

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

D.A.No.2063/96

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New Delhi: this the ¹²10th day of August, 2000.

HON'BLE MR. S. R. ADIGE, VICE CHAIRMAN (A)

HON'BLE MR. KULDIP SINGH, MEMBER (J)

1. Shri Vaishno Chander Sharma son of
Shri Dina Nath Sharma, resident of
33, Ram Nagar Extension, Delhi-51.
2. Shri Darshan Lal Goel son of Shri
Ram Kanwar, resident of 3493, Gali
Bajrangwali, Chawri Bazar, Delhi-6.
3. Shri Om Parkash Kanwal son of Shri
Jai Gopal, resident of 7-A, New
Krishna Nagar, Opp. Radhepuri,
Delhi-51.
4. Shri Krishan Lal Poogla son of
Shri Lachmandass, resident of
157, Burgawali Gali, Sunder
Puri, Ghaziabad.
5. Shri Krishan Gopal Sharma son
of Shri Devi Ram Sharma, resident
of 4/1406, Gali No.2, Peela
Mandir, Shalimar Park, Shahdara,
Delhi-110032.

6. Shri Narain Dass son of Shri
Reejhu Ram, C-81, Sudershan Park,
New Delhi-110015.
7. Shri Sachidanand Srivastava
son of Shri Ladli Pershad
Srivastava, resident of C-8/256,
Lawrence Road, New Delhi-35.
8. Shri Om Prakash Gupta son of
Shri Tika Ram, resident of A-1/284-A,
Lawrence Road, Delhi-110035.
9. Shri Brij Lal Aneja son of Shri
Bhagwan Dass, resident of A-5-B/70,
SFS Paschim Vihar, New Delhi-63.
10. Shri Ved Parkash Wadhwa son of Shri
Jassu Ram, resident of 70 E/2, Gali
No.2, Amrit puri Garhi, New Delhi.
11. Shri Kesar Dass Gandhi son of
Shri Jhangi Ram, resident of
House No.60, Block 3, Nehru Nagar,
New Delhi-110065.

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12. Shri Om Parkash Madan son of
Shri R.D. Madan, resident of
EPT-32, Dev Nagar, Parkhat Road,
New Delhi. (25)
13. Shri Subhash Chander son of
Shri Kartar Chand, resident of 204,
New Modern Group Housing Society
Plot No.26/2, Sector 9, Rohini,
Delhi-110085.
14. Shri Kamal Pershad Upadhyaya son
of Shri Balbhadra Prasad resident
of HPT-42, Sarojini Nagar, New Delhi.
15. Shri Tej Bhan son of Shri Chandan
Dass, resident of C-5 B/41B, Janakpuri,
New Delhi-110058.
16. Shri I.M. Lal son of Shri Kesho
Ram, resident of A-2 A/251, Janakpuri,
New Delhi-110058.
17. Shri Ramjiwan Aggarwal son of
Shri M.D. Aggarwal, resident of
H-14, Gali No.7, Old Govindpura,
Extension, Delhi-110051.

18. Shri Nafe Singh son of Shri Sohan Lal, resident of 7/732, Gian Nagar, Behind Sarang, Sonapat.

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19. Shri Jai Dayal Sharma son of Shri Umrao Singh, resident of H-6/Gali No.7, Old Govindpura, Extn., Delhi-110051.

20. Shri Kanwar Singh Kalaliya son of Shri Netram, resident of T-30/1 FB, Baljeet Nagar, New Delhi-110008.

21. Shri Ram Chander Bhatnagar son of Shri Gulab Singh, resident of House No. 6336/A Mohalla Chhipatwara, Rewari.

.. APPLICANTS.

(By Advocates: Shri G.D. Gupta)
Versus

1. Union of India through the Secretary to the Government of India, Department of Telecommunication, Sanchar Bhawan, New Delhi.

2. Chief General Manager 'NIR' (Northern Telecom Region), Kidwai Bhawan, New Delhi.

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3. Director (Telegraph Service),
Northern Telecom. Region,
Eastern Court,
New Delhi

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..... Respondents.

(By Advocate: Shri R.P. Agarwal).

ORDER

Mr. S.R. Adige, VC(A):

The 21 applicants in this OA impugn respondents' letter dated 17.1.96 (Annexure-Q); 1.3.96 and 10.5.96 (Annexure-R(Colly)) and seek a declaration that transferees under Rule 38 P & T Manual Vol. IV will also be entitled to count their length of service for purpose of promotion to Gr. IV under BCR Scheme in the basic grade from the date of appointment in the basic grade/basic cadre and their transfer under Rule 38 will not affect that position adversely.

2. Heard both sides.

3. It is applicants' own case that they were initially recruited as Telegraphists/Clerks in the basic grade (Gr. I) on various dates in various circles and except applicants No. 15 and 18, were transferred to Delhi Circle on their own request under Rule 38 P & T Manual Vol. IV and were placed at the lowest position in the gradation list of Telegraphists on the date of joining Delhi Circle. In the case of applicants No. 15 and 18 it is stated that they were initially appointed as Clerks in Delhi Circle and while so working, they were appointed as Telegraphists in Delhi Circle and have been continuing there since then.

4. The short question for adjudication is whether for the purpose of the BCR Scheme introduced vide

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respondents' order dated 6.10.90 whereby 10% of posts in Rs.1600-2660 (Gr.III) were to be in the pay scale of Rs.2000-3200, while determining seniority in the basic grade (Gr. I) which was to form the basis of promotion to the scale of Rs.2000-3200 against the 10% posts, vide C.A.T., P.B.'s order dated 7.7.92 in O.A. No. 1455/91 Upheld by Hon'ble Supreme Court on 9.9.93 in Civil Appeal No. 3201/93, the seniority of applicants in basic grade would be determined with effect from the date they joined duty as Telegraphists in Delhi Circle, or it would be determined with effect from the date they joined duty as Telegraphists in other circles, or held some other post (as in the case of applicants 45 and 18) in Delhi circle.

5. Relevant portions of Rule 38 P & T Manual Vol. IV are extracted below:

"Transfer at one's own request."

- (1) Transfers of officials when desired for their own convenience should not be discouraged if they can be made without injury to the rights of others. However, as a general rule, an official should not be transferred from one unit to another, either within the same circle, or to another circle unless he is permanent. As it is not possible to accommodate an official borne on one gradation list into another gradation list without injury to the other members in that gradation list such transfers should not ordinarily be allowed except by way of mutual exchange. Transfers by way of mutual exchange, if in themselves inherently unobjectionable, should be allowed, but in order to safeguard the rights of men borne in the gradation lists of both the offices, the official brought in should take the place, in the new gradation list; that would have been assigned to him had he been originally recruited in that unit or the place vacated by the official with whom he exchanges appointment, whichever is the lower.

Note - Transfer of officials, who are not permanent in the grade, may, in deserving cases, be permitted with the personal approval of the Head of Circle/Administrative Office.

- (2) When an official is transferred at his own request but without arranging for mutual exchange he will rank junior in the gradation list of the new unit to all officials of that unit on the date on which the transfer order issued, including also all persons who have


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been approved for appointment to that grade as on that date.

(3) If the old and the new unit form parts of a wider unit for the purpose of promotion to a higher cadre, the transferee (whether by mutual exchange or otherwise) will retain his original seniority in the gradation list of the wider unit."

6. From the foregoing rule it is clear that seniority of applicants in basic grade has to be determined with effect from the date, they came on transfer and joined duty as Telegraphists in Delhi Circle or were appointed as Telegraphists in Delhi Circle. Nothing contained in the BCR Scheme introduced vide respondents' circular dated 6.10.99¹⁹⁰, or indeed in any other circular leading up to the same, or for that matter in the Tribunal, order dated 7.7.92 in OA No. 1455/91, warrants taking any other view in the matter, and indeed if any of the aforesaid circulars did ^{YUN} ~~even~~ counter to the aforesaid Rule 38 in any material particular, the same would have to give way to the rule.

7. The OA therefore warrants no interference. It is dismissed. No costs.


(KULDIP SINGH)
MEMBER (J)


(S.R. ADIGE)
VICE CHAIRMAN (A)

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