

(2023) 03 CAT CK 0029

In the Central Administrative Tribunal

Case No : Original Application No. 180, 00103 Of 2019

A. Padmanabhan HRMS/200010702

APPELLANT

Vs

General Manager, Telecom District, Bharat Sanchar Nigam
Limited, BSNL Bhavan, South Bazar, Kannur-670002 & Ors

RESPONDENT

Date of Decision : 13-03-2023

Acts Referred:

Telecom Mechanic (Recruitment) Rules, 2002 —
Department Of Telecommunications Phone Mechanic Recruitment Rules, 1991 —
Constitution Of India, 1950 — Article 14, 16(1)

Citation : (2023) 03 CAT CK 0029

Hon'ble Judges : Sunil Thomas, Member (J); K.V. Eapen, Member (A)

Bench : Division Bench

Advocate : P.K. Madhusoodhanan, Binoy Krishna P.M, George Kuruvilla

Final Decision : Allowed

Judgement

K. V. Eapen, Member A

1. The applicant has filed the Original Application seeking the following relief:-

(a) Set aside AnnexureA7

(b) Declare that the applicant is eligible and entitled to get similar treatment as granted to the employees similarly situated as disclosed in Annexures A4 to A6, untrammelled by AnnexureA7, A9 and A10

(c) Issue necessary directions to the respondents to grant the applicant as well promotion to the post of Telecom Mechanic/Telecom Technician as granted to Sri O.Muraleedharan and others who don't possess the educational qualification without showing any hostile discrimination to him arbitrarily and grant all consequential benefits arising therefrom

(d) Award costs of these proceedings &

(e) Grant such other and further reliefs as this Tribunal deems fit and proper.

2. The applicant is an Assistant Telecom Technician (ATT) (earlier Titled as Regular Mazdoor (RM) in the BSNL, posted at Panoor, Kannur District. He has filed this Original Application seeking his promotion to the post of Telecom Mechanic(TM) also known as Telecom Technician(TT). Initially, the applicant was engaged as a casual labourer in the Department of Telecom (DoT) under the jurisdiction of the 1st respondent. After a series of litigations for regularisation of service, this Tribunal in OA No.45/2000 by final order dated 16.11.2000 produced at AnnexureA1 issued the following directions:-

"4. In the result, in the light of what is stated above, I allow this application setting aside the impugned order AnnexureA10 and direct the respondents to include the name of the applicant at appropriate place in the list of casual labourers accepting the certificates produced by the applicant showing the date of his engagement as valid documents and taking into account the number of days of work put in by the applicant on verification of the certificates and also the documents which may be in the possession of the respondents. If any person who has put in lesser length of service than the applicant as casual labourer has been granted temporary status and regularisation, the same benefit shall be granted to the applicant also. The above exercise shall be completed and necessary orders issued by the competent authority as expeditiously as possible at any rate within a period of two months from the date of receipt of a copy of this order. There is no order as to costs."(Emphasis added)

3. The respondents preferred an OP No.3073/2001 before the High Court of Kerala against the above. The said OP was dismissed on 31.10.2003 upholding the orders at AnnexureA1. Due to the non-compliance of the directions in AnnexureA1 a notice was issued in CP. (C)No.12/2004 by the Tribunal. The respondents then preferred a Review Petition(RP by way of R.P.No.111/2004 against the judgement dated 31.10.2003 in OP No.3073/2001 by the Hon'ble High Court of Kerala. However, that too did not succeed vide the order dated 19.02.2004 by the Hon'ble High Court. The respondents did not comply even after this with the directions given as per AnnexureA1 even though the order had been upheld by the Hon'ble High Court in the O.P and R.P. referred earlier. Finally, after hearing a CP(C) No.12/2004 filed in OA No.45/2000 in detail, the Tribunal once again reiterated its order delivered in OA No.45/2000, produced at AnnexureA1. Once again the respondents preferred W.P.(C) No.19362/2004 before the Hon'ble High Court of Kerala against this Order. The Hon'ble High Court vide its judgement dated 05.07.2004 then directed the respondents to fully implement AnnexureA1 order expeditiously. It was also stated in the judgement that if they failed or refused to implement the same within one month permission is granted for initiating action against the respondents.

4. After this bout of up and down litigations shuttling between this Tribunal and the Hon'ble High Court, the respondent BSNL finally issued the Memorandum dated 14.07.2004. A copy of this has been produced by the respondents at Annexure R1(c), along with the reply statement. As per this Memorandum, the

applicant was conferred with Temporary Status Mazdoor (TSM) with effect from 01.10.1995 and appointed as Regular Mazdoor (RM) with effect from 01.10.2000. It has also been indicated in the Memorandum that the same has been issued as per the verdict in CP(C) No.12/2004 in OA No.45/2000 by the CAT, Ernakulam and as per the direction of the High Court in W.P.(C) No.19362/2004 dated 05.07.2004. As a result of the above order, it is submitted that the directions, which were made in the order of the Tribunal in OA No.45/2000 dated 16.11.2000, produced at AnnexureA1, the operative portion of which also has been brought out earlier, would stand.

5. However, soon after the above another issue cropped up with the applicant as he was issued an order stating that since he had not worked either as Temporary Status Mazdoor or Regular Mazdoor, he was not eligible for any other consequential benefits on the principle of "no work no pay". This decision was challenged by him before the Hon'ble High Court of Kerala in WP(C) No.23825/2005 which was transferred to the Tribunal as Transferred Application (TA) No.43/2008. After hearing the matter, this Tribunal in its final order dated 21.01.2010 which has been produced at Annexure A2 allowed the TA to the extent that the respondents were directed to verify whether the applicant was at all gainfully employed from 01.10.1995 to 27.02.2004 and if so, the income earned by him should be ascertained and if the same is not comparable to the salary that the applicant would have drawn had he been serving the respondent organisation, then the respondents shall accordingly pay the applicant arrears of pay and allowances. It was also directed in the order at Annexure A2 that they may restrict the extent of arrears to the difference between the pay and allowances admissible under the respondents and the amount received by the applicant in private/public employment during that period.

6. From the above it is to be noted that the applicant was not just given the benefit of temporary service, regularization etc. but that it was also ordered that arrears of pay for the period from 01.10.1995 would also be paid to him in the manner indicated in the order at Annexure A2. The applicant submits that the respondents being fairly infuriated by the above turn of events and the fact that all the orders of the Tribunal and Hon'ble High Court were in his favour had tried in the meanwhile to wreck vengeance on him by various means. For example, soon after the order of compliance which was brought out at Annexure R1(c) dated 14.07.2004 was passed by the 1st Respondent giving him the status of Temporary Status Mazdoor with effect from 1.10.1995 and Regular Mazdoor with effect from 1.10.2000, the Respondents posted him at Kaniyala Exchange, near the Karnataka Border in a very hard tenure hilly station for almost eight years. This, he submits was done as a punishment posting, though he did join duty there with effect from 23.07.2004.

7. In any case, the applicant has now come before this Tribunal once again by filing this OA. This will be the third set of litigation after the first set of litigation regarding the status of his service and the second set regarding payment of

salary. In this litigation applicant is seeking orders for his consequent promotion, due with service counter with effect from the date that he had been conferred with the status of Temporary Status Mazdoor and Regular Mazdoor . He submit that the next promotion which is available to him and people like him who are working in the post of Regular Mazdoor (now re-designated as Assistant Telecom Technician) is to the post of Telecom Mechanic (now re-designated as Telecom Technician). This is as per the Recruitment Rules for Telecom Mechanic, a copy of which has been produced at AnnexureA3. These Rules known as the Telecom Mechanic (Recruitment) Rules 2012, were issued on 19.09.2012. He submits that as per Column 11 of these Rules, 50% of the recruitment to the post of Telecom Mechanic is to be filled up by promotion through Limited Internal Competitive Examination (LICE) and the remaining 50% by Direct Recruitment. Further, he submits that Column12 of these Rules indicates at point (3) that the Limited Departmental Competitive Examination(LDCE) is open for Regular Mazdoor working in SSA Units. Of course, it is also indicated therein that they should possess a 10th standard qualification. However, he points out in the OA that a number of his fellow employees, including K. Nishant, P. Suchithran, M.M. Munir, Smt. Prameela, O. Muraleedharan, Seetharama, K. Prakashan, Santhosh T.V., C. Baburaj, K.P. Suresh Babu, Manojan Mannat and others who did not possess the 10 Std. Qualifications were permitted to undergo the qualifying test for Telecom Mechanic /Telecom Technician. They were then granted promotion as Telecom Mechanic on passing the tests. On the otherhand the applicant alone had not been allowed to undergo the test for Telecom Mechanic which is hostile discrimination against him. The applicant also submits that the said Smt.Prameela had studied only upto the 7th standard. Further, Shri O. Muraleedharan, who is his junior in terms of service also referred to in AnnexureA1 order of this Tribunal, was also granted promotion as Telecom Mechanic in the year 2003 even though he does not posses the 10th Std. Qualification.

8. The applicant accepts that he had studied upto the 10th standard but had not passed the SSLC examination. However, except the applicant all other employees who are either juniors or seniors who also did not possess the qualification were allowed to write the test for promotions for Telecom Mechanic. They have been graciously granted promotions whereas he alone has been denied consideration inspite of repeated requests made by him. He submits that he had made representations on 08.4.2010 and 31.12.2013 to the 2nd respondent vide Annexure A4 & A5 respectively in this regard. Further, he had made another representation on 23.1.2018 which he submitted for consideration of the 1st respondent. This has been produced at Annexure A6. It is to the representation at AnnexureA6 that the respondents have replied with the impugned order dated 12.02.2018 at AnnexureA7.

9. For a proper appreciation of the facts and the position taken by the BSNL, it is required to elucidate on what has been contended in the Annexure A7 order. As per the order the BSNL has informed the applicant that the promotion to the post

of Telecom Mechanic had been initially covered by the Telecom Mechanic (Recruitment) Rules 2002. Later the Telecom Mechanic (Recruitment Rules) 2012, was issued in supercession to the Recruitment Rules of 2002. The qualification uniformly specified in both these Rules in for the feeder categories to the cadre of Telecom Mechanic through LDCE, in the cases of Regular Mazdoor and Casual Mazdoor working in SSA units was that they had to possess the 10th Standard qualification and also have temporary status in the Department. As the applicant came under this category, it was clear that he had to possess the 10th Standard qualification for applying/appearing in the LDCE to be considered for the post of Telecom Mechanic. This was the position in effect from the date of publication of the Rules, which was in the case of the 2002 Rules was 20.02.2002. As regards the cases of some of his colleagues, the reply at AnnexureA7 states that the officials mentioned in his representation at AnnexureA6 were originally appointed as Group 'D' staff and such staff did not require the 10th standard qualification as per the 2002 Rules. Further, in the specific case of Shri O. Muraleedharan, it is informed that he had been selected to the cadre of Telecom Mechanic before pronouncement of the above Recruitment Rules of 2002. Shri Muraleedharan underwent induction training in 2001 for which the selection method at that time was only through a Qualifying Trade Test.

10. It is submitted by the applicant that the statements made at AnnexureA7 are incorrect and misleading. He had earlier given a lawyer notice to the respondents on 20.04.2010, which was replied to him by the letters dated 22.04.2010 and 12.5.2010, produced at AnnexureA9 and A10. In the letter dated 22.04.2010 and 12.05.2010, the same position as indicated in the AnnexureA7 reply was earlier informed to him. It has been stated that the eligibility for promotion to the cadre of Telecom Mechanic is decided as per the Telecom Mechanic (Recruitment) Rules 2002 and the said Rules clearly stipulate that Regular Mazdoor/Temporary Status Mazdoor who have passed 10th Class or SSLC are only eligible for appearing in the examination. Further it was clarified that all the officials mentioned in the representations had been promoted as Telecom Mechanic after they had passed the Qualifying Screening Tests to the cadre of Telecom Mechanic as that was the position before the framing Telecom Mechanic (Recruitment) Rules 2002.

11. It is submitted by the applicant that AnnexureA7 is prima facie erroneous and illegal and opposed to law besides being arbitrary and discriminatory. It is submitted that the replies at AnnexureA9 & A10 are also erroneous. The statement made at AnnexureA9 to the effect that the officials mentioned in his representation to the respondents had been promoted as Telecom Mechanic because they had passed the Screening Tests to the cadre of Telecom Mechanic as obtaining before the framing of Telecom Mechanic (Recruitment) Rules 2002 as well as the statement in AnnexureA10 that the officials mentioned in his notice were selected as Telecom Mechanic before the framing of Telecom Mechanic (Recruitment) Rules 2002 and also the statements made in the last two paragraphs in AnnexureA7 are contrary and contradictory to each other and not

correct. Further, it is submitted by the applicant in his grounds that these statements also clearly prove, by the admission on the part of the respondents, that the applicant had not been called for the so called Qualifying Screening Tests at any point of time. This also establishes discrimination against him. It is submitted that the applicant was holding the same posts as the other officials after his appointment as Regular Mazdoor, now redesignated as Assistant Telecom Technician. It is reiterated that except him all others in the BSNL who had not passed the 10th standard qualification had been granted promotion as Telecom Mechanic.

12. The applicant submits that Shri O. Muraleedharan who was admittedly junior in service was granted promotion to the post of Telecom Mechanic during the year 2003. The applicant is, therefore, eligible and entitled to be considered at least in preference to Shri O. Muraleedharan, for promotion to the post of Telecom Mechanic in view of the final order of this Tribunal in OA 45/2000 dated 16.11.2000 produced at AnnexureA1. If the applicant had been properly considered for the post of Telecom Mechanic like the others who did not possess the 10th standard qualifications, he too should have been allowed to undergo the so called Qualifying Test along with them. He would then have been promoted to the post of Telecom Mechanic at the same time as Shri O. Muraleedharan and others. Further, he submits that K. Nishant, Suchithran, M.M. Muneer etc were in the post of Regular Mazdoor while they were granted promotion to Telecom Mechanic during the year 2010-2011. It is submitted that the statement to the contrary in AnnexureA7 to the effect that they were originally appointed as Group 'D' staff and do not require 10th standard qualification is perverse and opposed to the facts.

13. The respondents have filed a detailed reply statement in this regard. They submit at the outset that they had fully honoured the AnnexureA2 order of this Tribunal in TA 43/2008. They have also denied the allegation made that they had been harassing the applicant by all means and had never lost an opportunity to wreak vengeance on him. It is submitted that as far as the details of this OA are concerned, the concerned Telecom Mechanic rules now prevailing in BSNL are the Telecom Mechanic (Recruitment) Rules 2012 at Annexure A3. These rules came into effect on 19.09.2012 and till that time the earlier Rules i.e. the Telecom Mechanic (Recruitment) Rules 2002 were in operation. These Rules of 2002 came into effect from 20.02.2002 after the formation of the BSNL on 01.10.2000. Thus for the period from 20.02.2002 till 18.09.12, it was the Telecom Mechanic (Recruitment) Rules 2002 that was ruling the field. A copy of the said Telecom Mechanic (Recruitment) Rules 2002 have been produced at AnnexureR1(a). Further, it is submitted that before the issuance of the Annexure R1(a) Telecom Mechanic (Recruitment) Rules 2002, there had been some other Rules for regulating the recruitment to the cadre of Phone Mechanics (presumably now called Telecom Mechanics/ Telecom Technicians) in the Department of Telecommunications(DoT) as it existed at that time. These Rules were known as 'The Department of Telecommunications Phone Mechanic Recruitment Rules

1991'. They came into force on 22.07.1991 and were amended in 1996. A copy of the amended Phone Mechanic Recruitment (Amendment) Rules 1996, has been produced at AnnexureR1(b). As per these 1996 rules, vide note 1, it is stated that a Lineman/Wireman possessing a matriculation qualification and cable splicer's shall be considered for transfer to the cadre of Phone Mechanic. It was also indicated that others, including Regular Mazdoors, Group 'D' officials and Casual Mazdoors having temporary status shall be considered for promotion as Phone Mechanics on the basis of a Qualifying Screening Test.

14. The AnnexureR1(a) 2002 Rules then came into effect where the qualifications prescribed for different feeder categories of regular employees for promotion to the cadre of Telecom Mechanics through Limited Department Competitive Examination (LDCE) was indicated. It was indicated therein that Regular Mazdoors and Casual Mazdoors working in the SSA units would have to possess the 10th standard qualification and should have been granted temporary status by the Department. Another feeder category to the cadre of Telecom Mechanics were Group 'D' officials of the Department. However in their case no educational qualification was prescribed. Later however by AnnexureA3 Telecom Mechanic (Recruitment) Rules 2012 the 10th standard qualifications was made mandatory for all the feeder categories including the Group 'D'. T

15. It is submitted that the applicant, who is a Regular Mazdoor coming under the feeder category No.4 as per AnnexureR1(a) Telecom Mechanic (Recruitment) Rules 2002, which was in vogue at the relevant time did not possess the 10th standard qualifications. Hence, he was not qualified to appear for the LDCE conducted in 2010 as per those Rules for appointment as Telecom Mechanic against the vacancy year 2008. He had made the representation as produced at AnnexureA4 followed by the AnnexureA8 Lawyer Notice requesting that he be allowed to appear for the LDCE conducted in 2010. The same had been declined by the BSNL by AnnexureA9 and A10 replies. It is submitted that the applicant never chose to challenge Annexure A9 & A10 replies till this time and hence, it has become time barred. Later, he filed yet another representation in 2013, produced at AnnexureA5, highlighting the same grievances. Yet later the applicant submitted another representation in 2018, as at AnnexureA6, after a gap of five years. He has filed this OA challenging the AnnexureA7 reply of the BSNL to his AnnexureA6 representation. The AnnexureA7 reply is similarly worded as the AnnexureA9 & A10 replies given to the applicant earlier. Hence, in this background the respondents submitted that the present challenge to the OA is time barred and is liable to be dismissed on that ground.

16. It is submitted by the respondents that the post of Telecom Mechanic being one in the technical cadre, no employee can be appointed without qualifying in the LDCE and without successfully undergoing the mandatory pre-appointment training programme. If the applicant had a real grievance about his non-consideration, he should have approached the Tribunal immediately on receipt of the AnnexureA9, reply from the respondent not allowing his participation in the

LDCE to be held at that time. This was actually what had given rise to the cause of action in this case and not the issuance of the impugned AnnexureA7 order. The applicant has therefore slept over his right from 2010 till the filing of this OA in 2019. He is guilty of laches and is not entitled to have any relief as per the respondents.

17. With regard to the list of employees cited by the applicant in his representations as well as in para 4.7 of the OA who are stated to have been given promotion to the cadre of Telecom Mechanic without the 10th Standard qualifications, the respondents submit that they were promoted on the basis of the Qualifying Screening Test held on 02.05.1999 as per the Phone Mechanic Recruitment(Amendment) Rules 1996 that were in force. Others who may have been Group D category employees were declared successful in the Limited Departmental Competitive Examination (LDCE) held on 30.05.2010 for the vacancy year 2008 as per Telecom Mechanic (Recruitment) Rules 2002. This means that all the names the applicant had furnished who can be compared to him as Regular Mazdoor were qualified before the Telecom Mechanic (Recruitment) Rules 2002 came into operation. It is submitted that as per the AnnexureA3 Telecom Mechanic (Recruitment) Rules 2012 all the feeder categories for Telecom Mechanics/Telecom Technicians, it was made clear that to appear for the Limited Departmental Competitive Examination (LDCE) the employees should possess the 10th standard qualifications. It is clarified that Shri K. Nishant, Shri P. Suchithran, Shri M. Muneer and Smt. Pramila K. had been originally appointed as Group 'D' officials on compassionate grounds. The aforesaid four Group 'D' officials were declared successful in the Limited Departmental Competitive Examination (LDCE) for promotion to the cadre of Telecom Mechanics for the Recruitment Year 2008 which was held on 30.05.2010 as per the then existing Telecom Mechanic (Recruitment) Rules 2002. It should be noted in these Rules of 2002, the 10 th standard qualification was not required for Group 'D' officials. It is once again reiterated that the eligibility condition for Regular Mazdoor as a feeder category for Telecom Mechanic was qualification with 10th standard for appearing in the LDCE as per the Telecom Mechanic (Recruitment) Rules 2002. Since the applicant did not possess the 10th standard qualification he was not eligible to appear in the LDCE.

18. Regarding the remaining officials referred by the applicant in the OA who did not possess the 10th standard qualification, it is again submitted that all of them have been promoted to the post of Telecom Mechanic prior to the coming into force of Telecom Mechanic (Recruitment) Rules 2002. These employees were promoted based on their seniority and position in the eligibility list by appearing in the Qualifying Screening Test which had been prescribed in the earlier Rules in force i.e., the Phone Mechanic Recruitment(Amendment) Rules 1996. it is submitted that Shri O. Muraleedharan, was a Temporary Status Mazdoor at the time of the Screening Test held on 02.05.1999. Further, Shri K. Prakashan, Shri T.V. Santhoshkumar, Shri C. Baburaj, Shri K.P. Suresh Babu and Shri Manojan Mannatt were all Regular Mazdoors at the time of Screening Test held on

02.05.1999. All of them had qualified in the Screening Test held on 02.05.1999 held as per the directives of the Department of Telecommunications(DoT) vide its letter dated 24.12.1988. They were posted subsequently in later years depending on the availability of vacancies from the eligibility list. In other words it is submitted that there were clear reasons for promotion of all the names that have been submitted by the applicant in his representation as well as in the OA, including the said Shri O. Muraleedharan. They were all covered either by the Rules of 1996 or by the Rules of 2002, which had allowed them to be promoted on the basis of Qualifying Screening Test without having the 10th standard qualification.

19. Coming to the specific case of the applicant it is submitted that as per Annexure R1(c), he was conferred the Temporary Status Mazdoor with effect from 01.10.1995 and appointed as Regular Mazdoor with effect from 01.10.2000. R1(c) would reveal that the applicant was appointed only on 14.07.2004 with effect from the previous dates. Thus it is clear from this that he could not have attended the Screening Test which was held in the year 1999. Subsequent to his appointment in the BSNL in 2004, first the Telecom Mechanic (Recruitment) Rules 2002 and later the Telecom Mechanic (Recruitment) Rules 2012 ruled the field. In both these Rules the eligibility conditions for Regular Mazdoor for appearing in the LDCE for promotion to Telecom Mechanic is the 10th standard qualification. The applicant thus had to qualify as per whatever Recruitment Rules was in vogue at that time as the Telecom Mechanics cadre is a technical one. Unless and until the applicant could qualify as per the relevant Recruitment Rules, he cannot claim that he should be granted promotion in preference to his junior Shri O. Muraleedharan. It is again explained that Shri O. Muraleedharan was promoted as Telecom Mechanic on passing the Qualifying Screening Test which was the then mode of selection in force at the time before the formulation of Telecom Mechanic (Recruitment) Rules 2002. Shri Muraleedharan had also completed the induction training in 2001. Thus it is submitted that there was no discrimination or arbitrary action on the part of the respondents nor any violation of the equality clause enshrined in Article 14 of the Constitution. Hence, Annexure A7 reply given to him was perfectly in order.

20. It is also submitted that the LDCE for promotion to Telecom Mechanics/ Telecom Technicians being conducted periodically by the BSNL in order to give promotional chances to eligible candidates. The applicant had been made aware of the minimum qualifications requirement for appearing in the LDCE for promotion to the cadre of Telecom Mechanic vide the reply at Annexure A9. The respondents also bring to notice that after the LDCE was held on 30.05.2010 for the Recruitment Year 2008, some other LDCEs were also conducted on 11.08.2013, 28.09.2014 and 20.08.2017. It is submitted that if the applicant was keen on getting promoted he could have tried to attain 10th standard qualifications. It is pointed by the respondents that a number of opportunities are now available like National Institute of Open Schooling(NIOS). If he had qualified as per this he could have applied and appeared for the LDCE thereafter.

It is submitted that the LDCE is now being conducted periodically, atleast every alternative year. Hence, the respondents submit that principle of equality and equal opportunity enshrined in Article 14 and Article 16(1) of the Constitution are not being compromised with as is being alleged by the applicant. They have only acted in full conformity with the Recruitment Rules in force. There was no discrepancy or confusion in the AnnexureA7, A9 or A10 letters of the respondents as being alleged by the applicant.

21. A rejoinder has been filed by the applicant where it is submitted that the question that the respondents have not discriminated against the applicant was denied as even after the 1st and 2nd round of litigations it is clear that the applicant had always to fight for his rights. He was given appointment as a Regular Mazdoor at Kaniyala Exchange, near the Karnataka- Kerala Border which is a hard tenure hilly station by the memo dated 14.07.2004. Moreover, he was compelled to work there for a period of 8 years at a stretch as punishment. It is submitted that no other employee of BSNL/DoT had been compelled to work for more than 3 years at a time except for him. This shows the discriminatory and arbitrary attitude, which is now being continued by the respondents by denying him promotion to the post of Telecom Mechanic. They are not allowing him to undergo the Qualifying Screening Test while his juniors, who were mentioned in the order of AnnexureA1, had not passed SSLC but were allowed to undergo the Screening Tests. They were granted promotion to the post of Telecom Mechanic whereas the applicant was not allowed and discriminated against due to this prolonged litigation entered by him. This was done at the instance of the respondents to deny the benefits legally due to him given to his juniors.

22. It is pointed out that AnnexureA1 order of the Tribunal has to be now taken to be in full force. The same was issued on 16.11.2000 but inspite of the order being issued, the respondents preferred to keep on going for litigation by way of Writ petitions and Review Petitions. It required a Contempt Petition for them to finally give up the entire bout of litigation. However, by these proceedings they were successful in denying appointment to the applicant till a very late stage. His junior Shri O. Muraleedharan was granted promotion as Telecom Mechanic in the year 2003 itself though he did not possess the 10th standard qualification, in the guise of successfully undergoing the Qualifying Screening Test to Telecom Mechanic. Thus the protracted proceedings which ensued after the orders of the Tribunal at AnnexureA1, cannot be used to deny giving him the promotion. The benefits granted to the juniors of the applicant should have been granted to him in the interest of justice. The respondents could have allowed him to undergo the Screening Test which were made available to his juniors. This would have enabled him to get promotion as Telecom Mechanic. It is submitted by the applicant that except for him all others in the BSNL had been granted promotion as Telecom Mechanic on one pretext or the other. He is only one who had been denied the same which shows the hostile attitude towards him throughout his entire service.

23. It is also contested by the applicant that the persons named in paragraphs 7 and 8 of the reply statement were holding the post of Regular Mazdoor while they were granted the promotion as Telecom Mechanic. Not a single piece of paper has been produced by the respondents to substantiate they were actually Group 'D' employees as is being contended to justify allowing them to undergo only the Qualifying Screening Test. It is submitted that there is no bonafide or merit in the contentions raised by the respondents and it has been only done with the sole intention to deny him his rightful claim.

24. We have gone through the above exhaustive contentions of both sides. On our reading of the sequence of events, it appears that to some extent what the applicant submits is justified. The respondents did enter into prolonged litigation in this after the AnnexureA1 order of the Tribunal, was issued on 16.11.2000 in OA No.45/2000. As brought out earlier, that order of this Tribunal was clear in terms of the facilities entitled to the applicant as the Tribunal had held that '.....If any person who has put in lesser length of service than the applicant as casual labourer has been granted temporary status and regularisation, the same benefit shall be granted to the applicant also.'. This particular order of the Tribunal was first taken on appeal in a Writ Petition, then on Review. Later a Contempt was filed in which certain directions were given. That too was again taken to the Hon'ble High Court. It required the final order of the High Court for the respondents to issue the AnnexureR1(c) orders dated 14.07.2004. There is no doubt that the action taken by the respondents in the course over 4 years from 2000 to 2004 had some effect on the service of the applicant.

25. The issue to be considered at the end of the day now is how the order of this Tribunal in AnnexureA1 which is now final will affect the relief claimed by the applicant. In effect this order has only allowed the applicant to be given a status which should not be lesser than his juniors in the organisation. This would mean specifically if we compare the case of Shri O. Muraleedharan admittedly his junior and accepted so by the respondents that the applicant cannot be discriminated. The applicant was then conferred the Temporary Status Mazdoor with effect from 01.10.1995 and appointed as Regular Mazdoor with effect from 1.10.2000, which presumably met this direction of the Tribunal. However, the said junior Shri O. Muraleedharan was promoted as Telecom Mechanic in 2003 inspite of the fact the 2002 Rules had come into operations by then. This was justified on the ground that he had passed the Qualifying Screening Test (QST) as per the earlier 1996 Recruitment Rules that were in force in 1999 itself and that vacancies had arisen only later. The Qualifying Screening Test had been held for Shri O.Muraleedharan and others as has been seen from the paragraph 8 of the reply statement on 02.05.1999.

26. The respondents seek to justify the non granting of a similar facility of QST to the applicant on the ground that the orders of appointment in his case were passed only in 2004. Obviously, therefore, he could not have written the qualifying tests in 1999. However, the fact is that the applicant had been

conferred Temporary Status Mazdoor with effect from 1.10.1995. In effect, hence, every facility which is due for him from 1995 the date of temporary counting of service should be automatically extended to him from that date. In other words, his services have to be considered from 1995 onwards for any benefit that are due to him. Hence, even though he did not appear in the Qualifying Screening Test in 1999 for obvious reasons, he cannot be discriminated against by not giving benefit of writing the Qualifying Screening Test which had been granted to his juniors in 1999 especially as his service as Temporary Status Mazdoor is to be reckoned from 1995. Hence, in the spirit of the directions of this Tribunal in AnnexureA1, it would be quite justifiable in our view to direct the respondents to conduct a Special Qualifying Screening Test in the case of the applicant. If he qualifies in the same he should be given promotion from the date of promotion of his immediate juniors like Shri O. Muraleedharan and others i.e. from 2003 onwards. This would be, in our view, the interpretation of the order of this Tribunal, produced at AnnexureA1, which indicated that the benefits which were given to his juniors should be extended to him. Otherwise it would amount to continued discrimination and prejudice against the applicant because of the prolonged, and to some extent unjustified litigation, which the respondents had entered into at different stages after the AnnexureA1 order. We hasten to add that while the respondents have every right to file Writ Petitions against any orders of this Tribunal, the delay that it caused has resulted in further prejudice and discrimination against the applicant.

27. We therefore direct that a Special Qualifying Screening Test should be conducted in respect of the applicant notwithstanding the fact of his not having a Class 10 qualification, in line with the fact that he was conferred with Temporary Status Mazdoor with effect from 1.10.1995 in line with the existing 1996 Amendment Rules. If he qualifies in this particular Special Screening Test he may be then given promotion with effect from the date his immediate junior in the cadre was given promotion (which appears to be 2003). However, in regard to the consequent question of pay or arrears which may crop up in case he qualifies for the said promotion, it is made clear that he will not be eligible for any pay or arrears to be drawn as Telecom Mechanic on the principle of 'no work no pay' for the period. However, he would be eligible for his pay to be fixed with effect the date of promotion of his immediate junior and for any consequent fixations by way of increment, revision of pay etc. on that basis. If he is retired as is likely, his pension would also have to be revised accordingly. The BSNL is directed to complete this process within a period of 3 months from the date of issue of this order.

28. The OA is accordingly allowed to the extent indicated above. We are making no order as to costs.

(Dated this the 13th day of March 2023)