

BEFORE THE HON'BLE CENTRAL ADMINISTRATIVE  
TRIBUNAL ERNAKULAM BENCH

M.A. No. 21 of 2018

in

C.P No. 56 of 2018

in

O.A No. 508 of 2018

Misc. Applicants/Respondents 1 & 2/Respondents 2 & 3

1. Shri. Anupam Shrivastava, Chairman and Managing Director, Bharat Sanchar Nigam Ltd, Harish Chandra Mathur Lane, Janpath, New Delhi-110 001
2. Shri. Keshav Rao, General Manager (Personnel), BSNL, 4<sup>th</sup> Floor, Bharat Sanchar Bhavan, Janpath Newdelhi-110 001

Vs

Respondents/ Petitioners/Applicants

1. Chandrakumar O.B, S/o Babu, JTO FTTH, Thrissur, O/o Divisional Engineer Broad Band, Residing at Oorkolil House, Lokamaleswaram, Kodungallur, Thrissur.
2. Vipal Prem, S/o R Ramachandran Nair, JTO NIB, O/o Divisional Engineer NIB, Kaithamukku, Thrivandrum, Residing at 'Indulekha' TC 6/993, PRA-30, Padayani Road, Vattiyoorkavu P.O, Trivandrum-695 013.
3. Sandeep P.S, S/o Sreenivasan P.R, JTO Maintenance, Thrissur, Residing at Punnur, Kalarickal, Dwaraka Estate, Peringandur P.O, Thrissur.

Miscellaneous Application For Discharge

Brief Facts leading to this Application

1. The Miscellaneous Applicants herein are the Respondents 1 and 2 in the above Contempt petition and the Respondents 2 and 3 in the above Original Application. The Respondents herein are the petitioners in the Contempt Petition and also the Applicants in the OA.

2. The above OA was filed alleging that, in disobedience of the directions in Annexure-A3 judgment of the Hon'ble High Court, the Respondents therein are going to make promotions to the cadre of Sub Divisional Engineers (SDE) from the Eligibility list of JTOs which has been set aside by the High Court, without publishing a fresh All India Eligibility directed to be prepared in accordance with the observations laid down in the said Annexure-A3 judgment.

3. In the said OA, this Hon'ble Tribunal was pleased to pass the Annexure-P1 interim order directing that any promotions, if done, during the period when the All India Eligibility List is in the process of finalization, the same shall be strictly in accordance with the directions contained in the Annexure-A3 judgment. But in the meanwhile, BSNL has issued Annexure-P5 All India Eligibility list and made promotions from the said list by Annexure-P3 order.

4. Thereupon, the above Contempt Petition was filed by the Respondents herein alleging contempt of the said interim order of this Tribunal by these Miscellaneous Applicants and in the said Contempt Petition, this Hon'ble Tribunal, after conducting preliminary hearing, by order dated 24.7.2018 found that the action of the Miscellaneous Applicants herein in issuing Annexure-P3 promotion orders, amounts to prima facie contempt of court and hence issued notice under Rule 8 of the CAT (Contempt of Court) Rules, directing the Miscellaneous Applicants herein to appear before this Tribunal on 18.12.18 either in person or through counsel to show cause why action should not be taken against them under the Contempt of Courts Act 1971. The above notice under Rule 8 of the CAT (Contempt of Court) Rules was now served on these Miscellaneous Applicants on 17.12.18, asking to show cause as to why action under the Contempt of Courts Act should not be taken.

5. It is submitted that these Miscellaneous Applicants have not done anything in violation to Annexure-P1 interim order of this Hon'ble Tribunal or the Annexure-A3 judgment of the Hon'ble High Court. These

Miscellaneous Applicants have no intention to do so also. Being citizens of India, these Miscellaneous Applicants have always great respect for the orders of the courts and the Tribunals of the country.

6. Incidentally, the Annexure-P3 promotion order, the issuance of which has been alleged as the contemptuous act by the petitioners in the above Contempt Petition, has not been ordered or signed or issued by alleged contemnor no. 1. It is understood and believed that, contemnor no. 1 has been arrayed as a respondent in his personal capacity in the above contempt petition, solely for the reason that he is a respondent in the above Original Application in the Official capacity.

7. It is submitted that there are around 5000 vacancies in the cadre of SDE (T) lying unfilled at present in the respondent Corporation. The respondent corporation intends to fill up these vacancies, as an interim measure, in terms of the provisions of Recruitment Rules for the post of SDE and in compliance of the order dated 05.06.2018 of the Hon'ble High court of Kerala.

8. It is submitted that the principles of considering senior most direct recruit and senior most promotee in 1:1 ratio, and distributing vacancies equally among them as enunciated in High Court of Kerala's judgment are invariably followed while considering promotion in the cadre of SDE. It primarily happens for the reason that induction from direct recruitment and promotion in the feeder grade of JTO is done on the basis on 1:1 ratio as per JTOs Recruitment Rules. Further, for filling up posts of SDEs, a seniority list (known as All India Eligibility List) of JTOs is prepared in 1:1 ratio to the extent of availability of direct recruits/promotees in a year, and subsequently vacancies too are distributed accordingly. However, where direct recruits or promotees are not available for interpolation, they are placed en-block below the interpolated list in the same year.

9. It is submitted that since the order dated 05.06.2018 of the Hon'ble High court of Kerala has already been challenged in the High Court of Kerala through a Review petition, the proposal to promote the eligible JTOs (T) to the post of SDE (T), as an interim measure, would be on the basis of Recruitment year of JTO and to the extent of available vacancies in the cadre of SDE (T). In other words, the promotee JTO (T) and Direct Recruit JTO (T) of the Recruitment year 2000 would be promoted to the post of SDE (T) to begin with, so on and so forth thereafter, till the availability of vacancies in the cadre of SDE (T). As a result, a few of the petitioners are also likely to be promoted to the post of SDE (T).

10. It is submitted that the rationale behind resorting to promotion in the above manner is to give utmost protection to the proposed promotees from reversion at a later stage and the aforesaid rationale will be subject to the outcome of the Review Petition filed before the Hon'ble High Court of Kerala or in higher judicial forum.

11. It is submitted that proposed promotion of the JTOs (T) of both promotee and direct stream to the post of SDE (T) as an interim measure, would be subject to the finalization of the final All India eligibility list of JTOs and the final outcome in the Review Petition filed in the Hon'ble High Court and other higher judicial forum, as applicable.

12. Thus it can be seen that the proposed promotion of JTO(T)s to the post of SDE(T) against the existing vacancies through Seniority-Cum-Fitness (SCF) is likely to take care of the interests of a few of the Petitioners thereby redressing their grievance.

13. In view of the aforesaid facts and circumstances, it is respectfully and humbly prayed that this Hon'ble Tribunal may be pleased to drop the above contempt of court proceedings initiated against these Miscellaneous

Applicants and to discharge them from the said contempt of court proceedings.

Reliefs prayed for:-

For the reasons stated above and those to be urged at the time of hearing, it is humbly prayed that this Hon'ble Tribunal may be pleased to drop the above contempt of court proceedings initiated against the Miscellaneous Applicants and to discharge them from the above contempt of court proceedings.