

completed five years regular service, are eligible for the Departmental Qualifying Examination as well as Limited Departmental Competitive Examination. However, for appearing in the Limited Competitive Examination, the candidates must have qualified in the Departmental Qualifying Examination. This is evident from Clause-4 of Appendix-III of the Rules, which is to the following effect:

“4.The candidates shall have the option to take both the examinations together or to take Departmental Qualifying Examination initially and the Limited Departmental Competitive Examination in subsequent years. However, for appearing in the Limited Departmental Competitive Examination, it shall be obligatory to qualify in the Departmental qualifying examination. In other words, if a candidate takes both the Examinations together and fails in the Qualifying part, he will not be considered for the competitive examination of that year or till he qualifies in the qualifying examination.”

- 3.2. The 1981 Rules, were replaced by a new set of Rules known as Telecommunications Engineering Service (Group-B posts) Recruitment Rules,1996 (hereinafter called as ‘the 1996 Rules’), which came into force from 23.07.1996. Under the 1996 Rules, it was provided that all the JTOs became eligible for promotion as SDEs but



1/4th vacancies in the cadre of TES Group-B (SDE) were to be filled up from among the JTOs, who qualify in the competitive examination conducted for the purpose and 3/4th vacancies were to be filled up from amongst the other JTOs as per their seniority.

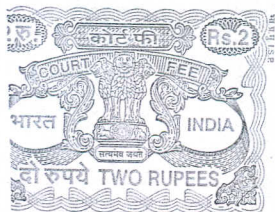
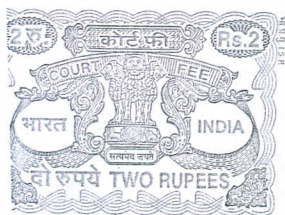
- 3.3. Some of the JTOs approached the Ernakulam Bench of the Central Administrative Tribunal seeking for a direction for filling up of the SDE vacancies available prior to coming into force of the 1996 Rules as per the 1981 Rules. In pursuance of the order of the Hon'ble Supreme Court dated 25.10.1996 and that of the Central Administrative Tribunal, Ernakulam Bench dated 01.05.1998, the petitioners (Telecom Department) issued order dated 06.11.1998 to hold Departmental Qualifying-cum-Competitive Examination for promotion to SDE as per 1981 Rules stipulating inter alia that the Departmental Qualifying Examination would be confined only to SC and ST candidates whereas the Limited Departmental Competitive Examination was open to all categories. This furnished a cause of action for JTOs of unreserved category, some of whom approached the High Court of Kerala at Enrakulam challenging the order of the Department in so far as it confined the Departmental Qualifying Examination only to SC and ST employees. In pursuance of the order of



the High Court of Kerala dated 28.01.2002, the petitioner in continuation of the earlier notification dated 06.11.1998 issued another notification dated 11.04.2003 to conduct Supplementary Departmental Qualifying-cum-Competitive Examination (Annexure-A/5 to the Original Application). Examination in pursuance of the said notification was rescheduled to 23rd to 26th September, 2003 in pursuance of order of the High Court of Kerala dated 24.7.2003 passed in O.P. No.21656 of 2001.

3.4. Between December,2000 and June, 2005, the opposite parties (applicants in the Original Application before the Tribunal) were promoted to the post of SDEs in accordance with the 1996 Rules.

4. The opposite parties filed O.A. No.38 of 2009 before the Central Administrative Tribunal, Cuttack Bench, Cuttack seeking reliefs as described in paragraph-2 above on the assertions that in view of the fact that fresh Departmental Qualifying-cum-Competitive Examinations were held in the year 2000 and 2003 in pursuance of the order of the Central Administrative Tribunal, Ernakulam Bench and that the order of the High Court of Kerala dated 28.01.2002 to fill up vacancies existing/occurring prior to coming into force of the 1996 Rules, and that the petitioners having taken up the examination and having passed the Departmental Qualifying Examination, they were entitled to be adjusted against the 66-2/3rd quota vacancies, which were 862 in number, existing prior to



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22.07.1996. The manner as to how 862 number of vacancies as against 66- 2/3rd quota existed prior to 22.07.1996 was described in paragraph-4.8 to paragraph-4.12 of the Original Application filed before the Tribunal which are quoted hereunder:

"4.8. That after passing the qualifying examination held in September,2003, the applicants became eligible for promotion as SDE against 2/3rd quota of the vacancies existed as on 22.7.96 and also became senior to all the Junior Telecom Officers (JTOs) who had not qualified in such examination as on 22-7-1996.

4.9. That from among the 650 number of JTOs who qualified in the qualifying examination, 147 numbers of JTOs passed the competitive examination and became qualified for being promoted against 1/3rd quota of vacancies existed on 22-7-1996. Copy of the result sheet in respect of the 147 number of JTOs who passed the competitive examination is made as Annexure-A/8 to this O.A.

4.9. That none of the rest 503 numbers of JTOs who had passed the qualifying examination including that of the applicants were promoted as SDE against 2/3rd quota though the 1981 recruitment Rule was very clear regarding giving them promotions prior to non qualifying JTOs. It is respectfully submitted that it is established from the judgment of Hon'ble Ernakulam High Court in W.P. (C) No.8245/05, 9634/05, 19129/05 and 13155/06 that 4200 vacancies were existed as on 22-7-1996 for promotion against 2/3rd quota of vacancies. A copy of the said order of the



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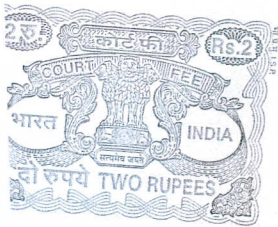
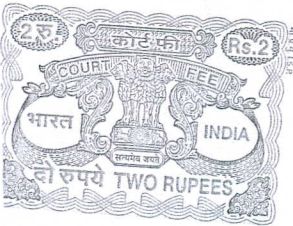
Hon'ble High Court of Ernakulam is annexed as Annexure-A/9 to this O.A.

4.10. That prior to 1-2-2001, 270 JTOs were successful in the departmental competitive examination vide DOT letter No.15-78/99-STG-II dated 1-2-2001 based on the departmental examination held in May,1987 and November,1988. A copy of the result sheet notified by the DOT on 1-2-2001 is made as Annexure-A/10 to this O.A. It is pertinent to mentioned here that these 270 JTOs were promoted earlier in the 2/3rd quota prior to announcement of the above result.

4.11. That from the list of 147 numbers of JTOs who had qualified in the competitive examination, 21 numbers of JTOs were earlier promoted to TES Group-B post against 2/3rd quota as they were senior to others who had not passed in the qualifying examination. Hence about 291 vacancies (270+21=291) arose against 2/3rd quota due to crossing over of these JTOs from 2/3rd quota to 1/3rd quota.

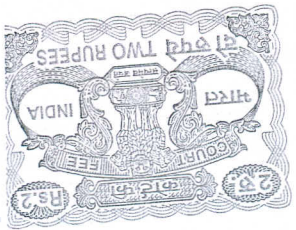
- (i) Vacancies arose due to passing of JTOs in the departmental competitive examination vide DOT letter No.15-78/99-STG-II dated 1-2-2001.....270.
- (ii) JTOs promoted earlier to TES Group-B post against 2/3rd quota.....21
- (iii) Total vacancies arose.....291.

4.12. That it is pertinent to mention here that 3629 numbers of JTOs were promoted vide DOT letter



No.2-7/98-STG-II dated 21-10-1998. An extract of the DOT's order dated 21-10-1998 is made as Annexure-A/11 to this O.A. Thus taking all the above mentioned factors in to account there existed approximately 862 number of vacancies in TES Group-B posts against 2/3rd quota as on 22-7-1996 as detailed below against which the applicants were eligible to be promoted as SDE as per the pre revised recruitment Rule.

- (i) As per the orders of Hon'ble High Court of Ernakulam dated number of vacancies available in the cadre of SDEs (TES Group-B0 on 22-7-1996.....4200
- (ii) Less Number of JTOs promoted against these vacancies.....3629
- (iii) Add Vacancies arose due to passing of JTOs in the departmental competitive examination vide DOT letter No.15-78/99-STG-II dated 1-2-2001.....270.
- (iv) Add Vacancies arose due to promotion of JTOs earlier against 2/3rd quota.....21
- (v) Total vacancies existed on 22-7-1996..... 862.”



5. It was contended before the Tribunal by the present opposite parties that they, having qualified in the Departmental Qualifying Examination held in September, 2003, they were eligible to be promoted



against those 862 vacancies and to be treated enblock senior to all the JTOs, who did not pass any qualifying examination. It was also contended that the representations in this light were made by them to the present petitioners but to no effect, which compelled the original applicants to approach the Tribunal.

In their counter affidavit filed before the Tribunal, the present petitioners contended that the factual assertions made in the Original Application were admitted to the extent they were matters on record. It was further stated that in the supplementary Departmental Qualifying-cum-Limited Competitive Examination which was held in September, 2003 in pursuance of the direction of the High Court of Kerala, the opposite parties (original applicants) appeared but though they passed the Departmental Qualifying Examination, they failed the Limited Competitive Examination. Their initial promotion was not against 66-2/3rd quota but was under the 1996 Rules. It was further contended that the Special Qualifying-cum-Competitive Examination was held in compliance of the order of the High Court of Kerala only to fill up the vacancies of Limited Competitive Examination Quota and not qualifying quota and that since the opposite parties could not pass the Limited Competitive Examination, they cannot be considered for promotion against any qualifying quota. It was also contended that the Original Application suffers from delay and laches and for non-joinder of employees, who are likely to be affected in the event the seniority of the opposite parties was re-casted in the manner sought for by them.



In reply to the averments in the Original Application of the opposite parties with regard to existence of 862 number of 66-2/3 quota vacancies prior to the 1996 Rules came into force, i.e., as on 22.07.1996, it was stated by the petitioners, by way of amendment of their counter affidavit that there was no material in support of such averment.

6. On consideration of the rival contentions raised by the parties, the Tribunal came to the conclusion that the stand of the respondents (writ petitioners) that as the applicants failed in competitive Examination, their passing the Qualifying examination could not have been taken into consideration is contrary to 1991 Rules. For coming to such conclusion the Tribunal also took into consideration the fact that SC/ST candidates, who took qualifying-cum-Limited Competitive Examination but passed only the qualifying examination, were promoted against 2/3rd quota vacancies and, therefore, it held that there was no reason why the employees of other categories shall not be extended the same benefit. The Tribunal further held that in view of the statement of the respondents, which appeared in the order of the High Court of Kerala in W.P.(C) No.8245 of 2005 (Annexure-A/9 to the Original Application), there was no scope to accept the contention of the respondents that there was no vacancies under 2/3rd quota. With regard to the plea of non-joinder of parties, the Tribunal also held that there was no need to go into that aspect of that matter in view of the decision of the High Court of Kerala in O.P.No.21656 of 2001 (Annexure-R/5 to the counter of the respondents in Original Application); which has answered this aspect as the same was raised by the respondents. Accordingly, the Tribunal directed the



respondents (writ petitioners) to modify the seniority list showing the names of the applicants at appropriate places under 2/3rd quota of [4200-3629] vacancies and grant them consequential benefits.

7. Reiterating their stand as was taken in their counter affidavit before the Tribunal, the petitioners in this writ application contended that there was no promotional vacancy against 66-2/3rd qualifying quota as on 22.07.1996 for adjustment of the opposite parties and, therefore, the opposite parties by merely passing the qualifying examination in the Supplementary Examination held in September, 2003 cannot claim their promotion against such quota vacancy. It is contended that the finding and direction of the Tribunal to adjust the opposite parties against [4200-3629] 2/3rd quota vacancies is the result of misinterpretation of the order of Kerala High Court in W.P.(C) No.8245 of 2005 inasmuch as no categorical finding with regard to existence of any such vacancy has been recorded in the said judgment. It is also contended that the claim of the opposite parties suffer from defect of delay and laches and non-joinder of individual employees over and above whom the opposite parties claim seniority as those employees are going to be affected in case the reliefs sought for by the opposite parties were granted.

The learned Senior Counsel appearing for the contesting the opposite parties submit that the order of the Tribunal suffers from no infirmity and needs no interference.

8. On the basis of the facts described in the common order passed by the Kerala High Court in W.P.(C) No. 8245 of 2005 and three other connected writ petitions, the Tribunal assumed the number of 2/3rd



qualifying quota vacancies existing as on 22.07.1996 to be 571 (i.e., 4200-3629) and accordingly directed for adjustment of the opposite parties there against. It is, therefore, apposite to see whether the Kerala High Court has found as a fact the existence of such number of vacancies which is said to be the qualifying quota. Order of the Kerala High Court reveals that by Ext.P-1 order dated 21.10.1998 of the Telecom Department 3629 JTOs were promoted as SDEs in accordance with the 1981 Rules against vacancies said to be available on 22.07.1996. There is nothing in the order to show what was the proportion of qualifying quota and competitive quota in such vacancies. However, 1966 number of posts of SDE/SDTO created by order dated 15.10.1998 with retrospective effect from 15.10.1993 were included in the above vacancies against which 3629 JTOs were promoted. Some senior JTOs, who could not qualify and as such were deprived of promotion filed two OAs before the Central Administrative Tribunal, Bangalore Bench challenging the retrospectivity given to the creation of 1966 number of SDE/SDTO posts and the Central Administrative Tribunal allowed the applications and quashed the retrospectivity given to the creation. This resulted in reduction of posts as on 22.07.1996 by 1966 number which prompted the department to issue Ext.P-12 order cancelling the promotion order dated 15.10.1998 feeling that there may not be sufficient number of vacancies to accommodate 3629 incumbents promoted on 15.10.1998. Following such cancellation two seniority lists (Exts.P-14 and 16) were also published. Exts. P-12, P-14 and P-16 were challenged by some employees whose promotion was cancelled by filing O.A. before the CAT. Apparently, the O.A. being dismissed, the applicants

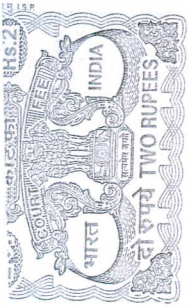


therein filed writ petitions before Kerala High Court contending that there were 4200 vacancies available before 22.07.1996 and the applicants were promoted to 3629 vacancies out of them and so the quashing of the retrospectivity given to creation of 1966 posts would not affect the applicants, and, therefore, the Exts. P-12, P-14 and P-16 orders were bad. It appears that these grounds urged by the applicants were not specifically met by the respondent-Department in their counter-affidavit. It was contended before the High Court on behalf of BSNL that Ext.P-12 cancellation order was an interim order issued subject to the orders that might be passed in some other writ petitions pending before the Kerala High Court and that such writ petitions were disposed of directing the BSNL to publish fresh seniority lists in accordance with law. It was also contended that Exts.P-14 and 16 were only draft seniority lists. Since the applicants' claim that reduction of 1966 posts would not affect their promotion was not controverted by the respondent-BSNL, the Kerala High Court quashed the Ext.P-12 order of cancellation of promotion, but directed the BSNL to review the promotions granted to vacancies which were available on 27.07.1996 with reference to actual vacancies available and publish the seniority list with opportunity to affected persons to object to the same. It was also clarified that if there is dearth of vacancies as on 22.07.1996 to accommodate all promotees (3629), the excess junior hands shall be reverted.

9. The Kerala High Court order does not show that the claim of availability of 4200 vacancies as on 22.07.1996, which was not controverted by the BSNL then, were all 66-2/3rd qualifying quota



vacancies. Even assuming that those were qualifying quota vacancies, in view of the order of Central Administrative Tribunal, Bangalore Bench the said vacancies have come down to 2234 being reduced by 1966 posts, retrospective creation of which was quashed. Now as against 2234 posts there are already 3629 promoted officers whose promotion is going to be reviewed as per order of the Kerala High Court so as to limit the promotees to 2234 according to seniority thereby reverting 1395 (i.e., 3629-2234) excess junior hands. Admittedly, the petitioners have been promoted to SDE/SDTO sometime between December, 2003 and June 2005 in accordance with the 1996 Rules. Before the petitioners' case for adjustment against any qualifying quota vacancy existing as on 22.07.1996 is considered, the surplus 1395 earlier promotees who would stand reverted as per the Kerala High Court order are going to be adjusted as they were initially promoted since 1998. Therefore, the finding and direction of the Central Administrative Tribunal in the instant impugned order that the opposite parties should be adjusted against qualifying quota of (4200-3629) vacancies are wholly fallacious and cannot be sustained. The Tribunal merely took note of the plea of parties before the Kerala High Court but has manifestly failed to consider the effect and import of the orders of the CAT, Bangalore Bench and the Kerala High Court. Even assuming that there were 862 vacancies existing on 22.07.1996, as averred and described in paras-4.11 and 4.12 of the Original Application of the opposite parties, still then they have not made out a case for their adjustment against those vacancies since they have not been able to show that these 862 vacancies are still available after adjustment of the 1395



officers, who were to suffer reversion by virtue of the order of the Kerala High Court and who have a prior and preferential right for promotion against any vacancy existing prior to 22.07.1996 over and above the petitioners.

In view of our aforesaid analysis and finding it is unnecessary to deal with the question of delay and laches and non-joinder of necessary party before the Tribunal by the opposite parties, as raised by the petitioners.

10. In view of our finding in paragraph-9 above, we allow the writ application and set aside the order dated 10.02.2011 passed by the Central Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No.38 of 2009 under Annexure-1.

There shall be no order as to costs.

E.P. Das, J. I agree.

Sd/- B.K. Nayak, J

Sd/- B.P. Das, J

Orissa High Court, Cuttack
The 8th October, 2012/Gbs



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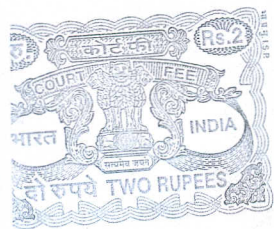
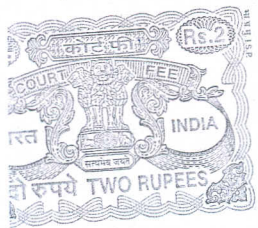


- (A) To direct the Respondents to fix the seniority of the Applicants prior to 22-7-1996 along with the JTOs who passed the qualifying examination held in November, 2000.
- (B) To direct the Respondents to revise the present seniority list of JTOs as on 22-7-1996 by putting the Applicants' names above the JTOs who were in service as on 22-7-1996 and who had not qualified in the departmental qualifying examination.
- (C) To direct the Respondents to consider the case of the Applications for promotion as SDE against 2/3rd quota of vacancies in the SDE Cadre as on 22-7-1996 as per the 1981 recruitment rules by convening review DPC.

3.

The uncontroverted facts of the case can be stated as under :

- 3.1. Opposite party nos.1 to 14 were appointed as Junior Telecom Officers between June,1990 and June, 1997. Promotion of JTO/JE to the next higher grade, i.e., Sub Divisional Engineers-cum-Sub Divisional Officers (SDEs/SDOs) was governed by the Telegraph Engineering Service (Group-B Posts) Recruitment Rules,1981 (in short 'the 1981 Rules'). The recruitment by way of promotion under the Rules was to be made by two modes, i.e., 66- 2/3 per cent of posts from officials, who qualified in the Departmental Qualifying Examination and 33-1/3 per cent through Limited Departmental Competitive Examination on the basis of relative merits. Junior Engineers/JTOs, who have



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