

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 435/92
XXXXXX

XXX

DATE OF DECISION 20.7.1992

Mr M Asokan and 5 others _____ Applicant (s)

Mr AK Avirah _____ Advocate for the Applicant (s)

Versus

Union of India (Secy. Commu- _____ Respondent (s)
nifications) & 4 others.

Mr NN Sugunapalan, SCGSC _____ Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. SP Mukerji - Vice Chairman

&

The Hon'ble Mr. AV Haridasan - Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Ys*
2. To be referred to the Reporter or not ? *Av*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *Av*
4. To be circulated to all Benches of the Tribunal ? *Av*

JUDGEMENT

(Hon'ble Shri AV Haridasan, JM)

The prayer in this application is that it may be declared that the applicants are entitled to be promoted to the grade of Assistant Engineer (TES Group B) with effect from the date prior to the promotion of any Junior Engineer (Junior Telecom Officer) who passed the departmental qualifying examination subsequent to them and for a direction to the respondents to promote the applicants to TES Group B with effect from a date prior to the date of promotion of any Junior Telecom Officer who passed the departmental qualifying examination subsequent to them

and to adjust their seniority accordingly and to pay them the arrears of pay and allowances with effect from such dates. The applicants' claim is based on the common judgement dated 20.2.1985 of the Hon'ble High Court of Allahabad in Writ Petition No.2739/81 (Parmanand Lal vs. Union of India & others) and Writ Petition No.3652/81 (Brij Mohan vs. Union of India & others) and the judgements of different Benches of this Tribunal in which the judgement of the High Court of Allahabad has been relied upon and followed, that the Department is bound to follow the instructions contained in Rule 206 of P&T Manual in making promotions to TES Group B service as those provisions are supplementary to the recruitment rules. According to these decisions, persons who qualify the departmental qualifying examination for promotion to TES Group B earlier should be placed above those who qualify it later.

2. The applicants are Assistant Engineers in the TES Group B service. Prior to this, they were Engineering Supervisors, redesignated as Junior Telecom Officers. Recruitment to TES Group B is by promotion of Junior Telecom Officers under the Telegraph Engineering (Group B) Recruitment Rules, 1981. The method of promotion is:

- (1) 66-2/3rd per cent by a duly constituted DPC from the officials who have qualified in the departmental qualifying examination; and
- (2) 33-1/3rd per cent through the limited competitive examination on the basis of relative merit.

The applicants who passed the departmental qualifying examination in the year 1980 have thus become eligible to be promoted in the year 1980 or later but earlier than those who passed the qualifying examination in 1981 and later. The applicants were promoted to TES Group B in December, 1990.

3. It has been averred in this application that a large number of JTOS who qualified the departmental qualifying examination later than the applicants had been promoted earlier than the applicants and that in the absence of a gradation list it was not possible for the applicants to verify and ascertain as to how many JTOS who qualified the examination subsequent to the applicants had been promoted to TES Group B overlooking the claim of the applicants. It has also been averred that contrary to the rules, the Department had been ordering promotions of qualified Junior Engineers on the basis of their seniority ignoring the year of their passing the examination. The applicants also stated that they had submitted representations to the 2nd respondent pointing out that they had passed the examination in 1980 and that other Junior Engineers who passed the examination subsequent to them had been promoted in supercession of their superior and preferential claim for promotion as Assistant Engineers.

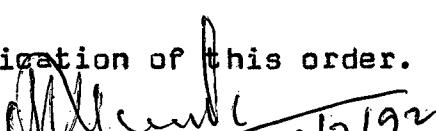
4. The respondents did not file any reply statement. However, when the case came up for final hearing on 29.6.92

the learned counsel for the parties submitted that this application could be disposed of on the same lines as in OAK 112/88 and OA 241/90 etc. in which identical question was considered and disposed of. In OAK 112/88, after a detailed examination of the case, we had observed as follows:-

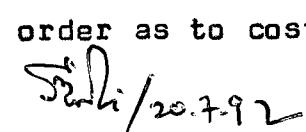
"Though the Union of India and others challenged this judgement of the Allahabad High Court before the Hon'ble Supreme Court of India in SLP, the same was dismissed on merits. Therefore, it cannot be disputed that in making promotion to the Telegraph Engineering Group B Service under the Recruitment Rules of 1981 to 66-2/3 of promotion quota the instructions contained in Rule 206 of P&T Manual cannot be ignored. Therefore, the applicant who passed the qualifying examination in 1977 is entitled to be promoted to the post of Telegraph Engineering Group B Service on a date prior to the date of promotion of any person who passed departmental qualifying examination subsequent to 1977 and have his seniority adjusted accordingly."

With the above observations, OAK 112/88 was disposed of by giving specific directions to the respondents.

5. In view of the submission of the parties at the Bar and in view of the fact that the question involved is identical, following the above judgement, we allow the application and direct the respondents to promote the applicants with effect from the date prior to a date of promotion of any Junior Engineer to Telegraph Engineering Group B Service who passed the Departmental Qualifying Examination subsequent to the date of passing of such examination by the applicants and to adjust their seniority accordingly and to revise the pay of the applicants with effect from the revised dates of promotion and to give them all monetary benefits arising therefrom within a period of 3 months from the date of communication of this order. There will be no order as to costs.


AV HARIDASAN
JUDICIAL MEMBER

20.7.1992.


(SP MUKERJI)
VICE CHAIRMAN