

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 2646/1993

This the 11th day of April, 1997.

HON'BLE DR. JOSE P. VERGHESE, VICE CHAIRMAN (J)

HON'BLE SHRI S. P. BISWAS, MEMBER (A)

P. N. Lal S/O Phulan Lal,
R/O Flat No. A-7/2,
Peshwa Road,
New Delhi

... Applicant

(In Person)

-Versus-

1. Secretary and Chairman,
Tele Communication,
Department of Telecommunication,
Sanchar Bhawan, Ashok Marg,
New Delhi.
2. Chief General Manager,
Telecommunications,
Northern Telecom Region,
Kidwai Bhawan, Janpath,
New Delhi.
3. Shri O. N. Awasthi,
D.E.(L/D) O/O C.G.M.,
N.T.R., Kidwai Bhawan,
New Delhi.

... Respondents

(By Shri E. X. Joseph, Senior Counsel)

O R D E R

Dr. Jose P. Verghese -

The applicant in this case is challenging the reversion order passed by the respondents on 4.2.1993, which, according to the respondents, is passed in view of various orders passed by different Benches of this Tribunal as well as that of the Allahabad High Court in the case of the applicant. According to them, the said reversion order was not at all in conflict with order of the Supreme Court when it took an over-all view of all the decisions, some of them with conflicting conclusions.

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The applicant a graduate in engineering, was recruited in 1966 by the Postmaster General in the North East Circle as Engineering Supervisor and was sent for training to Telecommunication Centre at Jabalpur. In 1968 he was appointed as a Junior Engineer (then known as Engineering Supervisor). He was confirmed and regularly absorbed in Telegraph Engineering Service Group "C" with effect from 18.12.1968. The applicant came to U.P. Circle on his own request in 1977 after he passed the qualifying examination in the year 1974. The post of Assistant Engineer was governed by Telegraph Engineering Service Group "B" Recruitment Rules, 1966. The method of recruitment to the Service was by promotion on the basis of selection only from amongst Junior Engineers through a qualifying departmental examination. An approved list was to be prepared by a duly constituted Departmental Promotion Committee (DPC) from among the candidates who were found to qualify in the departmental examination by selection of the eligible and qualified Junior Engineers in the departmental examination as well. According to the rules, ordinarily, those who were recruited against a vacancy in a year shall not be absorbed before five years of the commencement of the said examination and the examination is to be ordinarily held once in a calendar year. Specific instructions are provided in the rules as to the eligibility of the candidates.

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In accordance with the general notification dated 20.12.1975, issued by the Government of India, Department of Personnel and Administrative Reforms, the procedure for making promotion and functioning of DPC is as follows :-

"Each Departmental Promotion Committee shall decide its own method and procedure for objective assessment of the suitability of the candidates. The panel for promotion/confirmation may be drawn up on the basis of assessment of the record of work and the conduct of the officer concerned."

According to the O.M. dated 30.12.1976 the selection is made out of a field of choice which ordinarily extends to five to six times the number of vacancies expected to be filled in a year. Another O.M. dated 24.12.1980 stipulates that the department was not required to declare the number of vacancies to be filled in a particular year.

The applicant qualified in the examination held in the year 1974 and he was placed at serial No. 1558 of the eligibility list. Up to the year 1978 all eligible candidates who were senior to the applicant and those who had qualified in the examination which took place prior to 1974, were promoted and in the year 1981 those persons who were kept out in 1978 and persons junior to the applicant as well as the applicant, did not find place in the list of promotees in the year 1981. It is an admitted case that the list of 1981 was prepared after coming into force a new set of rules known as Telegraph Engineering Service Group "B" Recruitment Rules, 1981, which came

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to be operative with effect from 7.8.1981. The 1981 list is said to have been made on the basis of the DPC that met on the next date, namely, 8.8.1981 and the said DPC is alleged to have scrutinised the record of about 1000 candidates and declared a list of 800 candidates within a day. But the DPC was to finalise a list of 800 candidates on the basis of departmental qualifying examination and another list of 400 candidates to be prepared on the basis of competitive examination which had already taken place, and the said DPC announced both these results.

Under the new rules, the total number of posts were to be divided; 66.6% of the posts were meant for those who qualified through departmental qualifying examination and 33.4% to be selected through limited departmental competitive examination on merits. It is to be noted that in the year 1979, some 30 candidates who qualified in the departmental examination of 1975 and 1976; that is, after the applicant was promoted on 18.4.1979. The applicant approached the High Court of Allahabad, alleging that his promotions may be ante-dated and be made with effect from a date prior to the date of promotion of any person who passed the departmental examination subsequent to him and adjust their seniority accordingly. He also prayed for the consequential reliefs such as arrears of pay and allowances with effect from the said date.

A Division Bench of the Allahabad High Court allowed his writ petition No. 2739/1981 and granted all reliefs to the applicant as prayed for and it is stated that an SLP filed against the said decision at

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the instance of the Union of India had been dismissed and thus the decision of the Allahabad High Court had become final and liable to be implemented. The respondents had no choice left but to implement the orders of the Allahabad High Court in favour of the applicant and the said orders of the High Court dated 20.2.1985 were implemented and the applicant was given all consequential benefits including benefit of seniority, arrears and consequential promotions.

In the meantime, a number of other petitioners approached various Benches of this Tribunal and in view of the implementation of the orders of some of the decisions by this Court as well as that of the Allahabad High Court, the respondents proceeded to revise the seniority position of the petitioners and all other similarly placed persons. Thus, the applicant's seniority, after the decisions of the Allahabad High Court was placed at 00847, vide the seniority position in the Blue Book available in April 1989. The consequential benefits given to the applicant including further promotion were, based on this placement in seniority. It is to be noted that the seniority position of the applicant before the Allahabad High Court's judgment was at 04741 vide, extract from the Blue Book maintained upto 1985, available in the paper-book.

The respondents further proceeded to consider the decisions of this Court or rather they were compelled to consider, since a spate of notices in contempt of court proceedings were issued against the respondents and they were directed to comply with the orders

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passed by various Benches of this Tribunal and this Court on 14.9.1992 directed the respondents to take a final decision within six months and the respondents had to finalise the inter-se seniority, not only that of the applicant but also of all the petitioners who had initiated contempt of court proceedings in this Court and a consolidated seniority list was finalised and presented to the Court in which the seniority of the applicant was fixed at 04064 and the same is available in the Blue Book of 1993. It is in pursuance to this seniority position that the orders of reversion were to be passed and the said orders passed on 4.2.1993 is being challenged on the ground that the said orders are illegal in view of the final decision of the Allahabad High Court referred to hereinabove.

It is to be noted that prior to the decision of the Allahabad High Court the seniority position of the applicant was at 04741 which was brought up to 00847 in view of the decision of the Allahabad High Court, wherein the entitlement of other petitioners was not considered, and after considering the entitlement of other petitioners who were parties to different O.A.s in different Benches of this Tribunal, the seniority position of the applicant had to be placed at 04064. It is this refixation of the seniority and the consequential orders of reversion which is in fact being challenged by the applicant in this case.

The contention of the applicant is that since the Allahabad High Court has given an order in favour of the applicant and in view of the fact that the said

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judgment and order has become final and in view of the fact that the seniority has been fixed in accordance with the said judgment and implemented by the respondents in accordance with law, and thereafter granted all consequential benefits including promotion to the applicant, the action of the respondents to further refix the seniority of the applicant is illegal and the reversion order passed as a consequence to that refixation is also illegal and liable to be quashed.

On the other hand, the submission of the respondents is that even though, with all respect to the decisions of the High Court of Allahabad, they have implemented the said judgment in the first instance, and when the rights of the other petitioners similarly placed as that of the present applicant, asserted their claims through courts the respondents were duty bound to look into the entire matter and an overall consideration of the rival contentions of rights were taken at appropriate level by the respondents and a final consolidated seniority list was published. By no stretch of imagination the said order passed by the respondents in implementing all the other judgments including that of the Allahabad High Court can be held to be in isolation to violate the orders of the Allahabad High Court. Respondents as a public authority, do have a duty to respect the orders of various courts and see the rival contentions and the rights accruing to various parties, out of various orders of the courts; just because in one case the respondents had implemented the judgment on a previous date, that cannot give any vested right to

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the applicant not to be subjected to revision of his seniority vis-a-vis various other persons in accordance with the directions given by different Benches of this Court.

The assertion of the petitioner that the right accrued to him out of the judgement of Allahabad High Court is a vested right and that cannot be taken away under any circumstances, is untenable. One can fairly concede that he had a protected right after the Allahabad High Court decision to the extent allowed in the said judgement. But ofcourse that cannot be understood to be an absolute right. That will have to be understood in the light of other protected rights, such as those, not considered by the court at the relevant time, and those that have arisen in favour of others from subsequent judgements. This is because every "right" creates a corresponding "duty" on others and the protected "rights" of others, in similar manner, create an added corresponding "duty" on the petitioner, which may affect the full enjoyment of his protected rights, previously accrued.

This is a well recognised principle, from time immemorial, analysed and elaborated by jurists of substance. According to Austin, a person has a right, if he can exact from another, acts or bearance; and according to Salmond, every legal right has an essential element that there must be a person who is the "owner of the right", whom he called the subject of the legal right, and an equally essential element is that a legal right accrues against another person

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or persons who are under a corresponding duty to respect that right, and such a person he called the "subject of the duty".

It is for the same reason that the Upnishads, conceived the most elusive idea of "Dharma" as a principle that takes within itself, not only the "right" of an individual but also the corresponding "duty" of that individual vis-a-vis the "rights" of all others.

In the beginning of this century, Hohfeld, brilliantly pioneered and developed these ideas into his famous "jural postulates" and placed right-duty co-relation as the most important preliminary point of a jural relation between individuals. According to one of the modern jurists, John Finnis, justice is "other directed", i.e., it concerns relation with others; it is owed as a duty to another; and it involves equality in the sense of proportionality (vide his magnum opus, "Natural law + Natural Rights"). It is too late in the day therefore, for the petitioner to claim his "pound of flesh" as an absolute right, irrespective and in disregard of the rights that accrued to other similarly placed individuals from subsequent judgements.

In any case, these matters were considered by the Hon'ble Supreme Court wherein 58 matters were considered. A Division Bench of the Supreme Court by an order dated 13.5.1994, passed an order and resolved the possible conflicts that had arisen out of the decisions of the various Benches of this Tribunal and

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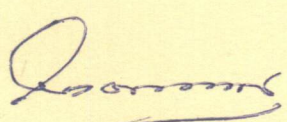
directed the respondents to resolve the conflicts that had arisen by implementing the orders of various courts by the respondents. It is to be noted that the decision of this Tribunal which necessitated the respondents to review the seniority position of the entire cadre exceeded ten thousand persons; it was bound to take time and the respondents were duty bound to do justice to all the parties and it cannot be stated that the applicant will have a right of precedence, just because the decision from the Allahabad High Court was given prior in time and it was first implemented. The Hon'ble Supreme Court gave specific directions by holding that the ratio of the decision of the Allahabad High Court's judgment is good law and constitute precedence to be followed in similar cases and the contention of the respondents here is that the respondents have applied the ratio of the Allahabad High Court decision to all the affected parties equally and brought out the new seniority list accordingly.

In their order dated 13.5.1994 the Hon'ble Supreme Court also took great care and stated that while revising the seniority, after extending the benefit of the judgment of the Allahabad High Court to all similarly placed persons, the refixation of seniority and notional promotion with retrospective effect may affect the vested rights; but it was clarified by the Court that wherever such rights are affected, they would be entitled only to refixation of their present pay, which should not be less than that of those who were immediately below and that they would not be entitled to backwages. Thus, the Hon'ble

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Supreme Court proceeded to solve the problem by protecting the pay whether rightly or wrongly granted to various petitioners when the respondents proceeded to implement the same.

In view of the findings recorded above and in view of the considerations and directions issued by the Hon'ble Supreme Court by order dated 13.5.1994, we are of the view that the present application lacks merit and the same is accordingly dismissed with no order as to costs.


(S. P. Biswas)
Member (A)


(Dr. Jose P. Verghese)
Vice Chairman (J)

/as/