the promotees in Annexure-A7 of Ext.P1. It is stated that there was no direct recruitment of JTOs during the period between 1996 and 2000 and naturally, their number became lean in the eligibility list when compared to the direct recruits.

6. The rival contentions as noticed hereinbefore were considered by the Tribunal and thereupon, it came to the finding, as can be seen from the impugned common order in O.A.Nos.185 & 1081, of 2013 that the applicants in the original applications viz., the petitioners herein, could not make any claim for assignment of seniority by giving slots against the unfilled quota of direct recruits during the period between 1996 and 2001 and they are entitled to get seniority only based on the actual date of joining in the cadre of JTOs. The said finding is based on the conclusion that there was a collapse of the rotation of

quota system and the fact that in the interregnum promotions were given to a large number of departmental candidates as JTOs. As a necessary consequence the Tribunal had declined to issue direction to follow 1:1 ratio in the matter of preparation of the final All India Eligibility List of JTOs for promotion to SDE cadre and dismissed the said Original Applications. As noticed hereinbefore, O.A.No.553 of 2015 was dismissed taking into account the dismissal of O.A.Nos.185 & 1081 of 2013 as per the common order dated 16.1.2015 and also the pendency of original petitions viz., O.P.(CAT)Nos.25 & 45 of 2015 filed against the said common order, before this Court.

7. It is pertinent to note that in O.A.No.553 of 2015 the applicants sought to quash Annexure-A1 which is a true copy of order No.2-18/2007-Pers.II(Pt.I) dated 20.2.2015 and the relevant portion of the eligibility list. Virtually, it is the relevant portion of the final eligibility list published on 20.2.2015. In the said O.A. it was stated that Annexure-A1 is nothing but a verbatim reproduction of the provisional All India Eligibility List (Annexure-A7). O.P.(CAT)No.126 of 2015, as noticed hereinbefore, has been filed against the order of dismissal in O.A.No.553 of 2015. We have already noted that in O.A.Nos.185 & 1081 of 2013 the challenge was against the provisional All India Eligibility List of JTOs. A scanning of the order in O.A.No.553

of 2015 dated 21.7.2015 would reveal that though the main challenge was against Annexure-A1 final All India Eligibility List dated 20.2.2015 the Tribunal had not actually gone into the merits of the challenge against the same observing that as against the order in O.A.Nos.185 & 1081 of 2013 carrying challenge against the provisional All India Eligibility List original petitions were filed by then, before the High Court of Kerala and further that the contentions raised to challenge the said provisional list viz., Annexure-A7 of Ext.P1 and the contentions raised to challenge the final list viz., Annexure-A1 in O.A.No.553 of 2015 which is Ext.P15 in O.P.(CAT)No.126 of 2015 are the same. Consequently, it was held that it is not just and proper to reopen or reconsider the issue in such circumstances and dismissed O.A.No.553 of 2015. In O.P. (CAT)No.126 of 2015 the petitioners who were the applicants in O.A.No.553 of 2015, narrated the circumstances which, according to them, led to the present situation. According to them, no direct recruitment was made under JTO Recruitment Rules, 1996 and at the same time, there was no conscious decision not to effect direct recruitment to the post of JTO by DoT. No competitive examination was also conducted in terms of the said rules to fill up 15% of the promotion quota. Such examination was not conducted as there were many officers who had already qualified in the examination for promotion

under the JTO Recruitment Rules, 1990. Meanwhile, it was superseded by JTO Recruitment Rules, 1996 which, in turn was superseded by 1999 Recruitment Rules. The ratio 1:1 between direct recruitment and promotion was retained even thereunder. However, the provision for making promotions based on screening test was dispensed with. In other words, the entire promotion quota of 50% were to be filled up by competitive examination. At the same time, on finding that vacancies prior to the promulgation of 1996 Recruitment Rules were available such vacancies were sought to be filled up by conducting screening test for appointment against 35% of the promotion quota. It is to be noted that under the 1996 Recruitment Rules, 35% was earmarked for filling up by promotion after conducting a screening test. When such examination was conducted on 29.1.1999 and 30.4.2000 the number of qualified hands exceeded the available vacancies under 35% quota. According to them, the surplusage was about 6000. It is also their case that yielding to the insistence of unions it was decided by the board of BSNL as per letter No.5-4/2001/PERS-IV dated 27.3.2001 to divert the vacancies in the direct recruitment quota of JTOs as promotion quota, in a phased manner, for accommodating the said surplus qualified officers. Such a decision, according to the petitioners, was taken in the 23rd meeting of the Board of Directors, on 30.3.2001. It is also their precise

case that at the time when such a decision was taken a notification for direct recruitment for appointment to the post of JTO was in force. However, the selection proceedings pursuant to the said notification was completed only as per JTO Recruitment Rules, 2001. It is also their contention that the diversion of vacancies in the recruitment quota for adjusting the surplus qualified hands under promotion quota was challenged before the High Court of Punjab and Haryana in C.W.P.5608/2007 mainly on the ground that it is inconsistent with the Recruitment Rules. All such contentions were in fact, taken in O.A.No.553 of 2015. A copy of the judgment in CWP.5608/2007 of the High Court of Punjab and Haryana has been produced in O.P. (CAT)No.126 of 2015 as Ext.P13 and it is dated 30.5.2008. As per Ext.P13, the official respondents were directed to restore the posts diverted pursuant to a finding that the diversion of vacancies was illegal. It is also their contention that the said judgment was affirmed by the Hon'ble Apex Court. Evidently, it is thereafter that the provisional All India Eligibility List was published on 7.12.2012 and subsequent to the dismissal of O.A.Nos.185 & 1081 of 2013 Annexure-A1 final All India Eligibility List was published. Like the petitioners in the other original petitions the petitioners in O.P.(CAT)No.126 of 2015 are also contending that seniority in the eligibility list of JTOs for promotion to

the post of SDE is to be determined according to rotation of vacancies between direct recruits and promotees based on quota-rota rules and it should be done by allotting the eligible direct recruits in the unfilled quota of direct recruits between 1996 and 2001. Relying on the decision in **Parmar's** case (supra) it is contended that non-availability of direct recruits in order to render the rotation of vacancies impracticable could occur only when an attempt to make direct recruitment was made and unless such an attempt was made carrying forward of vacancies in the direct recruitment quota could not have been permitted. In such circumstances, according to them, the available direct recruits in a particular recruitment year should be interposed in accordance with ratio with the promotees of that recruitment year. According to them, since promotions were made in 1996 the year of recruitment for direct recruits must also be taken as 1996. It is also their contention that in terms of O.M. dated 3.7.1986 (Annexure-A4) in so far as no vacancy was notified for direct recruitment between 1996 and 2001 promotions effected during the said period could not be treated as regular and that direct recruitments were made from 2001 onwards actually to fill up vacancies available right from 1996. It is also their contention that after the issuance of O.M. dated 7.2.1986 the official respondents were not justified in taking

up the contention of breakdown of quota-rota rule. It is also their contention that retrospective promotions given to promotees assigning them years of recruitment prior to 2001 even when actual promotion took place only after 2001, cannot be sustained. Additional respondents 4 to 6 had filed counter affidavit in the said original petition. Respondents 1 to 3 had also filed counter affidavit. In their counter affidavit respondents 4 to 6 contended that the cause of action for filing O.A.No.553 of 2015 is different from the cause of action available for filing O.A.No.185 of 2013. It is their case that as per order dated 21.7.2015 in O.A.No.553 of 2015 (Ext.P18) the Tribunal had not adjudicated the issues involved in O.A.No.553 of 2015 on merits. In short, according to them, in such circumstances, the legality or otherwise of Annexure-A1 viz., the final All India Eligibility List has to be decided by the Tribunal itself as a first instance. In short, their contention is that the provisional eligibility list as also the final eligibility list do not invite any interference. In the counter affidavit filed by respondents 1 to 3 in O.P.(CAT)No.126 of 2015 the averment of the petitioners that officers qualified in the screening test conducted on 29.1.1999 and 30.4.2000 and promoted in excess quota of 35% quota and protected by creating supernumerary post, had been assigned recruitment year 1996 onwards were denied. At the same time, it is to

be noted in the said counter affidavit the official respondents did not refute the averment of having conducted such examinations on 29.1.1999 and 30.4.2000. In fact, what is stated in paragraph 15 of the counter affidavit is as follows:-

“Ext.P13 judgment of the Punjab and Haryana High Court has no bearing to the promotions effected to the promotee quota vacancies during the period from 1996 to 1999. Those qualified in the examinations held on 29.1.1999 and 30.4.2000 are allotted vacancy years from 1996 to 2000 to the extent vacancies are available in the respective quota, according to their eligibility. The actual appointment to the qualified candidates delayed due to various reasons like corporatization of DoT, delay in pre-appointment, various court cases etc. The seniority of supernumerary hands from 2001 onwards are decided subject to the outcome of SLP which is pending in the Hon'ble Supreme Court.”

In paragraph 17 of the said counter affidavit it is stated that there is nothing wrong in assigning recruitment years of 1996 and 1997, as the case may be, to those officials who were promoted against the vacancies of the said recruitment years, as those officials got a right to be considered for promotion to the higher grade for the recruitment years to which they are recruited. It is further stated that in accordance with DoP&T O.M. dated 29.5.1986 seniority is to be stipulated based upon the vacancy year and that absorption of such persons were done subsequently when they got qualified in Limited Departmental Examination (LICE), held in 1999 and 2000, before the

formation of BSNL against the vacancies of 1996 and 1997 and such appointments were made after the formation of BSNL.

8. When these original petitions are taken up for consideration, it is submitted by the learned counsel appearing for the petitioners that the crucial question which would decide the fate of the original petitions is whether or not a breakdown of the quota-rota rule had occurred during the period between 1996 and 2000. As noticed hereinbefore, the party respondents as also the official respondents contend that there occurred a breakdown of the quota-rota rule mainly based on the undisputed and indisputable factum of non-recruitment of JTOs during the period from 1996 to 2001. It is also their contention that the petitioners/applicants being persons directly recruited only after the formation of BSNL they cannot claim for assignment of slots during the period from 1996 and 2001 as during those period none of them had borne in the cadre. Thus, it is obvious that the very contention that there was a breakdown of quota-rota system itself would reveal that even according to them, in the matter of filling up of posts of JTOs quota-rota rule was in existence. In fact, the said fact is not in dispute. The fact that even before the formation of BSNL, in its predecessors' service viz., that of DoT, going by the rules, 50% of the vacancies in the category of JTO ought to have been filled up by

promotion and balance 50% of the vacancies, by direct recruitment. It is also not in dispute that 1:1 ratio was also there in the matter of filling up of such vacancies and it reflected in the seniority list as well.

9. While considering the question whether there occurred a breakdown of quota-rota system during the aforesaid period it is only worthwhile to refer to the common order dated 13.3.2015 passed by a Division Bench of this Court in O.P.(CAT)Nos.25 & 45 of 2015. Paragraph 4 of the said order is extractible in this context and it reads thus:-

“4. The learned Tribunal, through the impugned order, has proceeded as if there is a breakdown of the quota rule. We pointedly wanted the learned counsel for BSNL to show its specific pleading as to the facts relied on by it to specifically plead, prove and, thereby demonstrate before a judicial authority, that there was a breakdown of the quota rule so as to apply the ratio of the decision of the Hon'ble Supreme Court of India in **Direct Recruit Class-II Engineering Officers' Association and others v. State of Maharashtra and others (AIR 1990 SC 1607)**. Certain submissions were made. But, we are yet to see the requisite pleadings as indicated above, as of now.”

Paragraph 4 therein would reveal that, according to the Division Bench, requisite pleadings to canvass the position that there was a breakdown of quota-rota rule as regards the post of JTO were not there on the part of the official respondents. In fact, as per the said order, after making such observations the matter was adjourned to facilitate BSNL to place

better submissions based on records and materials, on that issue. The learned counsel appearing for the official respondents submitted that the observation that requisite pleadings were not there in respect of breakdown of quota-rota system is not true to facts and in fact, requisite pleadings are there in their pleadings. The pleadings in the reply affidavit filed by the official respondents would reveal that the basis for taking up the contention that there occurred breakdown of the quota-rota system is the undisputed fact that during the period between 1996 and 2001 there occurred no direct recruitment of JTOs. In this context, it is also relevant to note that except the contention that it was done away with owing to the corporatisation of DoT no other reason has been assigned for the same. It is the case of the official respondents that owing to the said reason no direct recruits are available for 1:1 rotation for the recruitment years 1995 to 2000 and it became impossible to follow the said quota-rota rule. Further, it is stated in paragraph 13 of the counter affidavit filed by them in O.P.(CAT)No.126 of 2015 thus:-

“Thereby, the quota of 50:50 between Direct Recruitment and Promotee came to be broken down and Direct Recruitment vacancies became dead vacancies. These dead vacancies could not have been carried over to BSNL and in fact, were not carried over to BSNL also.”

As noticed hereinbefore, BSNL was formed only with effect from

1.10.2000. In such circumstances, the question is whether there was actual breakdown of quota rota rule in DoT? In the contextual situation, it is relevant to refer to the decision in **M.Subba Reddy v. A.P.SRTC** reported in **(2004) 6 SCC 729**. The Hon'ble Apex Court held therein that mere inaction in, or imposition of ban on, direct recruitment did not mean that quota was broken down or it became inoperative. For not effecting direct recruitment despite the provisions for direct recruitment in the rules and the relevant rules providing for quota-rota rule in the matter of filling up of vacancies in the category of JTOs, the mere fact that direct recruitment was not effected for a particular period, by itself cannot be assigned as a ground for contending breakdown of quota-rota rule or that the said rule had become inoperative. The question whether the contention of breaking down of the quota-rota can be accepted, has to be considered based on certain other admitted facts, as well. The official respondents who contended that direct recruitment was not effected from 1996 to 2001 owing to corporatisation of DoT lacks bona fides in view of their own statement in the counter affidavit filed in O.P.(CAT)No.126 of 2015. In the said counter affidavit in paragraph 11 the official respondents had stated that the various communications at Exts.R1(a) to (d) would reveal that DoT had been constantly requesting UPSC to take steps for

filling up the direct recruitment quota from 1996 or to allow the DoT to do it on its own as a one time measure. True that, it is stated therein that no such permission was granted by the UPSC. Furthermore, it is stated therein thus:-

“All attempts have been thus made to fill up the direct recruitment quota from 1996 to 2000 by the DoT.”

It is thus obvious that no conscious decision was taken by DoT not to effect direct recruitment of JTOs during the period 1996 to 2000. But, at the same time, the pleadings of the official respondents, referred hereinbefore, would go to show that their consistent case was that due to corporatisation of DoT during the period in question no direct recruitment was made. At the same time, it is stated in paragraph 11 of the counter affidavit filed in O.P.(CAT)No.126 of 2015 that in the meantime, promotions to the vacancies under the promotee quota from 1996, were made by DoT by conducting qualifying and competitive examination in accordance with the Recruitment Rules of 1996. However, the fact that such promotions were not actually confined to vacancies within the promotion quota and promotions were also effected against direct recruitment quota is a fact which is indisputable in view of the materials on record. It is also in this context that the judgment of the High Court of Punjab and Haryana in Civil Writ Petition

No.5608 of 2007 dated 30.5.2008, which is produced as Ext.P13 in O.P. (CAT)No.126 of 2015, assumes relevance. Before considering the said judgment with reference to the decision taken on merits it is only worthwhile to note the stand of Union of India. We will deal with these issues a little later.

10. From the facts elaborately stated as above, it is evident that during the period from 1996 to 2000 no direct recruitment was effected against the prescribed quota by the predecessor of BSNL viz. DoT. It is an indisputable fact that all the petitioners were appointed as JTOs only after the formation of BSNL, on different dates in different years from 2001 to 2010. Admittedly, BSNL was found with effect from 1.10.2000. The petitioners' appointment was essentially in terms of JTO Rules, 2001. Despite our anxious scrutiny of the materials on record we could not lay hand on any notification issued by DoT for direct recruitment, against which the petitioners responded and ultimately culminated in their appointment. In fact, none of the petitioners got any such specific case and even according to them they were directly recruited by the BSNL. When that be the admitted position the question is, irrespective of breakdown of quota rota rule or not, under the DoT how the petitioners who were directly recruited by BSNL as per JTO Recruitment Rules, 2001, could legally raise a claim

against the vacancies which ought to have filled up by direct recruitment by DoT. Merely because BSNL is the successor of DoT how can persons borne in BSNL and not in any cadre existed in DoT could stake claim for allotment of recruitment years taking into account the vacancies which could have been and should have been filled up, by DoT by direct recruitment. There can be little doubt that any employee in any institution or organization can be governed only by the rules in vogue at the time of his/her entry in its service. True that, the employer can, subject to permissible limitation, modify or bring in a new set of rules to govern the service conditions of its employees. In the case on hand, it is not the case of the petitioners that they responded to any notification issued by UPSC at the instance of DoT or by DoT itself. As noticed hereinbefore, the undisputed and indisputable fact is that the petitioners were all recruited under the JTO Recruitment Rules, 2001, directly from open market during the period from 2001 to 2010, by BSNL. No provision of law or any authority which confer them an indefeasible right to claim allotment of recruitment years as 1996 onwards reckoning the date of occurrence of vacancies under the direct recruitment quota in DoT, despite being recruited by BSNL in terms of JTO Recruitment Rules framed by it, was brought to our notice. True that DoT is the predecessor of BSNL. When the position of law is that

even a person who is included in a rank list published by PSC/UPSC for appointment to any organization whose appointments are left to PSC/UPSC, would not get any indefeasible right to get appointment merely because of his/her inclusion in such a ranked list how can the petitioners in the circumstances explained hereinbefore claim allotment of recruitment years as 1996 onwards on the ground that no direct recruitment was effected by DoT though direct recruitment of JTOs are provided for, in the rules then governing DoT. In the absence of any such provision for getting allotted recruitment year reckoning the occurrence of vacancy in DoT in so far as recruits in BSNL are concerned, in our considered view, the question whether there was any breakdown of quota-rota rule in DoT would pale into insignificance. The fact that there was no breakdown of quota-rota rule and the non-recruitment was not based on any conscious decision not to effect direct recruitment by DoT also would not and could not confer any indefeasible right to the petitioners to raise such a claim. In such circumstances, we find force in the contention raised by the official respondents that being persons borne in the cadre of BSNL in the year 2002 and afterwards, they got no absolute right to claim for accommodating them in the vacancies which were earmarked for direct recruitment during the period from 1996 to 2000 in DoT. True that the

official respondents had also admitted the position that they had extended some benefits to some of the petitioners by allotting them recruitment year of 2001 onwards even though the recruitment was actually effected only subsequently. But, by that itself cannot confer any larger or indefeasible right to the petitioners for getting allotment years between 1996 and 2000 and to get interposed between the promotees who were given promotion by DoT during the aforesaid period. At the same time, if the petitioners were also recruited by DoT before formation of BSNL despite the delay in their recruitment the question regarding breakdown or not, of the quota rota rule, would have assumed relevance. Certainly, from the date of their appointment in BSNL the petitioners are having the right to get their seniority fixed in accordance with JTO Recruitment Rules framed by BSNL.

11. In that context, the contention of the official respondents in the matter of fixation of seniority, has to be looked into. According to them, irrespective of the source of recruitment viz., direct recruitment or promotion, JTOs are to undergo a pre-appointment training before actual appointment. Their further contentions in that regard are as follows:-

Only those who came out successful in the training would be given appointment and the said training is being conducted in batches

in a phased manner, according to the accommodation available in the training centres. Seniority of JTOs is to be determined based on the marks obtained in the pre-appointment training and also taking into account the recruitment year. It is also their case that in such circumstances, the sole common criteria that could be followed in respect of all the candidates appointed, either under the direct recruitment quota or departmental quota is reckoning of marks obtained in the pre-appointment training by candidates of a particular year of recruitment. Even after raising such contentions they went on to contend that date of completion of training and appointment as JTO would depend upon fortuitous circumstances. True that, such a contention has been taken to canvass the position that date of joining the post of JTO could not be taken as the basis for determination of seniority. In the context of the said contention it can only be said that the very statement of the official respondents that date of completion of training and appointment of JTO would depend upon fortuitous circumstances by itself is sufficient to hold that the date of successful completion of pre-appointment training or the marks obtained in such training cannot be taken as the basis for fixation of seniority between promotees and direct recruits. Evidently, the promotees as also direct recruits would be sent for training only in batches according to the

accommodation available in the training centres. Persons directly recruited or promoted to the post of JTOs in the same recruitment year, in such circumstances, may not be sent for training at the same time. In other words, subject to the availability of accommodation they may get chance to undergo training, but it need not be during the same period. It may be in different dates. In such circumstances, the persons promoted or directly recruited during one recruitment year if not sent for training along with his fellow recruits or promotees may be deprived of a chance to undergo training along with the others and naturally, in such eventuality, he would not be able to complete the training along with others. It is also to be noted that in the case of promotees there can be no doubt that they would be sent for training only after promotion as JTOs. In such circumstances, on successful completion of training how it could be said that during the interregnum i.e., from the date of promotion till completion of training they would be considered only as a member of feeder category to the post of JTO and would be given salary only at the rate applicable to be said category despite being promoted. There is nothing on record to explain the position in such circumstances. In fact, nothing is on record as to how the promotees are sent for training, in other words, as to whether they would be selected for training before or after the order of promotion or

only after finding eligible for promotion. At any rate, the contention that seniority between directly recruited JTOs and promotee JTOs would be fixed only based on the marks obtained in the training cannot be accepted in the light of the admitted fact that all direct recruits and promotees during a particular year would not be and could not be sent for training at the same time and sending them for training would depend upon the accommodation available in the training centres. But, at the same time, it is to be noted that there is no dispute by the official respondents that even after the training (we may hasten to add that the details regarding training, the syllabus of training and how marks are awarded and what is the basis for assessment of performance in the training are not available on record) the *inter se* seniority between direct recruits and promotees on their posting would be made only in the ratio 1:1 and on rotation of quotas. When the precise mode of selection for sending selectees/promotees for training is not available on record, either in the form of document or pleadings and when there is nothing to suggest that they were selected in a manner capable of strictly adhering to the rotation of quotas and also in terms of their respective seniority in their respective cadres, how the marks obtained in a training, that too, without knowing the procedures for assessment and awarding marks, be based as the yardstick for

fixing seniority in the eligibility list of JTOs, for promotion to the post of SDE. Then the question is how, in such circumstances, *inter se* seniority between direct recruits and promotees could be made? We are of the view that the pragmatic way of fixing such seniority in the said circumstances would be to reckon the date of appointment as regards the direct recruits and the date of promotion as regards the promotees, once they successfully complete the training and then interpose them in the seniority list in accordance with the rotation of quotas, reckoning their due seniority or position in their respective list of appointment or order of promotion. In such circumstances, we do not find any reason to interfere with the finding of the Tribunal that the direct recruits are entitled to be considered for inclusion in the seniority list only after their actual entry in service and that they could not make any claim to the unfilled quota of direct recruits during the period between 1996 and 2001.

12. The aforesaid finding cannot result in dismissal of the original petitions as the petitioners got a further grievance relating placement of promotees who had actually promoted later than their entry in service, ahead of them in the eligibility list of JTOs for promotion to the post of SDE. It is the precise case of the petitioners that such situation had occurred solely because on their promotion,

ignoring the actual date of promotion, they were allotted recruitment years from 1996 onwards. The question is whether there is any merit in the said contention and if it is well merited, what is the solution for the situation. The pleadings of the official respondents would undoubtedly go to show that during the period when no direct recruitment was effected viz., from 1996 to 2000 they had effected promotions to the post of JTOs from the existing employees of DoT. In fact, the indisputable position is that such promotions were effected not only within the quota but, as against the direct recruitment quota as well. This was done before the formation of the BSNL as also subsequent to its formation. In fact, subsequent to the formation, those promotees were actually allotted recruitment years from 1996 onwards subject to the availability of vacancies, ignoring whether the vacancies are earmarked for direct recruitment or not. The factum of conversion of direct recruitment quota for accommodating promotees as JTOs at various stages is also indisputable in view of Ext.P13 judgment of the High Court of Panjab and Haryana in C.W.P.No.5608 of 2007.

13. We will now refer to the judgment in C.W.P.No.5608 of 2007 viz., Ext.P13. The said writ petition was filed with the prayers for issuance of writ in the nature of certiorary to quash the waiting list of 3338 candidates for promotion as JTOs in BSNL against 35% quota

prepared in pursuance of the screening test held on 23.4.2000 and for such other reliefs. Essentially, the grievance was with respect to conversion of the direct recruitment quota as departmental quota. As per judgment dated 30.5.2008, the said writ petition was disposed of with a direction to the respondents to restore the posts diverted from the direct recruitment quota to departmental quota. In the contextual situation, it is also relevant to refer to a letter of the Union Secretary to Government of India, Department of Telecommunication, New Delhi to the Chairman and Managing Director of BSNL extracted in Ext.P13 judgment. It reads thus:-

"The undersigned is directed to refer to DO letter No.Staff/M-71/(Option)-Gr.B/Corr/2002 dated 5.3.2002 from Chief General Manager, B.S.N.L, U.P.(E) Circle (copy enclosed for ready reference) seeking clarification for issue of Presidential orders in respect of T.T.As who have qualified for J.T.Os examination.

2. From the letter under reference, it is seen that B.S.N.L has diverted vacancies of J.T.Os under Direct Recruitment (D.R) quota to 35% Departmental Quota and these are being filled up by deputing the candidates who have already qualified the screening test.

3. The action on the part of B.S.N.L to divert D.R vacancies to 35% departmental quota is irregular as it is not permissible to divert vacancies pertaining to one quota to another quota. Further vide this office letter No.5-11/99-NCG dated 10.11.1999 (copy enclosed), it was clarified that qualified candidates of 35% J.T.O Screening test will be sent on training only to the extent of vacancies available under 35% quota upto 31.8.1999.

The remaining qualified officials will have no claim whatsoever for training/appointment as J.T.O.

B.S.N.L may therefore, clarify as to how and under what authority the D.R vacancies have been diverted to 35% Departmental Quota. Further, it may be ensured that no candidate is deputed for training against diverted vacancies and the Presidential Orders may be issued in respect of all such employees who are waiting to be deputed for training for want of vacancies."

A perusal of the said letter would reveal that Union of India had not approved the action of the BSNL, in fact, DoT, in diverting vacancies of JTOs under direct recruitment quota to departmental quota. At the same time, evidently, the BSNL in the counter affidavit filed therein stated that permission granted to appear in JTO screening test, was not without any rider and the rider with which candidates were sent for training after diversion of post from direct recruitment quota to 35% departmental quota was quoted in Ext.P13 as hereunder:-

"It is correct that in view of Annexure P-1 "all" the eligible candidates up to 31.08.1999 under 35% quota were permitted to appear in J.T.O Screening Test including "all" the T.T.As as on 31.08.1999 with a rider that:-

- i) T.T.As were permitted provisionally to appear in 35% qualifying screening test without insisting 6 years of service in the cadre of T.T.A subject to the outcome of various Original Applications pending in different Central Administrative Tribunals; and
- ii) That all qualified officials of 35% J.T.O Screening Test will be sent on training only to the extent of

vacancies available under 35% quota upto 31.08.1999; and

- iii) Remaining qualified officials will have no claim whatsoever for training/appointment as J.T.O.”

The contentions based on Ext.P13 judgment were taken by the petitioners in O.P.(CAT).No.126 of 2015 before the Tribunal in O.A.No.553 of 2015. As noticed hereinbefore, those contentions and the other contentions to assail Ext.P15 final eligibility list (Annexure-A1 in O.A.No.553 of 2015) were not actually gone into by the Tribunal assigning the reasons specifically referred to hereinbefore. Thus, it is evident that it is not as if the persons aggrieved by the final eligibility list had not approached the Tribunal and approached this Court directly. As can be seen from the impugned order in O.A.No.553 of 2015, the applicants therein/the petitioners in O.P.(CAT).No.126 of 2015 who are also directly recruited JTOs approached the Tribunal challenging the final eligibility list of JTOs. It was declined to be considered citing the reasons that the contentions raised to challenge the provisional eligibility list as also the final eligibility list are one and the same and that the orders passed in the original applications challenging the provisional list are under challenge before this Court. Evidently, the reference was with respect to O.P.(CAT)Nos.25 and 45, of 2015 arising from O.A.Nos.185 and 1081 of 2013. There is no serious dispute

regarding the fact that challenge against both the lists are made almost on the same grounds and therefore, once the O.P challenging the common order in O.A.Nos.185 and 1081 of 2013 are decided on merits, there will be no point or fruitful purpose in remitting the matter carrying challenge against the final eligibility list to the Tribunal. That apart, as already noted, the respondents in O.P(CAT)No.126 of 2015 have filed their counter affidavits and evidently, it is the common case that further delay in the matter would be detrimental to all parties.

14. We will now revert to the actual issue. How the promotee JTOs in excess of the promotion quota could be assigned *en masse* seniority over direct recruits by BSNL, dehorning the JTO Recruitment Rules framed by it? While considering this question, it is only apropos to refer to Annexure-R4(d) of Ext.P3. It is an office memorandum dated 30.9.2000 issued by the Government of India, Ministry of Communications on the subject of setting up of BSNL and transfer of DoT staff in that regard. Going by the same, the establishment (officers, staff, employees and industrial workers) in offices and projects etc. of DoT, Department of Telecom Services (DTS) and Department of Telecom Operations (DTO) would stand transferred to BSNL along with their posts on existing terms and conditions, on as is where is basis, on deemed deputation, without deputation allowance.

It is thereafter that the BSNL had come into existence on 1.10.2000. In such circumstances, when they were transferred to BSNL for the purpose of setting up the same and subsequently absorbed in service with existing terms and conditions governing them while they were in DoT, how could the excess promotee JTOs of DoT claim for continuance with seniority over direct recruits despite being in excess of promotion quota. Certainly, in DoT, it could not be said that, going by the service conditions, they were having a right to get promotion in excess of their quota against the post of JTO. In the light of Ext.P13 judgment and also in the light of the rider extracted therein as regards persons sent for training after diversion of direct recruitment quota to promotion quota such promotees who are in excess of their quota cannot claim that they should be given *en masse* seniority over direct recruits of BSNL without giving due regard to the JTO Recruitment Rules, 2001 framed by BSNL. The official respondents did not dispute the fact that going by the said rules, 50:50 is the percentage available to direct recruits and promotees in the cadre of JTOs and 1:1 is the ratio to be followed going by the quota-rota rule to be followed thereunder. In the contextual situation, in the light of the decision of the Hon'ble Apex Court in **D.Ganesh Rao Patnaik v. State of Jharkhand [(2005) 8 SCC 454]** promotions in posts falling within direct recruits' quota has to

be held as improper. Such promotees, instead of being reverted, could be allowed to continue by treating as promoted against vacancies available within the quota against subsequent quota of promotees. In the light of the dictum laid down in **Suraj Parkash Gupta v. State of J&K [(2000) 7 SCC 561]**, the direct recruits after belated recruitment could not claim seniority from an earlier date contending backlog vacancies in direct recruitment quota, but could claim seniority only from the date of appointment, certainly, subject to the rules for determination of seniority between direct recruits and promotees.

15. The upshot of the discussions is that the directly recruited JTOs like the petitioners and the promotee JTOs in excess of their quota by virtue of the quota-rota rule available in DoT, are to be assigned *inter se* seniority in the integrated eligibility list of JTOs for promotion to the post of SDE taking into account their actual date of appointment and date of promotion certainly, subject to their respective seniority in the concerned appointment order/promotion order and the rules of rotation of quotas. Since the provisional eligibility list of JTOs viz., Annexure-A7 of Ext.P1 and final eligibility list of JTOs viz., Ext.P15 (Annexure-A1 in O.A.No.553 of 2015) are set aside to the extent they relate assignment of seniority of directly recruited JTOs in BSNL and promotee JTOs from DoT in excess of the promotion quota as mentioned

hereinbefore a final eligibility list in respect of those persons shall be prepared expeditiously in the light of the positions settled hereinbefore and it shall be incorporated in the integrated final eligibility list of JTOs for the period mentioned in Annexure-A7 of Ext.P1 dated 11.5.2012, for promotion to the post of SDE. This shall be done, at any rate, within a period of six months from the date of receipt of a copy of this judgment. Needless to say that taking into account the dearth of sufficient personnel to man the post of SDE, it will be open to the official respondents to effect promotions against the unfilled vacancies of SDE equally distributing the vacancy among the senior most directly recruited JTOs and senior most promotee JTOs subject to finalization of the final eligibility list of JTOs in the manner mentioned hereinbefore.

The original petitions are disposed of as above.

Sd/-
C.T.RAVIKUMAR
Judge

Sd/-
K.P.JYOTHINDRANATH
Judge

TKS