

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No.116/2011

Tuesday, this the 29th day of November, 2011

C O R A M :

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

1. K.P.Jayadevan,
Assistant General Manager (EP),
Equipment Planning,
O/o.General Manager,
BSNL, Kottayam – 686 001.
2. Jaya M Nair,
Divisional Engineer (Phones),
BSNL, Changanacherry.
3. B.Vasantha Kumari,
Assistant General Manager
(Equipment Planning),
O/o.General Manager,
Telecom, BSNL, Palakkad – 678 014.
4. Mariamma George,
Divisional Engineer (Retired),
BSNL, Pampady, Kottayam.
5. P.J.Mariamma,
Assistant General Manager,
(Operation Planning), (Retired),
BSNL, O/o.PGMT, Kottayam.
6. T.Santhakumari Amma,
Divisional Engineer (External) (Retired),
O/o.Divisional Engineer,
BSNL, Alappuzha.
7. M.Thulasee Bai Amma,
Area Manager, BSNL,
Karunagappally, Kollam District.
8. Rumold Joe Nettar,
Divisional Engineer (Retired),
O/o.General Manager,
Telecom, BSNL, Kollam.

9. R.Surendran Achary,
Assistant General Manager,
(Operation Planning) (Retired),
O/o.General Manager,
Telecom, BSNL, Kollam.
10. V.K.Suseela Devi,
Deputy General Manager (Mobile Services),
Panampally Nagar, Ernakulam.

(By Advocate Mr.Vishnu S Chempazhanthiyil)

versus

1. The Chief General Manager,
Bharat Sanchar Nigam Limited,
Kerala Circle, Thiruvananthapuram – 33.
2. The Chairman and Managing Director,
Bharat Sanchar Nigam Limited,
Corporate Office, Statesman House,
New Delhi – 1.
3. Union of India represented by its Secretary,
Department of Telecommunication/Chairman,
Telecom Commission, Ministry of Communication,
Sanchar Bhavan, New Delhi – 110 001.

...Respondents

(By Advocates Mr.George Kuruvilla [R1-2] &
Mr.Varghese.P.Thomas,ACGSC [R3])

This application having been heard on 29th November 2011, the
Tribunal on the same day delivered the following :-

ORDER

HON'BLE Mr.K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER

The applicants in this O.A. were members of Telegraph
Engineering Services Class-II. Their promotion to the post of Assistant
Engineer was made, other eligibility conditions being satisfied, on the
principle of seniority based on the date of passing the qualifying
examination as per the instructions in Para 206 of Posts and Telegraph



Manual, Volume IV. The Telegraph Engineering Services Class-II Recruitment Rules, 1996, provide for counting their seniority on the basis of year of recruitment. In the year 1981, S/Shri Paramandan Lal and Brij Mohan challenged the principle of seniority on the basis of the year of recruitment before the Hon'ble Lucknow Bench of the Allahabad High Court in Writ Petition Nos. 2735/89 and 3652/81. On the basis of the judgements of Hon'ble Lucknow Bench of the Allahabad High Court and also on the basis of the orders of various Benches of the Central Administrative Tribunals, like Annexure A/1, the seniority list was revised on the basis of year of qualification and seniority list 1 to 17 was issued. The Annexure A-1 order dated 29.06.1992 clearly directed the respondents to extend the benefit of judgement of the Hon'ble Lucknow Bench of the Allahabad High Court to the applicants therein. The order of this Tribunal in Annexure A-1 was confirmed by the Hon'ble Supreme Court. However, based on the subsequent decision of the Hon'ble Supreme Court in 1997 (10) SCC 226, **Union of India vs. Madras Telephone SC & ST Social Welfare Association**, seniority should be based on the year of recruitment. Consequently, seniority list was once again revised to the detriment of the applicant. However, Hon'ble Supreme Court had made it clear that in respect of those similarly situated persons like Shri Paramanand Lal and who had judgements in their favour which were confirmed by the Hon'ble Supreme Court and therefore, became final, should not be affected. In terms of the clarificatory orders issued by the Hon'ble Supreme Court in I.A. No. 16

in Civil Appeal No. 4339/1995, 2000 (9) SCC 71 and other cases, the applicants are entitled to be extended the benefits due to them on the basis of the Annexure A-1 judgement by revising their seniority based on the year of qualifying. The applicants had made representations to the 2nd respondent for restoring their seniority. Though the respondents issued orders granting benefit of the clarificatory orders of the Hon'ble Supreme Court to 45 similarly situated persons in TES Group-B, no orders were issued in respect of the applicant on the ground that they had not approached the Hon'ble Supreme Court in a Contempt Petition. Aggrieved by the inaction on the part of the respondents to redress their grievances, the applicants have filed this O.A. for the following reliefs:

1. Direct the respondents to consider revising the seniority position of the applicants on the basis of Annexure A-1 and Annexure A-1(a) as directed in Annexure A-2 and Annexure A-3 judgments of the Hon'ble Supreme Court and grant consequential benefits.
2. Declare that the applicants are entitled to the benefits of the directions of the Hon'ble Supreme Court in Annexure A-2 and Annexure A-3 and extend the same treatment as given to similarly situated persons like the officers covered by Annexure A-10, Annexure A-11, Annexure A-12 and Annexure A-14.
3. Direct the respondents to grant all consequential benefits of fixation of seniority as per Annexure A-1 including consequential promotions, fixation of pay and arrears of pay.
4. Any other further relief or order as this Hon'ble Tribunal may deem fit and proper to meet the ends of justice.
5. Award the cost of these proceedings to the applicants.

2. The applicants contend that as they had passed the qualifying examination in the year 1980 earlier than their juniors, as per Annexure A-1



judgement confirmed by the Hon'ble Supreme Court in Civil Appeal No. 1816-36/1993 decided on 13.05.1994, they are entitled to seniority over their juniors. The respondents have granted the benefit of seniority on the basis of year of qualification to 45 persons, while it is denied to the applicants, which is discriminatory. As far as the applicants are concerned, there is a final order at Annexure A-1 confirmed by Hon'ble Supreme Court, which binds the respondents. Persons similarly situated should be treated alike. The applicants stand on the same footing as that of Shri Paramanand Lal and judgement in favour of the applicants has become final. If the clarificatory orders of the Hon'ble Supreme Court are implemented, it is only just and fair that the seniors like the applicants are considered before granting promotion to junior hands who are similarly situated.

3. In their reply statement, the respondents submitted that they had rearranged the entire seniority of TES Group-B cadre (SDE) on recruitment year basis in accordance with the judgement dated 26.04.2000 in CA No. 4339/1995, 2000 (9) SCC 71 of the Hon'ble Supreme Court. The seniority of all the employees except the exceptional cases like those of Paramanand Lal and Brij Mohan and other similar cases in which judgements have been obtained from the Court and which have attained finality, are to be determined accordingly. Therefore, they have decided to consider only those representations which are received through proper channel and supported by certified copies of judgements in their favour. The representations filed by all officers including that of the applicants are kept in abeyance pending disposal of Special Leave Petitions before the Hon'ble Supreme Court. It is only because of the fact that the issue is still under

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consideration of the Hon'ble Supreme Court, the applicants grievances are kept in abeyance.

4. We have heard Mr. Vishnu S. Chempazhanthiyil, learned counsel for the applicant, Mr. George Kuruvilla, learned counsel for the respondents 1 and 2 and Mr. Varghese P. Thomas, learned counsel for the respondent No. 3.

5. This Tribunal had decided the issue in question in a number of cases identical to the present one like T.A. No. 79/2008 and O.A. No. 520/2009 directing the respondents to extend the benefit of seniority based on the year of qualification as decided by the Hon'ble Lucknow Bench of Allahabad High Court in favour of S/Shri Paramanand Lal and Brij Mohan in Writ Petition Nos. 2735/81 and 3652/81. O.P. (CAT) No. 63/2010 challenging the order of this Tribunal in O.A. No. 520/2009 was dismissed by the Hon'ble High Court of Kerala as under:

"..... The order under challenge is Ext.P5 issued by the Tribunal. After hearing both sides and after going through the Tribunal's order, we notice that the Tribunal has only followed the earlier decision of the Supreme Court and aht of this court in the same matter. However, petitioners' case is that Supreme Court has admitted another SLP which is coming up for hearing and this O.P is filed challenging the order only to keep the matter alive so that if Supreme Court accepts the position canvassed by the petitioners, they want to apply it to this case as well. Counsel appearing for the respondents has pointed out that issue is already covered by the earlier decision of this Court. On going through the Tribunal's order we do not think petitioners can have any grievance because the Tribunal by allowing the claim has specifically stated that the claim is allowed subject to the decision of the Supreme Court in the pending SLP. In other words, if the Supreme Court judgment is in favour of the petitioners without any need for them to challenge this order, they will get the relief. We dismiss the O.P but on condition that if there is change in legal position after the decision of the Supreme Court in the pending SLP, the same will apply between the parties, without the



necessity of challenging this judgment or the order of the Tribunal before the Supreme Court."

6. In O.A. No. 98/2011, this Tribunal has held as under :

"2. xxxxxxxx xxxxxxxx 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. xxxxxxxx xxxxxxxx

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."

As the applicants have inter party judgements in their favour and as per the clarificatory orders of the Hon'ble Supreme Court, their seniority is to be fixed on the basis of the year of qualification. As the ratio of the above decisions squarely apply to the instant case, the O.A. succeeds.

7. The respondents are directed to revise the seniority of the applicants on the basis of Annexure A-1 and Annexure A-1(a) as directed in Annexures A-2 and A-3 judgements of the Hon'ble Supreme Court and extend the same



treatment as has been given to the similarly situated persons , like the officers covered by Annexures A-10, A-11, A-12 and A-14 and to grant all consequential benefits including promotion, fixation of pay and arrears of pay limited to a period of 3 years prior to the date of filing of this O.A and thereafter, subject to the decision of the Hon'ble Supreme Court in the pending SLP, within a period of 3 months from the date of receipt of a copy of this order.

8. The O.A. is allowed as above with no order as to costs.

(Dated, the 29th November 2011)



K.GEORGE JOSEPH
ADMINISTRATIVE MEMBER



JUSTICE P.R. RAMAN
JUDICIAL MEMBER

cvr.