

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

.....

O.A. No.617/91, 817/91, 840/91, 1516/91,
1741/91, 1788/91 & 1801/91.

DATE OF DECISION: 29.6.1992.

Applicants

S/Shri P.C. Joseph, T.K. Mathew, M.G. Mahadevan &
P.R. Jayapalan in O.A.617/91.

S/Shri K. Rama Das, K. Rajendran, James Paul, P.N.G. Kaimal,
A.D. John, C.D. Namboodiri, P.K. Sankunnikutty, M.J.Thomas,
K.C. Antony, C. Parameswaran, K. Balaraman, C.L. Lonappan,
P. Peethambaran, T.K. Narayanan and Ms. K.V. Sreedevi in
O.A.817/91.

S/Shri A. Thampi, V.E. Thomas, S.R. Jayakumar, K.V. Pankajak-
shan, P.S. Sivadasa Kurup, A. Vikraman Nair, C.P. Namboodiri,
P. Krishna Iyer, R. Raghavan Pillai, ~~M. Thomas~~ & Ms. Annamma
George in O.A.840/91. *M. Thamara Sili*

Ms. Leelamony Devi, S/Shri B.A. Thomas, M. Balachandran and
N.S. Navaneetha Krishnan in O.A.1516/91.

Ms. T. Santhakumari Amma, Ms. P.J. Mariamma, Ms. Jaya M. Nair,
Ms. Mariamma George, Shri K.P. Jayadevan and Ms. B. Vasantha
Kumari in O.A.1741/91.

S/Shri Vijayakumaran Nair, K., A. Mariadas, P.S. Nandan, S.
Krishnan Nair, G. Mohandas, B. Sudhakaran, E. Krishna
Pillai, S. Ponnu Iyer, T.D. Yohannan, Baby Peter, B. Bala-
krishnan Nair & C. Velappan in O.A. 1788/91.

S/Shri V.O. Suresh Babu and D. Thomas in O.A. 1801/91.

Advocate for the applicants

Shri G. Sasidharan Chempazhanthiyil in O.A.817/91, 840/91, and
1516/91.

Shri N. Sugathan in O.A.617/91, 1788/91 & 1801/91.

Shri T.R. Raman Pillai in O.A.1741/91.

Respondents

Union of India (Secretary, Ministry of Communications)
and others.

Advocate for the respondents

Shri K. Prabhakaran in O.A.617/91, 1516/91, 1741/91, 1788/91 &
1801/91.

Shri P. Sankaran Kutty Nair in O.A.817/91 & 840/91.

C O R A M:

The Hon'ble Mr. S.P. Mukerji, Vice Chairman

&

The Hon'ble Mr A.V. Haridasan, Judicial Member.

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

JUDGEMENT

(Hon'ble Shri A.V. Haridasan, Judicial Member)

The common question raised in all these applications is whether Rule 206 of Vol.IV of the P & T Manual governs the fixation of the inter se seniority of persons promoted as Assistant Engineers under the Telegraph Engineering Service (Class II) Recruitment Rules, 1966 and under the Telegraph Engineering Service (Group B) Posts Recruitment Rules, 1981 during the periods when these rules were/are in force. The applicants contend that such is the case on the authority of 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. Hence all these applications are considered and disposed of together.

2. The prayer in these applications is to direct the respondents 1 & 2 (respondents 1 to 3 in O.A.1741/91) to refix the seniority of officers in TES Group B in accordance with Rule 206 of P&T Manual Vol.IV, to give the applicants in O.A.817/91, 840/91 & 1516/91 seniority above the 3rd respondents in those applications and to promote them from a date prior to the date of promotion of the 3rd respondents to the TES Group B with consequential benefits and to promote the applicants in all these cases with effect from the date prior to the date of promotion of any Junior Engineer to Telegraph Engineering Service Group B who passed the qualifying examination subsequent to the date of passing of the applicants or those who passed the examination along with the applicants but were junior to the applicants in the Junior Engineers cadre.

3. The applicants in all these applications as also the 3rd respondents in O.A.817/91, 840/91 & 1516/91 are officers of the Telegraph Engineering Service Group B. Prior to this, they were Engineering Supervisors (now Junior Telecom Officers). Recruitment to TES Group B is by promotion of Junior Telecom Officers under the Telegraph Engineering (Group B) Recruitment Rules, 1981. There is no direct recruitment to this cadre. The method of promotion is as under:-

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

Rule 206 of the P&T Manual Vol.IV is supplementary to the recruitment rules. Under this rule, all Engineering Supervisors for promotion to TES Group B have to pass a qualifying examination on completion of 5 years of service. Those who pass the qualifying examination earlier would rank senior to those passing the examination in the later batch. Their seniority inter se would be according to their seniority in the cadre of Engineering Supervisors. This Rule was the subject matter in the Writ Petition No.2739/81 and 3652/81 before the Hon'ble High Court of Allahabad in which the High Court had held that the Department is bound to follow the instructions contained in Rule 206 of P&T Manual in making promotions to TES Group B as those provisions are supplementary to the recruitment rules. According to these decisions, persons who qualify the examination earlier should be placed above those who qualify it later. It has been averred in these applications that the 2nd respondent (1st respondent in O.A.617/91, 1741/91, 1788/91 & 1801/91) has been fixing and revising seniority in the TES Group B violating Rule 206 even after judicial pronouncements without reviewing the whole seniority list in the light of the Court orders.

4. The facts are like these:

O.A.617/91

The applicants passed the qualifying examination in 1980 and have thus become qualified and eligible to be considered for promotion in 1980, but have been ordered promotion with effect from 16.11.1990. The applicants claim promotion with

effect from 22.12.1987, the date of promotion of their junior.

O.A.817/91

The applicants 1 to 3 passed the qualifying examination in October, 1973 and 4,13,14 & 15 in December, 1974 and the rest in July, 1974. The 3rd respondent passed the qualifying examination in December, 1974 and was placed junior to the applicants 4,13,14 & 15 in the gradation list of 1985 and in the gradation list of 1989, the 3rd respondent has been placed above the applicants.

O.A.840/91

The applicants 1 to 4,7,8 and 11 passed the qualifying examination for TES Group B in July, 1974 and the applicants 5,6,9 and 10 in December, 1974. The 3rd respondent passed the qualifying examination in December, 1974. But since he was junior to 5th, 6th,9th and 10th applicants in the JTO cadre, he was placed junior to them in TES in the 1985 gradation list. However, in the gradation list of 1989, the 3rd respondent has been placed much above the applicants.

O.A.1516/91

The 3rd respondent passed the qualifying examination in December, 1974 and was placed junior to the applicants 1,2 and 4 since they qualified the examination earlier to him. While in the gradation list of 1985, the 3rd respondent was junior to the 3rd applicant, in the 1989 gradation list he was placed much above the 3rd applicant.

O.A.1741/91

The applicants passed the departmental qualifying examination in 1980 and thus became qualified to be considered for promotion to TES Group B service in 1980. But persons who qualified

the examination later and are thus their juniors were promoted prior to the applicants.

O.A.1788/91

The applicants passed the qualifying examination in 1985 and have thus become qualified to be considered for promotion to TES in 1985, but have not been considered for promotion so far.

O.A.1801/91

The applicants qualified the examination in 1978 and have thus become eligible to be considered for promotion to TES in 1978 but have been promoted only in November, 1990. They claim that they are entitled to be promoted to TES Group B with effect from the date of promotion of the applicant in OAK 603/88, i.e. from 29.8.83 as the case of these applicants are similar to the case of the applicants in OAK 603/88.

5. It has been averred in these applications that the applicants are entitled to have their seniority in TES Group B refixed from a date prior to the date of promotion of ^{their juniors} the 3rd respondents in O.A.817/91, 840/91 and 1516/91 and also other juniors promoted earlier) with salary in the higher post on the basis of the principle as laid down by the Allahabad High Court and upheld by the Hon'ble Supreme Court based on Rule 206 of P&T Manual Vol.IV. The applicants in O.A.817/91, 840/91 & 1516/91 claim that they are senior to the 3rd respondents and contend that giving the 3rd respondents promotion under the 2/3rd quota to TES Group B before the applicants are promoted is contrary to the provisions of Rule 206 of the P&T Manual Vol.IV. All the applicants claim that they are eligible to be promoted to the cadre of TES Group B from a date prior to the date of promotion of persons who qualified in the examination later or along with

✓7

them, but were juniors to them in the TE/JDO cadre, as per Rule 206 of P&T Manual Vol.IV.

6. The identical question as involved in these cases, has come up for consideration before the Principal Bench and several other Benches of this Tribunal. In a batch of cases in O.A.498/90, 999/90, 1062/90, 93/91, 94/91, 580/91, 612/91, 615/91 and 655/91 on the file of this Bench also, this identical question came up for consideration. As the contentions in the above said batch of cases and the batch of cases before us were identical, the respondents filed a statement adopting the contentions raised by them in O.A.1062/90. The respondents have in the statement filed in O.A.1062/90, a copy of which has been appended to the statements filed in all these cases, opposed the application on various grounds. Finally, when the batch of cases, including O.A.1062/90 came up for final hearing before the Bench, the learned Central Government Standing Counsel submitted that the Department had decided to revise the seniority of officers of TES Group B cadre in terms of the Allahabad High Court's judgement and other judgements of the various Benches of this Tribunal taking the same view which has been taken by the Allahabad High Court on the issue. In a contempt proceedings CCP 256/91 before the Principal Bench of this Tribunal ~~the~~ the respondents took the same stand. Since the respondents have given up their contentions and have decided to extend the benefit of the judgement of the Allahabad High Court and to revise the seniority list accordingly, the batch of cases O.A. 498/90, 999/90, 1062/90, 93/91, 94/91, 580/91, 612/91, 615/91, & 655/91 were disposed of by order dated 24.4.1992 with the following observations and directions:-

"We allow these applications and direct the Department as has been done earlier in the order dated 30.3.90 passed by this Bench in OAK 603/88 and OAK 605/88, to extend the benefits of the judgement dated 20th February, 1985 of the High Court of Allahabad in Writ Petition Nos.2739 and 3652 of 1981 to the applicants herein and to promote them to the Telecommunication Engineering (Group B) service with effect from 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. The Department is further directed to grant the applicants pay and allowances from the respective revised dates of promotion."

7. In view of the fact that the contention of the parties in the above batch of cases and these cases are identical following the above judgement, we allow these applications and direct the respondents 1 & 2 to extend the benefits of the judgement dated 20th February, 1985 of the High Court of Allahabad in Writ Petition Nos.2739 and 3652 of 1981 to the applicants in these cases and to promote them to the TES Group B service with effect from dates prior to the dates of promotion of any Junior Engineer including the 3rd respondents in O.A.817/91, 840/91 & 1516/91, who passed the departmental qualifying examination subsequent to the passing of such examination by the applicants and to revise their seniority in the TES Group B cadre on that basis. We further direct the respondents 1 & 2 to revise the pay of the applicants with effect from the revised dates of promotion and to give them all the monetary benefits arising therefrom. Action on the above lines should be completed within a period ^{of} 3 months [^] from the date of communication of this order.

.....9



8. There is no order as to costs.

9. A copy of this order will be placed in the file of each of these cases.


(A.V. HARIDASAN)
JUDICIAL MEMBER


29.6.92
(S.P. MUKERJI)
VICE CHAIRMAN

29.6.92

*ps