

BHARAT SANCHAR NIGAM LIMITED
Recruitment wing
Room No.222, Eastern Court,
Janpath, New Delhi.

Dated 22nd May, 2015

F.No.63-2/2015-Rectt

To

All Chief General Managers Telecom Circles, BSNL.
Chief General Manager Kolkata Telephones/Chennai Telephones.
Chief General Manager(Mtce), NTR, BSNL, New Delhi

**Subject: Awarding of one mark in LDCE for promotion to the grade of SDE(T)
under 25% quota was held on 15.07.2007 -Reg .**

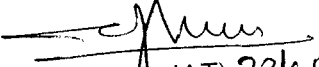
Sir,

I am directed to forward herewith copy of order dated 21.04.2015 in OA No.1074/JK/2013 of Hon'ble CAT, Chandigarh Bench regarding awarding of one mark in LDCE for promotion to the grade of SDE(T) under 25% quota was held on 15.07.2007.

2. It is requested that wherever required this judgement may also be quoted in the para-wise comments being prepared to defend the cases. The judgement may also be brought to the notice of the concerned courts in respect of ongoing Court cases if any, involving the similar issues.

Encl: As above

Yours faithfully,


(OP JAT) 22/05/2015 -
AGM(Rectt-III)
Ph:23766167.



CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH

O.A.NO.1074/JK/2013 Date of order:- April 21, 2015.

Coram: Hon'ble Mr. Sanjeev Kaushik, Member (J)
Hon'ble Mr. Uday Kumar Varma, Member (A).

Kishori Lal s/o Shri Dharam Chand, r/o H.No.201, Sector 2, Dream
City, Muthi, Jammu.

.....Applicant.

(By Advocate :- Mr. Kishori Lal, applicant in person)

Versus



1. Union of India Ministry of Telecommunication, New Delhi.
2. Chairman/Managing Director, Bharat Sanchar Nigam Ltd., 4th floor,
Bharat Sanchar Bhawan, H.C.Mathur Lane, Janpath, New Delhi-110
001.
3. Chief General Managhamer, Bharat Sanchar Nigam Ltd., 4th floor,
North Block, Bahu Plaza, Jammu.
4. AGM(DE) Departmental Examination Branch, BSNL Corporate Office
Room No.222, Eastern Court Building, Janpath, New Delhi-110001.

...Respondents

(By Advocate : Mr. R.K.Gupta).

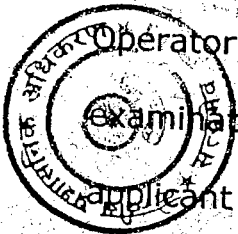
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ORDER

Hon'ble Mr. Uday Kumar Varma, Member (A):

Applicant Kishori Lal has filed the present Original Application under Section 19 of the Administrative Tribunals Act, 1985, for directing the respondents to consider the representation made by him for awarding him one mark in the departmental competitive examination with further direction to the respondents to promote him with effect from the date when other similarly situated employees were promoted with all consequential benefits.


2. Facts as projected by the applicant are that the applicant joined the service of the respondent department as Telephone Operator on 1.8.1973. On qualifying the departmental competitive examination, the applicant was promoted as JTO on 1.9.2001. The applicant again appeared in the departmental competitive examination for the post of SDE(T) in July, 2007. The result of the said examination was declared in 2008 and he came to know that he was granted 49 marks each in paper A & B respectively against the minimum 50 marks to clear the examination. Applicant has pleaded in his OA that after obtaining the answer sheets under RTI Act, he came to know that he has not been awarded marks for some correct answers and in case he had been awarded the numbers for the correct



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answers, he would have certainly cleared the departmental examination for promotion to the post of SDE(T). In this regard, the applicant made a number of representations to the respondents for giving him one more mark in each Paper A & B respectively, but to no avail. The applicant has also relied upon a judgment dated October 24, 2011 in the case of **D.P.S.Chawla versus Union of India & Ors** passed by the Hon'ble Delhi High Court. Hence the present OA.

3. Pursuant to notice, the respondents have contested the claim of the applicant by filing written statement. They have stated that the OA is hopelessly barred by the law of limitation. In this regard, they have relied upon the following judgments:-

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- "i) Ramesh Chandra Sharma vs. Udham Singh Kamal (2000(2) SLJ S.C. Page 89);
 - ii) Secretary to Government versus Shivram Mahadu Gaikwad (1995 Suppl.(3) S.C.C. Page 231);
 - iii) O.A.No.597/PB/2012 decided on 6.12.2012 (Pushpinder Singh vs. Union of India) by Chandigarh Bench of the Tribunal;
 - iv) Md. Mahaboob Ali versys V.S.V.S. Veerabhadra Rao (WP No.26059 of 2007) decided on 18.3.2008.

They have also relied upon an order dated 22.3.2011 in O.A.No.1071 of 2010 (Suresh Kumar versus BSNL) passed by the Principal Bench of the Tribunal wherein it was observed "It is not for the court to give directions to the respondents to have liberal approach in assessing

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Rules (supra) of the examination also is permitted. We are therefore of the opinion that the Tribunal erred in applying the prohibition under the Rule as to re-evaluation to such a mistake also".

However, in this case, the applicant is seeking revaluation of both the objective as well as subjective type answers that he had given. After very carefully considering his case, we are of the firm view that it will not be appropriate to allow the relief that he is claiming. The applicant has not confined his relief to the revaluation or remarking of objective type questions having multiple choice answers. His relief also embraces revaluating subjective type answers. In fact, his eligibility will come about only if the marks obtained by him are increased by at least one mark in each paper i.e. both objective and descriptive. It will be clearly inappropriate to allow a revaluation of his descriptive answer book.

9. Recently, the Hon'ble Apex Court in the case of **Chandresh Kumar Tripathi & Ors. versus Chairman cum Chief M.D. & Ors.** decided on January 19, 2015 has held that " The Division Bench of the High Court while setting aside the order of the Central Administrative Tribunal made it clear that since the Rules do not

provide for grant of grace marks, the direction of the Tribunal was illegal and cannot be sustained. Learned counsel for the petitioners by referring to the affidavit of the applicant filed before the Tribunal, pointed out such grant of grace marks against the post of JAO, Part-II Examinations of 2000, 2003 & 2007. Since, it is tacitly admitted that there is no revision in the Rules or any other proceedings for grant of such marks, reliance placed upon such illegality committed in the past cannot be a ground to sustain the order of the Tribunal. We, therefore, do not find any scope to interfere with the order of the Division Bench of the High Court. We only direct the respondent-State not to violate the Rules by granting such grace marks in future". We quote this case only to emphasise that the law does not permit even grant of grace marks in the absence of a specific rule to this effect.



10. In the instant case, the applicant has also approached the Court almost six years after the actual cause of action. The applicant has challenged the validity of examination which was held in the year 2007. The respondents very vehemently argued that his case is hopelessly barred by the law of limitation and has cited a large number of rulings in support of their claim. We are in full agreement with the respondents and we find that the applicant had to approach the Court

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soon after the examination was held i.e. within one year. There is no satisfactory explanation for this delay.

11. In view of the settled proposition of law, as stated above we find that the present OA deserves dismissal on merit as also on the point of delay and latches. The same is, thus, dismissed.



12. Litigating parties will bear their respective cost of litigation.

(UDAY KUMAR VARMA)
MEMBER (A).

(SANJEEV KAUSHIK)
MEMBER (J)

Dated:-April 21, 2015.

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Certified True Copy/प्रमाणित सत्य प्रतिलिपि
Uday Kumar
अनुयाय अधिकारी
Sanjeev Kaushik
अनुयाय अधिकारी
National Judicial Commission
Chandigarh Bench
Chandigarh