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CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Contempt Petition No.180/00056/2018
in Original Application No.180/00508/2018

Tuesday, this the 24th day of July, 2018

CORAM:

HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER
HON'BLE Mr. ASHISH KALIA, JUDICIAL MEMBER

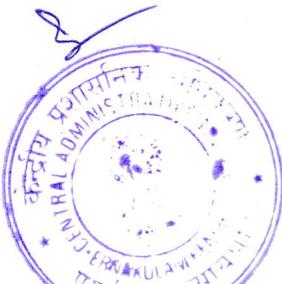
1. Chandrakumar.O.B., S/o.Babu O.K.,
JTO FTTH, Thrissur, O/o.De Broad Band.
Residing at Oorkolil House,
Lokamaleswaram, Kodungallur, Thrissur.
2. Vipal Prem, S/o.R.Premachandran Nair,
JTO NIB, O/o.DE Nib, Kaithamukku, Trivandrum.
Residing at Indulekha, TC 6/993,
Pra-30, Padayaniroad, Vattiyoorkavu P.O.,
Trivandrum – 695 013.
3. Sandeep.P.S., S/o.Sreenivasan.P.R.,
JTO OF Maintenance, Thrissur.
Residing at Punnur Kalarickal,
Dwaraka Estate, Peringandur P.O., Thrissur. ...Petitioners

(By Advocate – Mr.M.R.Hariraj)

V e r s u s

1. Sri.Anupam Shrivastava,
Chairman and Managing Director, BSNL,
Harish Chandra Mathur Lane, Janpath,
New Delhi – 110 001.
2. Sri.Keshav Rao,
Senior General Manager,
Personnel, BSNL, 4th Floor,
Bharat Sanchar Bhavan, New Delhi – 110 001. ...Respondents

(By Advocates – Mr.Jaju Babu, Sr. & Mr.George Kuruvilla)



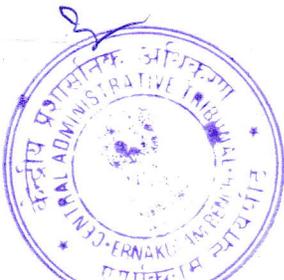
.2.

This Contempt Petition having been heard on 18th July 2018, the Tribunal on 24th July 2018 delivered the following :

ORDER

Per : Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER

While adjudicating issue between promotee JTOs in the BSNL and the directly recruited candidates to the same category in O.A.No.180/508/2018 filed by three applicants who are petitioners in the C.P as well, this Tribunal had directed in the interim order dated 14.6.2018 that the judgment of the Hon'ble High Court in O.P.(CAT) No.126/2015 dated 5.6.2018 that had delved into the issue in detail, should be adhered to in full. The C.P No.180/56/2018 is filed by the petitioners who are applicants in the O.A referred to wherein they alleged that the respondents with scant respect for the orders of the Hon'ble High Court and of this Tribunal had proceeded with promotions disregarding the terms spelt out in the order of the Hon'ble High Court. In the C.P they have annexed the interim order of this Tribunal issued on 14.6.2018 (Annexure P-1), the communication (Annexure P-2) dated 15.6.2018 issued by the learned counsel for the petitioners, referring to the directions of this Tribunal, the promotion orders issued by the respondent BSNL through Office Order dated 15.6.2018 (Annexure P-3), further direction on the implementation of the orders of the Hon'ble High Court issued by the respondent, BSNL dated 14.6.2018 (Annexure P-4) and the part list of All India Eligibility List of JTO(T) brought out on 14.6.2018 (Annexure P-5).



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2. To state the facts in brief, the matter relates to the dispute arising from the competing claims of the promotee JTOs and their directly recruited counterparts regarding their place in the list for eligibility for promotion as SDE. The Hon'ble High Court in O.P.(CAT) No.126/2015 considered the matter in detail in its order dated 5.6.2018 and in conclusion directed as follows :-

"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 order. 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 finalisation of the final eligibility list of JTOs in the manner mentioned hereinbefore.

The original petitions are disposed of as above."

3. The applicants filed O.A.No.180/508/2018 aggrieved by two communications issued by the BSNL Headquarters to field formations on 5.6.2018 and 12.6.2018 (Annexure A-4 and Annexure A-6 respectively in the O.A) instructing subordinate offices to ready the list of JTOs presumably for effecting immediate promotion.



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4. The applicants in the O.A were concerned with the possibility that the respondent organization was proposing to hurry through promotions relying on the list which had been considered at length by the Hon'ble High Court in the said O.P.(CAT) and found to be in need of amendment. After hearing Shri.M.R.Hariraj, learned counsel for the applicant as well as Shri.Jaju Babu, Senior Counsel and Shri.George Kuruvilla for BSNL, this Tribunal had deemed it necessary to issue the interim order at Annexure P-1. The CP being considered is filed by the applicants, alleging gross violation of the interim order of this Tribunal and thereby the orders of the Hon'ble High Court on which the former relies upon.

5. It is submitted in the C.P that with full knowledge of the interim order the respondents have chosen to defy the directions as per Annexure P-3 dated 15.6.2018. It is stated that on 14.6.2018 the respondents have hurriedly published an All India Eligibility List of JTOs containing 6948 names in which all except 112 are promotees. It is alleged that in the voluminous list, partiality is apparent in the manner in which promotees who are appointed as JTOs as late as in 2007 were assigned dates earlier to 2000, when BSNL had not come into existence. It is stated that the categorical finding of the Hon'ble High Court had been to re-adjust the promotees who had been promoted as JTOs in excess of their quota as per the 1:1 principle. None of these necessary amendments have been made when the list at Annexure P-5 has been brought out and promotions effected. This amounts to gross violation of the Court directions.



6. Shri.M.R.Hariraj, learned counsel appearing on behalf of the applicants submitted that their case is for adherence to the quota-rotta rule of 1:1 between promotee JTOs and direct recruit JTOs. Admitted facts are that there were no direct recruitment as JTOs between 1996 and 2000 and in 2000 BSNL was formed from erstwhile DoT. Hon'ble High Court has remarked clearly that prior to 2000, especially during the period when there were no direct recruitment of D.R, promotees far in excess of their quota of 50% were promoted as JTOs. The Hon'ble High Court has directed that a final eligibility list integrating both the categories of JTOs should be brought out for effecting promotions to the post of SDE and has granted six months time for the process from the date of receipt of a copy of the judgment. Conscious of the need for deploying sufficient personnel as SDEs, the Court had also directed that promotions may take place in the interim period equally distributing the vacancies among the senior most directly recruited JTOs and senior most promotee JTOs subject to the finalization of seniority list of JTOs. Shri.M.R.Hariraj pointedly alleged that the respondents have behaved with scant respect for the judicial orders that have been issued. With deliberate intent they have chosen to sabotage the directions of the Hon'ble High Court and have effected promotions from a list consisting predominantly of promotees in direct contravention of this Tribunal's interim order.

7. Shri.Jaju Babu, Senior Counsel argued that there has been no violation as alleged. He submitted that the Hon'ble High Court had insisted



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upon adherence to the 1:1 ratio only with respect to post 2000 recruits and the list at Annexure P-5 from which the promotions have been effected through Annexure P-3 are all belonging to the period prior to 2001. He argued that the Hon'ble High Court had clearly directed that the applicants who are direct recruits do not have any indefeasible right for getting their names interposed between the promotees who are given promotions between 1996-2000, for the reason that there was no direct recruitment during the aforesaid period.

8. We have considered the arguments raised by both sides. The Hon'ble High Court had discussed the issue in detail and had come to two conclusions. Firstly, it was directed that an integrated final eligibility list of JTOs is to be drawn up within six months of the judgment. While observing that the applicants will have no claim to seek fixation to any period prior to 2001, it had also been emphatically stated that the position of the promotees who are promoted prior to 2000 will have to be re-formulated by re-adjusting the fixation of those who had been recruited in excess of the 50% quota and their place in seniority brought down to subsequent years. This has not been done by the respondents. Instead they have rushed through the list which is more or less the same as the one which had been considered by the Hon'ble High Court and directed to be recast. Secondly, in so far as the interim period is concerned, the direction of the Hon'ble High Court was to effect promotions against the unfilled vacancies of SDEs equally distributing the vacancies among the senior most directly recruited



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JTOs and senior most promotee JTOs, subject to finalization of final eligibility list in the manner mentioned before.

9. Interestingly in Annexure A-9 document the respondents have chosen to divide the affected employees into the four categories :

- (i) DoT recruited JTOs for the vacancies prior to the formation of BSNL on 1.10.2000.
- (ii) Promotee JTOs appointed against their own quota up to the year 1999 ie. prior to the formation of BSNL.
- (iii) Directly recruited JTOs of BSNL after the year 2000, and
- (iv) Promotee JTOs from DoT in excess of the promotion quota from 2001 onwards.

Curiously the category whose position in seniority has been ordered to be re-adjusted ie. promotee JTOs, who were appointed in excess of the promotion quota up to 2000, do not find a place at all. To our understanding it is this specific category whose seniority requires to be recast in consonance with the quota eligible to that category.

10. The Contempt Petition was reserved for orders on 22.06.2018. However, no orders were pronounced due to change in the composition of the Bench. When the matter was re-posted, the respondent No. 2 filed an affidavit through counsel Shri George Kuruvilla. In the said affidavit various contentions are taken. It is claimed that the contempt petitioners being 2009 and 2010 JTO recruitees have no right or claim to object to the list of those eligible for promotion as SDE for vacancies of 2009-2010 and



2010-2011 to which Annexure P3 order relates. It is further affirmed that the orders of the Hon'ble High Court or of this Tribunal have not been violated or disobeyed by the respondents and the All India Eligibility list containing promotee JTOs appointed against their own quota up to 2000 in no way affects the fortunes of the category to which the applicants belong. The Hon'ble High Court had clarified that there had been no direct recruitment between 1996 and 2000 and hence no claim of the applicants can be admitted for seniority relating to that period. Respondent No. 2 in the said affidavit avers that Annexure P5 list "contains persons falling within the respective quota only and no person in excess of the quota finds a place in the said list." The few persons who have been assigned seniority previous to their actual date of promotion has been so accommodated only on account of relaxation in qualifying standards effected by the competent authority.

11. Delving further into Annexure P5 eligibility list the following table has been shown as to the year-wise breakup between the two categories.

Sl.	Years	Promotee quota	DR quota
1.	Prior to 1996	782	112
2.	1996	588	33
3.	1997	1261	4
4.	1998	1561	1
5.	1999	2605	1
	Total	6797	151 = 6948

12. Shri Hariraj appearing for the applicants submitted that the fresh list at Annexure P5 is a verbatim reproduction of the list that had been ordered by the Hon'ble High court to be re-cast. He contends that this has been done



in great hurry and people who are deceased, retired and even absconded from service find a place in the said list just as they had in the previous list. He reiterates his stand that the respondents have violated the quota rota principle and 'fixed' the seniority of promotees far in excess of their 50% quota. If the list is substantially the same as the one which had been commented upon by the Hon'ble High Court as in need of amendment, the following observations of the court becomes particularly relevant:

"12.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 CWP No. 5608 of 2007."

Clearly we are not inclined to accept the declaration in the affidavit at its face value.

13. The respondents have given short shrift to the directions of the Hon'ble High Court of Kerala and the interim order issued by this Tribunal on 14.6.2018. The unseemly haste exhibited by the respondents is discernible from the very first occasion by which they initiated the process of promotion on 5.6.2018 which happened to be the same day the Hon'ble

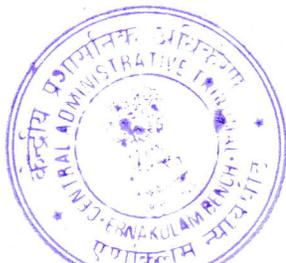


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High Court gave the direction. In a tearing hurry the respondents have sought to complete the process within ten days from that date ignoring the directions of the Hon'ble High Court to reappraise the integrated list. Their argument that the present promotion list only deals with JTOs who were promoted on or before 2000 is a specious argument as revising the list accounting for the promotions effected as JTOs in excess of their quota would see a good number of them being refixed as promoted JTOs subsequent to 2000. Thereupon many of them could come to be 'fitted' below the direct recruits recruited after 2000. This explains the *raison d'etre* of the applicants.

14. This Tribunal is of the view that the respondents are guilty of gross contempt of the directions of this Tribunal in the interim order issued on 14.6.2018 in O.A.No.180/508/2018 and the judgment of the Hon'ble High Court in O.P.(CAT) No.126/2015 issued on 5.6.2018. The deliberate violation of the court orders calls for exemplary, deterrent action.

15. Issue notice under Rule 8 to the respondents. Respondent Nos.1 & 2 shall appear before this Tribunal in person to explain why action under Contempt of Courts Act, 1971 shall not be initiated against them.



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16. List on 20th 08.2018.

2 (Dated this the 24th day of July, 2018)

sdl/
(ASHISH KALIA)
JUDICIAL MEMBER

sdl/
(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

"SA"

