

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.1881/99

New Delhi this the 20th day of December, 2000

Hon'ble Shri V.K. Majotra. Member (A)
Hon'ble Shri Shanker Raju, Member (J)

1. O.P. Kushwaha
S/o Late Shri Changa Prasad
Jr. Telecom Officer working in
New Coaxial, 5th Floor,
Kidwai Bhavan, New Delhi-110001.

2. Ashok K. Ahluwalia
S/o Shri Sita Ram
Jr. Telecom Officer working in
VFT, 6th Floor,
Kidwai Bhavan, New Delhi-110001.

-Applicants

(By Advocate: Shri H.K. Gangwani)

Versus

Union of India & Others
Through

1. The Secretary,
Dept. of Telecommunications
M/o Communications
Government of India
Sanchar Bhavan, New Delhi.
2. The Chairman/Secretary
Dept. of Telecommunications
M/o Communications
Government of India
Sanchar Bhavan, New Delhi.
3. The Chief General Manager
Northern Telecom Region
M/o Telecommunications
D/o Telecommunications
Kidwai Bhavan, New Delhi.
4. Shri K.K. Mehta,
SDE RADMN, New Delhi
O/O Director NOCC Tax Building
2nd Floor, Eastern Court,
Janpath, New Delhi.
5. Shri K.L. Dung, SDE
D/o DE, New Coaxial, 5th Floor Annexe,
Kidwai Bhawan, New Delhi.
6. Shri Mukhtyar Singh, SDE
O/O DE, New Coaxial, 5th Floor, Annexe,
Kidwai Bhavan, New Delhi.
7. Shri Darshan Lal
SDE, Fault Control,
O/o DET. Fault Control
Room No. 401, Kidwai Bhawan, New Delhi.

-Respondents

(By Advocate: Shri N.S. Mehta, Respondents Nos. 1 to 3 &
Shri Sant Lal, Respondents Nos. 4 to 7)

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ORDER (Oral)

Shri V.K. Majotra, Member (A)

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The applicants who are working as Junior Telecom Officer (JTO) on appointment in the recruitment year 1992 and 1989 respectively have challenged order dated 1.2.99 (Annexure A-1) whereby respondents 4 to 7 have been promoted to officiate in TES Group 'B' purely on ad hoc and temporary basis for 180 days in the pay scale of Rs. 7500-12000/-. According to the applicants, the rules of recruitment to the cadre of JTO were made effective from 9.2.1996 (Annexure A-2) Although the Assistant Superintendent Telegraph Traffic (ASTT) were treated at par with the cadre of JTO under the aforesaid recruitment rules, the applicants have contended that they ^{respondents 4-7} cannot be made senior to them as they ^{than} had been appointed as JTOs much earlier to 9.2.96. It is further pleaded that ASTTs treated at par to the cadre of JTO were to undergo training for a period of 25-29 weeks as per Memorandum dated 23.7.96 (Annexure A-3). According to the applicants, ASTTs merged into the cadre of JTOs were to be accorded seniority as JTOs only after having undergone training for 25-29 weeks. Thus, the applicants have objected to the promotion of respondents No. 4 to 7 to the post of Group-B as they have not undergone training as JTOs making them eligible for further promotions. The applicants have alleged that since they ^{respondents 4-7} are neither trained nor qualified nor eligible for the higher post, their promotion is illegal and in colorable exercise of power. Applicants have sought quashing and setting aside of the impugned order dated 1.2.99

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and direction to the respondents to consider the applicants for promotion to the higher post. They have also sought direction to the respondents for maintenance of combined seniority list in accordance with law and interpolation of the names of the applicants at appropriate places in accordance with law. 17

2. The official respondents 1 to 3 in their counter have stated that the seniority of JTOs and ASTTs was being maintained separately. In pursuance of DOT letter dated 5.4.94 (Annexure R-I), both the cadres were merged and seniority of ASTTs and JTOs on merger was allocated by following methodology for merger prescribed under Annexure R-1 dated 5.4.94. The respondents have taken exception to challenge to the methodology of placement of JTOs and ASTTs after a period of more than 5-1/2 years of the issue of orders dated 5.4.94 (Annexure R-I) ^{and despite} ~~although~~ the All India Combined Gradation list of merged cadres in compliance of orders dated 10.10.96 in OA No. 286/96 was prepared ^{on 12.6.1997.} According to the respondents, the private respondents 4 to 7 have been promoted under guidelines prescribed under letter dated 26.9.96 (Annexure R-IV) relating to local officiating arrangement in TES Group 'B' for a period of less than 180 days.

3. In their counter on behalf of respondents 4 to 7 have stated that the merger of the cadres of ASTTs and JTOs was effected vide Notification dated 5.4.94. The combined seniority list of ASTTs was issued on directions contained in the order dated 10.10.96 in OA-286/96. The Recruitment Rules of 1996 were issued vide Notification dated 9.2.96 in pursuance of the decision of merger of two cadres. These

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respondents have maintained that the seniority ~~of~~ ^{on} merger of two cadres has been allocated ~~through~~ ^{to} members of the merging cadres on the basis of their respective seniorities in their respective cadres on the basis of the methodology prescribed in order dated 5.4.94. Thus, whereas respondents 4 & 5 were recruited in their earlier cadre in the year 1980 and respondents 6 & 7 were recruited in their earlier cadre in 1979, applicants 1 & 2 were recruited in their cadre of JTO during 1992 and 1989 i.e. much later than the respondents in their respective cadres. 18

4. The applicants have filed rejoinder to the reply made by Respondents 1 to 3 and not to the reply filed by Respondents 4 to 7.

5. We have heard the learned counsel of both sides at length and considered the material available on record carefully.

6. The learned counsel of the applicants Shri Gangwani has maintained that merger of the two cadres was effected w.e.f. 9.2.96. The ASTTs were required to undergo training for a period of 25-29 weeks before they could be considered to have become JTOs. In any case according to him, ASTTs could not have been considered as JTOs prior than 9.2.96 as the Recruitment Rules for the post of JTOs came into effect only on 9.2.96. Referring to order dated 10.10.96 stated that whereas the respondents were directed to publish the draft seniority list of the merged cadre of JTOs within a period of three months from the date of receipt of a copy of the judgment, the order nowhere stated that the old

JTOs could be made junior to the new JTOs on merger from the cadre of ASTTs. The learned counsel has also contended that the contention of the respondents ^{for allocation of} ~~to have allocated~~ seniority on the basis of instructions contained in Memorandum dated 5.4.94 (Annexure R-I) cannot hold good as the respondents could be treated at par to the cadre of JTOs only w.e.f. 9.2.96 when the Recruitment Rules came into existence. The aforesaid instructions can only be allowed to supplement and not supplant the statutory rules. (19)

7. Shri N.S. Mehta, learned counsel for Respondents 1 to 3 pointed out that the seniority list of the merged cadres was published in pursuance of Court order dated 10.10.96 in OA No. 286/96 in combination with the instructions contained in Annexure R-I dated 5.4.94. This seniority list was published ~~in~~ provisionally on 12.6.97 and finally on 10.11.98 but was not challenged by the applicants. He further mentioned that the date of merger of ASTTs with JTOs was made effective from 9.2.96 and the advancement granted to ASTTs during the period w.e.f. 1.4.94 to 8.2.96 was treated as personal to them as per Memorandum dated 13.1.98 (Annexure R-1). The learned counsel further stated that the respondents 4 to 7 were promoted in TES Group-B on ad hoc and temporary basis for 180 days as per instructions in the matter of Local Officiating Arrangements in the Circles. However, the periods of such ad hoc appointments of respondents 4 to 7 were extended from time to time. However, now these ^{respondents} ~~provisions~~ have been promoted as ^{TES} ~~ASTTs~~ Group-B on a regular basis. The learned counsel maintained that JTOs' Recruitment Rules are applicable for fresh recruitment of JTOs. Thus the requirement of training etc prescribed in

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such rules is also applicable to the fresh appointees. These rules relate to the erstwhile ASTTs only to the extent that under these rules they were to be treated at par to the cadre of JTOs as a one time measure.

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8. Shri Sant Lal learned counsel of the respondents supplemented the points made by the learned counsel of the official respondents stating that the applicants have tried to confuse the seniority and promotion of the erstwhile ASTTs i.e. the respondents 4 to 7 with fresh recruitment of JTOs by suggesting that every thing contained in the Recruitment Rules should be made applicable to them. According to him the respondents 4 to 7 had become ipso facto JTOs as a one time measure. They were not required to be given training under the rules. They have received the relevant training when they were initially recruited as ASTTs under their own rules. The inter-se-seniority of the merged cadre was to be regulated by the instructions contained in Memorandum dated 5.4.94 (Annexure R-I) which had nothing to do with the Recruitment Rules of JTO 1996 as they related to fresh recruitment of JTOs. The applicants and respondents 4 to 7 have been allocated inter-se-seniority on merger of the cadres of ASTTs with JTOs by following the methodology prescribed in Memo dated 5.4.94 (Annexure R-I). Shri Sant Lal also pointed out that the applicants had not submitted any objection to the provisional combined seniority list of JTOs issued in June 1997 and thus final seniority list ^{was} ~~have~~ been published on 10.11.98. The applicants did not submit any objection to that as well by the prescribed date namely, 15.12.98. The learned counsel further pointed out that the applicants did not challenge the seniority list at the

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appropriate time. They have also not challenged the scheme relating to the merger of Telegraph Traffic and Telegraph Engineering arms issued on 5.4.94 (Annexure R-I) in which the methodology for merger of ASTTs & JTOs leading to allocation of inter-se-seniority of the two erstwhile cadres was prescribed. (21)

9. As regards the import of JTO Recruitment Rules 1996 is concerned, we go along with the learned counsel of the respondents that these rules relate to the recruitment/training of ^{fresh} JTOs. These rules relate to the erstwhile ASTTs only to the extent that they have to be treated at par to the cadre of JTO as a one time measure as described in Note -IV of the Schedule attached to the Recruitment Rules. It was made clear in Annexure A-III dated 23.7.96 that the erstwhile ASTTs were not required to undergo training of 25-29 weeks and as per Annexure-IV dated 18.1.96, these officers were to have shorter training but that had nothing to do with the seniority or status of these ~~ASTTs turned~~ ^{ASTTs turned} JTOs. The inter-se-seniority of ASTTs and JTOs on merger was to be regulated vide instructions contained in Memorandum dated 5.4.94 (Annexure R-I) as per methodology prescribed for merger. In particular, the following instructions related to the seniority of these cadres are:-

"For the purpose of merger of these cadres, the year of recruitment may be the criterion and the merger will be done on All India basis. All India seniority based on the training centre marks in both the cadres is already being prepared separately. These two lists will be mixed together on yearly pro-rata basis. For example, if in a particular year of recruitment 1,000 JTOs and 100 ASTTs (optees only) have been recruited, 100 ASTTs would be merged with the 1,000 JTOs in the ratio of 1 : 10. The 100 ASTTs would be placed in the All India Gradation List of JTOs in the following positions:

5A, 15A, 25A,
35A.....999A. After
preparing the All India combined gradation
list of the merged cadres of ASTTs/JTOs, the
Circle combined gradation lists will be
derived by picking out the official of the
Circle".

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10. The relevant Circular was issued on 5.4.94 and was never challenged by the applicants. In our view the allocation of inter-se-seniority on merger of cadres is a public policy matter which is not open to judicial review unless it is malafide, arbitrary or bereft of discernible principle. We are also fortified in Our view by the judgment of the Apex Court in The Director Lift Irrigation Corporation Ltd. & Ors etc. etc. Vs. Pravat Kiran Mohanty & Ors. 1991 (1) Scale 399.

11. In compliance of orders dated 10.10.96 passed by this Tribunal in OA 286/96, provisional All India combined gradation list of merged cadres of JTOs was circulated on 12.6.97 (Annexure R-III). The applicant Shri O.P. Khushwaha and Shri Ashok Kumar Ahluwalia were assigned seniority No. 1476 and 975 respectively as against the respondents. The final combined seniority list of the merged cadres was published on 10.11.98 (Annexure R-III) of Respondents 4 to 7 in which ^{again} whereas applicants Shri O.P. Khushwaha and Shri Ashok Kumar Ahluwalia were assigned seniority at Sr. No. 1476 and 975 respectively, respondents S/Shri Mukhtiar Singh, Shri Darshan Lal, Shri K.L. Dung and Shri K.K. Mehta were assigned seniority at 262, 263, 267 and 287 respectively. ^{, 262, 263, 267 and 287, respectively.}

12. Having regard to the above reasons and discussions, we do not find any fault with the inter-se-seniority assigned to the applicants and respondents 4 to 7.

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13. As per Annexure-V dated 13.1.99 to counter of Respondents 1 to 3 instructions for local officiating arrangements in TES Group 'B' were circulated, it was decided that erstwhile ASTTs merged with JTOs were also ^{eligible} ~~considered~~ for local officiating promotion to TES Gr 'B' as per the circle combined seniority list of JTOs/ASTTs as per Recruitment Rules 1996 of TES Gr 'B'. When we have found nothing wrong with the superior seniority of the respondents 4 to 7 vis-a-vis the applicants, order dated 1.2.99 (Annexure A-I) regarding promotion of the respondents 4 to 7 as ^{per} ~~local~~ officiating arrangement in TES Group 'B' cannot ^{be} ~~be~~ faulted with.

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14. In the facts and circumstances of the case and conclusions made above, the OA is dismissed being devoid of merit. No costs.

S. Raju

(Shanker Raju)
Member (J)

V.K. Majotra

(V.K. Majotra)
Member (A)

cc.