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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1128/2001

New Delhi, this the 8th day of October, 2002

Hon'ble Shri M.P. Singh, Member(A)
Hon'ble Shri Shanker Raju, Member(J)

1. R.C.Sharma
BA 49C, Ashok Vihar Phase I, Delhi
 2. Ravi Prakash
54B, Pocket B, Dilshad Garden, Delhi
 3. D.L.Manchanda
A-16/2, SFS Flats, Saket, New Delhi
 4. Bhagat Singh
B-1A/64B, Janakpuri, New Delhi
 5. M.L.Chabra
AN/28, Shalimar Bagh, New Delhi
 6. A.P. Raturi
B12, Manas Apts. Mayur Vihar Phase I
Delhi
 7. M.P.Chaturvedi
12A, Lachman Park, Chander Nagar
Delhi
 8. Kashmir Singh
C-7/203A, Lawrence Road, Delhi
 9. I.C.Gaur
Flat No.I, Telephone Exchange
Chanakyapuri, New Delhi
 10. O.P. Ajmani
1027, Dr. Mukherjee Nagar
New Delhi
- .. Applicants

(Shri C.B. Pillai, Advocate)

versus


- Union of India, through
1. Secretary
Ministry of Communications
Sanchar Bhavan, New Delhi
 2. Chairman
Telecom Commission (STG II Section)
Sanchar Bhavan, New Delhi
 3. Parma Nand Lal
Telecom Commission (STG II Section)
Sanchar Bhavan, New Delhi
- .. Respondents

(Shri D.S. Mehandru, Advocate)

ORDER(oral)

Shri M.P. Singh, Member(A)

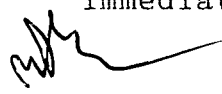
By the present OA, applicants - 10 in number - seek
the following reliefs:

- (i) Refix the seniority of the applicants notionally
above Respondent No.3 and grant them notional
promotion with effect from the date on which he
was promoted;
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- (ii) grant refixation of pay which should not be less than that of Respondent No.3 who is junior to them and grant back wages consequent on such refixation with effect from the date they actually worked on the post as laid down by the Hon'ble Supreme Court in the judgement dated 13.5.1994.

2. Briefly stated, it is the case of the applicants that they are working as Divisional Engineers (DEs) belonging to STS of ITS Group A on promotion from TES Group B in the Department of Telecommunications and they are all senior to Shri P.N. Lal (R-3) in respect of the position in the original eligibility list prepared according to the statutory rules, the year of passing of the Departmental Examination and the seniority assigned in the Blue Book on 1.2.85 and April, 1993. Shri Lal was promoted on 10.5.77 on the basis of a direction of the Allahabad High Court that he should be promoted with effect from a date prior to the date of promotion of any person who has passed the departmental examination subsequent to him. His seniority has been fixed accordingly and he has been paid pay and allowances w.e.f. that date. Many officials belonging to TES Group B, including the applicants who were senior to Shri Lal filed OAs in various Benches of the Tribunal and they have been granted notional promotion from the date their junior was promoted and pay at the same rate as drawn by the junior in the promotion post.

3. According to the applicant, the Supreme Court has held that these seniors will get refixation of their seniority and notional promotion with retrospective effect and would be entitled to fixation of their pay which should not be less than to those who are immediately below them. Though the applicants



represented to the official respondents for the same treatment being senior to Shri Lal they have not yet been granted notional seniority/promotion nor has their pay been refixed. Applicants claim that they are senior to R-3 by following any criteria, viz. the year of recruitment, the year of passing the departmental examination, the position in the original eligibility list prepared according to the statutory rules in 1980-81 and even following the procedure finally upheld by the Supreme Court in the judgement dated 26.4.2000. In spite of this, official respondents are showing R-3 as senior to the applicants in the provisional seniority lists issued by them on 29.9.2000, 5.10.2000 and 1.2.2001. Aggrieved by this, they have filed the present OA seeking the aforesaid reliefs.

4. Respondents have contested the case and have stated in their reply that in terms of TES Group 'B' Recruitment Rules, 1981, the vacancies in TES Group B were filled in by the following modes:

- (i) 33-1/3% through Departmental competitive examination and
- (ii) 66-1/3% on the basis of selection by DPC from amongst qualified candidates in the Departmental qualifying examination.

Promotions were made from amongst qualified persons according to the year of recruitment in the cadre of JTO irrespective of the year in which they passed the qualifying examination. This procedure was challenged by Shri Lal before the Allahabad High Court at Lucknow Bench praying that the seniority to the incumbent should be assigned on the basis of year of passing the qualifying examination. The said petition was allowed by the High Court vide order dated 20.2.1985 with the directions that

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the seniority of JTOs may be fixed on the basis of year of passing the qualifying examination. SLP filed by the department against this judgement was dismissed by the Supreme Court. In view of this position, judgement of Allahabad High Court was implemented by the department in respect of two petitioners involved viz. P.N.Lal and Brij Mohan. There were several cases decided by various Courts on the basis of judgement of Allahabad High Court; it was then that the department decided to implement the said judgement to the entire cadre and accordingly the seniority of entire TES Group B cadre was re-organised and the matter was finally settled in 1993.

5. Thereafter, a case was filed by Madras SC/ST Telecom Welfare Association whereupon the Madras Bench of this Tribunal ordered on 31.12.1986 that "We are therefore of the view that the eligibility list should be arranged according to the year of passing the qualifying examination and amongst those who pass in the same year, the list should be according to their merit as seen from the marks obtained in the examination". Against the said judgement, Department filed SLP before the Supreme Court, which in turn while quashing the judgement of the Madras Bench of the Tribunal vide order dated 13.2.1997, held that the eligibility list has to be prepared according to the year of recruitment/appointment. As the judgement of the Supreme Court was totally in contrast to the judgement of Allahabad High Court in the case of P.N.Lal, Department filed a clarificatory application before the Supreme Court, which vide their order dated 26.4.2000 clarified that the seniority is to be fixed on the basis of year of recruitment in JTO cadre. In accordance with the judgement of the Supreme Court, seniority of entire

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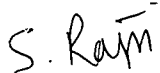
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TES Group 'B' category has again been revised on the basis of year of recruitment and all promotions etc. are to be made as per this revised list. In the revised seniority list, name of Shri Lal (R-3) has been shown senior to the applicants in terms of the judgement of the Supreme Court. As such the applicants are not entitled for their pay fixation etc. at par with Shri Lal. Hence the OA be dismissed.

6. We have heard the learned counsel for the parties and perused the records.

7. During the course of the arguments, the learned counsel for the respondents has drawn our attention to the common judgement of this Tribunal dated 16.7.2002 by which OA No.1914/2001 with OA 2945/2001 filed by similarly placed persons was dismissed in view of the clarificatory order of the Hon'ble Supreme Court dated 26.4.2000 (supra). The issues involved and the reliefs prayed for by the present applicants are not different from those of the aforesaid OAs (OA 1914/2001 with OA 2945/2001). We are bound by the decision of the Supreme Court. The provisional seniority list dated 29.9.2000 annexed by the applicants has been prepared in compliance of Supreme Court's judgement dated 26.4.2000 and therefore it cannot be interfered with by this Tribunal.

8. In view of this position, we are unable to entertain the present OA and grant the reliefs prayed for. The OA fails on merit and is accordingly dismissed. No costs.


(Shanker Raju)
Member(B)


(M.P. Singh)
Member(A)

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