

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 569 of 2011

Tuesday, this the 27th day of March, 2012

CORAM:

**HON'BLE MR. JUSTICE P.R. RAMAN, JUDICIAL MEMBER
HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

1. V.A. Mathukutty, Assistant General Manager (OP) (Retired),
Office of PGM, BSNL Bhavan, Kalathiparambu Road,
Kochi-16, Residing at 30/1163(1), RSAC Road,
Vytila P.O., Kochi-682 019.
2. L. Leelamony, Assistant General Manager (NS) (Retired),
Office of PGM, BSNL Bhavan, Kalathiparambu Road,
Kochi-16, Residing at 35/2575, Thulasi, Karanakodam,
Palarivattom PO, Kochi-682 025.
3. P.R. Jayapalan, Assistant General Manager (Retired),
BSNL Bhavan, Kochi-16, Residing at Poovathukadavil House,
Rice Research Road, Vytila-682 019.
4. P.C. Joseph, Deputy General Manager (Mobile Service) (Retired),
BSNL Panampilly Nagar, Kochi-36, Residing at 28/2592, Lallaj,
Chilavanoor Road, Kadavanthra PO,
Kochi-682 020. ... Applicants

[By Advocate Mr. Vishnu S. Chempazhanthiyil]

Versus

1. The Chief General Manager, Bharat Sanchar Nigam
Limited, Kerala Circle, Thiruvanthapuram – 695 033.
2. The Chairman and Managing Director, Bharat Sanchar
Nigam Limited, Corporate Office, Satesman House,
New Delhi – 110 001.
3. Union of India, represented by its Secretary,
Department of Telecommunications/Chairman,
Telecom Commission, Ministry of Communication,
Sanchar Bhavan, New Delhi – 110 001. ... Respondents

[By Advocates Mr. George Kuruvilla (R1&2) and
Mr. Millu Dandapani, ACGSC (R3)]



The application having been heard on 20.03.2012, the Tribunal on ~~27-03-12~~ delivered the following:

ORDER

By Hon'ble Mr. K. George Joseph, Administrative Member -

This Tribunal had allowed the O.A. Nos. 93/91, 94/91 vide order dated 24.04.1992 and O.A. No. 617/91 dated 29.06.1992 allowing their claim of seniority on the basis of year of passing the qualifying examination extending the benefit of the judgement of Allahabad High Court in Writ Petition Nos. 2739/81 and 3652/81 (filed by S/Shri P.N. Lal and Brijmohan) had become final and binding as regards the applicants and the respondents with the dismissal of Civil Appeal Nos. 1816-36/1993 and 1855-1874/1993 on 13.05.1994 by the Hon'ble Supreme Court. Identical issues were considered by the Hon'ble Supreme Court in the decisions reported in 1993 Supp. (4) SCC 693 and 1994 Supp. (2) SCC 222. However, the Hon'ble Supreme Court gave a different decision in Civil Appeal No. 4339/1995 as reported in 1997 (10) SCC 226 that the seniority should be determined on the basis of year of recruitment/appointment. Hon'ble Supreme Court in its clarificatory order dated 28.09.2006 in I.A. No. 16 in C.A. No. 4339/1995 as reported in 2006 (8) SCC 662 made it clear that all those cases that stand on the same footing as that of Parmanand Lal cannot now be adversely affected by redetermination of seniority to their disadvantage relying on 1997 (10) SCC 226. The benefit of this clarification was extended to 45 similarly situated persons in TES Group-B by the respondents but no action was taken to extend similar benefits inspite of representations, to the applicants who have retired from the service of BSNL as Dy. General Manager/Divisional Engineer. Aggrieved, they have filed this O.A. for the following reliefs:



- (i) Direct the respondents to consider revising the seniority position of the applicants on the basis of Annexure A1 and Annexure A1(a) as directed in Annexure A2 and Annexure A3 judgements of the Hon'ble Supreme Court and grant consequential benefits;
- (ii) Declare that the applicants are entitled to the benefits of the directions of the Hon'ble Supreme Court in Annexure A2 and Annexure A3 and extend the same treatment as given to similarly situated persons like the officers covered by Annexure A9, Annexure A10, Annexure A11 and Annexure A12;
- (iii) Direct the respondents to grant all consequential benefits of fixation of seniority as per Annexure A1 including consequential promotions, fixation of pay and arrears of pay;
- (iv) Direct the 2nd respondent to consider and pass orders on Annexure A7 and A17 forthwith;
- (v) Any other further relief or order as this Hon'ble Tribunal may deem fit and proper to meet the ends of justice;
- (vi) Award the cost of these proceedings to the applicant.

2. Heard Mr. Vishnu S. Chempazhanthiyil, learned counsel for the applicants and Mr. George Kuruvilla, learned counsel for the respondents 1 and 2 and perused the records.

3. This O.A. is identical to O.A. No. 570/2011, which was allowed as under:

"3. The applicants who had retired could not respond to Annexure A5 communication dated 11.02.2009 inviting applications from those who had judgements in their favour as it was not brought to their notice. The respondents have no case that it was brought to their notice. While considering those representations they received, the respondents decided to prefer Special Leave Petitions before the Apex Court and to keep further actions on the representations in abeyance. Hence we hold that the question of limitation raised by the respondents will not come into play in this O.A.



4. As regards the merit of the case of the applicants, this O.A is squarely covered by the decision of this Tribunal dated 29.11.2011 in O.A. No. 98 of 2011, which is extracted as under :

“The applicant retired from service of the BSNL as Divisional Engineer in the year 2007. While he was working as Assistant Engineer in the Ministry of Communications he had approached this Tribunal by filing OA 215/1991 along with others for certain reliefs, more particularly for a direction to the official respondents to give them the seniority above the 4th respondent therein in TES Group B Service and to promote the applicants from a date prior to the promotion of the 4th respondent to the TES Group B service and pay the applicants all consequential benefits including pay and allowances. There is a further prayer for a direction to the respondents to promote the applicants with effect from the date prior to the date of promotion of any Junior Engineer to TES Group B who passed the departmental qualifying examination subsequent to the date of passing of the applicants or who though passed the qualifying examination along with the applicants were junior to the applicants in the Junior Engineer's cadre. The reliefs sought for was based on the judgment of the Allahabad High Court in Writ Petition Nos. 2739/81 and 3652/81 and also the order of this Tribunal in OAK 112/88 in which the judgment of the Allahabad High Court was followed. This Tribunal following the earlier decision allowed the OA and directed the Department to extend the benefit of the judgment dated 20.02.1985 of the High Court of Allahabad in W.P.Nos. 2739/81 and 3652/81 of the applicants therein and to promote them to the TES (Group B) Service with effect from the dates prior to the dates of such promotions of any Junior Engineer, who passed the departmental qualifying examination subsequent to the passing of such examination by the applicants and revise their seniority in the TES Group B cadre on that basis. There is a further direction to grant the applicants pay and allowances from their revised rates of promotion.

2. We may at this juncture refer to the decision of the Allahabad High Court in W.P.Nos. 2739/81 and 3652/81 vide which benefits has been extended to the applicants. By the decision of the Allahabad High Court, he is given seniority to the writ petitioners like the applicants based on passing the qualifying examination instead of date of entry into service. Subsequently, the decision of this Tribunal in Annexure A-1 was challenged before the Apex Court and the Apex Court confirmed the view expressed by this Tribunal in favour of the applicants. This has become final. However, in an earlier judgment the view taken by the Apex Court was that seniority is to be determined based on the date of entry of the employee in the Establishment. In view of the conflictina



views a clarification was sought. The Apex Court noticed that Recruitment Rules came into force in the Establishment and seniority has to be reckoned from the date of entry into service of the applicant. Once the statutory Recruitment Rules have come into force and procedure has also been prescribed under the said rules for preparation of eligibility of officers for promotion to the Engineering Service Class II by notification dated 28.06.1966, it is that procedure which has to be adopted and the earlier administrative instructions contained in para 206 of the P&T Manual cannot be adhered to under the Recruitment Rules read with the Schedule appended thereto. Obviously determination of the seniority with reference to the passing of the qualifying examination was prescribed in the P & T Manual which has been done away with by the statutory rules framed subsequently. Normally therefore the seniority has to be reckoned with reference to the statutory rules and not based on P & T Manual. So however, employees like the applicant subsequently obtained judgment in their favour to determine the seniority from the date of passing the qualifying examination. The judgment inter parties whatever be the declaration of the law, subsequently is binding on the parties as they became final. Therefore, the Hon'ble Supreme Court clarified that wherever there is judgment inter parties the same will govern the parties. Accordingly the applicant had the advantage of reckoning his seniority with reference to the passing of the qualifying examination. The Department seems to have prepared the seniority list based on the subsequent decision that seniority has to be reckoned with entry into service. By Annexure A-10 it is submitted that seniority of the applicant was fixed based on Allahabad High Court judgment as Sl.No. 6776 on the basis of the qualifying year and after that as per Supreme Court judgment dated 26.04.2000, his seniority based on the recruitment year was fixed as 6262. Therefore, the Department took it as though the seniority position of the applicant has not been adversely affected because he has been brought up to 6262 as against 6776. The question as to whether the applicant's position has been improved or not is not the question but whether the seniority of the applicant has been reckoned with the year of qualifying service or with reference to the entry into service. As far as the applicant is concerned seniority has to be determined based on the date of passing of the qualifying examination and not based on entry into service because of the binding judgment. Therefore, in fact, if any factual mistake has crept in, the same has to be corrected. In that process if seniority of others is likely to be affected they should be heard in the matter. In the result, we direct the respondents the consideration of the applicant's seniority with reference to the year in which he passed the qualifying examination and in so doing, if there are existing employees whose seniority will be affected may also be heard and the



seniority shall be restored strictly in compliance with judgment of inter parties as is declared in Annexure A-1.

3. OA is **allowed** as above. In case when the seniority of the applicant is re fixed which results in improving his position, necessary follow up action be taken to notionally fix his pay for the purpose of determination of the retiral benefits. However, arrears will be paid only for the limited period of three years prior to the date of filing of the OA and thereafter. The same shall be done expeditiously at any rate, within three months from the date of receipt of a copy of this order. No costs.

Following the above decision, the O.A. is allowed as under.

5. The O.A is allowed extending all the benefits of seniority determined on the basis of date of passing the qualifying examination to the applicants in the same manner as in O.A. No. 98/2011. No costs."

4. Following the above order, the O.A is allowed extending all the benefits of seniority determined on the basis of date of passing the qualifying examination to the applicants in the same manner as in O.A. No. 570/2011. No costs.

(Dated, the 27th March, 2012)


K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER


JUSTICE PR RAMAN
JUDICIAL MEMBER

cvr.