

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA.NOS.1914/2001 & 2945/2001

Tuesday, this the 16th day of July, 2002

Hon'ble Mrs. Lakshmi Swaminathan, Vice Chairman (J)
Hon'ble Shri S.A.T. Rizvi, Member (A)

In the matter of:

1. Promotee Telecom Engineers Forum,
114, H-17, Sector 7,
Rohini,
New Delhi-110 085,
through its President.
2. Azad Singh Chaudhry,
SDE Displ.,
O/o GM(Vig), M.T.N.L.,
New Delhi.
3. V.M. Singh,
SDE Internet,
Shastri Nagar,
Meerut-250 001, U.P.
4. Dalbir Agrawal,
SDE, COC II(S),
O/o GM-PM,
M.T.N.L.,
New Delhi.
5. U.S. Arora,
SDE, H-2/77, Vikas Puri,
New Delhi.
6. Ranbir Singh,
SDE (TX-OKH)I, OFC
Telephone Exchange,
New Delhi-65.
7. Chunni Singh,
SDE(P),
BIJNOR, U.P.
8. Anup Kumar Kharb,
SDE(P)-I(W),
B.S. Block,
Shalimar Bagh,
New Delhi.
9. Rabendra Singh,
SDE(LC),
Kidwai Bhawan,
New Delhi.
10. Suresh Kumar Kulshreshta,
SDE (M/W),
Mussoorie (U.P.).

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11. Pradeep Kumar,
SDE Cable, 'E' Block Market,
Sarita Vihar,
New Delhi.
12. C.K. Saroja,
SDE, O/o GM(S), M.T.N.L.,
Mumbai, Tel. Bhawan,
Colaba, Mumbai.
13. B. Antony,
SDE, O/o GM(E-II),
MTNL, Mumbai,
Charai Tel. Exchange,
Thane(W),
Mumbai - 400 601.
14. P.K. Narayan,
SDE, O/o DGM(TAX), MTNL,
Mumbai,
Prabha Devi Tele. Exchange,
Dadar,
Mumbai.
15. Girdhari Lal,
S.D.E., SDO(P), Talab Tiloo,
Jammu Tawi (J&K).
16. Ramachandra G. Shet,
S.D.E., O/o RTTC MTNL,
Mumbai, Sakinaka,
Andheri-500 058.
17. Nagarajappa M,
S.D.E., O/o GM(MKT. & PR),
MTNL, Mumbai,
Prabha Devi Tele. Exchange,
Dadar (W), Mumbai.
18. B.P. Sinha,
S.D.E., O/o DGM(C),
MTNL, Mumbai,
Prabha Devi Tele. Exchange,
Dadar (W), Mumbai.
19. Janaky Jagdish,
S.D.E., O/o DGM(IT/FCS),
MTNL, Mumbai,
Malabar Hill Tel. Exchange,
Mumbai - 400 006.
20. S.R. Sakhare,
S.D.E., O/o DGM(Worli),
MTNL, Mumbai Tele. Exchange,
Worli, Mumbai.
21. G. Bheemappa,
S.D.E., O/o DGM(GSM),
MTNL, Mumbai,
Curry Road Tel. Exchange,
Parel, Mumbai.

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22. C.U. Gade,
S.D.E., O/o DGM(Worli),
MTNL, Mumbai,
Tele. Exchange,
Worli, Mumbai.
23. P.C. Parsai,
S.D.E., O/o DGM(CE/BW),
MTNL, Mumbai,
Phoenix Mill Compound,
Sena Patti Bapat Marg,
Lower Parel, Mumbai.
24. G.R. Kulkarni,
S.D.E., O/o DE(Panch Pakadi),
MTNL, Mumbai,
Tele. Exchange, Panch Pakadi,
Thane(W), Mumbai.
25. Anil Kumar,
S.D.E., O/o Director, NOCC,
CGM, NTR,
New Delhi.
26. K.B. Saxena,
S.D.E., SDO(P) KKD,
AGCR Enclave,
Delhi-92.
27. K.K. Rawat,
S.D.E., O/o GM(MM),
9 CGO Complex,
Lodhi Road,
New Delhi-3.
28. Y.S. Tyagi,
SDE(OCB)-283,
Lothian Road,
Telephone Exchange,
Delhi.
29. Balwant Singh,
SDE(CS),
Telephone Exchange,
Laxmi Nagar,
Delhi-92.
30. Madan Singh,
S.D.E., COC IX(S),
O/o GM(PM), MTNL,
New Delhi.
31. Brijesh Tyagi,
SDE(P) SHE
O/o GM(T),
Ghaziabad (UP).
32. Rajendra Prasad,
SDE-MM Sec-58 T.E.,
NOIDA(UP).

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33. R.K. Tanwar,
S.D.E., A.D. O/o DDG(V)
TEC., K.L. Bhawan,
New Delhi.
34. Virendra Prakash,
S.D.E., H.No.22A, D-Block,
RSEB Colony,
Jaipur.
35. R.S. Panwar,
SDE A/T,
O/o DGM A/T,
M.T.N.L.,
New Delhi.
36. C. Adiga,
S.D.E., O/o GM(N), MTNL,
Mumbai, Wadala Tel. Exchange,
Dadar, Mumbai.
37. V.K. Mahuli,
S.D.E., O/o GM(S), MTNL,
Mumbai, Tel. Exchange,
Colaba, Mumbai.
38. L.M. Baslikar,
S.D.E., O/o DGM(WAGLE), MTNL,
Mumbai,
Wagle Tel. Exchange,
Thane, Mumbai.
39. A.D. Babladi,
S.D.E., O/o DGM (Bandra), MTNL,
Mumbai, Tel. Exchange,
Bandra, Mumbai.
40. C.A. Weeramani,
S.D.E., O/o DGM (Gamdevi), MTNL,
Mumbai, Tel. Exchange Gamdevi.
41. Nand Kishore,
S.D.E., O/o GM(Planning),
Eastern Court,
New Delhi.
42. S.C. Bhardwaj,
SDE Cable,
Jor Bagh,
New Delhi.
43. S.C. Jigota,
SDE(TX-JB) OFC,
Jorbagh Tel. Exchange,
New Delhi.
44. C.B.S. Bisht,
SDE (TX-HK) OFC,
Hauz Khas Tel. Exchange,
New Delhi.

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45. Satya Pal Singh,
SDE (TX-LN-2) OFC,
Laxmi Nagar, Tel. Exchange,
New Delhi.
 46. R.K. Sharma,
SDE (TX-RG),
Rajouri, Tel. Exchange,
New Delhi.
 47. T.N. Singh,
SDE (TX-DG),
Delhi Gate, Tel. Exchange,
Delhi.
 48. Anil Gupta,
S.D.E., AD (N/W),
O/o DDGN,
TEC, New Delhi.
 49. Ajay Sharma,
SDE Rehabilitation,
AGCR Enclave,
Delhi-92.
 50. Satyendra Kumar,
SDE,
O/o CGM, ALTTC,
Ghaziabad, U.P.
 51. Mahendra Pal,
SDE,
SA to GM(WI) & LSC,
Mayapuri, Phase-I,
New Delhi.
 52. Amarjeet Kaur,
SDE D-II, Telephone Exchange,
Janakpuri,
New Delhi.
- ... Applicants
- (By Advocates: S/Shri Dayan Krishnan, Nikhil Nayyar & R.K. Shukla)

Versus

1. Secretary,
Department of Telecommunications,
Sanchar Bhawan,
20, Ashok Road,
New Delhi-110 001.

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2. Chairman
Telecom Commission
Sanchar Bhawan
20, Ashok Road
New Delhi-1
3. Director General (Telecom)
Sanchar Bhawan
20, Ashok Road
New Delhi-1
4. M.R.Balani
D.E. (Staff No.9457)
O/o GM
Jaipur Tel.District
Jaipur
5. B.C.Biradar
D.E. (Staff No.10290)
Wagle Tel Exchange Buildg,
Wagle Estate
Thane (W), Mumbai
6. A.V. Kulkarni
D.E. (Staff No.11635)
O/o G.M. (East-II)
Charai Tel. Exchange
Thane, Mumbai

..Respondents

(By Advocates: Shri M.M.Sudan & Shri R.K.Kapoor for
the respondents in both the OAs)

QA-2945/2001

1. R.N.Kuchai
SDE, SDOT Bari-Brahmana
O/O GMTD, Jammu
2. R.L.Kaul
SDE, ADT R/s O/o the CGMT
Jammu
3. S.N.Raina
SDE, Commercial Officer-II
O/o GMTD, Jammu
4. Harcharn Singh
SDE, SDOT, Baramulla,
O/o GMT., Kashmir
5. P.N.Raina
SDE, ADT Vigilance
O/O CGMT, J&K
6. L.D.Kaul
SDE, COT, Jammu
O/o GMTD, Jammu
7. Qazi Shamasudin
SDOT Badgam
O/o GMT, Kashmir

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8. A.K. Kachreo
ADT, P/R
O/o CGMT, J&K

..Applicants

(By Advocates: S/Shri Dayan Krishnan, Nikhil Nayyar & R.K.Shukla)

Versus

1. Secretary,
Department of Telecommunications
Sanchar Bhawan
20 Ashok Road
New Delhi-1

2. Chairman
Telecom Commission
Sanchar Bhawan
20, Ashok Road
New Delhi-1

3. Director General (Telecom)
Sanchar Bhawan
20, Ashok Road
New Delhi-1

4. M.R.Balani
D.E. (Staff No.9457)
O/o GM
Jaipur Tel.District
Jaipur

5. B.C.Biradar
D.E. (Staff No.10290)
Wagle Tel Exchange Bldg,
Wagle Estate
Thane (W), Mumbai

6. Shri Noor Ud Din,
SDE (Officiating), (Staff No.10279)
Telephone Exchange Building
Anantnag, Kashmir

..Respondents

(By Advocates: Shri M.M.Sudan & Shri R.K.Kapoor for the respondents)

O R D E R (ORAL)

Shri S.A.T. Rizvi:

These OAs raise similar issues of law and fact and are, therefore, being taken up together for passing this common order.

2. OA-1914/2001 has been filed by fifty two applicants against three official and three private

respondents. The other OA, being OA-2945/2001, has been filed by eight applicants against the same official respondents and three private respondents, out of which only one is different from the private respondents named in the above OA. In both these OAs, the seniority list Nos.3 & 4 respectively dated 22.3.2001 and 26.3.2001 are under challenge. In OA-1914/2001, the applicants have challenged yet another seniority list, being seniority list No.5 issued by the respondents on 28.3.2001. All these seniority lists together with two more seniority lists, being seniority list Nos. 1 and 2, have been issued simultaneously by the respondents by their letter dated 30.3.2001 (P-1).

3. We have heard the learned counsel at great length and have also perused the material placed on record. We have, in particular, carefully perused the Hon'ble Supreme Court's clarificatory judgement delivered on 26.4.2000 (P-3). The main and the only contention raised in these OAs centres around the interpretation of the dicta of the court finding place in the aforesaid judgement dated 26.4.2000.

4. Since a similar issue had been raised before the High Court of Kerala in OP No.13598/98, we have also cared to peruse the order dated 14.1.2002 passed by the respondents in the light of the aforesaid judgement of the High Court of Kerala delivered on 3.10.2001. The aforesaid order dated 14.1.2002 which was supplied to us by the respondents also takes into account the aforesaid clarificatory judgement of the Supreme Court dated

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26.4.2000. We have also perused the order dated 4.2.2002 passed by a Division Bench of this Tribunal in a similar case in OA-1269/2001 also supplied to us on behalf of the respondents.

5. The applicants' case in both the OAs, in a nutshell, is that the impugned seniority lists have been issued in contravention of the rule laid down by the Supreme Court in the aforesaid judgement dated 26.4.2000, and, as a result, the applicants have lost seniority. According to them, they stand on the same footing as S/Shri Parmanand Lal and Brij Mohan and should, therefore, have been treated in the matter of seniority and promotion in the same way in which S/Shri Parmanand Lal and Brij Mohan have been treated. Aforesaid discrimination against the applicants has been made, according to them, in spite of the rule laid down by the Supreme Court in its judgement dated 26.4.2000.

6. Very briefly, ^{stated,} it appears that Engineering Supervisors (re-designated Junior Engineers) were promoted on the basis of the eligibility lists drawn up in accordance with paragraph 206 of the P & T Manual, and this was done at a time when relevant recruitment rules and instructions had already existed in the shape of the Telegraph Engineering Service Class II Recruitment Rules, 1966 and the departmental instructions dated 28.6.1966. This resulted in seniority being accorded on the basis of the year of passing of the qualifying departmental examination, i.e., those who cleared the departmental examination earlier, were to be treated as senior to

those who did the same later. The aforesaid recruitment rules of 1966 read with the aforesaid departmental instructions of 28.6.1966, on the other hand, provided for determination of seniority on the basis of the recruitment year with the further provision that within the same recruitment year, those who cleared the qualifying departmental examination earlier were to be placed enbloc above those who passed the departmental examination subsequently. Determination of seniority by applying the provisions of paragraph 206 of the P & T Manual in some cases and by following the aforesaid recruitment rules of 1966 read with the aforesaid instructions of 28.6.1966 in some others, led to a spate of litigation. S/Shri Parmanand Lal and Brij Mohan had, aggrieved by the respondents' action in the matter of determination of their seniority and promotion, approached the High Court of Allahabad (in Writ Petition Nos. 2739/81 and 3652/81) which followed the provisions of paragraph 206 of the P & T Manual and when the matter was taken up before the Supreme Court, the SLP Nos. 3384-86 of 1986 was dismissed on 8.4.1986. Thus, S/Shri Parmanand Lal and Brij Mohan became entitled to benefit from the Allahabad High Court's judgement in question. In a subsequent case, namely, that of Union of India Vs. Madras Telephone SC & ST Social Welfare Association (CA-4339/95), the Supreme Court took a different view and ruled in favour of application of the provisions available in the aforesaid recruitment rules of 1966 and the departmental instructions of 28.6.1966 for determining seniority and also eligibility for promotion. In the circumstances, the Union of India,

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being of the opinion that the Supreme Court judgement in the case of Union of India Vs. Parmanand Lal & Ors. in SLP Nos.3384-86 of 1986 ran contrary to its judgement dated 13.2.1997 in Madras Telephone SC & ST Social Welfare Association's case (supra) in CA-4339/95, filed an application before the Supreme Court seeking clarifications in the matter. The aforesaid order dated 26.4.2000 has been passed by the Supreme Court, inter alia, on the aforesaid application filed by the Union of India.

7. The learned counsel appearing on behalf of the applicants have, during the course of arguments, placed reliance on the following observations made by the Supreme Court in the aforesaid judgement dated 26.4.2000:-

"17..... We however, make it clear that the persons who have already got the benefit like Parmanand Lal and Brij Mohan by virtue of the judgments in their favour, they will not suffer and their promotion already made will not be affected by this judgment of ours."

"19..... We have also indicated that the promotions already effected pursuant to the Judgment of the Allahabad High Court, which was upheld by this Court by dismissing the special leave petition filed by the Union of India will not be altered in any manner....."
(emphasis supplied)

The applicants have also relied on the following observation of the Court in regard to the aforesaid S/Shri Parmanand Lal and Brij Mohan:-

"19..... We make it clear that the seniority of Parmanand in the cadre of Junior Engineer, fixed on the basis of

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the directions of Allahabad High Court, after dismissal of the SLP against the same by this Court is not liable to be altered by virtue of a different interpretation being given for fixation of seniority by different Benches of the Central Administrative Tribunal....."

(emphasis supplied)

8. The sum and substance of the contention raised on behalf of the applicants is that from the aforesaid observations made by the Supreme Court (reproduced in paragraph 7 above), it is clear that all the Junior Engineers, who have already benefited by obtaining Court/Tribunal's verdict in their favour on the basis of the judgement of the Allahabad High Court, the SLP against which was dismissed by the Supreme Court on 8.4.1986, will have to be treated differently by giving them seniority as well as promotion in terms of the law laid down by the High Court.

9. The learned counsel appearing on behalf of the respondents have, on the other hand, contended that in the aforesaid clarificatory judgement dated 26.4.2000, the Supreme Court has nowhere observed/clarified the matter in the manner contended by the applicants. The Supreme Court has, according to them, ruled in favour of S/Shri Parmanand Lal and Brij Mohan, who were petitioners before the Allahabad High Court. The seniority as well as the promotion given to them in consequence of the judgement of the Allahabad High Court have been duly protected by the Supreme Court in the aforesaid clarificatory judgement. The Supreme Court has also, insofar as promotion alone is concerned, ruled that persons, who have already got the benefit, like S/Shri

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Parmanand Lal and Brij Mohan, will not suffer and their promotion already made will remain unaffected. This is, according to them, the true implication of the Supreme Court's observations reproduced in paragraph 7 above. Thus, according to the learned counsel for the respondents, what has been protected by the Supreme Court in respect of persons, like S/Shri Parmanand Lal and Brij Mohan, is their promotion, and not their seniority. Seniority and promotion, according to them, are distinct matters and one cannot follow the other. In the circumstances, while the respondents do not see any problem in protecting the promotion of those who have already received benefit, like S/Shri Parmanand Lal and Brij Mohan by virtue of judgements in their favour, they are not inclined to protect the seniority of any of such persons. Protection of seniority of such persons has not been sanctified, according to them, by the Supreme Court in the aforesaid judgement dated 26.4.2000. The fact that the Court has protected both seniority and promotion in respect of S/Shri Parmanand Lal and Brij Mohan cannot be relied upon to argue that an identical concession should be made in favour of all those persons who have benefited, like S/Shri Parmanand Lal and Brij Mohan by virtue of Court/Tribunal's judgements in their favour. The learned counsel have clarified that following the aforesaid judgement dated 26.4.2000, the respondents are prepared to protect the promotion already given to those other than S/Shri Parmanand Lal and Brij Mohan, who had already benefited by virtue of Court/Tribunal's judgements made in their favour by relying on Allahabad High Court judgement. Both seniority and promotion have

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to be protected, however, only in respect of S/Shri Parmanand Lal and Brij Mohan.

10. In the letter dated 14.1.2002 issued by the respondents to which a reference has been made by us in an earlier paragraph and which is a detailed and a reasoned letter, the respondents have stated that in its judgement, the Supreme Court has nowhere directed that seniority of those officers shall also be protected, who were not even a party before the Allahabad High Court. Further, when a similar case, as the case at hand, came up before this Tribunal in OA-1269/2001, the Division Bench in its order of 4.2.2002, after taking note of the aforesaid clarificatory judgement dated 26.4.2000, dismissed the OA by holding that the following conclusion recorded in the Supreme Court's aforesaid judgement cannot apply to those, who were not a party before the Allahabad High Court:-

"We have also indicated that the promotions already effected pursuant to the judgment of the Allahabad High Court which was upheld by this court by dismissing the SLP filed by the Union of India will not be altered in any manner. This being the position and the judgment of the Allahabad High Court having attained finality, he having received the benefit of the said judgment and having been promoted, could not have been reverted because of some later judgments and directions given either by the Tribunals or by this Court."

The aforesaid order passed by this Tribunal constitutes a binding judicial precedent for us.

11. For all the reasons brought out in the preceding paragraphs, we find considerable merit in the various

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pleas raised on behalf of the respondents and taking note of the fact that the promotions already made by virtue of Court/Tribunal's judgements made in the light of Allahabad High Court judgement in favour of the various applicants, like S/Shri Parmanand Lal and Brij Mohan will be protected, we find no merit in the applicants' case. Accordingly, both the OAs deserve to be dismissed and are dismissed without any order as to costs.

12. Let a copy of this order be placed in OA-2945/2001.

S.A.T. Rizvi

(S.A.T. Rizvi)
Member (A)

Lakshmi Swaminathan

(Mrs. Lakshmi Swaminathan)
Vice Chairman (J)

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