

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

17

OA No. 939/93

New Delhi, this the 21st day of July, 1999

HON'BLE SHRI S.R. ADIGE, VICE-CHAIRMAN(A)  
HON'BLE SHRI P.C. KANNAN, MEMBER (J)

1. S.K. Jain s/o late Sh. D.N. Jain,  
Director (SU),  
Room No. 1104, Sanchar Bhawan,  
New Delhi.
2. Savitur Prakash s/o Late Sri Sarju Dayal,  
Assistant Director General (CE),  
1214, Sanchar Bhawan,  
New Delhi.
3. J.L. Davar s/o Sri Gian Chand,  
Assistant Director General (JM),  
1009, Sanchar Bhawan,  
New Delhi.
4. Ram Singh s/o late Bhadian Ram,  
Assistant Director General (TIM),  
1009, Sanchar Bhawan,  
New Delhi.
5. V. Ganpathiraman s/o Sri T.C. Venkataraman,  
Assistant Director General (SK),  
Room No. 427, Dak Bhawan,  
New Delhi. ....Applicants

(By Advocate: Shri VSR Krishna)

Versus

Union of India through:

1. Director General (Telecom)  
Sanchar Bhawan,  
20, Ashoka Road,  
New Delhi.
  2. Narender Kumar,  
Director (MMS),  
R.No. 1205, Sanchar Bhawan,  
New Delhi.
  3. Khan Mohd. Abubacker,  
Director E-10-B(Installation)  
O/o the C.G.M. Telecom,  
Thiruvananthapuram.
  4. Anil Kumar Sanghi,  
Dy. Manager,  
M.T.N.L. Corporate Office,  
13th Floor, Jeevan Bharti Building,  
Parliament Street,  
New Delhi. ....Respondents
- (By Advocate: Shri A.K. Bhardwaj)

*DN*

O R D E R

By Hon'ble Shri P.C.Kannan, Member (J):

1. We have heard Shri V.S.R. Krishna, counsel for applicants and Shri A.K. Bhardwaj, counsel for respondents.

2. The applicants in this O.A. have challenged the seniority assigned to the directly recruited Junior Time Scale (JTS, for short) Officers (respondents no. 2 to 4) in the Senior Time Scale (STS, for short) before completion of five years of service in JTS grade. The applicants, who were earlier in Telegraph Engineering Service (TES, for short) Group-B, were officiating in the STS of Indian Telecom (Group-A) Service, under Rule 27(b) as a purely temporary measure to hold charge by promotion of the permanent members of TES Class-II who were on the approved list for promotion to JTS. As their services were not regularised in the STS grade a Writ Petition No. 4525-33 of 1985 (N.S.K.Nair & Ors. vs. Union of India & Ors) was preferred before the Hon'ble Supreme Court and the Hon'ble Supreme Court vide judgement dated 12.12.1991 (Annexure II) held as follows:-

"We have heard learned counsel for the parties at length. It is no doubt correct that the regular channel of promotion to Group A Service provided to the Officers of the Telegraph Engineering Service Class-II under the Rules is to the JTS and their promotions under Rule 27(b) are only to meet the administrative exigency of short-tenure. We are of the view

\$w

that Rule 27(b) of the Rules has been made to enable the Government to meet an ad hoc shortage of officers to man the posts in STS. The Class-II officers have long experience to their credit and the nature of their work is almost identical to that of the posts in JTS. The direct recruits to JTS are deputed to work in Class-II posts to acquire experience. It is also not disputed that a Class-II officers who is on the approved list for promotion is competent and eligible to work in JTS and STS. It is in this background that Rule 27(b) has been enacted to enable the Government to fill the large number of vacancies in STS by appointing Class-II officers with a frog-leap from Class-II to STS by-passing the JTS. The object of having Rule 27(b) of the Rules is to provide a source of appointment to meet an administrative exigency of short tenure. It could never be the intention of the framers of the Rule to permit the appointments under the said Rule to go on for 10 to 15 years. The appointments for such a long period cannot be considered to be purely temporary/officiting or to hold charge. Taking work out of the petitioners in the STS posts for 10/15 years and denying them the right of regularisation and the consequent benefits in the said grade, is wholly arbitrary and is violative Article 16 of the Constitution of India".

Dr

3. In the operative portion of the judgement  
the Hon'ble Supreme Court held:

"We have given our thoughtful consideration as to what relief under the circumstances can be given to the petitioners and other officers similarly situated. While doing justice to the petitioners we do not to cause any prejudice to the direct recruits Rule 27(a) of the Rules provided that a Direct Recruit to JTS shall not ordinarily be promoted to STS unless he has put in five years service in JTS. Taking cue from the said Rule we hold that the promotee-officers who have worked in STS for a continuous period of five years and are holding the posts to date shall be deemed to be regular member of Group-A service in STS. They shall be entitled to count their seniority in the STS from the date of completing the said period of five years and shall be entitled to be considered for further promotion to JAG and SAG on the basis of the said seniority".

4. In the light of the directions of the Hon'ble Supreme Court, the seniority of the applicants group of officers in the STS was granted from the date of completing five years of service in the grade and the revised seniority list was prepared & circulated by the respondents on 4.8.1992 (Annexure - III). The applicants contend that although Rule 27(a) provides that direct recruit J.T.S. shall not ordinarily be promoted to STS unless he has put in five years in JTS, private

*[Signature]*

respondents no. 2 to 4 who are directly recruited JTS officers were promoted to the STS before they completed the requisite five years of service in JTS grade.

5. The applicants submit that the action of the respondents in granting promotion to the directly recruited JTS officers before completion of five years service in the grade is wholly unjustified, arbitrary, unreasonable and without any basis whatsoever. They have, therefore, filed this O.A. The main grounds taken in the OA are as follows:-

(a) The Hon'ble Supreme Court while delivering its judgement in N.S.K.Nair & Ors. (Supra) held that the seniority of the applicant grade officers in the JTS grade would be counted from the date of their completion of five years in the grade. In the circumstances, the seniority of a directly recruited JTS officers must also be counted from the date of completion of their five years service in the JTS grade.

(b) Granting promotion to directly recruited JTS officers when they put in only 3-4 years service in the JTS grade is wholly unjustified, arbitrary & unreasonable.

(c) Hon'ble Supreme Court in N.S.K. Nair & Ors (Supra) relied upon Rule 27(a) which provided that a directly

*Am*

recruited JTS officer shall not ordinarily be promoted to STS till he completed five years service in JTS grade. Therefore, a directly recruited JTS officers cannot be promoted to STS before completion of five years service in the grade. By promoting directly recruited officers before their completion of five years service, an anomalous and arbitrary situation had arisen.

6. The official respondent in their reply submitted that the revised seniority (Annexure-III) was circulated in compliance with the Supreme Court's judgement dated 12.12.1991 in the case of N.S.K.Nair & Ors (Supra). It was further submitted that the Hon'ble Supreme Court in that case had considered the case of officers of Telegraph Engineering Service Class-II, who were directly promoted to the STS as purely temporary measure to hold charge. The promotion of Class-II officers to hold charge of the STS post was purely temporary in officiating capacity and was not counted for the purpose of seniority either for JTS or for STS. In terms of the provisions of the Telegraph Engineering Service (Class-I) Rules, 1965, 50% of the vacancies in JTS will be filled by direct recruitment and 50% by promotion from the Telegraph Engineering & Wireless Service (Class-II) Rules. In the light of the above judgement of the Hon'ble Supreme Court, the seniority list has been finalised with reference to the earliest date of joining of one of the promotee officer in a particular hold charge

den

promotion order in accordance with the orders of promotion of each year and the seniority of direct recruit JTS officers have also been assigned with reference to the earliest date on which one of the officers of a particular batch joined the STS post in the relevant year. It is further submitted that this principle has been upheld by the judgement dated 30.8.1988 of this Tribunal in OA 1121 of 1987 in the case of K.N. Mishra & Ors. vs. Union of India. It is also stated that the respondents no. 2 to 4 belonged to the 1978, 1980 and 1982 year of recruitment <sup>respectively</sup> and have joined at dates later than the date of their batch-mates with the permission of the competent authority. However, their seniority have been assigned alongwith their batch-mates as it has to be kept in the original JTS seniority given by the UPSC at the time of allotment. The applicants no. 1 to 5 were empanelled to its JTS cadre in May, 1979 to 1984 (May 1979 in respect of applicant no. 1; Nov., 1981 in respect of applicants no. 2 to 4 and Sept./, 1984 in respect of applicant no. 5). In the circumstances, it has been stated that seniority of respondents no. 2 to 4 in STS grade was correctly fixed.

7. Shri Krishna, counsel for applicants submitted that Hon'ble Supreme Court took the cue from the provisions of Rule 27(a) and directed that the promotee officers who had worked in STS for a continuous period of 5 years and are holding the posts to date should be deemed to be regular members of STS from date of completing the said period. In the same analogy, the directly recruited officers in JTS cannot be promoted before they put in five years of service. He contended that the action of the official respondent is wholly discriminatory and violative

Dr

of fundamental rights of the applicants under Articles 14 & 16 of the Constitution. He also submitted that the action is unjust and an anomalous situation had arisen.

8. Shri Bhardwaj, counsel for the Respondents, submitted that due to certain extra ordinary circumstances, posts in STS were available and the official respondent had promoted the directly recruited JTS even though they had not completed the requisite five years service and in the light of provision of rule 27(a) of the rules, such promotions cannot be regarded as violative of the rules. He further submitted that the applicants are indirectly challenging the promotion of the respondents No. 2 to 4 which was granted in the year 1984. He submitted that this cannot be allowed at this stage.

9. We have carefully considered the submissions of the counsel on either side and also examined the pleadings. The order under challenge is the seniority list as at Annexure-III which was prepared and circulated in compliance with the Hon'ble Supreme Court's judgement dated 12.12.1991 in the case of N.S.K. Nair & Ors (supra). The Hon'ble Supreme Court in the aforesaid case dealt with the cases of promotee officers of Class-II officers who were directly appointed to the Senior Time Scale in officiating capacity to hold charge. Rule 27(a) enables the competent authority to promote the respondents no. 2 to 4 who are directly recruited as JTS officers of the Telegraph Engineering Service (Class-I) Service, 1965, to STS subject to rejection of the unfit. The relevant rule reads as under:-

dm

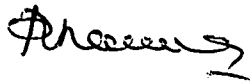



"27(a) - Appointments to the Senior Time Scale in the service shall be made by promotions of officers in the Junior Time Scale in the order of seniority subject to the rejection of the unfit. A directly recruited Assistant Divisional Engineer shall not ordinarily be promoted as Divisional Engineer unless he has put in five years service and has passed the prescribed departmental tests".

10. The expression "ordinarily" used in this rule would mean that the competent authority in certain special circumstances, may promote directly recruited JTS officers even before the completion of five years of service in the grade. The official Respondent have explained the circumstances under which the Respondents are given the seniority in the STS. We are inclined to agree with the submissions of the official respondents. In the circumstances, it cannot be said that the promotion of the respondents no. 2 to 4 as STS is violative of the provisions of rule 27(a) of the Rules. We, therefore, reject the contentions of the applicants that the seniority of the respondents no. 2 to 4 should be counted from the date of completion of five years of service or that their promotions is wholly unjustified or arbitrary or that an anomolous situation had arisen.

Den

11. In the facts and circumstances, this O.A. fails and is accordingly dismissed. There shall be no order as to costs.

  
(P.C.KANNAN)  
Member (J)

  
(S.R.ADIGE)  
Vice-Chairman(A)

/Naresh/