

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NOS. 5164-5165 OF 2013

**THE CHIEF GENERAL MANAGER,
TELECOMMUNICATION, B.S.N.L.**

APPELLANT(s)

VERSUS

SUSHANTA MOHANTY

RESPONDENT(s)

ORDER

The respondent filed the Original Application before the Central Administrative Tribunal, *inter alia*, contending that he had appeared in the internal competitive examination for Junior Accounts Officer against 40% quota during January, 2010 and secured 56.5 marks in Paper V, though he was expecting more marks. It is stated that in case 03 grace marks were allowed in furtherance to Circular dated 20.06.1994 and by rounding off, he would secure 60 marks and shall qualify the internal competitive examination.

His claim was contested by the Department on the ground that for the internal competitive examination the said Circular was having no application because it applies only to departmental qualifying examination. However, even the Tribunal, by the impugned order, issued the

directions as under: -

“6. We have given our anxious considerations and gone through the relevant circular governing the subject. It is not in dispute that the examination which the applicant was appearing comprised of descriptive questions in all the disciplines. In view of this, we cannot but hold that the circular issued by the DoT dated 20.06.1994 has the application to the present case of the applicant insofar as, awarding of grace marks is concerned. Accordingly, we direct the Respondents - Department to extend the benefit of grace marks to the applicant rounding off to 60 within a period of 30 days from the date of receipt of this order and make consequential action.

7. Before parting with this case, it is needless to mention that there may be similarly circumstanced candidates as that of the applicant having failed in one of the papers in the examination, in question, who might have not approached the Court of Law or Tribunal. In order to maintain equity, justice and fair play and to maintain administration of justice, it would be proper if we direct the Respondents to extend the benefit of DoT Circular dated 20.06.1994 to all similarly situated persons as that of the applicant herein. Ordered accordingly.”

The High Court, by the impugned order, considered the nature of JAO Part I and II Examination of B.S.N.L. and observed that it was based on old syllabus to which Circular

dated 20.06.1994 applies, therefore, benefit of grace marks cannot be denied, and as such confirmed the order passed by the Tribunal. On filing the review, it was rejected by an unreasoned order. Hence, the Department has filed the present appeal.

It is not in dispute, because of stay on the impugned order passed by the High Court and the Tribunal, it is not yet implemented. Learned counsel for the appellant placed reliance on an order passed by this Court in SLP (C) CC....No. 396 of 2015 dated 19.01.2015, whereby one of the candidates sought benefit of the grace marks for the same post based on the previous practice of grant of grace marks which was denied assigning the reasons given by this Court and the Special Leave Petition was dismissed. The said order is relevant, however for understanding it is reproduced as thus: -

“Delay condoned. 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 provision 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. With the above observations and directions, the special leave petition stands dismissed.”

After hearing learned counsel for the parties and considering the reasonings referred in the aforesaid order, which is squarely applicable in the present case, the benefit of grace marks, if any given in the circular in the previous year cannot be directed for the subsequent years once the Department has decided to not extend such grace marks. Therefore, direction as issued by the Tribunal and the High Court are not in conformity with the order referred above.

At this stage, learned counsel for the appellant submits that they had also prayed for an alternative relief before the Tribunal to re-evaluate Paper V in which 56.5 marks were secured. The said prayer has not been dealt with and considered by the Tribunal because of granting the benefit

of grace marks. However, the direction to re-evaluate Paper V may be issued.

We are afraid to issue such direction after the lapse of 14 years, more so, in particular when the respondent has not raised such plea before the High Court.

In view of the foregoing, we are not inclined to accept the said contention or to remit the matter back to re-adjudicate before the High Court. Accordingly, the appeals are allowed. The impugned judgment(s) passed by the Tribunal and the High Court stand set aside.

Pending interlocutory application(s), if any, is/are disposed of.

.....**J.**
[**J. K. MAHESHWARI**]

.....**J.**
[**SANJAY KAROL**]

New Delhi;
May 16, 2024.

ITEM NO.105

COURT NO.9

SECTION XI-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS**Civil Appeal No(s). 5164-5165 of 2013****THE CHIEF GENERAL MANAGER, TELECOMMUNICATION,
B.S.N.L.****Appellant(s)****VERSUS****SUSHANTA MOHANTY****Respondent(s)****Date : 16-05-2024 These appeals were called on for hearing today.****CORAM : HON'BLE MR. JUSTICE J.K. MAHESHWARI
HON'BLE MR. JUSTICE SANJAY KAROL****For Appellant(s) Ms. Mahevarish Rein, Adv.
Mr. Aldanish Rein, Adv.
Mr. Rameshwar Prasad Goyal, AOR****For Respondent(s) Mr. Suwendu Suvasis Dash, AOR
Ms. Swati Vaibhav, Adv.
Ms. Shruti Vaibhav, Adv.****UPON hearing the counsel the Court made the following
O R D E R**

The appeals are allowed in terms of the signed order.

Pending interlocutory application(s), if any, is/are disposed of.

**(JAYANT KUMAR ARORA)
ASTT. REGISTRAR-cum-PS****(VIRENDER SINGH)
BRANCH OFFICER****(Signed order is placed on the file)**