

**CENTRAL ADMINISTRATIVE TRIBUNAL  
MADRAS BENCH: :CHENNAI**

Original Application No. 246/2010

this, the 23<sup>rd</sup> day of March, 2011

Present: Hon'ble Shri K. Elango Member (J)  
Hon'ble Shri R. Satapathy. Membr (A)

Surinder Kumar,  
S/o Shr Om Prakaksh,  
Flat No. B/S1, Temple View Apartments,  
Door No. 2, Sannadhi Street,  
Villivakkam,  
Chennai 600 049. .. Applicant

By Advocate M/s. V.P. Raman.

Versus

1. Bharat Sanchar Nigam Limited,  
Rep by its Deputy Director General (SEA),  
Having its registered office at  
7<sup>th</sup> Floor, Bharat Sanchar Bhavan,  
Harish Chandra Mathur Lane,  
Janpath,, New Delhi 110 001.
2. Bharat Sanchar Nigam Limited,  
Rep by its Chief General Manager  
Maintenance, having office at  
Southern Telecom Region,  
No.11, Link Road, Ganapathy  
Colony, Guindy, Chennai 600 032.
3. Mr. C. Madhu,  
Junior Accounts Officer,  
3<sup>rd</sup> Floor, No.11, Link Road, Ganapathy  
Colony, Guindy, Chennai 600 032.
4. Mr.C.Ramesh,  
Junior Accounts Officer,  
3<sup>rd</sup> Floor, Office of Chief General



Manager (Telecom), Tamil  
Nadu Circle, No.82,  
Anna Salai,  
Chennai 600 002.

5. Mr. S. Shriram,  
Junior Accounts Officer,  
3<sup>rd</sup> Floor, Office of Chief General  
Manager (Telecom), Tamil  
Nadu Circle, No.82,  
Anna Salai,  
Chennai 600 002. .. Respondents

By Advocate Shri M. Govindaraj

**Order pronounced by**  
**Hon'ble Shri R. Satapathy. Member (A)**

This is an application under Section 19  
of the Administrative Tribunals Act, 1985. The  
applicant Shri Surinder Kumar has filed this OA  
seeking the following relief:

"8.1 Quash the common seniority list of  
Assistant Accounts Officers and Junior  
Accounts Officers employed in the first  
respondent company, compiled by the first  
respondent on 17.5.2007 bearing No. 4-  
18/2007-SEA and the subsequent  
clarification issued by the first  
respondent dated 27.02.2009 also being No.  
4-18/2007-SEA;

8.2 Direct the Respondents to compile the  
seniority list listing directly recruited  
employees of the year 2003 as en-bloc  
senior to the deputed employees absorbed on  
07.3.2005; and



8.3 Pass such further or other orders as this Hon'ble Tribunal may deem fit in the interest of justice."

2. Shri V.P. Raman has appeared for the applicant and Shri M. Govindaraj has appeared for respondents.

3. It is submitted by the applicant that due to shortage of officers in the grade of JAO, the erstwhile Department of Telecom took officers of lower cadre from other Government departments on deputation to work as JAO on adhoc basis. On 30.9.2000, the erstwhile DOT decided to absorb all such deputed employees as JAO into the erstwhile DoT as one time measure after conducting special examination for them. Para 6 of the letter dated 30.9.2000 states that every candidate should understand that the candidature for appearing in the said examination is purely provisional and would be subject to the approval of absorption by the Department of Personnel & Training. The examinees were asked to sign an undertaking agreeing to the same. Para (C) of Annexure 1



to the letter states that candidates were to be absorbed only after they were declared successful in the said examination and after they successfully complete 12 weeks of basic training. Para (F) of the same Annexure states that before the candidates were allowed to sit for the examination, they would given an undertaking that they will not claim any past service for the fixation of their seniority and pay; and they would rank en bloc junior to all the regular JAOs. Para G(v) of the same Annexure states that once the option for getting absorbed is exercised, it shall be final. However, it shall be effective only when the candidate qualify in the said special examination and thereafter complete the basic training. Para (G) (viii) of the same Annexure states that only on successful completion of basic training, they will be absorbed as Regular JAOs.

4. It is further submitted that as per the recruitment rules, 50% of the JAO post shall be filled up by promotion and 50% by direct



recruitment. Based on this the respondents have directly recruited about 800 JAOs in the year 2003 and the applicant is one such direct recruit.

5. It is also submitted that the special examination for the deputed employees was conducted in December, 2000, the results were declared on 29.8.2002, approval for absorption was sanctioned on 24.01.2003, thereafter the basic training started on 14.02.2005 and were absorbed only on 07.3.2005. Therefore, the directly recruited JAOs like the applicant were senior to the deputed employees. DOPT letter dated 03.7.1986 clearly establishes that where an employee is taken on deputation and absorbed later, he shall have his seniority counted only from the date of his absorption. If he had however, been holding the same or equivalent grade on regular basis in his parent department, such regular service in his grade shall also be taken into account in fixing his seniority. However, contrary to all the above mentioned Government notification, the



respondents have issued the impugned seniority list dated 17.5.2007. The seniority of the private respondents can only be from the date of their absorption i.e. from 07.3.2005. The DoT letter dated 30.9.2000 states that absorption shall be effective only on regular appointment after completion of basic training. The stand of the respondents that the absorption of deputed officials is direct recruitment is absurd, especially in the light of the fact that none of the deputed employees were eligible for direct recruitment. The deputed employees do not have the educational qualification, age etc., for direct recruitment.

6. It is contended by the applicant that the impugned letter dated 27.02.2009 is erroneous especially in the light of the fact that none of them were eligible for direct recruitment. The deputed employees were not holding equivalent post and they were holding lower post before deputed as JAO. It is further contended that the impugned



communication is also in violation of principles laid down by Hon'ble Supreme court in The Director, Central Bureau of Investigation & another Vs. D.P. Singh reported in (2010) 1 SCC 647. In that view of the matter, learned counsel for the applicant submits that the OA should be allowed.

7. After notice, the respondents have entered appearance and filed reply statement. In the reply statement it is stated that the applicant do not have a cause of action and the applicant is attempting to challenge an internal communication dated 27.02.2009, which cannot be construed as order and cannot be challenged. The applicant is seeking relief on behalf of all the direct recruits, which amounts to Public Interest Litigation. It is submitted that the external candidates who were serving as JAO on deputation had qualified in the JAO examination conducted by their parent departments during 1990 and they came out successful in the special examination conducted by the respondents in December, 2000. Under



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such circumstances, the external candidates who were on deputation can never be juniors to the applicant herein who commenced his service with the respondent only from 24.5.2004. It is submitted that the external candidates were never on deputation in BSNL, they were serving as JAOs in the erstwhile DoT on deputation basis and they continued as JAOs even after the information of BSNL. The external candidates came out successful in the special examination conducted in December, 2000. Naturally the employees who came out successful in the examination held in December, 2000 would rank senior to those recruited in the year 2003. Hence, there is no reason for the applicant to have any grievance over the common seniority list released on 17.5.2007. It is also submitted that in accordance with the guidelines framed by BSNL, the external candidates have been placed in between the departmental candidates and the direct recruit JAOs. Hence the recruitment rule of JAOs and the guidelines relating to the recruitment of





external candidates have been followed in true letter and spirit and as such there is no violation of any rules in fixing the seniority of the direct recruit JAOs. It further stated that the seniority position of external candidates vis-à-vis direct recruit JAOs was already specified in the BSNL OMs dated 24.01.2003 and 05.11.2004 well prior to the appointment of the direct recruitment of JAOs. Also on various occasions, the direct recruits have given undertakings that they will rank enbloc junior to the candidates qualified in the JAO exams that were held prior to the direct recruit exam of 2003.

8. It is contended by the respondents that the seniority position of the applicant was already highlighted to him in his appointment order dated 11.5.2004 itself. Under clause 4 and 5 of the terms and conditions of the appointment order it has been stated that "they will rank en-block junior to all the existing JAOs/AAOs who have already been appointed as JAOs/AAOs by the Dot/DTS.DTO/BSNL and who may



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be absorbed in BSNL at a later date. They will be ranking en-block junior to internal candidates who have already qualified the JAO Part-II exam and the External Candidates who came out successful in the special exam of December, 2000 i.e. the exams that were held before Direct Recruit Exam of 2003, but not yet appointed as JAO on probation in BSNL because of the administrative reasons." In that view of the matter, learned counsel for the respondents submits that the OA should be dismissed.

9. We have heard the arguments of both side and perused the documents available on record.

10. It is an admitted position by both side that the external candidates were taken on deputation and they have been subjected to special examination in December, 2000. It is submitted by the respondents that the result of the said exam was declared in the year 2002, then options were received from them, approval for absorption was taken and they were sent for



training and on successful completion of training, they were absorbed in the year 2005. While taking the external candidates on deputation, the respondents have made it clear that they will be absorbed only after successful completion of basic training and they were absorbed accordingly after completion of basic training. It goes without saying that the external candidates have become regular employee / JAO only from the date of their absorption. Till then they had lien with their parent department. The normal rule is, that the deputationist will get seniority only from the date of his absorption. In the case of **The Director, Central Bureau of Investigation & another Vs. D.P. Singh reported in (2010) 1 SCC 647** the Hon'ble Supreme Court has held as follows:

"15. As a matter of fact, a plain reading of sub-para (iv), which has been added to the earlier OM dated 22.12.1959 vide OM dated 29.5.1986, would show that it provides that a deputationist whose services are absorbed later would get his seniority in the grade in which he is absorbed normally from the date of his absorption. However, in the case of a



person who has already been holding the same or equivalent grade in his parent department on regular basis, his seniority shall be counted from the date he was holding same or equivalent grade in his parent department.

16. Insofar as the present case is concerned, admittedly, the respondent did not hold the rank of DSP or the equivalent post in his parent department on the date of his appointment as DSP on ad hoc basis in 1977 or at the time of his absorption in 1987 and, therefore, his seniority as DSP can only be counted from the date of his absorption i.e. 29.6.1987."

In the present case, the external candidates, who were on deputation, were absorbed only in the year 2005. Whereas, the applicant was appointed on 24.5.2004 on regular basis. Thus, it is clear that the applicant has become a regular employee of BSNL from 24.5.2004 and the private respondents have become regular employees of BSNL from 07.3.2005 in the grade of JAO. Therefore, the applicant will certainly rank senior to the private respondents.

12. In the light of the foregoing discussions and also placing reliance in the case of The Director, CBI cited supra, we set



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aside the impugned communication dated 27.02.2009 and direct the respondents to assign the seniority to the applicant above the external candidates, who were absorbed on 07.3.2005. This exercise shall be completed by the respondents within a period of four weeks from the date of receipt of a copy of this order.

13. With the above direction, the OA is allowed. No costs.

"Free Copy U/R 22 of  
CAT (Procedure) Rules"



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Kajalatah M.  
25/3/11  
DEPUTY REGISTRAR