

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

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

Laxman Balani & Others ...Applicants

Versus

Union of India & Others ...Respondents

2. OA 1947/91

Suresh Kumar Gaur & Ors. ...Applicants

Versus

Union of India & Ors. ...Respondents

✓ 3. OA 1948/91

R.S. Bajpai & Ors. ...Applicants

Versus

Union of India & Ors. ...Respondents

4. OA 1952/91

Ram Prakash & Ors. ...Applicants

Versus

Union of India & Ors. ...Respondents

5. OA 1953/91

Karpal Singh & Ors. ...Applicants

Versus

Union of India & Ors. ...Respondents

6. OA 2238/91

Yashveer Singh & Ors. ...Applicants

Versus

Union of India & Ors. ...Respondents

7. OA 2672/91

S. N. Puri & Ors.

...Applicants

S.N. Puri & Ors.Applicants

Union of India & Ors. ... Respondents

Coram:-—

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

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

• 100% ORGANIC 100% NATURAL

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

For the respondents : **None**

whether Reporters of local papers may be allowed

for Jacob 18th quote and 30th Judging Lent - now self imposed

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

1990-1991 1991-1992 1992-1993 1993-1994 1994-1995 1995-1996 1996-1997 1997-1998 1998-1999 1999-2000

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

Das ist eine Klammer, die man zwischen zwei Schrauben oder zwei Schraubenlöchern anbringt.

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.

Table 1. The results of the experiments on the dependence of the dependence of the

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:-

Rule 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 qual-

fying examination is intended to test the

general ability of Engineering Supervisors and

(13)

their knowledge in the latest developments in

Telegraphy and Telephones. A pass in this examination is an essential condition for promotion

and for appointment to the post of Telegraph Engineering and Wireless Service
Class-II.

2. Promotion to the T.E. and W.S. Class II,

which recognitions and ranks accordingly will be made according to the principle of
seniority-cum-fitness by the Engineering Super-

visors who pass the qualifying examination

earlier will rank senior as a group to those who

beforewards had and will pass the examination on subsequent occasions

and whose seniority will be according to the officials who passed the examination held

earlier. Likewise those who passed the examination 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

which is based on the departmental cadre of Engineering Supervisors. (emphasis supplied) Last 8000

and 10000 posts were also given to the

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

which is a fact. According to the Respondent No.1, the seniority of all the JTOs who have qualified

in the departmental examination and after their promotion to the next higher grade, i.e.,

Group 'B' in that order. The respondent No.1, also stated that the seniority of all the JTOs who have qualified in the departmental examination and after their promotion to the next higher grade, i.e.,

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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 date for hearing was fixed to 12.12.1991. None represented 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, acknowledgement due. The learned counsel further submitted that the issues of law and fact raised 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 law as above, were filed, but not noticed for hearing.

law and of fact have since been disposed of by the
Court has been disposed of by the Principal Bench of this Tribunal in OA 1599/87 Daljeet Kumar

& Ors. Vs. U.O.I. & Ors. alongwith six other OAs vide
to be decided by the Principal Bench of the Tribunal on the 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 Daljeet 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
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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17 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 Allahabad High Court dated 20.2.1985 in Writ Petition No. 2739/81 and 3652/81 (Parmanand Lal and Brij Mohan Vs. Central Board of Secondary Education and the 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 & Another 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 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 also dismissed on merits on 22.3.1991.

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

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

to the hearing and now before said consolidated petition

These special leave petitions are directed against the judgement of the Central Administra-

tive 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

(before this Court has right to rule on it)

In view of our order in SLP(C) Nos.1971 22/91

dismissed earlier and the Hon'ble Chairman

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

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10,000 the implementation would take time and the names of the petitioners would be placed in T.E.S. Group 'B' on the 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).

(A) AMENDMENT

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

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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 the relationship to existing rules and norms of seniority and consequent retrospective promotions, we have also directed that the amounts of the reliefs are of the opinion that the applicants shall be fixed retrospectively on a notional basis without payment of arrears of wages or 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

Re: sealed letter, 7/1/48, etc., and application No. 1047/61 - 1048/61

applicable mutatis mutandis to OAs Nos. 1947/91, 1948/91,

1952/91, 1953/91, 2238/91 and 2672/91. The 2672/91

There will be no order as to costs.

A copy of the judgement in OA 1939/91 be placed

1995-1996 Graduate Catalog

in all the files, relating to the other Oas, indicated
in the subject and additional information.

above.

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7-13 TAD. MEMBER (A) 10/7/92
July 10, 1992.

MEMBER(A)

¹ See also the discussion of the 1990 and 1991 bills in the previous section.

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