

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

DATE OF DECISION: 7-6-1991.

(1) O.A. 1599/1987.

Daljit Kumar and Others Applicants.

V/s.

Union of India and Others Respondents.

(2) O.A. 1125/1988.

K.L. Mehta Applicant.

V/s.

Union of India and Others Respondents.

(3) O.A. 1673/1987.

Rakesh Srivastava and Ors. Applicants.

V/s.

Union of India and Others Respondents.

(4) O.A. 2141/1988.

S.S. Arora and Others Applicants.

V/s.

Union of India and Others Respondents.

(5) O.A. 2139/1988.

J. Subramanian and Others Applicants.

V/s.

Union of India and Others Respondents.

(6) O.A. 1597/1987.

R.S. Jauhari and Others Applicants.

V/s.

Union of India and Others Respondents.

(7) O.A. 1671/1987.

Vidya Parkash Gupta & Ors. Applicants.

V/s.

Union of India and Others Respondents.

CORAM: Hon'ble Mr. Justice Ram Pal Singh, V.C. (J).
Hon'ble Mr. P.C. Jain, Member (A).

Shri P.N. Gupta, counsel for the applicants in all the 7 cases.

Shri P.P. Khurana, counsel for the respondents in cases at
Sl. No.1, 2, 3, 5, 6 and 7 above.

Shri N.S. Mehta, counsel for the respondents in case at Sl.No.4
above.

(Judgement of the Bench delivered by
Hon'ble Mr. P.C. Jain, Member (A).)

JUDGMENT

The aforesighted seven O.A.s are based on similar facts
and raise a common point of law and, as such, these can be
conveniently disposed of by this common judgment.

2. In O.A. 1599/1987, there are 11 applicants, namely,
Daljit Kumar (5088), Commercial Officer (Coordn.), K.K. Aghi

4. In O.A. 1673/1987, there are 13 applicants, namely, Rakesh Srivastava (Staff No.5336), Asstt. Engineer, Sanatan Das (Staff No.5197), Assistant Engineer, K.C.P. Srivastava (Staff No.5201), S.D.O. Telegraph, S.N. Gupta (Staff No.5205) Asstt. Engineer, J.P. Gupta (Staff No.5233), Asstt. Engineer, D.S. Dhiren (Staff No.5254), Asstt. Engineer, A.K. Pandey (Staff No.5268), S&TO Grade I, G.S. Bedi (Staff No.5269), Asstt. Engineer (CP), S.C. Gupta (Staff No.6866), A.E. (Carrier) Long Distance, B.C. Agarwal (Staff No.6870), Asstt. Engineer, M.L. Oberoi (Staff No.6871), Asstt. Engineer, Inder Jit (Staff

No. 6877), Asstt. Engineer and Hans Raj (Staff No. 6894), Asstt. Engineer. All the applicants are members of the T.E.S. Group 'B' officers in the Department of Telecommunications posted in different offices. They have filed this O.A. with reference to the two orders dated 27.6.1986 and 10.12.1986 ibid.

5. In O.A. 2141/1988, there are 13 applicants, namely, S.S. Arora (5241), A.D. (ESM-3), Navendra Kumar (5346), A.E. (Computer), H.K. Arora (4917), A.D. (ESV), D.B. Girhotra (5395), S.D.O. (P), Harcharan Jit Singh (5934), A.D. (ESY), P.C. Joshi (5946), A.E. (Computer), Hardas Singh (6021), A.E. (Computer), T.R. Khanna (6032), A.E. (Computer), Tek Chand (6058), S.D.O. (P), V.P. Sehgal (6118), A.D. (ESP), D.K. Aggarwal (6208), S.D.O. (P), Akhilesh Kumar (6227), A.E. (Computer) and O.P. Prashar (6261), A.E. (Spl. Services).

All the applicants are members of the T.E.S. Group 'B' officers in the Department of Telecommunications posted in different offices. They have also filed this O.A. with reference to the aforesaid two orders dated 27.6.1986 and 10.12.86.

6. In O.A. 2139/1988, there are 10 applicants, namely, J. Subramanian (4298), Mrs. Mukta Gaur (4315), A.K. Nandi (4469), S.N. Vohra (4485), Raghu Nath Pd. (4559), Y.L. Sharma (4570), Kamal Gaur (4967), S.K. Rawat (5007), Narendra Kumar (5081) and S.K. Sharma (5092). All the applicants are T.E.S. Group 'B' officers in the Department of Telecommunications posted in different offices. They have also filed this O.A. with reference to the aforesaid two orders dated 27.6.1986 and 10.12.1986.

7. In O.A. 1597/1987, there are 11 applicants, namely, R.S. Jauhari (4419), S.&T.O. Grade I, Randhir Bhattacharya (3403), Asstt. Engineer, S.N. Prasad (4161) Asstt. Engineer, O.P. Khullar (4175), S.&T.O. Grade I, R.B. Gupta (4321), S.&T.O. Grade I, P.K. Chandra (4322), S.&T.O. Grade I, D.R. Mahajan (4357), Asstt. Engineer, R.P. Anand (4374), S.D.O. Phones (I), T.S. Arora (4378), Asstt. Engineer (C),

K.L. Bhatia (4393), Asstt. Engineer and S.B. Lal (4468),

Asstt. Engineer. All the applicants are members of the Indian T.E.S. Group 'B' officers in the Department

of Telecommunications posted in different offices. They have also filed this O.A. with reference to the aforesaid two orders dated 27.6.1986 and 10.12.1986.

8. In O.A. 1671/1987, there are 11 applicants, namely,

Vidya Parkash Gupta (Staff No.5952), Asstt. Engineer, K.K.

Kapoor (Staff No.5953), Asstt. Engineer, M.L. Jain (Staff

No.5974), Administrative Officer (Staff-I), R.K. Dhawan

(Staff No.5986), Asstt. Engineer, Ram Nain Singh (Staff

No.6023), Asstt. Engineer (Quality Assurance), V.P. Marwah

(Staff No.6049), C.O. Cables, Y.P. Sharma (Staff No.6126),

Asstt. Engineer, R.S. Dhillon (Staff No.6167), Asstt. Engineer,

R.K. Dass (Staff No.6178), Asstt. Engineer, Sudarshan Khanna

(Staff No.6251), C.O. Cables, and H.C. Garg (Staff No.7030),

Asstt. Engineer. All these applicants are also members of

the Indian T.E.S. Group 'B' officers in the

Department of Telecommunications posted in different offices

and they too have filed this O.A. with reference to the

aforesaid two orders dated 27.6.1986 and 10.12.1986.

9. Briefly stated, all the applicants in the seven

O.A.s were initially recruited as Engineering Supervisor, at

present designated as Junior Engineer in the Department of

Telecommunications in different years. The next promotional

post is that of Assistant Engineer to be filled through a

Qualifying Departmental Examination as provided under para 206

of the P&T Manual Vol. IV, which is reproduced below:

"206. All Engineering Supervisors recruited

after the 1st January, 1929 under the new

system after serving for 5 years in Engineering

Branch may be permitted to appear at the

Departmental Qualifying Examination, which

will be held from time to time in the subjects

enumerated below, provided they have a good

record. This qualifying examination is intended

to test the general ability of Engineering

Supervisors and their knowledge in the latest

developments in Telegraphy and Telephony. A

pass in this examination is an essential condition for promotion to Telegraph Engineering and Wireless Service, Class-II.

2. Promotion to the T.E.&W.S. Class II, will be made according to the principle of Seniority-Cum-fitness by the Engineering Supervisors who pass the qualifying examination earlier will rank senior as a group to those who pass the examination on subsequent occasions i.e., officials who passed the examination held in 1956 will rank as enblock senior to those who passed in 1957. Their seniority inter se will, however, be according to their seniority in the cadre of Engineering Supervisors."

The applicants passed the T.E.S. Class II Qualifying Department Examination, now known as T.E.S. Group 'B' Qualifying Examination in different years and they have been working as Assistant Engineer or equivalent T.E.S. Group 'B' post in the Department of Telecommunications. It is clear from the aforesaid Rule 206, that the Junior Engineers who pass the qualifying examination earlier would rank senior as a group to those who pass the examination on subsequent occasions. But the Department of Telecommunications, contrary to the above Rule, has been promoting qualified Junior Engineers on the basis of their seniority in the cadre of Junior Engineers ignoring the year of their passing the examination. Two of the Junior Engineers, namely, Parmanand Lal and Brij Mohan working in the Department of Telecommunications, filed separate writ petitions No.2739 of 1981 and No.3652 of 1981 before the Hon'ble High Court of Allahabad at Lucknow Bench praying that they be declared promoted before the candidates who qualified subsequent to them but were promoted earlier and to pay allowances and pay and fix their seniority accordingly. Both these writ petitions were allowed with costs and mandamus was issued directing the opposite parties that both the petitioners may be promoted with effect from the date prior to a date of promotion of any person who passed the departmental examination subsequent to them and adjust their seniority accordingly and pay them salary and allowances accordingly with effect from the said date, vide

orders of the Hon'ble High Court of Allahabad at Lucknow Bench dated 20th February, 1985. Union of India & Others, who were respondents in the writ petitions, filed Special Leave Petitions before the Hon'ble Supreme Court (3384-86/86). Special Leave Petitions were dismissed on merits vide orders of the Hon'ble Supreme Court dated 8.4.86. The judgment of the High Court of Allahabad dated 20.2.1985, which was common in both the writ petitions, having been confirmed by the Hon'ble Supreme Court, was implemented by the respondents by issuing orders dated 27th June, 1986 in the case of Shri Parmanand Lal and orders dated 10th December, 1986 in the case of Shri Brij Mohan. As per orders dated 27.6.1986, Shri Parmanand Lal, who was locally officiating A.E. TIC, Lucknow was deemed to have been promoted to TES Group 'B' on regular basis with effect from 12.5.77 and his name had been placed above Shri Biswanath Pradhan and below Shri R.S. Deshpande. As per orders dated 10.12.1986, Shri Brij Mohan's seniority had been fixed above Shri K. Suryanarayana and below Shri K. Appalacharyulu and his pay was refixed by granting him notional promotion from the date of promotion of his immediate junior, who was promoted under Office Memo dated 10.3.77. Coming to know of the implementation of the decision of the Hon'ble Supreme Court, the applicants submitted representations, but their representations did not evoke any response. In their representations, the applicants highlighted for rectification of the anomalies created as a result of giving advance seniority in the T.E.S. Group 'B' post to Shri Parmanand Lal and Shri Brij Mohan in the implementation of the judgment of the High Court of Allahabad and confirmed by the Supreme Court. The grievance of the applicants is that the Respondent Department has wrongly, erroneously and arbitrarily applied the law laid down by the Hon'ble High Court of Allahabad, resulting in miscarriage of justice to the applicants. They have stated that the Respondent Department ought to have ensured that seniority of no person who passed the departmental examination prior to Shri Parmanand Lal and Shri Brij Mohan or alongwith them and was senior to

them on account of interse seniority in the Eligibility List is made junior to them and that their seniority ought to have been refixed and/or adjusted at such places where seniority of other seniors like the applicants is not adversely affected. They have further alleged that non-extension of the benefit of law laid down by the Hon'ble High Court of Allahabad and upheld by Hon'ble Supreme Court on the ground that the present applicants or other employees of the Department were not party to the said cases, is arbitrary and discriminatory being violative of Articles 14 and 16 of the Constitution. They have also pointed out that even the Minister of State (Communications) in reply to an unstarred question in Parliament on 26th August, 1987 stated that the judgements relate to two individual officers only and hence question of deciding other representations by the applicants does not arise.

10. In the light of the aforesaid facts, the applicants have prayed for issuance of an appropriate order/direction to the respondents 1 to 3 that the law laid down by the Allahabad High Court as upheld by the Supreme Court of India in the aforesaid cases of Shri Parmanand Lal and Shri Brij Mohan be made applicable to the applicants irrespective of the fact that they were not party before High Court in above writ petitions and extend the same benefits to the applicants namely that they be deemed to have been promoted with effect from the date prior to a date of promotion of any person who passed the departmental examination subsequent to the applicants and their seniority be revised in T.E.S. Group 'B' cadre accordingly. They have also prayed for an order/direction to respondents 1 to 3 that the applicants be paid all the benefits of pay and allowances as admissible on their promotion and refixation of seniority in T.E.S. Group 'B' cadre as given to Shri Parmanand Lal and Shri Brij Mohan. They have further prayed that to the extent necessary, the orders dated 27.6.1986 and 10.12.1986 ibid, which adversely affect the seniority of the applicants be declared illegal, arbitrary and not binding upon them and to the extent necessary be quashed and that they be allowed the cost.

of the proceedings.

11. We have carefully gone through the record of these cases. In O.A. 1599/1987, O.A. 1673/1987, O.A. 2139/1988, O.A. 1597/1987 and O.A. 1671/1987, there are five respondents - (1). Union of India through the Secretary, Ministry of Communications, (2) Telecom. Board through the Chairman, Telecom. Board, (3) Director General, Department of Telecommunications, (4) Shri P.N. Lal (Staff No.7035), Assistant Engineer and (5) Shri Brij Mohan (Staff No.6861), A.E. (Computer). In the remaining two cases, viz., O.A. 2141/1988 and O.A. 1125/1988, except that Shri Brij Mohan has not been impleaded as respondent, the respondents are the same as in the other five cases. The respondents, except Shri Parmanand Lal, have not filed any counter-reply in spite of a number of opportunities having been given to them. Shri Parmanand Lal has filed his counter-reply in O.A. 1125/1988, and in O.A. 1673/1987 only.

He has stated that in view of the orders of the High Court of Allahabad which were confirmed by the Hon'ble Supreme Court, he was appointed as Assistant Engineer w.e.f. 12.5.1977 vide order dated 27.6.1986 issued by Respondents No.1 to 3 on behalf of the Union of India and the same attained finality and the applicants are estopped to challenge the same now, and there cannot be any change of seniority now. In his counter-reply in O.A. 1673/1987, he has stated that "Raising the Bogie of equality and justice is irrelevant in this case, because he has already been promoted when he was due to be promoted. The applicant never had aggrieved during the last ten years, as such the redressal of the grievance of the applicant in this application is unwarranted as because he has no real grievance at all." He has further stated that "The Judgement of the High Court and the Supreme Court relates the two petitioners only viz P.N. Lal and Brij Mohan, which has been rightly declared by Hon'ble Minister of Estate in Parliament according to the submissions of the applicant in para 6/(XVIII)." In their rejoinder in O.A. 1673/1987, the applicants have reiterated

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that "It is only the incorrect implementation of the above judgment, which has been challenged in this case. The applicants pray that the same benefit of law laid by the High Court and Supreme Court be made applicable to their cases as well and injustice done to them due to incorrect implementation of above judgement be redressed. They have further stated that "The Impugned orders at Annexure A-6 and A-7 were issued on 27.6.1986 and 10.12.1986 respectively. The Department of Telecommunications did not circulate these orders. The present applicants came to know about this case in January 1987 and they made their representations immediately to the Director General, Department of Telecommunications for redressal of their grievance. But so far no action has been taken nor any reply received in response to the representations of the applicants." We have heard the learned counsel for the parties.

12. Learned counsel for the applicants has filed copies of the judgments passed in O.A. No. K-112/88 (T.N. Peethambaran Vs. Union of India & Others) and O.A. K-603/88 & O.A. K-605/88 (T.M. Santhamma & Others and K. Ramavarma Thampuran & Others respectively) by the Ernakulam Bench of this Tribunal, on 27.2.1990 and 30-3-1990. The facts in those case are also the same as are contained in the instant O.As. In O.A. K-112/88 the Ernakulam Bench of this Tribunal decided the case in favour of the applicant by directing the respondents to promote the applicant therein with effect from the date prior to a date of promotion of any Junior Engineer to Telegraph Engineering Group 'B' Services who passed the Departmental Qualifying Examination subsequent to the date of passing of the Examination by the applicant and adjust the seniority accordingly and to pay him pay and allowances accordingly with effect from the said date. In O.A. K-603/88 and O.A. K-605/88 also, the Ernakulam Bench of this Tribunal passed similar orders. In yet another case O.A. 487 of 1989 (V.S. Ganesan Vs. Union of India and Others), the Madras Bench of this Tribunal directed

the respondents to refix the seniority of the applicant therein on the basis of the judgment of the Allahabad High Court in WP 2739 and 3652 of 1981, taking into account the date of passing the qualifying examination for promotion to the Telegraph Engineering Service Group 'B' (Assistant Engineers). In addition, learned counsel for the applicants cited a number of authorities in support of the contention that the benefits of the order of the Hon'ble Supreme Court ought to be extended to all others similarly situated. On the other hand, learned counsel for the respondents have not quoted any authority to controvert the contention of the learned counsel for the applicants.

13. In view of the various judgments passed by this Tribunal in accordance with the spirit of the judgment given by the Hon'ble High Court of Allahabad as upheld by the Hon'ble Supreme Court of India in the case of Shri Parmanand Lal and Shri Brij Mohan, we direct that the benefits of the said judgment be extended to the applicants herein also and they shall be deemed to have been promoted with effect from the date prior to a date of promotion of any person who passed the departmental examination subsequent to the applicants and their seniority be revised in T.E.S. Group 'B' cadre. They shall also be entitled to refixation of their pay with effect from the said date. This order shall be implemented within a period of three months from the date a copy of this order is received by the respondents. There shall, however, be no order as to costs.

(4) A copy of this order be placed on the file of each of the seven obs. 1.6.9

(P.C. JAIN)
Member(A)

RAMPAL SINGH
Vice-Chairman (J)

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