(31)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn.No. Date of decision: 22.04.1992

(9)

(1) OA 2407/88 with
MP 195/92; MP Nos. 957, 965 and
966 of 1992 in MP 195/92;
MP 129/92;
MP Nos. 3493, 3494, 3396 and 3397/91

Shri S. Venkateswara Shenoi ..Applicants

(2) OA 2409/88

Shri M.T.R. Nambisan ..Applicant

(3) OA 2410/88

Shri Katayani Kumar ..Applicant

(4) OA 2411/88

Shri S.C. Singhai ..Applicant

(5) OA 2412/88

Shri R.C. Patel ..Applicant

(6) OA 2413/88

Shri K.K. Jain ..Applicant

(7) OA 2414/88

Shri B.S. Oswal ..Applicant

(8) OA 2415/88

Shri M.F. Quaiyumi ..Applicant

(9) OA 2416/88

Shri K.K. Bajaj ..Applicant

(10) OA 2417/88

Shri G.C. Gupta ..Applicant

(11) OA 1824/89

Shri K. Surendran & Others ..Applicants

(12) OA 1825/89

Shri L.B. Nachane & Others ..Applicants

(13) OA 1826/89

Shri A.H.K. Pillai & Others ..Applicants

(14) OA 1827/89

Shri A.M. Agesar & Others ..Applicants

(15) OA 1828/89

Shri S.V. Subramanian & Others ..Applicants

(16) OA 1829/89

Shri S.K. Pasricha & Others ..Applicants

(17) OA 1830/89

Shri Devidas Trimbak Manjrekar & Others ..Applicants

(18) OA 55/89

Shri Amar Kant Navik & Others ..Applicants

(19) OA 1661/91

Shri R.L. Kapoor & Others ..Applicants

(20) OA 1885/91

Shri Ramesh Chander & Others ..Applicants

(21) OA 2503/91

Shri M.L. Jain & Others ..Applicants

(22) OA 2504/91

Shri I.J. Nagpal ..Applicant

(23) OA 2507/91

Shri Ranjeet Bhattacharjee & Others ..Applicants

(24) OA 2609/91

Shri R.C. Srivastava and Others ..Applicants

(25) OA 2155/91

Shri V.K. Patni & Others ..Applicants

(26) OA 1674/91

Shri U.C. Rattan & Others ..Applicants

(27) OA 1675/91

Shri J.S. Yadav & Others ..Applicants

(28) OA 1676/91

Shri P.C. Tiwari & Others ..Applicants

(29) OA 2667/91

Telecommunications Engineering Services Association & Another ..Applicants

Vs.

Union of India through the Secretary, Telecommunications & Others ..Respondents

For the Applicants — Shri Gobind Mukhoty, Sr. Counsel with S/Shri M.L. Chawla, Ramesh Chander, Naresh Kaushik, Shankar Divoti, P.N. Gupta and N. Safaya, Counsel

For the Respondents — Shri P.P. Khurana, Counsel

For the Intervenors — S/Shri E.X. Joseph, J.K. Sethi, Jose.P. Verghese, V.S.R. Krishna, P.L. Mimroth, S.M. Ahlawat and K.P. Dohare, Counsel.

CORAM:

THE HON'BLE MR. P.K. KARTHA, VICE CHAIRMAN(J)

THE HON'BLE MR. A.B. GORTHI, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the judgment? Yes

2. To be referred to the Reporters or not? Yes

JUDGMENT
(of the Bench delivered by Hon'ble Shri P.K. Kartha, Vice Chairman(J))

In this batch of applications, some filed at the Principal Bench and some transferred from the various Benches of this Tribunal, to avoid conflict of decisions, two basic issues arise for consideration, namely;:

(1) Whether the applicants and persons similar to them are entitled to promotion from the grade of Junior Engineers to the next higher grade in the Telegraph Engineering Service Group 'B' (Assistant Engineers and equivalent posts) on the basis of the year of passing the qualifying Departmental Examination envisaged in Para 206 of the P&T Manual and not on the basis of their respective seniority as had been adopted and followed by the respondents; and

(2) Whether, in the facts and circumstances, they are entitled to refixation of inter se seniority on the said basis and promotions with retrospective effect together with back wages.

2. The applicants have relied upon the judgment of the Allahabad High Court dated 20.02.1985 in W.P.Nos. 2739/81 and 3652/81(Parmanand Lal and Brij Mohan Vs. Union of India and Others) and decisions of the various Benches of this Tribunal following

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the judgment of the Allahabad High Court, as detailed below:-

(1) Judgment dated 27.02.1990 of the Ernakulam Bench in OAK-112/88 (T.N. Peethambaran Vs. Union of India & Others).

(2) Judgment dated 30.03.1990 of the Ernakulam Bench in OAK Nos. 603/88 and 605/88 (T.M. Santhamma & Others Vs. Union of India & another).

(3) Judgment dated 5.7.1990 of the Madras Bench in OA 487 of 1989 (V.S. Ganesan Vs. Union of India & Others).

(4) Judgment dated 7.6.1991 of the Principal Bench in OA 1599 of 1987 and connected matters (Daljit Kumar and Others Vs. Union of India & Others).

(5) Judgment dated 28.11.1991 of the Bangalore Bench in OA 491 of 1991 (K. Dwarkanath and Another Vs. Union of India and Others).

3. In the aforementioned decisions, the Allahabad High Court and this Tribunal have concluded that the applicants are entitled to promotion, refixation of inter se seniority and consequential benefits as claimed by them and have decided the two issues in their favour. The applicants before us seek the same benefits.

4. SLP 3384-86/86 filed by the Union of India against the judgment of the Allahabad High Court was dismissed on merits on 8.4.1986. SLP Nos. 19716-22/91 filed by them against the judgment of the Principal Bench of this Tribunal dated 7.6.1991 were dismissed with some observations on 6.1.1992 along with Intervention Application No.1 and SLP(C)/91 filed by the Junior Telecom Officers' Association (India) seeking permission to file Special Leave Petition, which will be discussed further in the course of this judgment.

5. A Review Petition (R.A.) filed by the Union of India against the judgment of the Principal Bench of this Tribunal dated 7.6.1991 was dismissed on 1.10.1991. RA 49/91 in OAK No.603/88 filed in the Ernakulam Bench by a third party is, however, pending.

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6. Thereafter, another Bench of this Tribunal presided over by the Hon'ble Chairman has given certain directions to the respondents on 28.02.1992 in a batch of CCPs filed by the petitioners alleging non-compliance with the judgment of the Principal Bench of this Tribunal dated 7.6.1991 (CCP 256/91 in OA 1597/87 and connected matters).

7. In the aforesaid order dated 28.02.1992, the Bench noted the intention of the respondents to revise the seniority of entire cadre of TES, Group B Officers as per Para 206 of the P&T Manual, Vol. IV. The respondents submitted that since the said cadre exceeds 10,000, the implementation would take time and that the names of the petitioners would be placed in TES Group B seniority list and thereafter would be considered for further promotion according to the revised list in accordance with the rules, availability of vacancies and on the basis of the recommendations of DPC. The said Bench observed that those similarly situated should be given relief by application of the same principle, whether or not they approached the Tribunal and secured orders in their favour. The matters have been listed for further consideration on 14.09.92.

8. We have been informed that out of the large number of applications filed in the Principal Bench of the Tribunal, some were disposed of by judgment dated 7.6.1991 and the same is the subject matter of the above mentioned CCPs. The applications before us cannot, however, be disposed of on the basis of the judgment dated 7.6.1991 by a short order, as intervention applications filed by interested parties and associations opposing the grant of relief to the applicants also require consideration.

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9. Intervention applications have been filed in OA 2407/91 (S. Venketeswara Shenoi Vs. Union of India and Others) espousing the cause of three categories of persons, namely:

(i) Those belonging to the Scheduled Castes/Scheduled Tribes who support the stand of the applicants but contend that while giving promotions and refixing the inter se seniority, the respondents should give due regard to the rules and instructions relating to reservation in favour of SC/ST perons(MP 195/92 in OA 2407/88 and MP Nos. 957, 958, 965 and 966 of 1992 in MP 195/92);

(ii) The Telecom Engineering Services Association (India) which also supports the stand of the applicants (MP 129/92 in OA 2407/88); and

(iii) Junior Telecom Officers Forum for Redressal of Grievances said to represent 6000 affected persons and Junior Telecom Officers Association (India) both of which contend that the judgment of the Allahabad High Court and the decisions of this Tribunal following the said decision do not constitute good precedents, that they are judgments per incuriam, that the matter should be considered on the merits afresh and that the applicants before us should not be granted the reliefs sought by them (MP Nos. 3493, 3494, 3396 and 3397/91).

10. We have carefully considered the matter in the light of the records of the case, the submissions made and the plethora of case law relied upon by the parties*. The interventionists have

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* Case law cited on behalf of the applicants:-
1986(4) SCC, 246 and 247; 1992(1) SCC 489, 491; 1991(2) Supp. SCC 516, 523-524.

Case law cited on behalf of the Intervenors:-
AIR 1976 SC 1766; AIR 1987 SC 1073; AIR 1979 SC 1384; AIR 1974 SC 818; 1962(2) SCR 558; AIR 1960 SC 195; AIR 1967 SC 1480, 1486; 1989 AC 375, 379; AIR 1975 SC 1087; AIR 1979 SC 478; 1955 SCR 520; AIR 1963 SC 786; AIR 1989 SC 38; JT 1991(3) SC 268; 1989(3) SLJ CAT 353; AIR 1988 SC 1531; 1975(1) SCC 794; Seervai Constitutional Law 3rd Edition, Vol. II P.2243; 1959 SCR 1099, 1108, 1109, 1110; AIR 1980 SC 1707; Constitutional Law of India, H.M. Seervai, 3rd Edition, Supplement 579; 1989(1) SCC 101.

(15)

vehemently opposed the contention, of the applicants that the dismissal of the SLPs filed against the decision of the Allahabad High Court in the case of Parmanand Lal and Brij Mohan and of this Tribunal in Daljit Kumar and Others, mentioned above, have given finality to the entire controversy. The question arises whether the interventionists who are opposing the grant of relief to the applicants before us are justified in their prayer to hear the matter afresh, treating the judgment of the Allahabad High Court as judgment per incuriam.

11. As the issues raised in these applications are common, it is proposed to deal with them in a common judgment. We may, at the outset, briefly set out the issues which arose before the Allahabad High Court in the case of Parmanand Lal and Brij Mohan and before this Tribunal in Daljit Kumar & Others.

12. The grievance of the petitioners/applicants, was that promotions were made on the basis of seniority in disregard of the provisions of Para 206 of the Posts and Telegraph Manual which stipulate, inter alia, that those who pass the qualifying examination earlier will rank senior as a group to those who pass the examination on subsequent occasions. This is clear from the following extracts from the judgments:-

Judgment of Allahabad High Court dated 20.02.85

" The facts stated above show that those who had qualified after the petitioner in more than one attempt and one in 6th attempt were given chance for ad hoc and temporary promotion in preference to the petitioners. Persons of later year were promoted earlier including those whose record in 4 days or 5 months could not become 'outstanding' or 'very good'. It shows that deliberately the petitioners were passed over with oblique intentions and motives. Even if merit was criteria, yet promotions every time were made on the basis of seniority after excluding those who were left over or passed over".

Judgment of the Tribunal dated 7.6.1991

" The applicants passed the T.E.S. Class II Qualifying Departmental 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 (Para 206 of the P&T Manual) 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".

13. The applicants before the Allahabad High Court and this Tribunal had challenged the action of the Union of India in disregard of Para 206 of the P&T Manual in the matter of promotion from the post of Junior Engineer to that of Assistant Engineer and fixation of seniority of Assistant Engineers. The Union of India had contended that Para 206 of P&T Manual would not apply after the statutory Recruitment Rules of 1966 and 1981 were brought into force. This was repelled by the Allahabad High Court whose decision was upheld by the Supreme Court by dismissing the SLP on the merits.

14. The interveners before us in MP Nos. 3396, 3397, 3493 and 3494 of 1991 in OA 2407/88 sought to take up the same stand of the Union of India before the Supreme Court by filing their Intervention Application in the SLP filed by the Union of India against the judgment of this Tribunal in the case of Daljit Kumar and Others but both the SLPs were dismissed by the Supreme Court. We are not impressed by their contention that all the aspects of the matter were not brought to the notice of the High Court, this Tribunal and the Supreme Court. They themselves had high-lighted all the contentions in the Intervention Application filed by them in the Supreme Court, running into 125 pages. Their submission that their application was dismissed as the SLP filed by the Union of India was dismissed, does not appeal to us, apart from the fact that it is unfair to the apex court.

15. The interveners in MP 129/92 in OA 2407/88 took the same stand as the applicants before us. The interveners in MP 192/92 and the various MPs filed thereunder in OA 2407/88 also supported the stand of the applicants before us though they contend that in effecting promotions, the respondents should be directed to comply with the provisions relating to the reservation in favour of Scheduled Castes and Scheduled Tribes.

16. During the hearing, the learned counsel for the intervenors in MP Nos. 3396, 3397, 3493 and 3494 of 1991 submitted that giving promotion and refixation of seniority on the basis of the year of passing the qualifying departmental examination and not on the basis of seniority will entail large scale reversions giving rise to wide

spread discontentment in the service, though its exact ramifications cannot be indicated at this stage.

17. We are conscious of the fact that refixation of seniority and consideration for promotion on that basis, concerning about 10,000 persons, might result in some ups and downs in the placement of officers in the seniority list, but this, in itself, would not justify our interference. In case the redrawing of the seniority list results in reversion of officers who had been duly promoted already, we are of the opinion that, in all fairness, their interests should be safeguarded at least to the extent of protecting the pay actually drawn by them, if the creation of the requisite number of supernumerary posts is not found to be feasible from the administrative angle.

18. It may also happen that as a result of the redrawing of the seniority list, the chances of some, including the interveners, for further promotions may be adversely affected. It is, however, well settled that mere chances of promotion are not conditions of service (Vide Ramachandra Shankar Deodhar and others Vs. The State of Maharashatra and Others, 1974(1) SCC 317; AIR 1986 SC 1830; RBI Vs. C.N. Sahasranaman). Where more than one view may be possible, as in the instant case, the ultimate test according to Sahasranaman's case ought to be,"Justice to as many as possible and injustice to as few".

19. One further question that arises is whether in the case of large scale revision of seniority list and retrospective promotion, the persons concerned would be entitled to payment of arrears of pay and allowances from the retrospective date.

20. While granting the consequential reliefs to the applicants, the High Court and the Tribunal do not appear to have considered the magnitude of the problem arising out of large scale revision of seniority and promotions consequent thereto retrospectively.

21. In our opinion, the normal rule of giving back wages to the persons concerned will not apply to such cases or in such situations.

22. In Palura Ramakrishniah and Others Vs. Union of India, 1989(1) SCALE 830, the Supreme Court observed that it is a well settled rule that there has to be no pay for no work although after due consideration a person is given a proper place in the gradation list having deemed to be promoted to the higher post with effect from the date his junior was promoted. At the most, he would be entitled to refixation of his present pay on the basis of the notional seniority granted to him so that his present salary is not less than those who are immediately below him.

23. As large scale revision of seniority and consequent promotions with retrospective effect might be anticipated in the instant case, the aforesaid ruling of the Supreme Court would apply and the relief should be moulded accordingly.

24. In the light of the foregoing discussion, the applications and MPs filed thereunder are disposed of with the following findings, orders and directions:-

(1) Subject to what is stated in (2) below, we hold that the decision of the Allahabad Bench dated 20.02.1985 in the cases of Parmanand Lal and Brij Mohan and the judgments of the Tribunal following the said decision lay down good law and constitute good precedents to be followed in similar cases. We reject the contentions of the interveners to the contrary and further hold that having urged before the Supreme Court their various contentions and their SLP having been dismissed by the Supreme Court, they cannot reagitate the matter before us. We, therefore, dismiss MP Nos. 3396, 3397, 3493 and 3494 of 1991 in OA 2407 of 1988 as being devoid of any merit.

(2) We hold that the applicants are entitled to the benefit of the Judgment of the Allahabad High Court dated 20.02.1985 except that in the event of refixation of seniority and notional promotion with retrospective effect, they would be entitled only to refixation of their present pay which should not be less than that of those who were immediately below them and that they would not be entitled to back wages. We order and direct accordingly.

(19)

(3) We hold that in case the redrawing of the seniority list results in reversion of officers who had been duly promoted already, their interests should be safeguarded at least to the extent of protecting the pay actually being drawn by them, in case creation of the requisite number of supernumerary posts to accommodate them in their present posts is not found to be feasible. We order and direct accordingly.

(4) While effecting promotions, the respondents shall give due regard to the provisions for reservation in favour of Scheduled Castes/Schedules Tribes. MP No.195 of 1992 in OA 2407 of 1988 and MP Nos. 957, 958, 965 and 966 of 1992 in MP No.195 of 1992 are disposed of with these observations.

(5) In view of the observations in (1) above, no orders are required to be passed on MP No.129 of 1992 in OA 2407 of 1988.

(6) The respondents shall comply with the above directions before 14.09.1992.

(7) Let a copy of this order be placed in all the case files.

(8) There will be no order as to costs.

(A.B. GORTHI) 22.04.92
MEMBER(A)
22.04.1992

(P.K. KARTHA)
VICE CHAIRMAN(J)
22.04.1992

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