

CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH

1. ORIGINAL APPLICATION No. 060/00504/2015 & M.A NO. 060/01142/2015

Date of filing: 15.06.2015

Order reserved on: 28.09.2016

2. ORIGINAL APPLICATION NO. 060/00605/2015

Date of filing: 20.07.2015

Order reserved on: 28.09.2016

Chandigarh, this the 30TH day of September, 2016

CORAM: HONBLE MR. JUSTICE L.N. MITTAL, MEMBER (J) &
HONBLE SMT. RAJWANT SANDHU, MEMBER (A)

1. 060/00504/2015

1. Swinderjit Singh HRMS No.199407687, working as JTO, Telephone Exchange, BSNL, Dehlon, District Ludhiana.

2. Gurtej Singh, HRMS No.199401306, working as JTO, Telephone Exchange, BSNL, Sahnewal, District Ludhiana.

3. Ramesh Taneja, HRMS No.198806707, working as SDE, Telephone Exchange, Fatehabad.

4. Om Parkash Arora, HRMS No.198806797, working as SDE (CSA-NOW), BSNL, Kalanwali, District Sirsa.

5. Dharam Pal Chopra, HRMS No.198703335, working as SDE (Commercial), BSNL, O/o GMTD, BSNL Hisar.

6. Satish Gakhar, HRMS No.198007743, working as SDE (CAF), O/o GMTD, BSNL, Hissar.

7. Dharminder Joshi, HRMS No.199308567, working as SDE(O), BSNL, Telephone Exchange, Sector 37, Chandigarh.

8. Nanak Chand Chabbra, HRMS No.198806668, working as SDE, BSNL, Telegraph, Hansi (Haryana).

9. Nand Kumar, HRMS No.198803028, working as SDE Vigilance BSNL, O/o GMTD, Sonapat (Haryana).

10. Anil Kumar Dhawan, HRMS No.198211291, working as SDE, Phones-1, BSNL, O/o GMTD, Hissar (Haryana).

11. Jai Chand Kamoj, HRMS No.198703411, working as SDE, Cable, BSNL, Sirsa, (Haryana).

12. Mahabir Singh, HRMS No.198218658, working as SDE, Phones BSNL Sirsa (Haryana).

13. Sunil Kumar Sachdeva, HRMS No.199004222, working as SDE, (Group) BSNL, O/o GMTD, Hissar (Haryana).

14. Roshan Lal Yadav, HRMS No.198111148, working as SDE, (Phones) BNSL, O/o GMTD, Gurgaon (Haryana).

.APPLICANTS

BY ADVOCATE: Mr. R.K. Sharma.

VERSUS

1. Union of India through Secretary to Government of India, Ministry of Communications & Information Technology, Department of Telecommunication, Sanchar Bhawan, Ashoka Road, New Delhi 110001.

2. Bharat Sanchar Nigam Limited, Corporate Office, 3rd Floor, Bharat Sanchar Bhawan, Harish Chandra Lane, Janpath, New Delhi 110001 through its Chairman-cum-Managing Director.

3. General Manager (Pers.), Bharat Sanchar Nigam Limited, Corporate Office, 7th Floor, Bharat Sanchar Bhawan, Harish Chandra Mathura Lane, Janpath, New Delhi-110001.

4. Director (HR), Bharat Sanchar Nigam Limited, Corporate Office, 7th Floor, Bharat Sanchar Bhawan, Harish Chandra Mathura Lane, Janpath, New Delhi-110001.

5. Chief General Manager Telecom, Bharat Sanchar Nigam Limited, Haryana Telecom Circle no.107, Mahatama Gandhi Road, Ambala Cantonment 133001.

6. Chief General Manager Telecom, Bharat Sanchar Nigam Limited, Punjab Telecom Circle, Chandigarh.

7. Govind Singh son of Sh. Bhim Singh, age 35 years, working as Junior Telecom Officer (JTO) in the Office of Sr. General Manager, I.T. Project Cell (ITPC), Chandigarh.

8. Pawan Kumar son of Sh. Ramesh Kumar, age 37 years, working as Junior Telecom Officer (JTO) in the office of JTO CMTS, BSNL Telephone Exchange, Sector 49-C, Chandigarh.

9. Ajay Kumar son of Sh. Raj Kumar, age 35 years, working as Junior Telecom Officer (JTO) in the office of C-DOT Exchange, Barnala, SSA-Sangrur, Circle Punjab.

.RESPONDENTS

BY ADVOCATE: Mr. D.R. Sharma, counsel for respondents no.1 to 6.
Mr. Girish Agnihotri Sr. Adv. with Mr. P.M. Kansal & Mr. Saroj Malakar, counsel for respondents no.7 to 9.

2. O.A. NO. 060/00605/2015

1. Naveen Sharma son of Sh. V.N. Sharma, working as JTO, BSNL, Sector 20, Panchkula.
2. Rajiv Kumar son of Sh. Tara Chand, working as JTO BSNL, Main Telephone Exchange Building, Sukhdev Nagar Panipat.
3. Devendra Sharma S/o Sh. Y. Sharma, working as JTO, BSNL, Sector 20, Panchkula.

.APPLICANTS

BY ADVOCATE: Mr. Gunjan Mehta.

VERSUS

1. Union of India through Secretary to Government of India, Ministry of Communications & Information Technology, Department of Telecommunication, Sanchar Bhawan, Ashoka Road, New Delhi 110001.
2. Bharat Sanchar Nigam Limited, Corporate Office, 3rd Floor, Bharat Sanchar Bhawan, Harish Chandra Lane, Janpath, New Delhi 110001 through its Chairman-Managing Director.
3. General Manager (Pers.), Bharat Sanchar Nigam Limited, Corporate Office, 7th Floor, Bharat Sanchar Bhawan, Harish Chandra Mathura Lane, Janpath, New Delhi-110001.
4. Director (HR), Bharat Sanchar Nigam Limited, Corporate Office, 7th Floor, Bharat Sanchar Bhawan, Harish Chandra Mathura Lane, Janpath, New Delhi-110001.
5. Chief General Manager Telecom, Bharat Sanchar Nigam Limited, Haryana Telecom Circle no.107, Mahatama Gandhi Road, Ambala Cantonment 133001.
6. Chief General Manager Telecom, Bharat Sanchar Nigam Limited, Punjab Telecom Circle, Chandigarh.

.RESPONDENTS

BY ADVOCATE: Mr. D.R. Sharma.

ORDER

HONBLE MR. JUSTICE L.N. MITTAL, MEMBER(J):-

By this common order we are disposing of two Original Applications i.e. O.A. No. 060/00504/2015 titled Swinderjit Singh and Others Vs. Union of India & Ors. and O.A. No. 060/00605/2015 titled Naveen Sharma & Ors. Vs. Union of India & Ors. because common issues are involved in both the cases.

2. In the case of Swinderjit Singh, challenge is laid to notification dated 13.11.2014 (Annexure A-1) as modified vide notification dated 20.4.2015 (Annexure A-2) making reservation in promotion. Direction to official respondents has been sought not to apply reservation in promotion in view of judgments of various Courts with further direction to hold the Limited Departmental Competitive Examination (LDCE) for promotion to the Grade of Sub-Divisional Engineer (Telecom)- (in short, SDE (T) without applying reservation in promotion.

3. The applicants who belong to general category are Junior Telecom Officers (Telecom)- (in short, JTO(T) with official respondents- Bharat Sanchar Nigam Limited (BSNL). As per Recruitment Rules (RRs) (Annexure A-4) for the post of SDE (T) in BSNL, recruitment is done by promotion by two methods i.e. 67% on the basis of seniority-cum-fitness and 33% by LDCE. The case of the Swinderjit Singh relates to promotion by LDCE whereas the case of Naveen Sharma pertains to promotion on the basis of seniority-cum-fitness. Vide notification dated 13.11.2014 (Annexure A-1) applications were invited for promotion by LDCE for vacancies of the years 2010-11, 2011-12, 2012-13 and 2013-14. However, vide notification dated 20.4.2015 (Annexure A-2), LDCE was limited to vacancies for the year 2010-11. Posts were reserved for Scheduled Castes (SCs) and Scheduled Tribes (STs). The applicants are aggrieved by said reservation in promotion in view of judgments of Honble Supreme Court in 2006 (8) SCC 212 - M. Nagraj & Ors. Versus Union of India & Ors. and in (2011) 1 SCC 467 Suraj Bhan Meena Vs. State of Rajasthan and judgment of Honble High Court of Punjab and Haryana in CWP No. 13218 of 2009 Lachhmi Narayan Gupta Vs. Jarnail Singh & Ors. decided on 15.7.2011, Order of this Tribunal in O.A. No. 308/CH/2010 Rajesh Shukla & Another Vs. Union of India & Ors. and also order dated 21.03.2013 (Annexure A-7) in O.A. NO. 647/HR/2012- Narender Singh and Another Vs. BSNL & Ors. (Annexure A-7). It is alleged that the official

respondents have not collected any identifiable data regarding backwardness of classes and inadequacy of their representation in public employment and, therefore, there could be no reservation in promotion.

4. Private respondents no. 7 to 9 were impleaded as party on their application and they also belong to general category.

5. In the case of Naveen Sharma, process for promotion on the basis of seniority-cum-fitness has been initiated vide letters dated 10.2.2015 (Annexure A-2) and 15.7.2015 (Annexure A-3) making reservation in promotion. The same are under challenge in the instant O.A. with relief of consequential directions.

6. Official respondents in their written statement defended reservation in promotion by pleading that there is shortfall of SCs and STs Candidates in the cadre of SDE (T) as per summary (Annexure R-1). It is also pleaded that the O.A. is bad because SC/ST categories persons have not been impleaded. Reservation has been defended on the basis of O.Ms issued by DoPT.

7. Private respondents no. 7 to 9 in their written statement mainly advanced their grievance against interim order issued in the O.A. which is harming their interest of promotion on the basis of LDCE. However, otherwise they have also assailed reservation in promotion.

8. Applicants in their replication controverted the stand of private respondents and reiterated their own version.

9. We have heard counsel for the parties and perused the case file.

10. Counsel for the applicants relying on judgments in the cases of M. Nagraj (supra) , Suraj Bhan Meena (supra), Lachhmi Narayan Gupta (supra) and also Order dated 08.09.2016 of this Tribunal in O.A. No. 060/00864/2015 Sukhwinder Singh Vs. Union of India & Ors. contended that there can be no reservation in promotion because the respondents have not collected identifiable data regarding backwardness of the classes and inadequacy of their representation in public employment. It was also pointed out that SC/ST Welfare Association of BSNL and Ors. had filed O.A. No. 392/JK/2010 seeking removal of shortfall/backlog of vacancies for reserved categories. Respondents (BSNL) took stand therein that O.M. dated 10.8.2010 had been quashed by High Court in Lachhmi Narayan Gupta (supra) and, therefore, the respondents were disabled from taking steps to remove the shortfall in vacancies for reserved categories. In view thereof, the said O.A. was withdrawn by the applicants with liberty to file fresh one if need be.

11. On the other hand, counsel for respondents relying on judgment of Honble Supreme Court in 2014 (3) SCT 618- Rohtas Bhankhar and Ors. VS. Union of India and Another contended that lower standard can be prescribed for reserved categories. Referring to summary (Annexure R-1), it was also contended that there is inadequacy of representation of reserved categories in the cadre of SDE (T). It was also reiterated that SC/ST categories candidates have not been impleaded as party and the O.A. is, therefore, bad.

12. Counsel for the applicants rebutted that since there is challenge to policy of reservation in promotion, it was not necessary to implead candidates of SC/ST categories. Moreover, the O.A. was filed even prior to holding of the examination and, therefore, there were no identifiable candidates of SC/ST categories who could be impleaded as party to the O.A. It was also pointed out that summary (Annexure R-1) relates to the vacancy position as on 1.1.2015 whereas the LDCE in question held on 21.6.2015 was for vacancies of 2010-11 for which no data has been placed on record.

13. We have carefully considered the matter. It was not necessary to implead the candidates of SC/ST categories as party to the O.A. because the O.A. was filed even before the examination was held and, therefore, candidates of those categories were not identifiable at that time. Moreover, the challenge is to policy of official respondents regarding reservation in promotion and for this reason also, it was not essential to implead the candidates of the reserved categories as party to the O.A. Accordingly objection of official respondents to this effect is overruled.

14. As regards merit, the applicants are entitled to succeed in view of judgments in the cases of M. Nagraj (supra), Suraj Bhan Meena (Supra), Lachhmi Narayan Gupta (supra), Rajesh Shukla & Another (supra), Sukhwinder Singh (supra) and Narender Singh (supra). According to these judgments, there can be no reservation in promotion without collecting quantifiable data of backwardness of the reserved classes and inadequacy of their representation in public employment. No such data has, however, been collected by the official respondents. Consequently, the

respondents cannot grant reservation in promotion.

15. Contention of respondents based on summary of vacancies as given in Annexure R-1 cannot be accepted. Firstly the said summary relates to the position as on 1.1.2015 and not of the year 2010-11 for which LDCE was held on 21.6.2015. Secondly even according to said summary, ST candidates were over represented in the quota of promotion on the basis of seniority-cum-fitness whereas SC candidates were represented almost according to their quota. In the quota of promotion by LDCE, of course, there was shortfall in both reserved categories. However, the reservation in promotion cannot be permitted merely on the basis of shortfall in vacancies of one category or one cadre of one department or one entity or unit only. It would be completely against the letter, spirit, purport and intent of M. Nagraj (Supra). Quantifiable data regarding public employment has to be collected as per dictum of Honble Supreme Court in M. Nagraj (Supra), but it has not been so done. BSNL is following O.Ms of DoPT and admittedly DoPT has not carried out any exercise to collect identifiable data in terms of M Nagraj (supra). Even BSNL has not done so. For this reason, BSNL submitted in the case of SC/ST Welfare Association (supra) that they were disabled from taking steps to remove the shortfall in vacancies of reserved categories. However, official respondents have now taken U turn in the instant case. This cannot be permitted. Accordingly we conclude that there can be no reservation in promotion. Action of the respondents to the contrary cannot be sustained.

16. Accordingly both the O.As. are allowed. Notifications dated 13.11.2014 (Annexure A-1) and 20.4.2015 Annexure A-2) in the case of Swinderjit Singh & Ors. and letters dated 10.2.2015 (Annexure A-2) and 15.7.2015 (Annexure A-3) in the case Naveen Sharma & Ors. are quashed to the extent of permitting reservation in promotion to the post of SDE (T) by LDCE and on the basis of seniority-cum-fitness respectively. Respondents are directed not to apply reservation in promotion by LDCE or on the basis of seniority-cum- fitness. Respondents are further directed to make promotion on the basis of result of LDCE held on 21.6.2015 and also any other LDCE without applying reservation in promotion and also to carry promotion in the quota of seniority-cum fitness without applying reservation in promotion. This exercise be completed within three months from the receipt of certified copy of this order. No costs. M.A. No. 060/01142/2015 for vacation of stay is accordingly disposed of as infructuous.

(JUSTICE L.N. MITTAL)
MEMBER (J)

(RAJWANT SANDHU)
MEMBER (A)

Dated: 30.09.2016

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(O.A. No. 060/00504/2015 &

060/00605/2015)

O.A. No.