

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 98 OF 2011

Tuesday, this the 29th day of November, 2011

CORAM:

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

R.Vijayan
Staff No.11016
Retired Divisional Engineer (Telecom)
BSNL, Kollam SSA, Kerala Circle
Residign at Ushus, Vadamon PO
Anchal – 691 306

... Applicant

(By Advocate Mr. Vishnu S Chempazhanthiyil)

versus

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

(By Advocate Mr.George Kuruvilla (R1-2)
Advocate Mr.Thomas Mathew Nellimottil (R-3))

The application having been heard on 29.11.2011, the Tribunal on the same day delivered the following:

ORDER

HON'BLE Mr.JUSTICE P.R.RAMAN, JUDICIAL MEMBER

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 conflicting 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

TML

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 SI.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.

Dated, the 29th November, 2011.



K GEORGE JOSEPH
ADMINISTRATIVE MEMBER



JUSTICE P.R. RAMAN
JUDICIAL MEMBER

VS