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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.239 OF 1998
Cuttack, this the 2nd day of January 2004

Shri Karunakar Das

Applicant

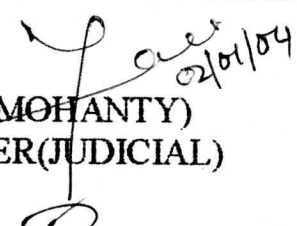
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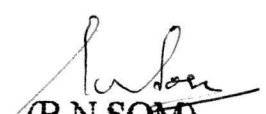
Union of India and others

Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? Yes
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? No


(M.R. MOHANTY)
MEMBER (JUDICIAL)


(B.N. SOM)
VICE-CHAIRMAN



CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 239 OF 1998

Cuttack, this the 2nd day of January 2004

CORAM:

HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN
AND

HON'BLE SHRI M.R.MOHANTY, MEMBER(JUDICIAL)

.....
Shri Karunakar Das, aged about 49 years, son of late Bandhu Das, at present officiating Sub Divisional Engineer (Legal) in the office of the Chief General Manager, Telecommunications, Orissa Circle, Bhubaneswar 751 001, District Khurda
..... Applicant

Advocates for the applicant

- M/s U.C.Mohanty & M.K.Pati

Vrs.

1. Union of India, represented through the Secretary to Government of India, Ministry of Communications, Department of Telecommunications, Sanchar Bhawan, New Delhi 1.
2. Chief General Manager, Telecommunications, Orissa Circle, Bhubaneswar 751 001

..... Respondents

Advocate for the Respondents

- Mr.U.B.Mohapatra, ACGSC

ORDER

SHRI B.N.SOM, VICE-CHAIRMAN

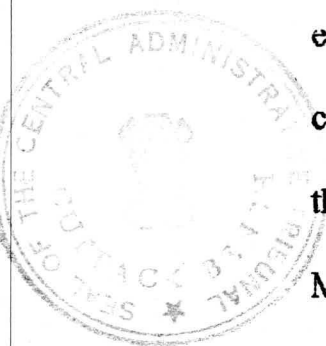
This Original Application has been filed by Shri Karunakar Das assailing the all-India eligibility list of the qualified Junior Telecom Officers (in short, 'JTO') prepared by the Department of Telecommunication (in short, 'DOT') for promotion to the grade of

Telegraph Engineering Service, Group B (hereinafter referred to as 'TES Group B') relating to the years 1989 to 1991. In this O.A. he has prayed for the following reliefs:

- (i) To issue direction to the Respondents to recast and revise the all-India eligibility list of JTOs of the years 1989 to 1991;
- (ii) To eliminate the names of the officials who were ineligible for appearing in the qualifying examination for promotion to the grade of TES Group B;
- (iii) To recast/revise the earlier eligibility list of qualified JTOs prepared on the basis of Paragraph 206 of the Posts & Telegraphs Manual, Vol.IV; and
- (iv) To hold Review DPC to place the applicant above his juniors with all consequential service benefits with effect from 1992

2. The case of the applicant is that he is a direct recruit JTO of the year 1973 and qualified in the departmental examination for promotion to TES Group B, in the year 1991. He was, therefore, eligible to be considered for promotion to Group B with effect from 1992, but the same right has been denied to him and he has been discriminated by the departmental authorities due to wrong interpretation of the recruitment rules and the Memorandum dated 28.6.1966 for preparation of the eligibility list of

qualified JTOs for consideration by the DPC for promotion. In making this demand, he has relied on the Apex Court judgment dated 13.2.1997 in the case of *Union of India v. Madras Telephones Scheduled Castes and Scheduled Tribes Social Welfare Association*, reported in 1997 SCC(L&S) 1279. He has submitted that as per the ratio of the said judgment, the promotion of the qualified JTOs to TES Group B should have been done according to the year of recruitment/appointment and not according to the year of passing the qualifying examination. He has also urged that in effecting promotion, the Respondents have not kept in view the instructions contained in the Government of India, Memorandum dated 28.6.1966 and the executive instructions as contained in Paragraph 206 of the P&T Manual, Vol.IV. He has further submitted that the Respondents, in their counter, have admitted that they have rejected the representation of the applicant since the Department decided not to implement the judgment of the Apex court in *Madras Telephones Scheduled Castes & Scheduled Tribes Social Welfare Association'* case (*supra*). But the said rejection letter was not communicated to the applicant at any point of time. He has further argued that he being a recruit of 1973 and having qualified in 1991, he was entitled to be considered by the DPC for promotion to the next higher grade on or after 1991. Admittedly, in 1991 and 1992, no DPC was



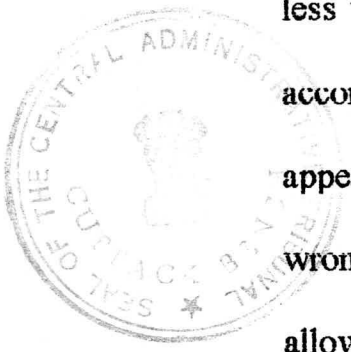
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held for promotion. But in the year 1992 the Department recast the seniority list of TES Group B officers on the basis of the year of their qualifying in the departmental examination in pursuance of the judgment of the Hon'ble Allahabad High Court (Lucknow Bench) dated 20.2.1995 and because of application of the ratio of the Hon'ble Allahabad High Court's judgment, the applicant became junior-most in the eligibility list and was deprived of promotion not only in the DPC held in November 1993 but was actually promoted on the recommendation of the DPC held in October 1998. The applicant has also disclosed that while he got his regular promotion to TES Group B in October 1998, he was given officiating promotion on Circle seniority on ad hoc basis with effect from 18.8.1993. The plea of the applicant is that the Respondents are bound by the decision of the Hon'ble Supreme Court in *Madras Telephones Scheduled Castes & Scheduled Tribes Social Welfare Association' case (supra)*.

3. The Respondents have contested the Original Application by filing counter on several counts including that the O.A. is badly barred by limitation. They have stated that the applicant is now challenging that he was not allowed to appear in the qualifying examination for the year 1978 held in 1980 although he was eligible for the same and that ineligible JTOs were allowed to appear in the qualifying examination for the year 1985.

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They have submitted that had the applicant any grievance with regard to examination held in 1980 or the one held in 1985, he should have represented against that then and there and not after 15 to 18 years of the event. On the merit, they have stated that the fact of the matter is that the applicant was not eligible for appearing in the examination of 1978 because he was lacking in essential qualification. Secondly, in the year 1985, the Central Government had invoked the relaxation clause to allow JTOs with less than 5 years service to appear at the departmental examination and accordingly, all the recruits of the years 1978 and 1979 were allowed to appear in the said examination. They have, therefore, submitted that it is wrong on the part of the applicant to allege that ineligible JTOs were allowed to appear in the qualifying examination for the year 1985. They have further stated that the recruitment rules for TES Group B were amended in the years 1981 and 1986 by virtue of which there have been some changes in the eligibility conditions for appearing in the departmental qualifying examination and those changes were brought in the interest of managing the service better. As regards operation of Paragraph 206 of the P&T Manual, Vol.IV, they have stated that the Lucknow Bench of the Hon'ble Allahabad High Court in its judgment dated 20.2.1985 in the matter of *P.N.Lal v. Union of India and others*, subsequently upheld by the



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Apex Court, held that this Paragraph 206 of the P&T Manual, Vol.IV supplements the recruitment rules and in terms of the conditions given in the recruitment rules, the JTOs, who qualify the departmental examination earlier would rank senior as a group to those who qualify the examination on subsequent occasions. This principle was followed for preparation of the eligibility list in 1992, as referred to by the applicant, and that the instructions contained in the Memorandum dated 28.6.1966 were replaced by issuing the order dated 12.11.1992 in accordance with the provisions made in the recruitment rules in 1991. As per the instructions issued in November 1992, the inter se seniority of JTOs would have to be arranged in order of passing of TES Group B departmental qualifying examination; those passing examination in earlier year being placed enblock above those passing in the later year. With regard to the non-implementation of the judgment of the Apex Court, dated 13.2.1997, delivered in *Madras Telephones Scheduled Castes & Scheduled Tribes Social Welfare Association' case (supra)*, they have submitted that the said judgment is a judgment per incuriam and in the circumstances, they have taken a decision not to revise the seniority list of TES Group B consisting of about 17,000 members on the basis of that judgment. It has been further submitted that the Respondents have duly considered the representation of the applicant

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regarding implementation of the judgment of the Hon'ble Supreme Court, dated 13.2.1997 and rejected the same on merit.

4. We have heard the learned counsel for both sides and have perused the records placed before us. We have also traversed the judgment of the Apex court in *Madras Telephones Scheduled Castes & Scheduled Tribes Social Welfare Association* case (*supra*).

5. The sole point to be decided in this case is, whether for the purpose of promotion of JTOs who had qualified in departmental examination held according to the terms and conditions laid down in the recruitment rules, are to be considered for promotion according to the year of recruitment to the service or according to the year of their qualifying the TES Group B departmental examination. This issue has already been gone into in all details by the Apex Court while disposing of Civil Appeal No.4339 of 1995 and Civil Appeal Nos.6485-6486 of 1998 by judgment dated 26.4.2000. It has been held by their Lordships that the eligibility list has to be prepared according to the year of recruitment and not with reference to year of confirmation as Junior Engineer, that recruitment has to be made entirely by promotion on the basis of selection through a qualifying departmental examination, that paragraph 206 of the P&T Manual, Vol.IV cannot be adhered to after statutory recruitment rules came into force, that

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separate list should be prepared by the DPC of officers recruited in different recruitment years, and that inter se seniority of officials belonging to same year of recruitment would be as indicated in Para (iii) of the Memorandum dated 28.6.1966. In the aforesaid judgment it was also made clear that the recruitment rules were amended in the year 1987 and under the amended provisions, the criteria for selection is on the basis of seniority-cum-fitness. Under the recruitment rules read with Schedule appended thereto and Appendix I to the rules, the recruitment to the service in Group B has to be made entirely by promotion on the basis of selection through a departmental qualifying examination. The DPC is duty bound to prepare list by selection from among the officers who have qualified in the departmental examination and on the basis of seniority-cum-fitness. This principle has been further illustrated by the Apex Court in the following manner:

“.....In other words, if in 1958, the Departmental Promotion Committee is recommending people for promotion to Class II, then all the eligible candidates who had passed the departmental examination and who had been recruited in 1950, are to be listed separately from those officers who also have qualified departmental examination and were recruited in the year 1951 and so on and so forth. Once, separate lists are prepared by the Departmental Promotion Committee of the officers recruited in

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different years in the feeder category and the criteria for promotion being seniority-cum-fitness, then it would create no problem in promoting the officers concerned. As to the inter se position of the officials belonging to the same year of recruitment in the feeder category, the procedure to be adopted has been indicated in paragraph (iii) of the Memorandum dated 28th of June 1966. In this view of the matter, we are of the considered opinion that the Judgment of this Court in Civil Appeal No.4339 of 1995 has rightly been decided in interpreting the relevant provisions of the recruitment rules read with the procedure prescribed under the Memorandum dated 28th of June, 1966.....”



The Apex Court, while holding that non-implementation of the order dated 13.2.1997 by the Department was on account of bona fide difficulties, directed the departmental authorities to proceed in accordance with law and in accordance with the observations made by their Lordships in their judgment dated 26.4.2000. The Apex Court had permitted the departmental authorities to carry out promotions within a period of six months from the date of the judgment. Their Lordships, at the same time, had also permitted that the persons who had already got the benefit, like Parmanand Lal and Brij Mohan, by virtue of the judgments in their favour, should not suffer and their promotion already made would not be affected by the judgment dated 26.4.2000. In the circumstances, the Respondents are duty bound to

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implement the judgment of the Hon'ble Supreme Court, dated 26.4.2000 in Civil Appeal No.4339/1995(reported in 2000(3)Supreme 754).

6. In the circumstances, we see no merit in the prayer of the applicant to hold any Review D.P.C. and accordingly reject the O.A. being devoid of merit. No costs.



(M.R. MOHANTY)

MEMBER(JUDICIAL)


(B.N. SOM)

VICE-CHAIRMAN

AN/PS