

Central Administrative Tribunal  
Principal Bench, N. Delhi.

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R.A. No. 243/94  
in  
O.A. No. 1045/92

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New Delhi, this the 27th January, 1995.

HON'BLE SHRI J.P.SHARMA, MEMBER (J)  
HON'BLE SHRI S.R.ADIGE, MEMBER (A)

Union of India through

1. Secretary,  
Ministry of Telecommunication,  
Sanchar Bhawan, Govt. of India,  
Sansad Marg,  
New Delhi - 110 011.
2. Chief General Manager,  
Data Networks Department of Tele-  
communication, Block 1-10,  
Sector 12, Noida (New Okhla  
Industrial Development Authority),  
(U.P.).
3. Chief General Manager,  
Satellite Communication Project,  
Department of Tele-communication,  
50, Community Centre, Naraina Vihar,  
New Delhi- 110 028.

(By Advocate Shri M.M.Sudan).

Review petitioner  
& respondents in  
O.A. No. 1045/92

Versus

Bhagwati Prasad  
son of Shri Gopal Singh, , ,  
Working as Junior Telecommunication Officer,  
Delhi Satellite Earth Station Campus at  
Sikandrabad, Distt. Baland Shahar, (U.P.)

(By Shri O.P.Khokha, Advocate).

Respondents and  
applicant in  
O.A. No. 1045/92.

JUDGEMENT

HON'BLE SHRI J.P.SHARMA, MEMBER (J).

Union of India i.e. respondents in O.A. No. 1045/92  
filed this Review Application arising out of a Judgement

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dated 30.4.1993 wherein the applicant claimed promotion from the date one Shri B.M.Sharma promoted with effect from 25.04.1990. However, from para No. 3 of the promotion order dated 25.4.1990(Annexure R-I of Review Application) it may be seen that the promotion of all officials was subject to final decision to be taken on Writ Petitions filed in various Courts/Central Administrative Tribunals of India.

2. By our Judgement dated 30.4.1993 we followed the ratio decided by the Principal Bench in its Judgement in a bunch of cases decided on 22.4.1992 and we have given the direction to the respondents that the applicant i.e. Bhagwati Prasad should be given promotion as Assistant Engineer w.e.f. the date his junior Shri B.M. Sharma had been promoted and the date of promotion of the applicant dated 4.8.1992 is antedated to April,1990. The Review Applicant sought the review of the judgement on the ground that Shri B.M.Sharma was promoted on 25.4.1990 on the basis of eligibility list in the J.T.O. cadre on the basis of recruitment year. Said Shri B.M. Sharma belongs to recruitment year 1969 and Shri Bhagwati Prasad belongs to recruitment year 1976 in the eligibility list placed before the D.P.C. held in 1990 and therefore, Shri B.M.Sharma was senior to Shri Bhagwati Prasad.

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Subsequently, based on various judgements delivered by the Central Administrative Tribunal on the basis of the judgement of the Allahabad High Court dated 20.4.1985 in the matter of Shri P.N.Lal and Others the eligibility list was prepared on the basis of year of passing the qualifying examination. Because of this revised eligibility list Shri Bhagwati Prasad who qualified the examination, as per para 206 of the P&T Manual, in the year 1985 and Shri B.M.Sharma qualified the examination in the year 1989 and as such Shri Bhagwati Prasad became senior to Shri B.M. Sharma. Because of this revised seniority list Shri Bhagwati Prasad became senior to Shri B.M.Sharma in the T.E.S.Group-B and said Shri Bhagwati Prasad has also been promoted vide order dated 18.11.1993 (Annexure R-III of the Review Application). Shri B.M.Sharma, therefore, became junior and his promotion order has not yet been issued.

3. In the light of the above grounds, the judgement delivered by us by the order dated 30.4.1993 has to be reviewed. The Union of India has also sought the review on the ground that the direction was also issued to revise the pay of the applicant and pay him the arrears of salary as per direction of antedating his promotion from 4.8.1992 to April, 1990 vice Shri B.M.Sharma. The contention of the Union of India's counsel in the Review Application is that arrears of pay has since been disallowed.

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even in the bunch of cases decided by the Central Administrative Tribunal, Principal Bench, New Delhi by its order dated 20th April, 1992, so, this is an error apparent on the face of the Judgement and the Judgement be also reviewed in that light.

4. The Original applicant Shri Bhagwati Prasad has filed the reply to the aforesaid Review Application. In this reply it is admitted to the original applicant Shri Bhagwati Prasad that Shri B.M. Sharma lost his seniority as a result of the revision of the said seniority on the basis of passing the qualifying examination under para 206 of the P&T Manual. This, itself goes to show that there is an apparent error on the face of the Judgement as the applicant was directed to be given benefit of promotion w.e.f. the date Shri B.M. Sharma have been promoted i.e. from April, 1990 but since Shri B.M. Sharma has lost his seniority, his promotion order has not yet been issued.

5. Thus, the original applicant has also sought review of the Judgement to the extent that the applicant i.e. Shri Bhagwati Prasad be also paid admissible salary and allowances for the period of suspension.

6. We have heard the learned counsel of both the parties at length, and perused the record. The Judgement of the Allahabad High Court in the case of Shri P.N. Lal and Brij Mohan decided on 20th Feb., 1985 settles the issue of fixation of seniority. An extract of the Judgement is given below:-

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"Judgement 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 charge 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".

The Judgement in the case of Daljit Kumar & Others by UOI decided by Principal Bench on 7.6.1991 in OA No. 1597/87 the relevant extract is also given below:-

"Judgement 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 Tele-communication, 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".

7. The perusal of the aforesaid decisions goes to show that the grievance assailed by the petitioners/applicants was that promotions were made on the basis of seniority in disregard of the provisions of para 206 of P &T Manual which stipulate, inter-alia that those who passed the qualifying examination earlier will rank senior as a group to those who pass the examination on subsequent occasions.

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8. Shri B.M.Sharma belongs to the recruitment year 1969 and he qualified the examination in the year 1989 while Shri Bhagwati Prasad passed the qualifying examination in the year 1985, in such a situation automatically Shri Bhagwati Prasad on the basis of the decision of the Hon'ble Allahabad High Court as well as of the Principal Bench in Daljit's case, is entitled to his seniority from the year 1985 and he became senior to Shri B.M.Sharma in T.E.S. Group-'B'. The Hon'ble Supreme Court of India also considered the Judgement delivered in the bunch of cases by the Principal Bench of Central Administrative Tribunal, New Delhi on 22.4.1992 in S.L.P. No. 16698/92 Telecommunication Engineer Services Association (India) and Another Vs. Union of India and by this Judgement dated May 13, 1994 the decision of the Principal Bench was upheld. The Hon'ble Supreme Court of India observed that the Judgement of the Allahabad High Court in 1985 which was upheld by the Supreme Court on 18.4.1986, the petitioners filed certain applications before the Central Administration Tribunal for the benefit of the judgement of the Allahabad High Court, in the year 1988.

9. In view of the above facts when there was a revision of seniority, the observation made by us in our Judgement that the applicant Bhagwati Prasad be

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given seniority with effect from his junior i.e. from April, 1990 is an incorrect observation and is an error apparent on the face of the Judgement which has to be corrected. The respondents' counsel Shri D.P.Khokha in this review application also could not show how this observation in the Judgement in the form of direction can be retained when Shri B.M.Sharma has become junior and with his order of promotion to T.E.S. Group-'B' has to be issued while in the case of the applicant Shri Bhagwati Prasad these orders have already been issued by the Deptt. of Telecommunication No. 2-55/93-STG-II dated 18.11.1993 (Annexure R-III of the Review Application). The name of Bhagwati Prasad appears in this order of promotion at eligibility No. 11640. This has been done by the respondents on the direction of the Central Administrative Tribunal in the Judgement dated 22.4.1992 in accordance with the Judgement of the Allahabad High Court and the seniority has been fixed in accordance with Rule 206 of the P&T Manual Vol-IV as supplemented by 1966 Recruitment Rules of the whole T.E.S Group-'B' cadre. As a result of the re-fixation of the seniority list the effected officers were put in three categories as follows:-

(i) TES Group-'B' officers who list their seniority.

(ii) TES Group-'B' officers who lost their seniority but remained TES Group-'B' Officers.

(iii) TES Group-'B' officers/lost their seniority to the extent that they were to be reverted.

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10. By this re-fixation, both Shri Bhagwati Prasad and Shri B.M.Sharma, referred to in the Judgement dated 30.4.1993 has lost their seniority. Said Shri B.M.Sharma with reference to whom the applicant Bhagwati Prasad has claimed seniority, is not finding place in the revised list of T.E.S. Group-'B' and he, therefore, obviously be junior in the seniority list to Shri Bhagwati Prasad.

11. In view of this, we review our order as detailed hereunder:-

Regarding the award of back wages the Hon'ble Supreme Court of India has finally decided the issue and held that because of the re-fixation of seniority and in the peculiar circumstances of the case and enormity of the problem dealing with 10,000 persons, the back wages are disallowed except with effect from the date they actually worked on the higher post. Thus, the direction has also to be reviewed in that light.

Regarding the contention of the applicant Shri Bhagwati that he should be allowed wages for the period under suspension, we find that this relief was not claimed in the original application by the applicant at all and therefore, that cannot be re-agitated in the review petition which is filed by the Union of India and not by the applicant. However, it is evident from the

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record that the suspension order of the applicant was revoked on 5th September, 1990 and he was placed under suspension with effect from 9th November, 1989 due to certain irregularities which were found in the discharge of his duties. However, Central Vigilance Commission recommended disciplinary proceedings against the applicant and the case is still pending in the department of Tele-communication alongwith other officers involved in the matter. The counsel for the U.O.I. have stated that this matter will be dealt with by the Department according to law and extant rules.

In view of the above discussion, our judgement dated 30.4.1993 is review and the last para 7 of the Judgement is re-written as follows:-

"We have given careful consideration and the conclusion we have drawn considering the various decisions including that of Allahabad High Court as well as of the Principal Bench of Central Administrative Tribunal, New Delhi in the case of Daljit Kumar decided on 9.6.1991 referred to above as well as in the bunch of cases decided by the Principal Bench, C.A.T. by the order dated 20.4.1992 and considering the judgement of the Hon'ble Supreme Court of India in SLP No. 16698/92 decided on 30th May, 1994, we direct the respondents to give promotion to the applicant as per revised

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seniority list drawn on the basis of the passing of the qualifying examination in accordance with the para 206 of P & T Manual Volume-IV. Further we also direct that the applicant will not be entitled to any back wages except with effect from the date he actually worked on the higher post. Regarding the wages for the suspension period from 9th November, 1989 to 5th September, 1990 of the applicant Bhagwati Prasad, the respondents shall take decision according to law and extant rules\*.

The review application is, therefore, disposed of with accordingly/no order as to cost.

*Adige*  
(S.R. ADIGE)  
MEMBER (A)

*Sharma*  
(J.P. SHARMA)  
MEMBER (J)

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