

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O.A.No.469/98

Tuesday this the 26th day of June, 2001.

CORAM:

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN  
HON'BLE SHRI T.N.T.NAYAR, MEMBER (A)

1. P.Balakrishnan,  
S/o.V.Kunhan Nair,  
Sub-Divisional Engineer,(Officiating),  
(Department of Telecommunications),  
Pulse Code Modulation Installation,  
Office of the Divisional Engineer,  
Transmission Installation, Calicut-32.
2. Rajan Maroli,  
S/o.M.Krishnan,  
Sub-Divisional Engineer(Officiating/  
External II, Department of Telecommunications,  
Vellayil, Chirackal Buildings., Calicut-11.

(By Advocate Sri T.C.G.Swamy)

vs.

1. Union of India represented by  
The Secretary to the  
Government of India,  
Ministry of Communications,  
New Delhi.
2. The Chairman,  
Telecom Commission,  
New Delhi.
3. The Chief General Manager,  
Telecom Kerala Circle,  
Trivandrum.
4. The Assistant Director General,  
Telecom Commission,  
Ministry of Communication,  
(Department of Telecom), New Delhi.
5. K.C.Mathai,  
Sub Divisional Engineer(Officiating),  
Phones (External),  
Mattancherry, Kochi-2.
6. T.R.Rajan,  
Sub Divisional Engineer(Officiating),  
Phones External,  
Kalamassery. .. Respondents

(By Advocate Sri Govindh K.Bharathan, SCGSC)  
Sri O.V.Radhakrishnan(R5-6)

The Application having been heard on 24.4.2001, the Tribunal on 26.6.01 delivered the following:

ORDER

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN:

The only issue involved in this case is whether promotion to the cadre Telecom Engineering Service Group-B after the amendment of the Telegraph Engineering Service Group 'B' Posts Recruitment Rules, 1981 notified on 4th February 1987 and till 22.7.1996 when the 1981 Rules was superseded by the new Recruitment Rules, are to be made from among the officials in the feeder grade who have passed the departmental qualifying examination on the basis of seniority-cum-fitness, irrespective of the year of passing the departmental qualifying examination or whether those who have qualified in the departmental promotion examination earlier are to be placed enbloc above those who have passed the examination subsequently, irrespective of their service seniority.

2. The applicants 1 and 2 are officiating as Sub Divisional Engineers and holding substantively the post of Junior Telecom Officers. The first applicant was recruited as JTO in the year 1974 against the vacancy as on year 1972 and the second applicant was appointed in 1976 as against the vacancy of the year 1974. According to the Telecom Engineering Service Group-B Recruitment Rules, 1981, vacancies in the cadre of TES Group B were to be filled 100% by promotion, i.e., 62 2/3% by selection on the basis of the departmental qualifying examination and 33 1/3% by selection on the basis of limited departmental competitive examination. Para 6 in Appendix 1 provided that " the

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eligibility list of candidates who have passed the departmental qualifying examination for consideration of the Departmental Promotion Committee shall be prepared in accordance with the instructions as may be issued by the Government from time to time. Pursuant to para 6, the Govt. by memorandum dated 28.6.66 issued the following directions:

"In pursuance to par.6 of Appendix I of the Government of India, Department of Communications P&T Board notification No.108/11/49-STA dt. 15th June 1966, it has been decided that the eligibility list for consideration by the Departmental Promotion Committee for promotion to Telegraph Engineering Service Class II from amongst the Engineering Supervisors, Wireless Supervisors, Ex.company officials, who qualified in the Telegraph Engineering Service Class II promotional examination shall be prepared in the following manner:-

A separate list shall be prepared for each year of recruitment/appointment subject to the provisions in Class VI and VII."

According to the Recruitment Rules and instructions issued by the Government on 28.6.66, the eligibility list of qualified candidates was being prepared with reference to the year of recruitment. While so, one Sri Parmanandlal and Brij Mohan, who had qualified the examination in the year 1974 filed two writ petitions in the Lucknow Bench of the Allahabad High Court claiming that they should be placed higher in the eligibility list than those who passed the departmental qualifying examination later irrespective of their date of recruitment placing reliance on paragraph 206 of the Posts & Telegraphs Manual, Vol.IV. The Allahabad High Court allowed the writ petitions holding that paragraph 206 of the Posts & Telegraphs Manual which was in existence when the recruitment rules of 1966 and 1981 came into force and

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held that para 206 was not inconsistent with either the Rules of 1966 or of 1981, but was supplemental to the recruitment rules, they allowed the claim of the writ petitioners and directed that those who qualified in the departmental examination earlier were entitled to be promoted prior to those who qualified later even though the latter were senior in service. Though the matter was carried to the Hon'ble Supreme Court, the Hon'ble Supreme Court has dismissed the SLP. This resulted in filing a large number of Original Applications before the various Benches of the Tribunal claiming the same benefit. The Telegraph Engineering Service Group- B Recruitment Rules 1981 was amended by notification dated 4.2.87 published in the Gazette 28.3.87. By the above amendment para 2(i) of Appendix I of Telegraph Engineering Service)Group "B" Posts Recruitment Rules, 1981 was amended including the words "on the basis of seniority-cum-fitness". The amended para 2(i) of Appendix I of the Rules therefore read as follows:

"66 2/3% by duly constituted departmental promotion committee from the officials who qualified in the departmental qualifying examination on the basis of seniority-cum-fitness."

No further administrative instructions regarding the preparation of the eligibility list was issued thereafter. However since the promotion from among officials who qualified in the departmental qualifying examination was to be made on the basis of seniority-cum-fitness all those who qualified the departmental qualifying examination would form a common class and from that class, promotion are to be made on the basis of seniority-cum-fitness. The 4th respondent

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issued Annexure A9 and A10 instructions according to which while preparing the eligibility list of officials who passed the departmental qualifying examination, those who passed the examination earlier were to be placed enbloc above those who passed the examination in subsequent years irrespective of their service seniority. Another order dated 9.4.97 was issued indicating that the date of abrogation of para 206 of P & T Manual Vol.IV would come into effect only from 25.7.1996. The grievance of the applicant is that while after the amendment of the recruitment rules in the year 1987 the promotion is to be made from among the officials, who have qualified in the departmental qualifying examination by a DPC on the basis of their seniority-cum-fitness, the revival of para 206 of P&T Manual IV and instruction issued to prepare the eligibility list placing the officials who passed the departmental qualifying examination enbloc above those who passed the same later is unsustainable in law. Therefore the applicants have filed this application praying for a declaration that on and with effect from 28.3.87, i.e. the date of publication of the recruitment rules, all the Junior Telecom Officers who have qualified in the qualifying examination are to be treated as a homogeneous class irrespective of the year of passing the qualifying examination, that they are to be considered for promotion on the basis of seniority cum fitness and that the para 206 of P&T Manual Vol.IV to the extent it classifies the qualified Junior Telecom Officers into separate classes with reference

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to each year of passing the qualifying examination is ultra vires of the Recruitment Rules and for direction to the respondents to treat the applicants for promotion to the cadre of Telecom Engineering Service, Group-B, against the vacancies which arose/ existed prior to 22.7.96 and after 28.3.87 , the date of amendment of the recruitment rules strictly based on their seniority cum fitness, irrespective of the year of passing the qualifying examination.

3. The applicants had impleaded only respondents 1 to 4 i.e. Union of India represented by the Secretary, Ministry of Communications; the Chairman, Telecom Commission; the Chief General Manager, Telecom, Kerala Circle and the Assistant Director General, Telecom Commission . Sri K.C.Mathai and Sri T.R.Rajan got themselves impleaded as respondents 5 and 6 by filing M.A.704/98. Both these officials are officials who had qualified in the departmental qualification earlier than the applicants and had been regularly promoted to T.E.S. Group B along with the applicants after filing of this application by order dated 21.10.1998(R5(a) and placed above the applicants.

4. The respondents 1 to 4 in their reply statement contend that the guidelines contained in Annexure A10 are consistent with the recruitment rules 1981 as amended in 1987 and the spirit of the judgment of the Principal Bench of the Tribunal dated 28/2/1982 which followed the judgment of the Allahabad High Court in the case of P.N.Lal and Brij Mohan holding that in the matter of promotion to TES, Group

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B, those who have passed in the qualifying examination in earlier years have to be placed enbloc senior to those who pass the same in the subsequent years, which was upheld by the Apex Court in SLP in Telecommunication Engineering Service Association(India) and another vs. Union of India and another reported in 1994 Supp 2 SCC 222. The order Annexure A8 giving effect to the abrogation of paragraph 206 of the P&T Manual Volume IV only w.e.f. 23.7.96 and the instruction in Annexures A9 and A10 having been issued in accordance with the settled legal position of judgment of Apex Court and consistent with the provisions in the Recruitment Rules are unassailable and therefore the applicants are not entitled to the reliefs sought, contend the respondents.

5. The respondents 5 and 6 also have filed detailed reply statement contending that the challenge to paragraph 206 of the P&T Manual, Vol.IV has become infructuous in view of the instructions issued in Annexure A10, that Annexures A8, A9 and A10 having been issued in conformity with the Recruitment Rules, there is no merit in the claim of the applicants.

6. We have carefully gone through the entire materials placed on record. We have also heard at length the arguments of Sri T.C.G.Swamy, learned counsel of the applicants as also Sri Govindh K.Bharathan, the Senior

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Central Government Standing Counsel, appearing for respondents 1 to 4 and Sri O.V.Radhakrishnan, the counsel appearing for the respondents 5 and 8.

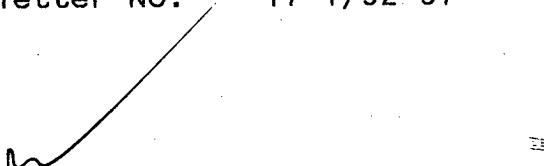
7. The learned counsel of the applicant argued that in view of the judgment of the Hon'ble Supreme Court in Union of India vs. Madras Telephone SC & ST Social Welfare Association reported in 2000 SCC (L&S) 835, wherein it was held that after coming into force of the Recruitment Rules of the year 1966 and issuance of instructions regarding preparation of the eligibility list for promotion on 28.6.1966 the provision of Para 206 of P&T Manual Vol.IV cannot be adhered to, the issues involved in this case has been fully covered and the challenge against Annexures A2, A8 and A9 have now become infructuous. The only point, according to him, if at all that would remain to be considered is the validity of Annexure A10 instruction issued on 12.11.1992, wherein it has been stated that while preparing eligibility list for promotion to T.E.S.Group B, those who pass the departmental qualifying examination in earlier years are to be placed enbloc above those who pass the examination in subsequent years. Sri Swamy further argued that as the judgment was rendered by the Apex Court on 26th April 2000 and as the amendment of the Telecom Engineering Services (Group B) Recruitment Rules dated 4.2.1987 has been considered by the Court the issue in this has been fully covered by the ruling and therefore for the purpose of filling the vacancies in Group B which arose after 4.2.1987 and 22.7.1996 the officers who have qualified

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in the departmental qualifying examination are to be considered for promotion on the basis of seniority cum fitness without reference to the year of passing the qualifying examination, and preparing separate list for each year of recruitment and placing among those recruited in a particular year those who have passed the qualifying examination above those who passed later. He further argued that though the Annexure A10 memorandum dated 12.11.1992 was not brought to the notice of the Apex Court in Madras Telecom SC & ST Social Welfare Association case, the memorandum has no legal validity in the light of the amendment of the year 1987 and because the same has not been issued by the Central Government but only by the Assistant Director General.

8. The learned Senior Central Govt. Standing Counsel also argued that in view of the ruling of the Apex Court cited by the learned counsel of the applicant, the controversy has been fully settled and promotion to T.E.S. Group B has to be made only accordingly.

9. Sri O.V.Radhakrishnan, the learned counsel of the respondents 5 and 6 on the other hand argued that as the Recruitment Rules of 1981(Annexure A1) having been issued in supersession of the Recruitment Rules of the year 1966 the administrative instruction contained in the memorandum dated 28.6.1966 is no more valid and the administrative instruction issued contained in the letter No. 17-1/92-97



G-II dated 12.11.92(Annexure A10) would hold the field in regard to the preparation of eligibility list of qualified Engineering Supervisors/Junior Telecom Officers. The instruction regarding the eligibility list contained in this letter reads as follows:

"The interse seniority of Junior Telecom Officers/Engineering Supervisors will be arranged in the order of passing of TES Group B qualifying exam by candidates, those passing exam in an earlier year being placed enbloc above those passing in later year. Within each year of qualifying examination, the placement of candidates inter se would be in accordance with their years of recruitment, i.e., those recruited in an earlier year of recruitment being placed enbloc above those recruited in subsequent year of recruitment. Within each recruitment year the candidates will be arranged in the order of marks obtained by them in the post training examination of JTOs/Junior Engineers those passing the examination in first attempt being placed above those who passed in subsequent attempt within batch. Within the same group the interse seniority of JTOs/JEs will be rotated between departmental and outside candidates in the ratios indicated above."

The learned counsel further argued that the validity of Annexure A10 has been considered by this Tribunal in O.A. 97/96, 297/98 etc. and it was held in the common order dated 1.5.1998 that Annexure A10 order was an executive order which must be deemed to be supplemental to the Recruitment Rules. The learned counsel argued that the order of the Tribunal upholding the validity and applicability of Annexure A10 having become final, neither the applicants nor the official respondents can seriously contend that Annexure A10 is not valid. We have perused the order of the Tribunal

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dated 1.5.1998 to which one of us(Hon'ble Sri A.V.Haridasan, Vice Chairman) was a party(Annexure R5(b)). In para 31 of the order, it is stated thus:

" 31. Even if it is granted that in terms of the ruling of the Hon'ble Supreme Court generally an administrative order cannot have retrospective effect and therefore the 1997 order modifying the effect of abrogation of para 206 from 15.4.94 to 23.7.96 may have to be considered as non est the order of the same Department of Telecommunications dated 12.11.92 found at R-4(k) in O.A. 1497/96 is, in our opinion an equally competent executive order which was obviously and specifically passed by the Govt. for the purpose of regulating the principle of seniority for the purpose of preparing the eligibility list of JEs/JTOs who qualify at the Departmental Qualifying Examination. No material whatsoever has been placed before us even to suggest that this 1992 order does not hold the field simultaneously with the pre-1996 Recruitment Rule. In these circumstances, following the principle first laid down by the Hon'ble High Court of Allahabad(Lucknow Bench) and upheld finally by the Supreme Court, referred to above, in the context of para 206, we hold that such an executive order must be deemed to be supplemental to the Recruitment Rules, and hence valid."

It has not been considered in that case whether the instruction contained in the letter dated 12.11.92 Annexure R4(K) in that case which is Annexure A10 in this case was issued by the competent authority in exercise of powers conferred by para 6 of appendix to the Recruitment Rules of 1981(Annexure A5) as amended in 1987. A reading of Annexure A10 would make it clear that what was contained in it were only clarification which cannot be considered as an instruction issued by the Central Government in exercise of the powers conferred by it under para 6 of appendix I of the Recruitment Rules Annexure A1 because it does not disclose the source of power nor is it stated there in that the

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Government issued it. According to paragraph 6 of appendix I of the Recruitment Rules Annexure A1 only Government has power to issue instruction from time to time in regard to preparation of eligibility list. In the memorandum dated 28.6.66 issued by the Government begin like this:

"In pursuance of para 6 of appendix 1 of the Government of India, Department of Communication, P&T Board Notification No.108/11/49-STA dt. 16th June 1996 it has been decided that the eligibility list....."

Such reference to the source of power is not seen stated in Annexure A10. Hence Annexure A10 cannot be considered as an instruction issued in exercise of the powers conferred on the Central Government under paragraph 6 of appendix 1 of the Recruitment Rules-Annexure A1. Even assuming that Annexure A10 is an instruction issued by the Government in exercise of powers conferred by paragraph 6 of Appendix 1 of Annexure A1 inasmuch as the instruction is not consistent with the spirit of the Recruitment Rules it is not valid and enforceable. The reason why we say so is that after amendment of the Recruitment Rules by notification dated 4.2.1987(A3) promotion to 66 2/3% of the vacancies has to be made by selection by the departmental promotion committee from the officials who qualified in the departmental qualifying examination on the basis of seniority-cum-fitness. The element of seniority is therefore important and cannot at all be overlooked by the DPC in considering those qualified for consideration after the amendment. Any administrative instruction for preparation of eligibility list which does not give

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weightage for seniority and prescribing that more weightage than seniority would be given to passing the departmental qualification earlier cannot be considered consistent with the provision of the Recruitment Rules. The Apex Court has in its judgment in Union of India vs. Madras Telephone SC & ST Social Welfare Association, 2000 SCC (L&S) 843, has noted that after amendment of the Recruitment Rules made on 4.2.87, the criterion for selection is seniority-cum-fitness. The Court has observed as follows;

"The Departmental Promotion Committee is duty-bound to prepare an approved list by selection from amongst the officials who qualify in the departmental examination. In view of the amendment to the Rules made on 4.2.1987, the criterion for selection is seniority-cum-fitness. In accordance with the prescribed procedure for preparation of eligibility list, notified by the Government on 28.6.1966, the Departmental Promotion Committee has to prepare separate lists for each year of recruitment in the feeder category. 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 the 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 different recruitment years in the feeder category and the criterion 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 para (iii) of the memorandum dated 28.6.1966. 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 28.6.1966. We however, make it clear that the persons who have already got the benefit like Parmanand Lal and Brij

Mohan by virtue of the judgments in their favour, will not suffer and their promotion already made will not be affected by this judgment of ours."

(emphasis supplied)

Since we have held that Annexure A10 was not a valid administrative instruction under para 6 of appendix 1 of the Recruitment Rules, the instruction issued on 28.6.1966 would still hold the field. A different interpretation would be inconsistent with the provisions of the statutory Recruitment Rules.

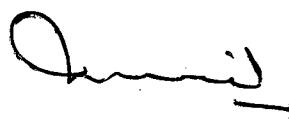
10. In the light of the above discussion, we find that the issue involved in this case is fully covered by the judgment of the Apex Court in 2000 SCC L&S 835, though the validity of Annexure A10 in this case was not specifically considered in that case. The Annexure A10 instruction being contrary to the spirit of the Recruitment Rules, is invalid and inoperative.

11. In the result, in the light of the above discussion, we find that the challenge against Annexures A2, A8 and A9 have now become redundant and infructuous. We dispose of this application with the following declarations and directions:

12. The directions contained in the letter of the Director General, Department of Telecom, New Delhi dated 12.11.92(A10) that the inter se seniority of the Junior Telecom Officers/Engineering Supervisors would be arranged in the order of passing the TES Group B qualifying examination, that those passing the examination in an earlier year being placed enbloc above those passing the

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examination in the later year, is declared ultra vires of the recruitment rules and set aside. The respondents are directed to consider the applicant for promotion to the cadre of Telecom Engineering Service Group-B against vacancies which arose between 4.2.87 and 22.7.96 on the basis of the seniority-cum-fitness preparing the eligibility list for each year of recruitment in the feeder category in accordance with the procedure indicated in paragraph 3 of the memorandum dated 28.6.66. There is no order as to costs.



(T.N.T.NAYAR)  
MEMBER (A)



(A.V.HARIDASAN)  
VICE CHAIRMAN

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List of Annexures referred to in the Order:

1. Annexure A1 True copy of the Recruitment Rules- Telegraph Engineering Service-Group 'B' Recruitment Rules,1981.
2. Annexure A2 True copy of para 206 of Posts and Telegraphs Manual, Vol.IV.
3. Annexure A8 True copy of letter No.236/94-STG-II dated 9.4.97 issued from the office of the first respondent.
4. Annexure A9 True copy of letter No.2-8/97-STG-II of 20.8.97 issued from the office of the first respondent.
5. Annexure A10 True copy of the Order No.17-1/92-STG-II dated 12.11.1992 issued from the office by the 4th respondent.
6. Annexure R5(b) True copy of the common order in O.A.Nos. 1497/96,297/98,629/97,1186/97 dated 1.5.1998 of this Hon'ble Tribunal.