IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

1. OA No.1939/91 Date of decision:10.07.1992.

La man Balani & Others ...Applicants

Versus

Un on of India & Others ...Respondents

2. OA 1947/91

Suresh Kumar Gaur & Ors. ...Applicants

Versus

Union of India & Ors. ...Respondents

3. OA 1948/91

R . Bajpai & Ors. ...Applicants

Versus

U on of India & Ors. ...Respondents

OA 1952/91

I Prakash & Ors. ...Applicants

Versus

U on of India & Ors. ...Respondents

OA 1953/91

pal Singh & Ors. ...Applicants

Versus

U on of India & Ors. ...Respondents

OA 2238/91

hveer Singh & Ors. ...Applicants

Versus

on of India & Ors. ...Respondents

7. OA 2672/91

S.N. Puri & Ors. ...Applicants

Versus

Union of India & Ors. ...Respondents

Coram:-

The Hon'ble Mr. T.S. Oberoi, Judicial Member

The Hon'ble Mr. I.K. Rasgotra, Administrative Member

For the applicants :Shri D.S. Choudhary, counsel.

For the respondents :None

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

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

(Judgement of the Bench delivered by Hon'ble Mr. I.K. Rasgotra, Member (A))

The 7 Original Applications, listed above raise common issues of law and of fact. We, therefore, propose to dispose them of through this common judgement. For facility of disposal we are dealing with the O.A. No.1939/91 hereunder in detail.

OA 1939/91

2. The above Original Application has been filed by Shri Laxman Balani & 5 others under Section 19 of the Administrative Tribunals Act, 1985 assailing the orders issued by the respondents vide Memo No.232-2/ 89/STG-II

dated 2nd November, 1989, promoting 300 Junior Telecom Officers (JTOs for short) and Memo No.232/4/89-STG-II dated 16.11.1990, promoting 3200 JTOs to Telecom Engineering Service (TES for short) Group 'B', ignoring the claim of the applicants for promotion, by virtue of their having qualified in the departmental examination, conducted by the respondents, earlier than those who have been promoted vide the above memoranda.

3. The facts of the case are that the applicants, who are working as JTOs in Group 'C', passed the Departmental Examination thereby making them eligible for promotion to the post of T.E.S. Group 'B'. Although the promotion from the grade of JTO to the Group 'B' post is made on seniority-cum-fitness basis, passing the departmental qualifying examination is essential for consideration for promotion to the T.E.S. Group 'B' post in accordance with Rule 206 of P&T Manual, Volume-IV. The said Rule reads as under:-

> "206. All Engineering Supervisors recruited after the Ist 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

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their knowledge in the latest developments in Telegraphy and Telephones. 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. and 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 an on block senior to those who passed in 1957. Their seniority inter se will, however, be according to their seniority in the cadre of Engineering Supervisors."(emphasis supplied)

4. The seniority of all the JTOs who have qualified in the departmental examination and after their promotion to T.E.S. Group 'B' post is maintained by Respondent No.1 on all India basis. According to Rule 206, as extracted above, the Engineering Supervisors (JTOs) who pass the qualifying examination earlier are to rank senior as a group retaining inter-se-seniority to those who passed the examination on subsequent occasions and they are to be considered for promotion to the next higher grade, i.e., T.E.S. Group 'B' in that order. The respondent No.1, however, is stated to have acted arbitrarily and in

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violation of the said Rule by promoting those JTOs who passed the qualifying examinations held subsequently to the ones, which the applicants had qualified in, thereby operating the seniority list as obtaining prior to the qualification in the departmental examination. The applicants had impleaded S/Shri K.L. Anand, Ratan Chand and L.S. Srivastava, Assistant Engineers who in accordance with the Rule 206 of P&T Manual Volume IV should have been placed below them in the eligibility list for consideration for promotion to Group 'B' posts.

5. Respondents Nos. 2, 3 & 4 who have been promoted to the T.E.S. Group 'B' passed the said qualifying examination in the year 1987, 1988 and 1989 respectively whereas applicant No.1 qualified in the examination in December, 1985, applicants Nos.2-4 in May, 1987 and rank senior to respondent No.3, while applicants No.5 & 6 passed in April, 1988 rank senior to respondents No.4 in accordance with the provisions contained in Rule 206. They contend that the respondents have arbitrarily ignored the legitimate claim of the applicants for promotion to T.E.S. Group 'B', conferring promotion on respondents No.2,3 & 4, despite their having qualified in the qualifying examination later than the applicants.

6. When this batch of Applications came up for admission on 27.8.91, a notice was issued to the respondents, returnable in four weeks and the case was ordered to be listed on 22.10.91. On 22.10.91 when the case came up again, service on respondent No.1 had been effected, whereas service report on respondents No.2-4 was awaited.

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Accordingly, fresh notice was ordered to be issued to the respondents Nos. 2,3 & 4, returnable in four weeks and the case was to be listed on 12.12.1991. None represented the respondents Nos.1-3 on that date inspite of service of respondents Nos. 1&2. As service on respondent No.4 was still awaited, a fresh notice was ordered to be issued to all the respondents, returnable on 14.2.92. On 14.2.92 and 27.2.92 again none appeared for the respondents. A fresh notice was again ordered to be issued to respondent No.4 on 27.2.92, returnable on 21.4.92 with a view to give a fair opportunity to the respondents to put up appearance. The respondents again remained unrepresented on 21.4.92.

When the case came up on 2.7.92 the learned counsel for the applicant Shri D.S. Choudhary submitted that the name of respondent No.4 may be deleted from the array of the respondents, as despite issue of four notices it has not been possible to effect service on him, even though the service can now be presumed to have been completed, as on the last occasion a notice was issued to him under registered post, ackonwledgement due. The learned counsel further submitted that the issues of law and of fact raised in in this case have already been decided in an identical case earlier by Allahabad High Court in Writ Petition No. 2739 and 3652 of 1991 decided on 20.2.1985. The SLP filed against the said judgement bearing No.33384 of 1986 was dismissed by the Hon'ble Supreme Court on 8.4.86. Besides 7 other OAs raising identical issues of

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law and of fact have since been disposed of by the Principal Bench of this Tribunal in **OA 1599/87 Daljit Kumar & Ors. Vs. U.O.I. & Ors. alongwith six other OAs** vide judgement delivered on 7.6.1991. The learned counsel further contended that possibly because of the several cases involving identical issues have already been decided by the Tribunal following the judgement of the Allahabad High Court, the respondents are not feeling it necessary to put up their appearance. He also filed a copy of the judgement delivered by the Principal Bench in **Daljit Kumar** (supra) case decided on 7.6.91 and submitted that the respondents had filed a SLP against the decision of the Principal Bench of the Tribunal (SLP No.19716-22191) in **Daljeet Kumar** (supra) case which too has been dismissed by the Hon'ble Supreme Court.

In addition he filed the copies of the following judgements:-

i) Batch of 29 OAs decided on 22.4.1992 alongwith OA 2407/88 decided by the Principal Bench.

ii) Copy of judgement in OA No.498/90 along with 8 other OAs decided by Ernakulam Bench of the Tribunal vide order dated 24.4.1992.

7. We have heard the learned counsel for the applicants and perused the copies of the judgements filed togetherwith the record on the judicial file. Having regard to the facts and circumstances of the case, we are of the opinion that this will be a fit case where we can proceed to decide the matter against the respondents as

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ex-parte, to avoid unnecessary delay in disposing of the matter, which has already been settled by a plethora of judgements.

8. The applicants have relied upon the judgement of the Allahabad High Court dated 20.2.1985 in Writ Petition No.2739/81 and 3652/81 (Parmanand Lal and Brij Mohan Vs. Union of India and Others). In the wake of the judgement of the Allahabad High Court the following judgements in addition to those referred to in para 6 above, have been pronounced by the various Benches of the Tribunal:-

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

b) Judgement dated 30.3.1990 of the Ernakulam Bench in OAs Nos.603/88 and 605/88 (T.M. Santhamma & Others Vs. Union of India and another).

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

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

The SLPs No.33384-86 of 1986 filed by the Union of India against the judgement of the Allahabad High Court were dismissed on merits on 8.4.1986 and SLPs No.19716- 22 of 1991 filed by the respondents against the judgement of the Principal Bench of this Tribunal dated 7.6.1991 were

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dismissed by the Hon'ble Supreme Court on 6.1.1992 vide the following order:-

"SLP(C)Nos.19716-22/91

These special leave petitions are directed against the judgement of the Central Administrative Tribunal, Principal Bench, Delhi dated June 7, 1991. The Principal Bench has followed the judgement of the Allahabad High Court in Writ Petitions 2739 and 3652 of 1981 decided on February 20, 1985. SLP(C) Nos.3384-86/86 against the judgement of the Allahabad High Court have already been dismissed by this Court on April 8, 1986. We see no grounds to interfere. Special Leave Petitions are dismissed.

IA No.1 & SLP(C)...../91

In view of our order in SLP(C) Nos.1971 22/91 the I.A. and SLP are dismissed."

Thereafter another Bench of the Tribunal presided over by the Hon'ble Chairman gave certain directions to the respondents on 28.2.1992 in a batch of CCPs filed by the petitioners alleging non-compliance with the judgement of the Principal Bench dated 7.6.1991 (CCP No.256/91 in OA 1597/87 and connected matters) the Bench observed that the intention of the respondents is to revise the seniority of the entire cadre of the T.E.S. Group 'B' officers as per para 206 of the P &T Manual Vol.IV. The respondents had submitted that since the said cadre exceeds

10,000 the implementation would take time and the names of the petitioners would be placed in T.E.S. 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 on the basis of the recommendations of the DPC. The said Bench further 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.

Since the applicants before us are on all fours with the petitioners in the case-law cited before us earlier, we are of the opinion that the applicants are entitled to similar reliefs, as have been provided to the applicants in **OA 1599/87 Daljit Kumar & Ors. vs. U.O.I. & Ors. decided on 7.6.91**, relying on the spirit of the judgement given by the Hon'ble High Court of Allahabad and as upheld by the Hon'ble supreme Court in the case of **Parmanand Lal and Brij Mohan** (supra).

Accordingly, we order and direct that the respondents shall redraw the seniority list for the purpose of promotion from the post of Junior Telecom Officer to the next higher grade of T.E.S. Group 'B', placing the applicants who have passed the departmental qualifying examination earlier than those who passed the said examination subsequently in accordance with Rule 206 of the P&T Manual Vol.IV, without disturbing their inter-se-seniority

in their group and consider the applicants for promotion from the date their next junior was promoted to the grade of T.E.S. Group 'B'. In view of the magnitude of the consequential reliefs arising from the large scale revision of seniority and consequent retrospective promotions, we are of the opinion that the applicants shall be fixed retrospectively on a notional basis without payment of back wages.* We order accordingly. The OA is disposed of as above.

The orders passed in OA No.1939/91 - Laxman Balani & Others Vs. Union of India & Others shall also be applicable mutatis mutandis to OAs Nos. 1947/91, 1948/91, 1952/91, 1953/91, 2238/91 and 2672/91.

There will be no order as to costs.

A copy of the judgement in OA 1939/91 be placed in all the files, relating to the other OAs, indicated above.

(I.K. RASGOTRA)
MEMBER(A)

(T.S. OBEROI)
MEMBER(A)

July 10, 1992.

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* Paluru Ram Krishnaiah & Others Vs. Union of India & Others - JT 1989 (1) SC 595.