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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No. 3020/2001
MA Nos. 2455, 2571 and 2572 of 2001

New Delhi, this the 22nd day of November, 2001

HON'BLE MR. V.K. MAJOTRA, MEMBER (A)
HON'BLE MR. KULDIP SINGH, MEMBER (JUDL)

1. Bishnu Swaroop
Executive Engineer (P&D)-I
BSNL Civil Planning Circle, Kolkata.
2. Parmeshwari Dayal
Executive Engineer (HQ)
o/o Chief Engineer (C)
BSNL Rajasthan Zone, Jaipur.
3. Vinod Sharma
Executive Engineer (C)
BSNL Civil Division, Meerut.
4. Sunil Bhandari
Executive Engineer (P&D) I
o/o Chief Engineer (c)
BSNL Rajasthan Zone,
Jaipur.Applicants

By Advocate: Shri Vikas Singh.

Versus

1. Union of India represented
by Secretary to Government of India
Department of Telecommunications,
Sanchar Bhawan, 20, Ashoka Road,
New Delhi-110 001.
2. Sr. Deputy Director General (BW)
Bharat Sanchar Nigam Limited,
10th Floor, Chanderlok Building,
Janpath, New Delhi-110 001.
3. Director (Civil),
Department of Telecommunications,
10th Floor, Chanderlok Building,
Janpath, New Delhi-110 001.Respondents

By Advocate: Shri M.M. Sudan, Sr. Counsel for respondents
Nos. 1 to 3.

Shri Chander Shekhar, counsel for private
respondents No. 4 and 5 on behalf of Shri
S.C. Garg and Shri M.K. Tyagi.

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By Hon'ble Mr. Kuldip Singh, Member (Judl).

This OA has been filed under Section 19 of

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the Administrative Tribunal's Act, 1985 whereby the applicants are seeking directions to the respondents to prepare seniority list of Executive Engineers in terms of the quota/quota prescribed under the P&T Civil Engineering (gazetted officers recruitment rules) which came into effect from the year 1969 and to promote to the Grade of Supdt. Engineers from the said revised seniority list.

2. The main grievance of the applicants is that this service was constituted in the year 1963. During 1963 to 1969 various Junior Engineers were appointed departmentally. Assistant Engineers (AEs) and Assistant Executive Engineers (AEEs) were appointed through UPSC by direct recruitment. Disputes with regard to seniority had also arisen. The applicants also say that in a matter before Hon'ble Supreme Court in the case of Abraham Jacob Vs. U.O.I. reported in 1998(4) SCC page 65, the respondents also filed an affidavit with regard to draft recruitment rules which were framed in the year 1969 itself and the same were given effect to as Administrative instructions in the absence of finalisation of the same and the draft rules were ultimately approved by the Government and became statutory rules on 21.2.1976.

3. The applicants further allege that the respondents had issued a seniority list of Assistant Engineers on 20.6.94. However, while issuing the provisional seniority list for Executive Engineers the respondents did not follow the quota/rota rule as had

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been done by them while determining the seniority of Assistant Engineers. It was challenged before the Ernakulam Bench of the Tribunal and the matter had also gone to the Hon'ble Supreme Court. The Supreme Court by its judgment dated 11.2.1998 held that the Recruitment Rules applied from the year 1969 as Administrative Instructions. Thereafter a provisional seniority list was issued on 25.11.1994 and now a seniority list of Executive Engineers was issued on 11.1.1999 after dealing with the objections filed by the various officers and in pursuance of the judgment of the Principal Bench. The said list has been finalised. The applicants apprehend that the respondents are going to make promotions on the basis of the said list.

4. The applicants further allege that this seniority list has also not been prepared in accordance with the rules and instructions on the subject, so they have challenged the same.

5. The applicants also pray for the following reliefs:-

(i) To direct the respondents to prepare a seniority list of Executive Engineers by following the rota/quota as prescribed under the 1976 Rules after applying the said rule from 1969 as done in the case of Assistant Engineers.

(ii) All those Assistant Engineers, who served as Executive Engineer on ad hoc basis and since have retired and who do not figure in the regularisation

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list of the Assistant Engineers at Executive Engineer level due to unavailability of their CRs before the DPC should be included in the combined seniority list at Executive Engineer level as per the quota rule amongst feeder cadre. The vacancies arising at Executive Engineer level due to retirement of such Assistant Engineers should be distributed amongst Assistant Executive Engineers and Assistant Engineers as per their respective quota.

(iii) Direct the respondents to make promotion to the rank of Supdt. Engineers only after finalisation of the seniority list of Executive Engineers as referred to above.

6. When the OA was taken up for admission, the following interim order was passed on 6.11.2001:-

" Restrain the respondents from permitting any Executive Engineers to the rank of Suptd. Engineers during the pendency of this OA."

7. On 20.11.2001 the matter was taken up for hearing. The respondents did not file any reply, rather the respondents through Shri M.M. Sudan, Sr. Govt. Counsel submitted that the seniority list dated 11.1.1999 is still under revision because in between various other OAs had been decided at Mumbai, Hyderabad, Bangalore and Principal Bench, New Delhi which are as follows:-

(i) OA No.513/98, 543/99, 52/2000 and 78/2000 of CAT Mumbai Bench in the case of Shri A.K. Milkatia & Others.

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(ii) OA No.1176/99 of CAT Hyderabad Bench in the case of Smt. Nasreen Quadri.

(iii) OA No.887/99 and 878/99 of CAT Bangalore Bench in the case of Shri P. Srinivasan and Shri P.V. Damodran respectively.

(iv) OA 1168/99 of CAT (PB) New Delhi in the case of Shri S.C. Arora and Others.

8. Keeping in view the directions given in the aforesaid judgments, the department is going to revise the seniority list. However, department is bound to respect the orders passed in case of Smt. Nasreen Quadri so as to avoid contempt proceedings in the case of Nasreen Quadri passed by the Central Administrative Tribunal, Hyderabad Bench and are going to comply with the directions given by the Hyderabad Bench.

9. Shri Sudan further submitted that since the respondents are otherwise going to revise the seniority list, so the reliefs claimed by the applicants will become infructuous because the cause of action, i.e., the seniority list dated 11.1.1999 which is under challenge in this case is itself going to be revised by the department itself and in case after the revision of the seniority list if the grievance of the applicants still survive, then the applicants will have a fresh cause of action and they may file a fresh OA, if so advised.



10. In reply to this, the counsel appearing for the applicants submitted that the respondents had submitted that they are following the 4 judgments given by the Benches of the CAT at Mumbai, Hyderabad, Bangalore and Principal Bench but the respondents are also bound to follow the judgment given in the case of Abraham Jacob (Supra).

11. We have heard the learned counsel for the parties and gone through the records of the case.

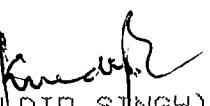
12. Since the basic cause for filing the OA is the seniority list dated 11.1.1999 and as the department is not going to act upon the same since Shri Sudan, Sr. Government Counsel appearing for the respondents submitted that they have to revise the seniority list dated 11.1.1999 as per the directions given in the judgments referred to in para 7 above, so we think that this OA can be disposed of at this stage itself because in any case after the revision of seniority list the present cause of action for filing the present OA will not survive and in case the fresh seniority list is issued, then the applicants will have a fresh cause of action, for which they have to file a fresh OA, if so advised.

13. Keeping in view the statement made by the learned counsel for the respondents that they are going to revise the seniority list dated 11.1.1999, we direct that the present seniority list dated 11.1.1999 be not acted upon and the respondent shall revise the seniority list dated 11.1.1999 as per the directions given in

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various judgments and the relevant observations made by the Hon'ble Supreme Court in the case of Abraham Jacob (Supra) which may have bearing on the seniority list in question, so the relevant observations made by the Hon'ble Supreme Court may also be followed.

14. The OA stands disposed of with the above directions. The interim order passed on 6.11.2001 is hereby vacated. The respondents are directed to revise the seniority list within a period of 3 months from the date of receipt of a copy of this order. No costs.


(KULDIP SINGH)
MEMBER (J)


(V.K. MAJOTRA)
MEMBER (A)

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