CENTRAL ADMINISTRATIVE TRIBUNAL: ERNAKULAM BENCH

.....

Date of decision : 24.4.1992

C O R A M

Hon'ble Shri N.V.Krishnan, Administrative Member

And

Hon'ble Shri N.Dharmadan, Judicial Member

OA Nos. 498/90, 999/90, 1062/90, 93/91, 94/91, 580/91, 612/91, 615/91 & 665/91

I. OA 498/90

K.S.Balakrishna Warrier ..... Applicant

Shri K.K.Sankara Ganakan ..... Counsel for applicant

Vs.

Union of India rep. by Secretary, Communications New Delhi. .... Respondents

Shri V.Krishnakumar, ACGSC .... Counsel for R 1 to 3.

II.OA 999/90

K.Ramachandran & 13 others .... Applicants

Mr. Sasidharan Chempazhanthiyil.. Counsel for applicants

Vs.

Union of India, rep. by Secretary, Min. of Communications, New Delhi. & 2 others... Respondents

Mr.S.N.Sugunapalan, SCGSC .. Counsel for R-1 and 2

III. OA 1062/90

J.J.Sarma & 24 others ... Applicants

Mr. Sasidharan Chempazhanthiyil.. Counsel for applicants

Vs.

Union of India, rep. by Secretary, Min. of Communications, NewDelhi & 3 others.. Respondents

Ms. K.B.Subhagamani, ACGSC .. Counsel for R 1 and 2

IV. OA 93/91

V.A.Mathukutty .... Applicant

Mr. N.Sugathan .... Counsel for the applicant

Vs.

Union of India, rep. by Secretary, Min. of Communications & 2 others .. Respondents

Mr. Mathews J Nedumpara .. Counsel for respondents

V. OA 94/91

L.Leelamony ... Applicant

Mr. N.Sugathan .. Counsel for the applicant

Vs.

Union of India, rep. by Secretary, Min. of Communications & 2 others -- Respondents

Mr. Mathews J Nedumpara .. Counsel for respondents

VI. OA 580/91

P.K.Anthrayose ... Applicant

Mr. M.R.Rajendran Nair.. Counsel for the applicant

Vs.

TheDirector General, Telecommunications, New Delhi & 2 others ... Respondents

Mr. Mathews J Nedumpara .. Counsel for respondents

VII. OA 612/91

N. Ravindran & 2 others ... Applicants

Mr.M.R.Rajendran Nair .. Counsel for the applicants

Vs.

The Chairman, Telecom Commission, N.Delhi & 2 others.. Respondents

Mr. V.Krishnakumar ... Counsel for respondents

VIII. OA 615/91

Mr. K.V.Manmadhan Nair .. Applicant

Mr. N.Sugathan .. Counsel for applicant

Vs.

Union of India, rep. by Secretary, Communications & 2 others .. Respondents

Mr. PSankaran Kutty Nair .. Counsel for R 1 & 2

Mr. M.RRajendran Nair .. Counsel for R3

IX. OA 655/91

Mr. K.Balarajan & 2 others .... Applicants
Mr. MR Rajendran Nair ... Counsel for applicants

Vs.

Chairman, Telecom Commission
& 2 others ..... Respondents

Ms. Subhagamani ..... Counsel for respondents

ORDER

N.V.Krishnan, Administrative Member

All these applications have been heard together as they raise the common question whether Rule 206 of Volume IV of the Post & Telegraph Manual--Rule 206, for short--governs the fixation of inter-se seniority of persons promoted as Assistant Engineers under the Telegraph Engineering Service (Class II) Recruitment Rules, 1966 (1966 Rules, for short) and under the Telegraph Engineering Service (Group 'B' Posts) Recruitment Rules, 1981 (1981 Rules, for short) during the periods when these Rules were/are respectively 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 Allahabad High Court disposing of 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 since rendered by different Benches of the Central Administrative Tribunal, in which aforesaid the judgement of the High Court of Allahabad has been relied upon and followed. On the contrary, the Union of India,

the Department of Communication, the Telecommunication Commission and the Chief General Manager, Telecom Circle, Thiruvananthapuram--Department, for short--who are respondents in these cases--besides certain contesting private respondents--contended that the seniority of the persons promoted as Assistant Engineers has to be fixed in accordance with the provisions of the 1966 Rules and the 1981 Rules, as the case may be. They submit that the judgement of the Allahabad High Court requires re-consideration and that Rule 206 has no application to the promotions made after the coming into force of the 1966 Rules and the 1981 Rules.

2. All these cases were finally heard on 13.11.91 and reserved for orders. When a draft judgement was prepared by me, it was felt necessary to seek some clarifications.

3. The cases were reopened on 3.2.92. On that date, Shri Sasidharan Chempazhanthiyil, the learned counsel for the applicants in OA 999/90 and in OA 1062/90 submitted that he has reliable information that the Government of India has since decided to implement the Allahabad High Court judgement in respect of all Assistant Engineers. This was corroborated later on. For, on 9.3.92, Shri N.Sugathan, learned counsel for applicants in OA 93/91, produced a copy of an order dated 28.2.92 passed by the Principal Bench of the Tribunal in CCP 256/91 in OA 1597/87 and 5 other CCPs in similar OAs involving the same issue. In that

order it is mentioned that the Department has sought additional time of 6 months for implementing the judgements in those applications because the Government of India has under consideration a proposal to revise the seniority of the entire cadre of TES Group B officers in accordance with Rule 206 of the P&T Manual, Volume IV. Shri N.Sugunapalan, the Senior Central Govt. Standing Counsel was taken by surprise by this development. He was therefore granted time to file a reply, for, if such a decision had been taken these applications could be disposed of easily. On 30.3.92, the last date of hearing, a verified statement was made by the Assistant General Manager (Admn.), Office of the General Manager, Telecom, Ernakulam, on behalf of the Department which is as follows:

> "In view of the judgement passed by the Principal Bench of Central Administrative Tribunal, Delhi in CCP No.255/91, the Department has decided to revise the seniority of all the existing members of TES Group B in accordance with the Allahabad High Court Judgement which lays down the principles for promotion to the TES Group B Cadre. This statement is filed as per the instructions received from the Directorate General, New Delhi as per communication D.O.No.15-3/91-STG-11 dated 24.3.1992."

4. In the circumstances, it would be enough if these applications are disposed of with suitable directions in the light of the aforesaid submission. However, for the reasons stated hereinafter, I am constrained to make a few observations before parting with this batch of cases.

5. OA 580/91 (item VI of this batch of cases) was first finally heard in isolation and reserved for orders on

20th September, 1991 because the learned Counsel for the applicant pointed out that the matter stands covered by the judgement of the Allahabad High Court in Writ Petitions No. 2739 and 3652 of 1981 (Allahabad judgement, for short) and the decisions of this Bench in OAK 112/88, OA 603/88 and OAK 605/88 in which the Allahabad judgement was followed. When the case was taken up by me for writing the judgement, I felt that the matter was not as simple as was made out by the learned counsel for the applicant and I recorded the following note to facilitate further hearing:

> "This case was reserved for orders on 20.9.91 as it was felt that the matter is squarely covered by the earlier decision (Exbt. R5) of the Allahabad High Court in Writ Petitions No. 2739 and 3652 of 1981 and by a decision of the Tribunal in OAK 603/88 and OAK 605/88 (Annexure-I) delivered after following the Allahabad High Court's judgement.
>
> 2. I have gone through the case. I am of the view that it is necessary to hear the counsel of the respondents in detail and also consider the reply affidavit in detail.
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> 3. It may be noted that in the earlier decisions of the Tribunal (i.e. Ann.I) as well as in OA 112/88 referred to therein, the respondents had not filed a reply. Therefore, this is the first occasion when the reply of the Department is to be considered.
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> 4. It would appear that a prima facie case has been made out in the counter affidavit to distinguish the Allahabad High Court's judgement.
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> 5. Earlier judgementshave directed the promotion of the petitioner/applicant with effect from the dates prior to the dates of promotion of any Junior Engineer who has passed the departmental qualifying examination subsequent to the passing of that examination by the petitioner/applicant. This is done following Rule 206 in Chapter VII of the P&T Manual.

6. The following doubts arise.

(a) Whether the aforesaid Rule which was in existence earlier and which seems to be in the nature of an executive instruction should be held to modify the provisions of the subsequent Recruitment Rules promulgated later on under proviso to Article 309, i.e. 1966 Rules (Annexure-R1) and the 1981 Rules. It is also to be noted that earlier the promotion was on seniority-cum-fitness basis but the 1966 Rules direct that the promotion should be on the basis of selection.

(b) The 1966 Rules authorises the Government to issue instructions for the preparation of the eligibility list to be considered by the DPC (para 5 of Appendix I of Exbt.R1). Appendix-I makes it clear that the examination is only a qualifying examination. The instruction at Exbt.R2 states that the Engineering Supervisors will be arranged according to the marks obtained at the end of the training course and not on the marks obtained in the departmental qualifying examination [Para (iii)(a) of Annexure-R2].

(c) Officials who qualified in the examination earlier are not required to qualify afresh and all officials of a particular year of recruitment who have qualified earlier shall rank enbloc senior to officials of the same year of recruitment but who qualified in any subsequent examination. This is all the benefit given to those who have passed the examination on an earlier date [Para (iv) & (vi) ibid]

(d) In the circumstances would it be proper to give a direction as in Ann.I judgement.

5. Therefore, I suggest that this may be listed as 'Spoken to' on 30.9.1991."

6. When the case was taken up again, it was represented that a batch of cases, 1062/90 and others, involving the same issue have been fixed for final hearing. Hence OA 580/91 was clubbed with that batch of cases.

7. These OAs were heard on 15.10.91 and on 13.11.91 and reserved for orders. Lengthy arguments were addressed as to whether theAllahabad judgement is to be followed or wnether it is based on wrong premises and has to be dissented from. It should be noted here that this judgement has been followed in the following cases by various Benches of the Central Administrative Tribunal:

i) OAK 603/88 (Santhamma & others Vs. U.O.I. & another)
and
OAK 605/88 (Ramavarma Thampuran Vs. U.O.I. & others)
/Ernakulam Bench_7

ii) OAK 112/88 /Ernakulam Bench_7 (T.N.Peethambaran Vs. U.O.I and others)

iii) OA 648/88 (V.T.Ganesan & others Vs. U.O.I. & others)
/Madras Bench_7

iv) OA 1390/91 (K.N.Vijay Kumar & others Vs. D.G., Telecom & others) /Ernakulam_7

v) OA 1599/87 (Daljit Kumar & others Vs. U.O.I. & others)
& 6 other applications) /Principal Bench_7

Therefore, if there was a disagreement with these decisions of the Tribunal relying on the Allahabad judgement, the matter would have to be heard by a larger Bench.

8. I prepared a draft judgement for consideration. It was then felt that clarification on the following issues was needed:

"(i) When was the first decision of the Ernakulam Bench rendered on the subject following the Allahabad High Court decision and in how many cases the said decision was followed by the Ernakulam Bench till date?

(ii) What would be the impact on service personnel if the Allahabad High Court judgement is not followed hereafter?

(iii) What is the legal status and position of the Allahabad High Court judgement which hasbeen upheld by the Supreme Court in two Special Leave Petitions? Can it now be held by this Tribunal as wrongly decided in the light of the facts presented before us?

(iv) Are the respondents giving effect to the decision of the Allahabad High Court judgement and similar decisions of the Central Administrative Tribunal generally and making it applicable to all employees or are they implementing the decision only if an order is passed by the Tribunal?

(v) After implementing the decision, either voluntarily or in pursuance of directions given by Courts, can the Department justifiably take a contrary stand, particularly when there was a default on their part in placing all the relevant facts before the High Court of Allahabad/Benches of the Tribunal and defending the cases properly?"

9. It is in this background that the cases were reopened on 3.2.92 as stated in para 2 supra. No doubt, the dispute between the parties has now been resolved by the latest stand taken by the Department in the statement dated 30.3.92. However, having taken considerable pains to go into the merits of an important issue which concerns thousands of employees, I find it necessary, as a matter of duty, to state, with great respect, that the judgement of the Allahabad High Court needs reconsideration by a larger Bench of the Tribunal. That would, perhaps, have been possible if, in midstream, this batch of cases had not been left uncontested now by the actions by the Government of India. A most inappropriate moment has been chosen by the Department to make the submissions they made before the Principal Bench in the Contempt petitions pending before ~~them~~ Ld. Bench. There are the following reasons why readiness to give effect to that judgement to all the members of Group B Service should not have been expressed

now by the Department:

(i) It should have been evident to the Department from the extracts quoted in paras 5 and 8 supra that the judgements to be delivered in this batch of cases would certainly consider the issue whether the Allahabad judgement is to be dissented from.

(ii) The records produced before us show that, like the present batch of cases before this Bench, OA 2407/88 and 19 similar applications are pending before the Principal Bench in which MP 3396/91 and five other MPs were filed in OA 2407/88. From an interim order passed on 22.1.92 it is observed that the MPs are filed by different persons for being impleaded as respondents and they have also raised contentions on merits opposing the grant of relief in the OAs. The OAs and the related MPs have been fixed for final hearing by the Principal Bench on 7.4.92.

(iii) Similarly, the Principal Bench has allowed MP 2282/91 filed in a representative capacity by the Junior Telecom Officers Association representing 6000 officers in OA 1758/91, as they have opposed the reliefs sought in the application.

(iv) Nothing has been gained by this concession. There is no finality yet to the Allahabad judgement and the subsequent decisions so far rendered by the Benches of the Tribunal. The OAs pending before the Principal Bench (referred to above)

cannot, perhaps, be disposed of in the same manner as the present batch of cases are being disposed of now on the basis of the statement date 30.3.92 of the Department, because there are other private contesting respondents who may not endorse the stand of the Department. Hence, judgement may have to be rendered on merits considering the contentions of the contesting party respondents.

10. The most important consideration which has weighed with me in deciding to record my view in the matter is that the Allahabad judgement has very wide repercussions and far reaching implications. This can be demonstrated from the facts stated in OA 1062/90. Annexure-III therein is an extract of the gradation list of TES Group B officials as in 1985. The 8th applicant therein, V.S.Krishnamurthy is at the top and given seniority No. 989 and the "date of DPC or promotion" in his case is 1976-77. As against this, Brij Mohan and P.N.Lal, whose writ petitions were allowed by the Allahabad High Court's judgement --exhibited as Ann.R5 in OA 1062/90-- are shown in that gradation list with seniority numbers 4567 and 4741 respectively and the "date of DPC or promotion" in their case is 1982-83. However, after the Allahabad judgement, the seniority of Brij Mohan and PN Lal was revised and in the gradation list of TES Group B officials for 1989 (Ann.IV) Brij Mohan and P.N.Lal are given seniority numbers of 661 and 847, while V.S.Krishnamurthy has been given seniority

number of 740. In other words, V.S.Krishnamurthy has improved his position during this period by 249 places only due to promotion, retirement etc. of his seniors. But Brij Mohan and P.N.Lal have gained 3906 and 3894 places respectively, not due to natural causes only, but due to the operation of the Allahabad judgement. Earlier, they were 3500 or more places below V.S.Krishnamurty and also below persons who were promoted earlier in 1976-77, March 1979, 1980, 1981. At present, they have been given seniority above all those persons who were promoted earlier than them from 1976-77 onwards.

11. This windfall improvement granted to Brij Mohan and P.N.Lal must have caused heart burning to all their seniors promoted much earlier than them, but who passed the examination later than them. If that principle is now sought to be extended to the whole cadre, it is bound to have an unsettling effect of great magnitude and will demoralize thousands of officials who will find themselves to be junior to persons promoted much later than them. Hence, there is an urgent need to have a second look into the Allahabad judgement which has resulted in consequences, which were, perhaps, never foreseen or intended.

12. I may now quickly go through the issues which require re-consideration.

13. The main contention in the reply affidavit is that the 1966 Rules (Exbt. R1 in OA 1062/92)

have not been considered properly. A perusal of Exbt.R1 shows that the TES Class II Recruitment Rules, 1966 issued under Article 309 of the Constitution apply to the post of Assistant Engineers and other equivalent posts having allied designations and that the appointment will be made by selection and the recruitment is made in accordance with Appendix I and Appendix II to the Rules. Para 1 of Appendix I reads as follows:

> "Except as otherwise provided in Appendix II in respect of recruitment to the posts reserved for Ex-company employees of the Telephone Districts of Bombay and Calcutta, recruitment to the Service shall be entirely by promotion on the basis of selection of officials indicated in paragraph 2 below, through a qualifying departmental examination. An approved list shall be prepared by a duly constituted Departmental Promotion Committee, by selection, from amongst the officials who qualify in the departmental examination." (emphasis mine)

The feeder category posts, the holders of which may appear in the said examination and the conditions which they should satisfy before they are admitted to the examination are specified in paras 2 to 4 of Appendix I. Para 5 then stipulates as follows:

> "The eligibility lists of the candidates for consideration of the Departmental Promotion Committee shall be prepared in accordance with the instructions, as will be issued by the Government from time to time."
>
> (emphasis mine)

14. Instructions dated 20th June, 1966 (Ext.R2 of OA 1062/90) were issued by the P&T Board in pursuance of the aforesaid provisions. Among other things, this instruction stipulates as follows in para (v):-

> "All officials of a particular year of recruitment/appointment who have qualified in an earlier examination would rank en bloc senior to those officials of the same year of recruitment/appointment who qualified in a subsequent examination".
>
> (emphasis mine)

Thus, for being considered for promotion, one has to pass a qualifying examination, to appear in which one has to be eligible. The selection will be made from those who have passed the examination. Their names will be considered according to their service seniority represented by the year of recruitment/appointment. However, in each year of recruitment/appointment, the names will be arranged on the basis of the dates on which they passed the qualifying examination. Needless to say, those who have passed the examination on the same date will be arranged on the basis of service seniority.

15. Admittedly, these instructions dated 20.6.66 have not been adverted to in the Allahabad judgement. An answer to the question as what weightage has to be given for passing the qualifying examination earlier than other seniors in the service is to be found in para (v) of the aforesaid instruction dated 20.6.66. Therefore, the question of invoking Rule 206 for implementing these statutory rules does not arise.

16. What is more important is that even during the period prior to the commencement of the 1966 Rules, Rule 206 did not apply to the promotion of Assistant Engineers. That Rule reads as follows:

> "206. All Junior Engineers recruited after the 1st January, 1929 under the new system after serving for 5 years in Engineering Branch may be permitted to appear at the Departmental Qualifying Examination, which will be held from time to time in

the subjects enumerated below, provided they have a good record. This qualifying examination is intended to test the general ability of Junior Engineers and their knowledge in the latest developments in Telegraphy and Telephony. A pass in this examination is an essential condition for promotion to Telegraph Engineering and Wireless Service, Group 'B'.

2. Promotion to the TE&WS, Group B will be made according to the principle of seniority-cum-fitness but the Junior Engineers who pass the qualifying examination earlier will rank senior as a group to those who pass the examination on subsequent occasions, i.e., officials who passed the examination held in 1956 will rank as en bloc senior to those who passed in 1957. Their seniority inter se will, however, be according to their seniority in the cadre of Junior Engineers.

3. This examination will be conducted in the following three subjects:-

(i) Telegraph and Telephony (without books)	100 marks
(ii) Line Construction and Transmission (without books)	100 marks
(iii) Code Rules (with books)	130 marks

One question paper will be set in each subject. In order to qualify in the examination the officials must obtain 40% of marks in each subject. xxxxx "

(emphasis mine)

The composition of TE&WS Group B referred to in Rule 206 is given in Rule 181 which shows that it consists of 3 categories i.e. Assistant Engineers, Deputy Assistant Engineers Grade A and Deputy Assistant Engineers Grade B. Thus, the lowest post for entry in TE&WS Group B is Deputy Assistant Engineer Grade B. Therefore, when Rule 206 refers to promotion to TE&WS Group B, on the basis of seniority-cum-fitness, it really refers to promotion of Junior Engineers (formerly called the Engineersing Supervisors) to the grade of Deputy Assistant Engineers Grade B and it does not refer to promotion as Assistant Engineer. Promotion to the post of Dy. Assistant Engineer Grade B

is dealt with in Rules 197(b), 199(b), 200(b) and 205(b). These rules provide for promotion to be made by the Director General on the basis of seniority. The post of Assistant Engineer is filled up by selection of the best man available in the General Branch/Telephone Branch/Electrical Branch/Wireless Branch, as will be seen from Rules 194, 195, 196 and 204, which do not provide for giving any seniority on the basis of passing the examination.

17. Lastly, if, for argument's sake, the Allahabad judgement is considered to lay down the law correctly, the scope of the direction given therein which is reproduced below requires clarification, for two interpretations are possible:

> "The writ petitions are allowed with costs and mandamus is issued directing the opposite parties that both the petitioners may be promoted with effect from the date prior to a date of promotion of any person who passed the departmental examination subsequent to them and adjust their seniority accordingly and pay them salary and allowances accordingly with effect from the said date."

18. A plain reading of the direction may suggest that the Department is required to take the following steps to implement that direction:

(i) Find out the dates on which the Astt. Engineers now working have passed the qualifying examination.

(ii) Based on that information, find out the persons who, having passed the examination later than Brij Mohan and P.N.Lal, have been promoted earlier than them.

(iii) What is the earliest date from which any such person has been given promotion in the past?

(iv) Give Brij Mohan & P.N.Lal, promotions one day prior to such earlier date and give them seniority accordingly.

This is how the Department has understood this direction. That is why Brij Mohan and P.N.Lal promoted in 1982-83 and who were earlier placed at S.No.4567 and 4741 respectively in the gradation list of 1985--produced as Ann.III in OA 1062/90--were subsequently shown as having been promoted along with officials of the 1976-77 year of promotion/DPC and given seniority ranks of ~~109~~ 661 and ~~115~~ 847 vide Ann.IV gradation list as on 1989, in the same OA. One does not know whether the Allahabad High Court really intended to give the petitioners retrospective promotion and seniority in this manner.

19. An alternative interpretation is possible which is as follows:

(i) The candidates found fit for promotion in one DPC meeting are first arranged according to their service seniority.

(ii) The date of passing the qualifying examination is recorded against the relevant names.

(iii) The selected names are then rearranged on the basis of the year of passing the examination. Persons who have passed the examination in the same year will be arranged on the basis of their service seniority.

(iv) This will be the final list indicating the order in which promotions are to be made.

The person who stands first in this list, when promoted, should occupy a place immediately below the person who was last promoted on the basis of similar recommendations made by the previous DPC.

20. It appears to me that Rule 206(2) should have been implemented only in the manner indicated in para 19 supra. This has not been clarified in the direction given in the Allahabad judgement. The Department also did not seek for a clarification from the Allahabad High Court. The Benches of the Tribunal, which followed the Allahabad judgement, also have neither considered this problem nor given any clarification. This important matter also has to be considered.

21. It is with these observations that I now consider the nature of orders to be passed in this batch of cases. The common prayer in all these applications is to issue a direction to the Department to give them the same benefit of earlier promotion and seniority based on the date of passing the qualifying examination, as was given to the petitioners in writ petitions 2739/81 and 3652/81 in the judgement dated 28.2.81 by the Allahabad High Court. It is necessary to know the directions given to the Department by the Principal Bench in the batch of cases, in which subsequently contempt proceedings CCP 256/91 and batch of contempt cases were initiated. The directions of the Principal Bench in respect of which contempt was alleged

read as follows:

> "In view of the various judgements passed by this Tribunal in accordance with the spirit of the judgement given by the Hon'ble High Court of Allahabad as upheld by the Hon'ble Supreme Court of India in the case of Shri Parmanand Lal and Shri Brij Mohan, we direct that the benefits of the said judgement be extended to the applicants herein also and they shall be deemed to have been promoted with effect from the date prior to a date of promotion of any person who passed the departmental examination subsequent to the applicants and their seniority be revised in T.E.S. Group 'B' Cadre. They shall also be entitled to refixation of their pay with effect from the said date. This order shall be implemented within a period of three months from the date a copy of this order is received by the respondents. There shall, however, be no order as to costs."

22. Accordingly, I dispose of all these applications with a direction to the Department that the benefits of the judgement of the High Court of Allahabad in writ petition Nos. 2739 and 3652 of 1981 (Exbt. R5 in OA 1062/90) be extended to the applicants herein also and they shall be deemed to have been promoted with effect from the date prior to the date of promotion of any person who passed the departmental examination subsequent to the applicants and their seniority be revised in T.E.S. Group B cadre on that basis. They shall also be entitled to refixation of their pay with effect from the said date. In the contempt petitions filed before the Principal Bench, the Department has been given time till 31st August 1992 to comply with the order in the original application. Therefore, this order too shall be implemented on or before 31.8.1992. There shall, however, be no order as to costs.

23. As stated earlier, a number of Original Applications are still pending before the Principal Bench. Such applications may be pending before other Benches also. In the normal course, these applications would probably be disposed of in the light of the decisions rendered by various Benches of this Tribunal, as mentioned in para 7, all based on the Allahabad High Court's judgement, unless any Bench finds it necessary to express dissent from these judgments. In the present cases, the validity of the Allahabad High Court's judgement could not be considered because of the subsequent developments in these cases, as a result of which the need for such consideration was obviated. I have, therefore, only given vent to my views on the need for a re-consideration of the Allahabad High Court's judgment, despite the stand taken by the Department, because of the far reaching effects of the Allahabad judgment. In the circumstances, the Registry is directed to send a copy of this order to the Hon'ble Chairman of the Central Administrative Tribunal for such action as he considers appropriate.

24/4/92

(N.V.Krishnan)
Administrative Member

MR. N. DHARMADAN, JUDICIAL MEMBER

24. I have gone through the judgment written by my learned brother. It has not been written on behalf of the Bench. So, no approval or concurrence is needed. However, these cases are to be disposed of on the basis of the statements filed by the respondents and the submission made by the learned Senior Central Government Standing Counsel at the time of final hearing following the earlier judgments of this Tribunal.

25. In fact, at the time when the case came up for final hearing, the SCGSC stated in unequivocal terms that the Department has decided to revise the seniority of officers of TES Group-B cadre in terms of the Allahabad High Court's judgment and other judgments of the various Tribunals taking the same view which has been taken by the Allhabad High Court on the issue. Same stand was taken by the Government before the Principal Bench when contempt application came up for consideration.

26. In the light of the above statement, it is unnecessary for me to state any of the details or other facts except to quote paras 2 and 3 of the order of the Principal Bench of the Tribunal dated 28.2.92 in a batch of CCPs filed in connection with the non-implementation of the judgments in similar cases. Paras 2 & 3 of the order is extracted below:

> "2. It is clear from what we have extracted above that the respondents have taken a firm decision to give effect to the principle laid down by the

..

decision of the Tribunal which decision stands affirmed by the Supreme Court, by reviewing the promotions of everyone who is similarly situate and not confining it only to those who approached the court for relief. They have conceded that they made a mistake in limiting their attention in the matter of giving deemed dates of promotion only to those who obtained orders from the Tribunal and ignoring the cases of others similarly situate only because they had not secured similar orders from the Tribunal. Now they have realised that once the principle has been laid down by the Tribunal which is of general application, it is their duty to make a comprehensive review in respect of everyone who is similarly situate whether all of them have obtained orders from the Tribunal or not. The attitude now taken which is reflected in what we have extracted above, is correct. That is the only way to satisfactorily give effect to the principle laid down by the Tribunal in various cases, including those enforcement of which has been sought in these contempt of court petitions. The respondents have stated that though steps have been initiated having regard to the fact that they have to review the cases of nearly ten thousand persons, the exercise is likely to take about six month's time. They have further stated that after the revised seniority list is prepared, according of further promotion on the basis of the revised seniority list and following the relevant rules would be made on the basis of the recommendations of the DPC.

3. As right steps have now been taken, there should not be any need for other similarly situate to rush to the Tribunal for grant of relief as they would all get relief by application of the same principle, whether or not they approached the Tribunal and secured orders in their favour."

27. Accordingly, I am of the view that the applicants are entitled to the reliefs. I allow these applications and direct the respondents to promote the applicants with effect from the date prior to the date of promotion of any junior Engineer to Telegraph Engineering Service Group-B who passed the departmental qualifying examination subsequent to the date of passing of the applicants and their seniority be re-fixed in TES Group-B cadre on that basis.

28. There will be no order as to costs.

24.4.92

(N.Dharmadan)
Judicial Member

ORDER OF THE BENCH

29. 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 T.E.S. 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.

30. There shall, however, be no order as to costs.

31. A copy of this order be placed in each one of the aforesaid Original Applications.

24.4.92

(N.Dharmadan)
Judicial Member

24/4/92

(N.V.Krishnan)
Administrative Member