

Civil Writ Petition No.5608 of 2007.

**IN THE HIGH COURT FOR THE STATES OF PUNJAB & HARYANA
AT CHANDIGARH**

...

Date of Decision: May 30,2008.

Dalbir Singh and others

... Petitioners

VERSUS

Bharat Sanchar Nigam Limited and another ... Respondents

CORAM : **HON'BLE MR.JUSTICE HEMANT GUPTA.
HON'BLE MR.JUSTICE MOHINDER PAL.**

1. Whether Reporters of Local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr.R.K. Malik, Senior Advocate, with
Mr. Yashdeep Singh, Advocate,
for the petitioners.

Mr. Madan Mohan, Advocate,
for the respondents.

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MOHINDER PAL, J.

In this petition filed under Articles 226/227 of the
Constitution of India, the prayer made is for issuance of a writ

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in the nature of certiorari to quash the Waiting List of 3338 candidates for promotion as Junior Telecom Officers (hereinafter referred to as 'J.T.Os') in Bharat Sanchar Nigam Limited (hereinafter referred to as 'B.S.N.L'), against 35% quota prepared in pursuance of the Screening Test held on April 23,2000. The petitioners have also prayed for issuance of a writ in the nature of mandamus directing the respondents to hold the Departmental Competitive Examination for promotion as J.T.Os afresh so that the claim of eligible candidates could be considered.

The facts of the case, as set out in the petition, are as under:-

The petitioners are employees of B.S.N.L. Earlier, the service conditions for the post of J.T.O in the B.S.N.L were governed by the statutory rules called Junior Telecom Officers' Recruitment Rules, 1996 (hereinafter referred to as 'the Rules of 1996'). Under the Rules of 1996, 50% posts of J.T.Os were to be filled up by way of direct recruitment from open competition and 50% by way of promotion from internal eligible candidates. Out of this internal 50% quota, 15% vacancies were to be filled up by promotion through Departmental Competitive Examination and remaining 35% vacancies were to be filled up through the Screening Qualifying Examination from amongst the eligible departmental candidates. Qua 35% vacancies to be filled up through Screening Qualifying Examination i.e internal promotions

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quota, the following candidates were eligible:-

i) The Phone Inspectors/Auto Exchange Assistants/Transmission Assistants/Wireless Operators who possess the qualification of degree in Engineering and have completed five years' regular service in the Cadre of Phone Inspectors/Auto Exchange Assistants/Transmission Assistants/Wireless Operators.

OR

ii) Phone Inspectors/ Auto Exchange Assistants/ Wireless Operators/ Transmission Assistants//Telecom Technical Assistants who possess the High School/Matriculation Qualifications and who have completed six years of regular service.

Apart from the above qualifications, the candidates had also to qualify the Screening Test.

With effect from September 01, 1999, the Rules of 1996 were replaced by the Rules called Junior Telecom Officers' Recruitment Rules, 1999 (hereinafter referred to as the Rules of 1999). Under the Rules of 1999, 50% posts of J.T.Os are to be filled up by direct recruitment and remaining 50% by way of promotion through Limited Departmental Competitive Examination of B.S.N.L. Out of these 50 % departmental quota, 35% posts are to be filled up by way of promotion

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from the following eligible candidates:-

i) Group -C employees below 50 years of age as on the date of such examinations of the Engineering Wing namely Phone Inspectors/Auto Exchange Assistants/Wireless Operators/Transmission Assistants/Telecom Technical Assistants/Senior Telecom Office Assistants and possessing the following essential experience:-

a) Bachelor of Engineering, Bachelor of Technology or equivalent Engineering Degree in any of the disciplines viz. Telecommunication/ Electronics/ Electrical/ Radio/ Computer OR Bachelor of Science with Physics and Mathematics OR 3 years diploma in Telecom/ Electronics/ Electrical/ Radio/ Computer AND

c) 10 years regular service on the post in Group -C.

Dalbir Singh (petitioner No.1) has passed three years Diploma in Electronics and Telecommunications Engineering with 20 years experience to his credit. Ishpal Singh (petitioner No.2) has passed three years Diploma in Radio Electronics and Telecommunications Engineering with 20 years experience to his

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credit. Naresh Kumar Ahuja (petitioner No.3) has passed three years Diploma in Electronics and Telecommunications Engineering with more than 15 years experience to his credit. Sarwan Kumar (petitioner No.4) has passed three years Diploma in Electronics and Telecommunications Engineering with 20 years experience to his credit. Deepak Verma (petitioner No.5) is Bachelor of Engineering in Electrical. Virender Kumar Sharma (petitioner No.6) is A.M.I.E.T.E which is equivalent to Bachelor of Engineering in Electronics and Communications. Subhash (petitioner No.7) is also Bachelor of Engineering in Electronics and Communications. Adesh Kumar (petitioner No.8) is Bachelor of Technology (Electrical).

As per letter dated November 10, 1999 (Annexure P-1) issued by the Government of India, Ministry of Communications, Department of Telecommunications, New Delhi, to all the Heads of Telecom Circles/Telecom Districts etc., vacancies of J.T.Os upto August 31, 1999 were to be filled up as per the Rules of 1996 and the vacancies after August 31, 1999 were to be filled up according to the Rules of 1999. It was further mentioned in letter Annexure P-1 that all eligible candidates upto August 31, 1999 under 50 % quota may be permitted to appear in J.T.Os Screening Test to be held shortly.

J.T.Os Screening Test was held on April 23, 2000 and an undertaking was taken from all the candidates who had appeared in the test that they would not claim appointments qua

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the vacancies available after August 31, 1999. In pursuance of the J.T.Os Screening Test held on April 23, 2000, all the vacancies of J.T.Os under 35% quota available upto August 31, 1999, were filled up from the successful candidates. It is the case of the petitioners that by exhausting all the vacancies of J.T.Os under 35% quota available upto August 31, 1999, still about 6000 candidates were in the Waiting List. Vide letter dated August 09, 2001 (Annexure P-3), 500 vacancies of direct quota were diverted to 35% departmental quota and 500 candidates of the Waiting List were accommodated in the year 2001. Similarly, vide letter dated April 02, 2002 (Annexure P-4), 500 vacancies of direct quota were diverted to 35% departmental quota and 500 candidates of the Waiting List were accommodated in the year 2002. Again, as per letter dated May 07, 2003 (Annexure P-5), 500 vacancies of direct quota were diverted to 35% departmental quota and 500 candidates of the Waiting List were accommodated in the year 2003. In the year 2004 also 500 vacancies of direct quota were diverted to 35% departmental quota and 500 candidates of the Waiting List were accommodated vide letter dated May 18, 2004 (Annexure P-6). In the years 2005 and 2006 again, 500 vacancies of direct quota, each, were diverted to 35% departmental quota and 1000 candidates of the Waiting List were accommodated.

It is further averred that when it was brought to the

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notice of Government of India that for the last several years posts of J.T.Os of direct quota were being diverted to 35% departmental quota and the said posts were being filled up from the Waiting List candidates of the Screening Examination of J.T.Os held on April 23, 2000, the Under Secretary to Government of India, Department of Telecommunication, New Delhi, vide letter dated April 10, 2002 (Annexure P-8) deprecated this practice of the B.S.N.L. However, the said practice has not been stopped.

It is further pleaded that no Screening Examination qua 35% quota posts of J.T.Os has been held after April 23, 2000 and the very right of consideration of petitioners Nos. 1 to 4 for the said posts has been taken away, they being eligible to compete after 2002.

It is pleaded that last advertisement for filling up 50% posts of J.T.Os under direct quota was issued in the year 2005 and thereafter no process for filling up these posts was initiated. Petitioners Nos. 5 to 8 are duly eligible in all respects and have right of consideration if the posts of J.T.Os of direct quota are filled up.

It has also been pleaded that those candidates who were eligible under the Rules of 1996 and appeared in the Screening Examination held on April 23, 2000 qua the vacancies of J.T.Os available under 35% departmental quota upto August 31, 1999, have no right of consideration qua the vacancies

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available after September 01, 1999. The posts meant for direct quota could only be filled up from amongst the candidates duly eligible in all respects.

In the written statement filed by the respondents, it has been pleaded that considering the requirements and need of the department, on due consideration of the existing special circumstances, multifarious activities undertaken by the B.S.N.L, exigencies of work and also large number of qualified candidates in the Waiting List, the Board of Directors of B.S.N.L in their meeting held on March 30, 2001, decided to divert 500 posts per year from Direct Recruitment Quota to admit Telecom Technical Assistants (T.T.As) who have qualified the Screening Test and are eligible for promotion, with the specific condition that the posts so diverted from Direct Recruitment Quota to 35% quota will be restored back to Direct Recruitment Quota in due course. It has been further pleaded that in accordance with the policy decision dated March 30, 2001, orders have been issued on December 26, 2007, diverting further 500 posts each for the year 2006 and 2007 as was done earlier vide Annexures P-3 to P-7.

We have heard Mr.R.K. Malik, Senior Advocate, assisted by Mr. Yashdeep Singh, Advocate, appearing for the petitioners and Mr. Madan Mohan, Advocate, appearing for the respondents and have gone through the records of the case.

It is case of petitioners Nos. 1 to 4 that no

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Screening Examination qua 35 % quota posts of J.T.Os has been held after April 23, 2000 and they have a right to be considered for promotion as J.T.Os under this quota after 2002. Similarly, it is the case of respondents Nos. 5 to 8 that no advertisement for filling up 50% posts of J.T.Os under direct quota has been issued after 2005 and they being eligible in all respects, their right for consideration against these posts has been marred.

Under Rule 3 of the Rules of 1996, it has been pointed out that the method of recruitment and other relevant criteria to the post of J.T.O is as specified in columns 5 to 14 of the Schedule appended to the said Rules. Column No.11 of the Rules of 1996 provides that 50% posts of J.T.Os are to be filled up by way of direct recruitment through a open competition and the balance of 50% of the posts by way of promotions/transfers as indicated under column No.12. Under column No.12 of the Rules of 1996, it is prescribed that 50% of the vacancies are to be filled-up by way of promotion/transfer of departmental candidates, which is regulated in the following manner:-

“ (i) 15% by promotion of departmental candidates through a competitive examination;

(ii) 35% by promotion/transfer of

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Transmission Assistants/ Wireless Operators/
Auto Exchange Assistants/ Phone Inspectors/
Telecom Technical Assistants.”

As noticed above, the Rules of 1996 were replaced by Rules of 1999 with effect from September 01, 1999. As per letter dated November 10, 1999 (Annexure P-1), vacancies of J.T.Os existing upto August 31, 1999, were to be filled up as per the rules of 1996 and the vacancies occurring thereafter under the Rules of 1999.

Rule 3 of the Rules of 1999, prescribes the method of recruitment and other relevant criteria to the post of J.T.O, as specified in columns 5 to 14 of the Schedule appended to the said Rules. As stated above, under the Rules of 1999, 50% posts of J.T.Os are to be filled up by direct recruitment and remaining 50% by way of promotion through Limited Departmental Competitive Examination of B.S.N.L employees. Out of these 50 % departmental quota, 35% posts are to be filled up by way of promotion from amongst the eligible candidates i.e Group -C employees below 50 years of age as on the date of Limited Departmental Competitive Examination of the Engineering Wing namely Phone Inspectors/AutoExchange Assistants/Wireless Operators/Transmission Assistants/Telecom Technical Assistants/Senior Telecom Office Assistants. The candidates must be possessing the qualifications of Bachelor of Engineering

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/ Bachelor of Technology or equivalent Engineering Degree in any of the disciplines viz. Telecommunication/ Electronics/ Electrical/ Radio/ Computer, or the qualification of Bachelor of Science with Physics and Mathematics or 3 years diploma in Telecom/ Electronics/ Electrical/ Radio/ Computer and 10 years regular service on the post in Group -C.

Learned counsel for the petitioners has contended that the candidates eligible under the Rules of 1996 had appeared in the Screening Examination held on April 23, 2000 against the vacancies of J.T.Os available under 35% departmental quota upto August 31, 1999 and, therefore, they have no right of consideration against the vacancies available after September 01, 1999. It has been further argued that no Screening Examination regarding 35% posts of J.T.Os has been held after April 23, 2000 and the right of eligible persons, who are eligible to compete thereafter for selection against the said posts has been taken away. Learned counsel for the petitioners further argued that the last advertisement for filling up 50% posts of J.T.Os against direct quota was issued in 2005. No process for filling up these posts having been initiated thereafter, the right of eligible candidates for consideration against these posts has been withheld. Lastly, learned counsel for the petitioners argued that as the respondents have themselves stated in the written statement that the posts diverted from Direct Recruitment Quota to 35%

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Departmental Quota will be restored to Direct Recruitment Quota in due course, they may be directed to abide by this undertaking.

It is not the case of the respondents that the petitioners are not eligible for being considered for promotion as J.T.Os. However, learned counsel for the respondents has relied upon the decision dated March 09, 2007, rendered by a learned Single Judge of Andhra Pradesh High Court in the case of **M.Sreenivasa Reddy v. Union of India and others (Civil Writ Petition No.14213 of 2005 decided on March 08, 2007** (Annexure R-2) wherein the petitioner had competed with others in the competitive examination held on January 08, 2000 for promotion to the posts of J.T.O. However, the petitioner in that case was not successful as he got 159 marks and the last selected candidate got 161 marks. After having been unsuccessful in the competitive examination, the petitioner had challenged the policy of B.S.N.L of diverting the vacancies meant for direct recruitment and had prayed that while diverting the said vacancies, the B.S.N.L ought to have held the competitive examination for filling up allotted 15% posts by way of holding Limited Departmental Competitive Examination. The plea of the petitioner did not find favour with the Court and the learned Single Judge held that no interference was called for in the pure policy matter of the B.S.N.L.

We have perused the judgment rendered by the

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learned Single Judge of Andhra Pradesh High Court in **M.Sreenivasa Reddy's case** (supra), but in view of the stand taken by the respondents in the written statement, we are not in agreement with the view taken in that case. As noticed above, it has been pleaded by the B.S.N.L in the written statement that in view of the requirements and need of the department considering its multifarious activities as also the exigencies of work and the large number of qualified candidates in the Waiting List, the Board of Directors of B.S.N.L had decided in their meeting held on March 30, 2001 to divert 500 posts per year from Direct Recruitment Quota to admit T.T.As who had qualified the Screening Test and were eligible for promotion. It was so done with the specific condition that the posts so diverted from Direct Recruitment Quota to 35% quota would be restored to Direct Recruitment Quota in due course. Since then i.e the year 2001, this practice is going on. Further, in accordance with the policy decision dated March 30, 2001, orders were issued on December 26, 2007, vide Annexures P-3 to P-7. diverting further 500 posts each for the year 2006 and 2007 as was done earlier. Keeping in view the facts and circumstances of the case especially the fact that B.S.N.L is a vast department having sufficient paraphernalia all over India, the orders dated August 09, 2001 (Annexure P-3), April 02, 2002 (Annexure P-4), May 07, 2003 (Annexure P-5), May 18, 2004 (Annexure P-6), July 20, 2006 (Annexure P-7) whereby

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the B.S.N.L each time diverted 500 posts from Direct Recruitment Quota to Departmental Quota without assigning any reason cannot be appreciated. The B.S.N.L sought to explain these orders in the written statement by pleading that multifarious activities are being undertaken by the B.S.N.L and due to exigencies of work these orders were passed. Considering the strength and vastness of the institution like the B.S.N.L, the explanation furnished is not at all sufficient. The Board of Directors of B.S.N.L had decided to divert 500 posts per year from Direct Recruitment Quota to Departmental Quota in their meeting held on March 30, 2001. We are now in the midst of year 2008. In these circumstances, it cannot be said that diversion of Direct Recruitment Quota is only a temporary measure. Neither, it can be said that this diversion was for the smooth functioning of the administration as much water has flown after 2001. It has also come on record that it was brought to the notice of Government of India that posts of J.T.Os of direct quota were being diverted to 35% departmental quota and the said posts were being filled up from the Waiting List candidates of the Screening Examination of J.T.Os held on April 23, 2000, for the last so many years. The Under Secretary to Government of India, Department of Telecommunication, New Delhi, then wrote letter dated April 10, 2002 (Annexure P-8) to the Chairman & Managing Director of B.S.N.L stating as under:-

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" 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

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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 above letter reveals that the Government of India, Department of Communication, New Delhi, was not approving the action of B.S.N.L of diverting vacancies of J.T.Os under Direct Recruitment Quota to 35% Departmental Quota and appointing the candidates who had already qualified the Screening Test. In this letter, the Under Secretary to Government of India also referred to his earlier letter No.5-11/99-NCG dated November 10, 1999, whereby it was clarified to the B.S.N.L that qualified candidates of 35% J.T.O Screening Test

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would be sent on training only to the extent of vacancies which were available under 35% quota upto August 31,1999 and the remaining qualified candidates would have no claim whatsoever for training/appointment as J.T.Os. However, in spite of all this, the said practice has not been stopped by the B.S.N.L. The grievance of the petitioners in this regard is quite justified.

Before parting, we may refer to the averments made in the written statement regarding the rider put on the candidates who were sent for training after diversion of posts from Direct Recruitment Quota to 35% Departmental Quota:-

“ It is correct that in view of Annexure P-1 “all” the eligible candidates upto 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

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- 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.

For the aforesaid reasons, this writ petition is disposed of with a direction to the respondents to restore the posts diverted from Direct Recruitment Quota to 35% Departmental Quota to admit Telecom Technical Assistants who had qualified the Screening Test held on April 23, 2000, to Direct Recruitment Quota as stated by them in the written statement. There shall be no order as to costs.

(HEMANT GUPTA)
JUDGE

(MOHINDER PAL)
JUDGE

May 30 , 2008.
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