(22)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

1. CCP NO. 140/93 in OA NO. 1825/89 — DECIDED ON : 08.09.1993

L. B. NACHANE & ORS. ... PETITIONERS

2. CCP NO. 141/93 in OA NO. 1826/89

A. H. K. PILLAI & ORS. ... PETITIONERS

3. CCP NO. 142/93 in OA NO. 1885/91

RAMESH CHANDER & ORS. ... PETITIONERS

4. CCP NO. 143/93 in OA NO. 1827/89

A. M. AGRESAR & ORS. ... PETITIONERS

5. CCP NO. 144/93 in OA NO. 1824/89

K. SURENDRAN & ORS. ... PETITIONERS

6. CCP NO. 147/93 in OA NO. 2504/91 MP NO. 1947/93

I. J. NAGPAL ... PETITIONER

7. CCP NO. 148/93 in OA NO. 2503/91 MP NO. 1949/93

M. L. JAIN & ORS. ... PETITIONERS

8. CCP NO. 149/93 in OA NO. 1661/91

R. L. KAPOOR & ORS. ... PETITIONERS

9. CCP NO. 164/93 in OA NO. 1828/89

S. V. SUBRAMANIUM & ORS. ... PETITIONERS

10. CCP NO. 165/93 in OA NO. 1675/91

J. S. YADAV & ORS. ... PETITIONERS

11. CCP NO. 166/93 in
OA NO. 1676/91

P. C. TIWARI & ORS. ... PETITIONERS

12. CCP NO. 167/93 in
OA NO. 1674/91

U. C. RATTAN & ORS. ... PETITIONERS

13. CCP NO. 182/93 in
OA NO. 2155/91

V. K. PATNI & ORS. ... PETITIONERS

14. CCP NO. 197/93 in
OA NO. 2507/91
MP NO. 1948/93

RANJEET BHATTACHARJEE ... PETITIONER

VS.

UNION OF INDIA THROUGH
CHAIRMAN, TELECOM COMMISSION
& ANR. ... RESPONDENTS

CORAM :

THE HON'BLE MR. JUSTICE V. S. MALIMATH, CHAIRMAN
THE HON'BLE MR. S. R. ADIGE, MEMBER (A)

Shri Gobind Mukhoty, Sr. Counsel with Shri Naresh Kaushik, Counsel for the Petitioners

Shri P. P. Khurana, Counsel for Respondents

O R D E R (ORAL)
(BY HON'BLE MR. JUSTICE V. S. MALIMATH)

The complaint of the petitioners in these contempt of court petitions is that the respondents are taking steps in the matter of implementation of the judgment of the Tribunal in O.A. No. 2407/88 and connected cases decided on 22.4.1992 in clear violation of the directions issued by the Tribunal therein. Shri Mukhoty, learned counsel appearing for the petitioners has two complaints

to highlight. The first complaint is about fixation of the pay of the petitioners in the light of re-fixation of seniority made in accordance with the directions of the Tribunal. It is his contention that the petitioners are required to be fixed on the basis of the revised rankings so far as their pay is concerned in such a manner that it is not less than that drawn by their immediate juniors. The second complaint highlighted is in regard to further promotions. The apprehension in the minds of the petitioners in the light of the steps already taken by the respondents is that for further promotion the revised rankings are not going to be adhered to, but what is going to be taken into account is actual dates on which some of the juniors were promoted earlier. This, according to the learned counsel for the petitioner, would be clearly inconsistent with the directions issued by the Tribunal. It is these two complaints, which we are required to examine in these cases.

2. For properly apprehending the rival contentions, it is necessary to extract the relevant directions (1) to (3) issued by the Tribunal in the aforesaid judgment, which read as follows :-

> "In the light of the foregoing discussion, the applications and MPs filed thereunder are disposed of with the following findings, orders and directions:-
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> (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 cannot reagitate the matter before us. We, therefore, dismiss MF Nos. 3396, 3397, 3493 and 3494 of 1991 in OA 2407 of 1988 as being devoid of 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 that that of those who were immediately below them and that they would not be entitled to backwages. We order and direct accordingly.

(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."

3. The clear effect of the judgment of the Tribunal is to direct that seniority in the cadre of TES Group 'B' should be determined in accordance with paragraph 206 of the Posts & Telegraphs Manual which clearly stipulates that those who qualify the examination earlier will rank senior as a group to those who pass the examination on subsequent occasions. So far as those who pass the qualifying examination at the same time, they are entitled to maintain their inter-se seniority among themselves. As this principle was not followed, aggrieved persons, like the petitioners, approached the High courts and the Tribunal in different cases. The

ultimate outcome of all these cases resulted in directions being issued to revise the seniority directly in accordance with paragraph 206 of the P & T Manual. The directions issued by the Tribunal which we have extracted above, are for giving effect to the said principle in the matter of determining the seniority in the cadre of TES Group 'B'. As this principle was not followed, certain promotions were given effect to, resulting in persons who passed the examination at a later point of time earning promotion earlier than those who had passed the examination earlier. Hence directions were required to be issued by the Tribunal taking into consideration all the circumstances and the equities involved. It is in this background that we shall now proceed to understand the effect of the directions issued by the Tribunal.

4. So far as the first complaint is concerned, we should advert to direction (2) in the judgment of the Tribunal. It is clear from this direction when re-fixation of seniority and notional promotions with retrospective effect are given, the beneficiaries would be entitled only to re-fixation of their pay on the basis of notional dates of promotion without having the benefit of arrears of wages flowing from such notional dates of promotion. So far as granting of the benefit of paragraph 206 of the P & T Manual is concerned, the same has been duly accorded. Notional dates of promotion have been accorded to all the petitioners and those who had secured undue advantage in violation of the said

paragraph have been pushed down and lower rankings have been given to them in the seniority list. This is clear from what has been extracted in Annexure C-2 by the petitioners in CCP 149/93. The instances of S/Shri M. N. Markendeya, P. R. Balagurgi, and R. H. Deshpande have been given therein. It is clear from the information furnished therein that Shri Markandeya has been given revised seniority number 1362 and Shri Balagurgi and Shri Deshpande have been given revised seniority numbers 1131 and 133 respectively. This is on the basis of the dates of their passing the relevant examination. We are satisfied on the materials placed before us that the revised rankings have been assigned to all the petitioners before us in accordance with the judgment of the Tribunal and in terms of paragraph 206 of the P & T Manual. But it was mantained by the learned counsel for the petitioners that though S/Shri Markandeya, Balagurgi and Deshpande have been pushed down in the seniority list, they are enjoying the benefit of higher pay which they have drawn on the basis of the wrong promotion accorded to them earlier. He submitted that having regard to direction No. (2), the petitioners are entitled to fixation of their pay on the basis of the notional dates of promotion accorded to them, which is not lower than the pay drawn by their immediate juniors. It is submitted that as persons like Markandeya, Balagurgi and Deshpande who areall juniors to them are enjoying the benefits of higher pay, the respondents were under an obligation to fix the pay of the petitioners on par or at a level higher than the pay accorded to them.

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It is no doubt true that in direction No. (2) it is stated that on the grant of notional promotion with retrospective effect the petitioners would be entitled only to re-fixation of their pay which should not be less than that of those who were immediately below them. The pay of those who are immediately below the petitioners which has to be taken into consideration is not the pay which the juniors were receiving but the actual pay which they would be entitled to receive on the revised dates of promotion being accorded to them. We say so for two reasons; firstly it is not reasonable to understand the judgment of the Tribunal as conferring any unjust benefit on the petitioners which they are not entitled to in law. In law the petitioners would be entitled to the fixation of pay on the basis of their legitimate rankings applying the principle incorporated in paragraph 206 of the P & T Manual. Whatever dates of promotion which they would have got on the basis of that principle must be made available to them. Hence, it follows that the legitimate fixation of the pay of the petitioners would flow from the rankings which they secure on the basis of the notional dates of promotion applying paragraph 206 of the P & T Manual. If some junior was unjustly getting a higher pay in contravention of paragraph 206, it is not reasonable to understand the judgment as having the effect of directing a similar unjust benefit being accorded to the petitioners as well. That is not the real content of Article 14 of the Constitution. Hence, it is reasonable to understand the judgment of the Tribunal as conveying that none of the juniors of the

petitioners on the basis of the revised notional dates of promotion should be fixed in pay higher than that of the petitioners or that the petitioners' pay should not be fixed at a level lower than that of their juniors as a consequence of review. It has no bearing on pay already fixed.

5. There is another direction in para 24 (3) of the judgment of the Tribunal which precludes the respondents from reducing the pay of the juniors fixed before the review was undertaken. It says that in case 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. The clear effect of this direction is to prevent the logical consequences flowing from the implementation of the directions of the Tribunal which would have entitled the respondents, on according of the revised dates of notional promotion to fix the pay of the juniors at the appropriate lower level. The continuance of the juniors of the petitioners like S/Shri Markandeya, Balagurgi, Deshpande and others at the higher level of pay is not on account of volition of the respondents but on account of the directions issued by the Tribunal. The directions No. (2) and (3) have to be harmoniously understood in the light of the principles which the Tribunal has directed to be followed. So understood, we have no

hesitation in holding that the fixation of the pay of the petitioners in accordance with their seniority which has been properly fixed in acordance with paragraph 206 of the P & T Manual, cannot be faulted solely on the ground that their juniors who had unjustly got the promotion from earlier dates are not deprived of the privilege of being continued in the higher pay which they were drawing. It is not, therefore, possible to take the view that there is any contumacious violation of direction (2) issued by the Tribunal.

6. So far as the question of further promotion to STS Group'A' from TES Group 'B' is concerned, the apprehension of the petitioners is that the respondents having protected their juniors' pay on the basis of the actual earlier dates of promotion they have accorded, that in the matter of further promotion also they would gain a march over the petitioners on the strength of the earlier dates of actual promotions and the higher pay they have been permitted to continue to draw. In our opinion, there is no scope for such a course being adopted by the respondents having regard to the clear directions of the Tribunal. The actual dates of promotions have to be ignored and only the revised dates of notional promotion now accorded have to be the basis for future promotions. There cannot be any doubt about this correct position in law. If any of the juniors had secured promotions on dates earlier than the revised

dates of notional promotion accorded to them, they have to be ignored and their cases have to be considered only on the basis of the new notional dates of promotion accorded to them.

7. Shri P. P. Khurana, learned counsel appearing for the respondents, rightly and fairly submitted that that is the basis on which further promotions would be accoreded to the parties. It is, therefore, enough, so far as the second complaint is concerned, to make this clarification and also to record the undertaking of the respondents in this behalf.

8. Another complaint made is about the date from which the pay fixation of the petitioners should be made. There is no averment in this behalf in these petitions. There are no specific directions in the main judgment of the Tribunal in this behalf. In these circumstances, we do not propose to examine this aspect of the matter in these proceedings. The petitioners may agitate this grievance in appropriate proceedings.

9. For the reasons stated above, these proceedings are dropped.

(S. R. Adige)
Member (A)

(V. S. Malimath)
Chairman

as
080993

Attested
Suresh Kumar 14.5.93
Court Officer
Central Administrative Tribunal
Principal Bench, New Delhi
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