CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

1. OA No.2573/96
2. OA No.2572/96
3. OA No.2574/96
4. OA No.2575/96
5. OA No.2576/96
6. OA No.1870/96
7. OA No.295/97
8. OA No.296/97
9. OA No.827/97

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New Delhi this the 28th day of April, 2000.

Hon'ble Mr. Justice V. Rajagopala Reddy, Vice-Chairman
Hon'ble Mrs. Shanta Shastry, Member (Admnv)

OA No.2573/96

1. Shri Sham Sunder J.T.O.
   C.T.O. Ambala.

2. Shri Baldev Raj J.T.O.
   O/O Chief General Manager,
   Punjab Telecom Circle,
   Ambala Cantt. ...Applicants

-Versus-

1. Union of India through
   Telecom Commission cum Secretary
   to Govt. of India,
   Deptt. of Telecom,
   Sanchar Bhawan,
   New Delhi.

2. The Chief General Manager,
   Punjab Telecom Circle,
   Ambala Cantt.

3. The Chief General Manager,
   Haryana Telecom Circle,
   Ambala Cantt.

4. The Chief General Manager,
   Himachal Pradesh Telecom Circle,
   Shimla.

5. Shri Parvinder Singh Nayyar,
   SDE (EDX) Telephone Bhawan,
   Telex Section, Sector-17,
   Chandigarh.

6. Sh. P.K. Jose S/o Sh. P.M. Kuria Jose,
   Officiating Sub Divisional
   Engineer (Installation),
   Ernakulam, Cochin-682035 (Kerala).

7. Smt. P.V. Sheela Devi, W/o Sh. N. Gopa Kumar,
   Officiating Sub Department Engineer
   (Computer Section), Deptt. of Telecom,
   Ravi Vihar Building, Kalothiparambil Road,
   Cochin-682016 (Kerala).

8. Smt. P. Sobhana W/o SH. K.Madhu Soodnan,
Officiating Sub-Divisional Engineer
(Transmission Planning),
office of the General Manager (T),
Deptt. of Telecommunication,
Annie Hall Road, Calicut-2
(Kerala). ...Respondents

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OA No.2572/96

1. Narender Kumar,
JTO, Telephone Exchange,
Sector 15-A, Faridabad.

2. Satish Kumar,
JTO, Telephone Exchange,
Sonepat.

3. A.K. Verma,,
JTO, Telephone Exchange,
Sector 15-A, Faridabad.

4. R.K. Gupta,
JTO, o/o SDO Phones,
Sonepat.

5. K.K. Mehta,
JTO, Telephone Exchange,
Kundli, Distt. Sonepat.

6. Joginder Singh,
JTO, Telephone Exchange,
Sonepat.

7. Mahavir Parsad,
JTO, Telephone Exchange, Sonepat.

8. Vipin Kumar Jain,
JTO, Telephone Exchange, Sonepat.

9. Rma Shankar,
JTO, Telepone Exchagne, Sonepat.

10. Jatinder Kumar,JTO,
Telephone Exchange,
Sonepat.

11. Narinder Singh,
JTO C Dot Sonepat.

12. I.S. Yadav,
JTO, Telephone Exchange,
Narnaul.

13. Partap Singh, JTO,
Telephone Exchange, Sonepat.

14. A.S. Malik, JTO,
Telephone Exchange, Jind.

15. K.K. Mewani, JTO,
JTO, Telephone Exchange,
Sector 15-A, Faridabad.

16. K.K. Bansal, JTO,
Office of SDO Phones,
Sector 15-A, Faridabad.

17. Bahadur Singh,
JTO, Telephone Exchange,
Nuh, Distt. Gurgaon.

18. Satyavir Singh,
JTO, o/o SDO Phone,
Sector 15-A, Faridabad.

19. S.K. Verma,
JTO, o/o SDO Phones,
Nehru Ground, Faridabad. ...Applicants

-Versus-

1. Union of India through its Chairman,
Telecom Commission,
Ministry of Communications,
Department of Telecommunication,
Sanchar Bhawan, 20 Ashoka Road,
New Delhi-110001.

2. Director General, Telecom,
Department of Telecommunication,
New Delhi-110 001.

3. Chief General Manager, Telecom
Haryana Telecom Circle, 107,
The Mall, Ambala Cantt.

4. Sh. Madho Parsad,
JTO, through
Telecom District Manager,
Karnal Telecom District,
Karnal.

5. Sh. Tilak Raj Prashar,
JTO, through General Manager,
Telecom, Ambala Telecom District,
Ambala Cantt. ...Respondents

OA No.2574/96, OA No.2575/96 & OA No.2576/96

1. All India Telegraph Assistant,
Superintendents Association,
Karnataka Circle by its Karnataka
Circle Secretary, 633/120, 9th Main Road,
Pra)ash Nagar, Bangalore-56021.

2. P. Gangulappa,
S/o Sh. P. Venkataramaiah,
JTO, Central Telegraph Office,
Bangalore-560 001.

3. Smt. D.C. Gujari,
W/o Sh. G.S. Gujari,
JTO, o/o Director,
Bangalore Telecom Area,
Hotel Suprabhatha Complex,
Ananda Rao Circle,
Bangalore-560 009. ...Applicants

-Versus-

1. The Chief General Manager,
Karnataka Telecom Circle,
1, Old Madras Road, Ulsoor,
Bangalore-560 008.

2. The Senior General Manager,
Bangalore Telecom District,
Fkcci Buildings, K.G.Road,
Bangalore-560 009.

3. The Union of India,
Ministry of Communications,
Represented by the
Chairman, Telecom Commission,
Sanchar Bhavan, 20, Ashoka Road,
New Delhi-110 001.

4. Shri S.S. Sajjan,
Sub Divisional Engineer (Groups),
Nagamangala,
Mandya Telecom District. ...Respondents

OA No.1870/96

1. Circle Secretary, AITASA Western UP
Telecom Circle Dehradun through
Sh. M.R. Tiwari s/o late Sh. M.L. Tiwari,
JTO CTo AG.

2. Mr. J.P. Saxena,
S/o late Shri Jagdish Prasad Saxena,
JTO o/o CGMT (W) Dehradun. ...Applicants

-Versus-

1. Union of India through Secretary,
Govt. of India, Ministry of Telecom,
New Delhi.

2. Chairman, Telecom Commission,
New Delhi.

3. Chief General Manager Telecom,
Western UP Telcom Circle, Dehradun.

4. Chief General Manager Telecom,
Eastern UP Telecom Circle Lucknow.

5. Sh. Kamlesh Mishra, S/o Sh. K.N. Mishra,
R/o PO Compound, Haridwar (UP).

6. Sh. J.S. Bajwa S/o T.S. Bajwa,
R/o B-9, Haqueqat Nagar,
Saharanpur (UP).

7. Sh. C.B. Singh, S/o Sh. Puran Singh,
R/o 3/43, ALTTC Campus, Ghaziabad (UP).

8. Sh. A.K. Gupta, S/o Sh. K.P. Gupta,
R/o MIG-106, Ram Ganga Vihar,
Moradabad (UP). ...Respondents

OA No.295/97

Sham Sunder s/o Sh. Bal Mukand
JTO working in Central Telegraph Office
Ambala. ... Applicant

-Versus-

Union of India through Chairman,
Telecom Commission-cum-Secretary,
Govt. of India, Department of Tekecom,
Sanchar Bhawan, 20 Ashoka Road,
New Delhi.

2. The Chief General Manager,
Haryana Telecom Circle,
Ambala Cantt. ...Respondents

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OA No.296/97

1. Satish Kumar, JTO
2. S.L. Purey, JTO
3. Mauji Ram Ghangas, JTO
4. Jogi Ram, JTO
5. S.R. Bhalla, JTO
6. S.C Wahi, JTo
7. Shankar Lal, JTO
8. Satbir Singh, JTO
9. S.P. Katyal, JTO
10. T.R. Prashar, JTO
11. K.L. Kanda, JTO
12. Swaran Singh, JTO
13. Ujagar Singh, JTO
14. Gurmukh Singh, JTO
15. Rameshwar Dass, JTO
16. Raj Kumar Singh, JTO
17. P.R. Kahol, JTO
18. Anoop Parshad, JTO
19. Meharban Singh, JTO
20. R.P. Gupta, JTO
21. Ram Parkash, JTO
22. K.L. Sharma, JTO. ...Applicants

-Versus-

1. Union of India through
the Secretary, Ministry of
Communications, Department of
Telecommunications, Sanchar Bhawan,
New Delhi.

2. Member (Services), Telecom Commission
cum Director General Telecommunications,
Sanchar Bhawan, New Delhi.

3. Chief General Manager,
Punjab Telecom Circle,
107, The Mall, Ambala Cantt.

4. Chief General Manager,
Haryana Telecom Circle,
107, the Mall, Ambala Cantt.

5. Sukhdev Singh Gill, JTO,
Regional Telecom Training Centre,
Rajpura.

6. I.B. Talwar, JTO,
O/o Divisional Engineer,
Telecom Acceptance Testing,
Jalandhar.

7. S.C. Katyal, JTO (Installation),
O/o General Manager,
Telecome District, Ambala Cantt. ...Respondents

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OA No.827/97

All India Telegraph Assistant,
Superintendents' Association,
through Shri Shanu Lal Durga,
General Secretary,
C-2/C/2/165, Pocket-2, Janakpuri,
New Delhi-110 058. ...Applicant

-Versus-

1. Union of India through
Chairman-cum-Secretary,
Telecom Commission,
Deptt. of Telecommunication,
Sanchar Bhawan,
New Delhi.

2. Member (Services) and
Director General,
Telecommunications,
Telecom Commission, Sanchar Bhawan,
New Delhi.

3. Dy. Director General (Personnel),
Deptt. of Telecommunications,
Sanchar Bhawan, New Delhi.

4. Secretary,
Deptt. of Personnel & Training,
North Block, New Delhi.

5. The Secretary, UPSC,
Dholpur House, Shahjahan Road,
New Delhi. ...Respondents

(Applicants through Sh. Sham Sundar, applicant in OA-2572/96 alongiwth General Secretary of the applicant Association)

(Official Respondents through Sh. P.H. Ramchandani, Sr. Counsel with Sh. Anil Singh, proxy for Mrs. P.K. Gupta)

(Private Respondents through Mrs. Meera Chhibber, Counsel)

O R D E R

By Reddy, J.-

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Common questions of facts and law arise in these cases. Hence they are disposed of by a common order.

2. However, in OA-395/97 and OA-396/97 the reliefs claimed are different from the reliefs claimed in the remaining cases. Hence, they are dealt with separately.

3. For the purpose of convenience and to illustrate the factual position in the batch of cases, the facts in OA-2573/96 are stated hereunder.

4. The applicants were initially working as Assistant Superintendents Telegraph Traffic (ASTT) in the department of Telecommunication, in various Telecom Circles. There is an Engineering Wing in the Telecom Department. The cadres of ASTTs and Junior Engineers (JEs of Engineering Wing) alone were the parallel cadres functioning at the highest non-gazetted level for performing functional, operational and management functions in the Telegraph Traffic and Telecom Engineering Wings respectively. The pay scales of ASTTs have however, been higher than the JEs in all the Pay Commissions recommendations, but w.e.f. 1.1.86 they were drawing the pay scale of Rs.1640-2900 at par with the Junior Engineers, now redesignated as Junior Telecom Officers (JTOs). With the aim of improvement in the Telecom Services, the Telecom Commission has issued an order dated 5.4.1994, deciding to merge the Telegraph Traffic Arm with the Engineering Arm w.e.f. 1.4.94 (Annexure A-11). A common seniority list was directed to be prepared for each circle and one seniority list for the entire country. In accordance with the merger order the applicants opted for the merger in the cadre of JTOs and it has been accepted by

the respondents. Once the cadre merger is done the promotion to the grade of TES Group 'B' (combined cadre) has to be necessarily done as per the combined seniority list.

4.1 Immediately after the issuance of the merger order dated 5.4.94 the department issued an order of abrogation dated 14.4.94 in terms of para 206 of the P&T Manual Vol. IV wherein it has been stated that promotion to the grade of Sub Divisional Engineer in TES Group 'B' will be governed by the statutory recruitment rules in existence for promotion to the grade of TES Group 'B'. These instructions came into force for the vacancies existing for the year 1994-95 onwards. It is the case of the applicants that a combined seniority list has accordingly been prepared for all the Telecom circles. In spite of the above fact the respondents passed the impugned orders dated 27.5.94, 3.6.94 and 9.12.94 (Annexures A-1, A-2 and A-3 respectively), promoting respondent No.5, JTO who is junior to the applicants and other JTOs to the grade of TES Group 'B', ignoring the rightful claims of the applicants. The respondents have also picked up some JTOs for officiating promotion. Aggrieved by the above orders the present OAs are filed.

5. Some of the applicants who argued in person, contend that the order of merger dated 5.4.94 resulted in merging the posts of the applicants (ASTTs) with the posts of JTOs and in creating new posts of JTOs, TES Group 'B' by abolishing equal number of posts of Telegraph side. Thereupon all promotions will have to be done as per the combined cadre drawn up and as far as non-optees are concerned, they would remain in their own seniority and get their own promotion as if merger did not take place. Hence,

the applicants are entitled to have been promoted after 1.4.94 when the order of merger came into force to TES Group 'B' combined cadre post.

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6. The learned counsel for respondents 1-4, however, contends that as per the Telegraph Engineering Service (Group 'B') Recruitment Rules of 1981 the promotion to the posts of Assistant Engineer Group II or Group 'B' from Junior Engineer (now designated as JTOs) is by way of selection from the feeder cadre viz. JTOs who had passed the departmental qualifying examination. The applicants who are ASTTs who have not even passed the departmental qualifying examination are not entitled to promotion to TES Group 'B' cadre. They are entitled to be promoted only in accordance with their recruitment rules. It is further stated that the order dated 5.4.94 is only an administrative decision but in pursuance of the administrative decision unless the recruitment rules are amended for promotion to TES Group 'B' and unless fresh recruitment rules came into existence, the applicants who are ASTTs who may have been merged with the JTOs will not be entitled for promotion to TES Group 'B'. The impugned orders are, therefore, rightly passed in accordance with the existing recruitment rules. Hence they are prefectly legal. The respondents rely upon the judgment of the Ernakulam Bench of the Tribunal in V. Sarasalochanan & Ors. v. Union of India & Others, OA No.308/96 decided on 1.5.98. The learned counsel for the private respondents also advanced the arguments on the same lines as above.

7. The counsel for the applicants are absent. Hence, we have heard the arguments of some of the applicants who were present.

8. We have given careful consideration to the pleadings as well as the arguments advanced on either side.

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9. The facts are not in dispute in this case. The applicants are ASTTs of the Traffic Wing whereas the private respondents are the JTOs of the Engineering Wing of the Telcom department. Relying upon A-11 the applicants seek to submit that the ASTTs of the Traffic Wing, have been finally merged with the JTOs of Engineering wing w.e.f. 1.4.94 and they are entitled for promotion to TES Group 'B' as per the combined seniority list. The dispute thus, revolves, round Annexure A.11 of 5.4.94 . It is, therefore, necessary to closely examine Annexure A-11 and the implications thereof. It is clear from a perusal of the decision dated 5.4.94 of the department of Telecommunication, Government of India, that the merger was brought about of the two posts along with others. The methodology for merger is shown in paragraph 1 of the order. Excluding the ASTTs who had opted to remain as ASTTs, the cadres of ASTTs and JTOs should be merged with equivalent cadre of JTOs and a common seniority list has to be prepared. At the time of merger new posts of JTOs in TES Group 'B' will have to be created by abolishing equal number of posts in Traffic Side. Para 12 is crucial and is heavily relied upon by the applicants. It reads that once cadre merger is done the promotion to TES Group 'B' will be done as per the combined seniority list drawn up. The merger came into force w.e.f. 1.4.94. Thus a firm decision was taken for merger of these two cadres into JTOs and the methodology of merger was also elaborately mentioned in the order. It is, therefore, contended by the applicants that the merger decision was not only taken but it has been effected and came into effect from 1.4.94 as is clear from

para 12 of the order of merger. Hence the applicants are entitled to be promoted to the grade of TES Group 'B' in the combined cadre as per the combined seniority. But this is disputed by the respondents. Hence the question is whether the decision taken by the Government would tantamount to amending the recruitment rules in both the cadres. It is not in dispute that the service conditions, regarding, recruitment, promotion etc., are governed in both the cadres by their own recruitment rules. The next higher post for promotion to JTOs is to the post of TES Grade 'B'. In exercise of the powers conferred by proviso to Article 309 of the Constitution of India the recruitment rules called TES Group 'B' were promulgated in 1981 as amended from time to time. The method of recruitment was given in the schedule. 66-2/3% to be promoted by DPC and 33-1/3% through limited departmental competitive examination. JTOs among others are eligible for promotion as per the Rules. Thus, under these Rules only JTOs are eligible for promotion to the posts of JTOs Group 'B'. It is also not in dispute that till 1996 the recruitment rules were not amended. Likewise, as per the Recruitment Rules governing the service conditions of the applicants, they are entitled to be promoted only to the next higher post to ASTT in their own line. The Recruitment Rules either for the applicants or for the respondents were not amended in pursuance of the decision taken by the Government, merging the two posts.

10. The applicants, therefore, submit that until the rules are properly amended as per the merger decision the promotions should be made in accordance with the order of merger. The Recruitment Rules existing and applicable to both the erstwhile cadres have no application for promotion to JTO of the combined cadre. In support of their

contention the applicants rely upon State of U.P. & Another v. M.J. Siddiqui & Others, AIR 1980 SC 1098. This decision was followed by the Mumbai Bench of the Tribunal in M.P. Gupta v. Secretary, Ministry of Defence, OA No.254/92 decided on 17.12.97. In the Supreme Court case, the Government merged the two services viz. TMS-I and TMS-II with the object to have one medical service w.e.f. 1.11.64. Considering the order of merger whereby the distinction between TMS-I and II was abolished and the two services were constituted into one designated service, though the rules were not amended for fixing inter-se-seniority of the officers of the erstwhile two services, the learned Judges of the Supreme Court have taken the view that the existing rules were inapplicable so far as the new service was concerned till the interregnum and till the rules were amended subsequently. Hence, promotion to the selection grade of the new service was to be made purely on the basis of the merger order. It was also held that the notification was issued under Article 309 of the Constitution and was, therefore, of a statutory character or "at any rate had a statutory flavour". Hence the old rules could not be applied to the situation obtaining after the merger. The learned counsel for the respondents, however, seeks to distinguish the facts in Dr. Siddiqui's (supra) case on the ground that the impugned order of merger was not an order passed under the proviso to Article 309 of the Constitution, hence it would not await to a rule governing the new situation. We entirely agree with the learned counsel for the respondents. In Dr. Siddiqui's case (supra) a notification has been issued by the Government and in view of the facts and circumstances of that case the Hon'ble Judges of the Supreme Court has treated it as a statutory order or at least having statutory flavour, whereas in the

instant case the impugned order of merger was an administrative decision taken by the Government of India. Hence, it cannot be said that it was issued under Article 309 of the Constitution or at least it has any statutory force. It is true, as contended by the applicants that the merger has came into force w.e.f. 1.4.94, but unless it is followed by the recruitment rules of the TES Group 'B', the same cannot alter or suspend the Recruitment Rules, governing the service conditions. The merger still remained as an administrative decision short of merger legally. We are supported, in our view, by the judgement of the Ernakulam Bench in OA No.308/96 (supra), cited by the learned counsel for the respondents. In the said judgment it has been held that "the two erstwhile cadres of ASTs and JTOs cannot legally be held to have been merged w.e.f. 1.4.94....." "...Any merger abolishing the independent and distinct identity of a cadre of posts created under the statutorily prescribed recruitment rules can legally be effectuated only by promulgating another set of statutory rules having the effect of an amendment to the former recruitment rules." Since the decision of the Mumbai Bench cited by the applicants is the decision rendered following Dr. Siddiqui's case (supra) of the Supreme Court and as we have already considered the said judgment of the Supreme Court, we do not find it necessary to discuss the judgement of the Mumbai Bench.

11. The applicants also cited the decision in Nagpur Improvement Trust v. Yadaorao Jagannath Kumbhare & Others, 1999 (4) RSJ SC 177. The applicants rely upon the reasons given in para 8 where it was stated that in the absence of any statutory rule governing the service conditions of the employees the executive instructions

and/or decision taken administratively would operate in the field and appointments/promotions can be made in accordance with such executive instructions/administrative directions. This view of the Supreme Court is unexceptionable but the ratio is inapplicable to the facts of our case, as in our case there are statutory rules governing the service conditions of the employees, which were neither abrogated nor amended till 1996, when the post of ASTTs was shown as one of the feeder cadres for promotion to JTOs.

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12. The applicants lastly challenge note 4 of the JTOs Recruitment Rules, 1996. Under the above Rules, Note 4 has been added, which is as follows:

> "The existing holders of the post of Asstt. Supdt. Telegraph Traffic may be treated at par to the cadre of Junior Telecom Officer as per these Recruitment Rules as one time measure."

13. Under this note the applicants (ASTTs) were shown as part of the cadre of JTOs as per the above rules. Thus they became eligible for promotion to TES Group 'B' with effect from the date the rules came into force. The applicants challenge the above 'note' stating that those, who are affected should by the above 'NOTE' have been issued prior notice. We do not find any substance in this contention. It is the prerogative of the department to amend the rules and no notice is necessary before amendment of the rules. The contention is, therefore, rejected.

14. In view of the above facts and circumstances we do not find any merit in the OAs. The OAs are, therefore, dismissed. No costs.

Contd...

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OA-295 & OA-296/97

15. The applicant in OA-295/97 is also the applicant in OA-2573/96. The applicants in OA-296/97 are also ASTTs in the Telecom Department. The present OAs are filed challenging the orders of their promotion dated 5.2.96 and 29.6.96 as TTS Group 'B'.

16. We have considered this aspect in the above batch of cases holding that the Government's decision of merger has no sanctity to alter or amend the recruitment rules and that though the merger was effected in 1994, their rights for promotion to the post of TES Group 'B' would arise only after the recruitment rules are amended in July, 1996. Hence, the applicants are liable to be promoted only according to the recruitment rules to the post of TTS Group 'B'. We have also held that the rules are beyond challenge. In the circumstances the contentions raised herein need not be discussed in extenso. The OAs are, therefore, liable to be dismissed for the same reasons, as stated in the above OAs. They are accordingly dismissed. No costs.

(SMT. SHANTA SHASTRY)
MEMBER (ADMNV)

(V. RAJAGOPALA REDDY)
VICE-CHAIRMAN (J)

'San.'

Original Judgement placed in OA 2573/96

B.S.

28.4.98

C.O.C.