

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 16 of 2009

Tuesday, this the 23rd day of February, 2010

CORAM:

Hon'ble Mr. George Paracken, Judicial Member
Hon'ble Mr. K. George Joseph, Administrative Member

Thomas Zachariah, Munjattu Karingattil,
 Perissery P.O., Chengannur, working in Bharat
 Sanchar Nigam Limited, Telephone Exchange,
 Chengannur.

.....

Applicant

(By Advocate – Mr. T.C. Govindaswamy)

V e r s u s

1. Bharat Sanchar Nigam Ltd., (A Government of India undertaking), Represented by and through its: Chairman & Managing Director, Corporate Office, 6th Floor, Statesman House, New Delhi - 110001.
2. The Chief General Manager (BSNL), Kerala Telecom Circle, Bharat Sanchar Nigam Ltd., Thiruvananthapuram.
3. Union of India, (By and through), the Chairman, Telecom Commission, Department of Telecommunications, Sanchar Bhavan, Ashoka Road, New Delhi - 110001.

.....

Respondents

(By Advocate – Mr. Pratap for Mr. T.C. Krishna)

The application having been heard on 23.2.2010, the Tribunal on the same day delivered the following:

ORDER

By Mr. George Paracken, Judicial Member

The applicant is aggrieved by the Annexure A-5 provisional seniority list No. 6 of TES Group-B officers issued vide Bharat Sanchar Nigam Limited (in short BSNL) letter dated 28.7.2004 and Annexure A-6



provisional seniority list No. 7 in respect of regular SDEs in BSNL issued vide letter dated 2.12.2004.

2. The BSNL has invited objections if any to the aforesaid provisional seniority lists dated 28.7.2004 and 2.12.2004. The applicant herein has belatedly filed Annexure A-11 representation dated 3.3.2008 against those lists. In the said representation he has stated that while he was promoted as TES Group-B officer vide Department of Telecommunication (in short DOT) letter dated 7.12.2001 with his staff No. 107836, his juniors promoted under the competitive quota vide DOT order No. 2-48/2000-STG-II dated 27.4.2004 have been shown above him. He has also pointed out that the respondents have committed a mistake as around 6000 candidates including himself promoted under promotee quota vide DOT order dated 7.12.2001 have been treated as juniors to those who were promoted through competitive quota in the year 2004. He has, therefore, requested the respondents that the candidates who have been promoted under the competitive quota vide order dated 27.4.2004 should be placed en bloc below who have been promoted vide order dated 7.12.2001 in accordance with paragraph 2.1 of DOP&T OM dated 3.7.1986 (Annexure A-8) and 7.2.1986 (Annexure A-7) on the subject of seniority. In this OA the applicant has prayed for quashing and setting aside the aforesaid provisional seniority lists. He has further sought a direction to the 3rd respondent to recast the aforesaid provisional seniority lists in accordance with the instructions contained in DOP&T OM dated 7.2.1986 and 3.7.1986 read with clarification dated 3.3.2008 and thereby place all the SDEs en bloc



below all the SDEs promoted in the year 2001 (under 75% quota). He has also sought a direction to the respondents to complete the final seniority list after the necessary rectification and after giving opportunity of hearing to the applicant and other similarly placed persons.

3. Learned counsel for the applicant Shri T.C. Govindaswamy has also submitted that the question involved in this case is no more res-integra as the same has been decided by the Chandigarh Bench of this Tribunal in TAs 84&85/HR/2009 - Dewan Chand & Ors. Vs. Union of India & Ors. decided on 25.8.2009. The specific question raised in those applications were as to what would be the mode of fixation of seniority in TES Group 'B' between members of service who are appointed on the basis of seniority vis-a-vis those who entered the service after qualifying the Limited Departmental Competitive Examination (for short LDCE), if the rules are silent on this aspect? After detailed discussion of the aforesaid issue the Tribunal held as under:-

"22. Thus, the seniority of the incumbents have to be determined on the dates of their actual joining and not on notional basis by allotment of slots. If the recruitment is conducted in a single process and promotions are ordered on the same date or occasion, one can understand case of the respondents. But in this case where the LDCE could not take place, for whatsoever reasons, for a number of years and once it has taken place subsequently, the pass out candidates cannot be given seniority on national basis of year of vacancy, which concept is applicable on in the case of All India Service officers. In any case one thing is more than clear that this a case where the rota rule has been broken down due to delay in making recruitment from both the sources and as such it has to be taken that one would get his seniority only from the date he becomes member of the service. The official respondents have admitted that competitive examination could not be held because the process of absorption of Group B officers including SDE (T) in BSNL was finalized in the year 2004-05 and syllabus for the examination had to be revised / finalized. The



vacancies of SDE (T) had to be recalculated retrospectively, as a result of cancellation / abolition of 1966 posts of TES Group B retrospectively and transfer of posts to MTNL. The quota for each category i.e. 75% and 25% i being maintained from 2001-02 onwards.

23. The Respondents have relied upon instructions issued by the Government of India, Department of Personnel and Training issued vide OM dated 3.7.1986. Para 3.2. of which clearly provides that where absorbees are affected against specific quota prescribed in the recruitment rules, the relative seniority of such absorbee's vis-a-vis direct recruits or promotees shall be determined according to the rotation of vacancies which shall be based on the quota reserved for promotion, direct recruitment and promotion respectively in the recruitment rules. In this case, a person who has become member of service in 2004 is sought to be placed below persons who qualified an examination on the basis of a syllabus prescribed in 2006, against the vacancy of 1996 or so. This kind of approach is totally unreasonable, unwarranted and illegal. In any case, official respondents would have done well to issue their own instructions for fixation of seniority of incumbents when there is clash of interest amongst thousands of officers and there is huge delay in making selection.

17. In view of the above discussion, both these Original Applications are allowed. Orders/seniority lists impugned in these petitions are quashed and set aside. The respondents are directed to re-draw the seniority of officers of TES Group-B on the basis of dates of joining of incumbents, as discussed above, within a period of six months from the date of receipt of copy of this order. Before undertaking such exercise, respondents may invite objections from the persons likely to be adversely effected before re-drawing seniority as observed herein above. No costs."

4. Shri Govindaswamy has also relied upon the order of this Tribunal in OA 86 of 2009 - V. Govindan & Ors. Vs. Union of India & Ors. decided on 5.2.2010. The applicants in the said OA were Divisional Engineer/Assistant General Managers in the BSNL initially recruited as Junior Engineers prior to 1982 and their earlier promotions as Sub Divisional Engineer on their qualifying (prior to 1990) the departmental examination were all against pre 1994-95 vacancies. Their contention was also that on assigning higher seniority to the later qualified individuals is against the existing instructions



and the rules do not provide for such intermingling of officers belong to different recruitment years and to steal a march over the already promoted officers in seniority. After hearing the parties in detail the Tribunal has allowed the OA and set aside the impugned seniority lists. The operative part of the said judgment is worthwhile to be reproduced here as under:-

"12. Arguments were heard and documents perused.

13. First as to the technical objection. The applicants have challenged the proposed seniority list and at least two individuals have been impleaded. The objection by the official as well as party respondents is that the OA is bad due to non-joinder of parties. The applicants have no claim against any particular individual. The challenge is only as to the method adopted by the respondents in fixation of seniority. As such, the question is whether the applicant has to implead all the individuals whose seniority has been fixed above them. Such an issue arose in the case of A. Janardhana v. Union of India, (1983) 3 SCC 601, wherein the Apex Court has held as under:-

36. It was contended that those members who have scored a march over the appellant in 1974 seniority list having not been impleaded as respondents, no relief can be given to the appellant. In the writ petition filed in the High Court, there were in all 418 respondents. Amongst them, first two were Union of India and Engineer-in-Chief, Army Headquarters, and the rest presumably must be those shown senior to the appellant. By an order made by the High Court, the names of Respondents 3 to 418 were deleted since notices could not be served on them on account of the difficulty in ascertaining their present addresses on their transfers subsequent to the filing of these petitions. However, it clearly appears that some direct recruits led by Mr Chitkara appeared through counsel Shri Murlidhar Rao and had made the submissions on behalf of the direct recruits. Further an application was made to this court by nine direct recruits led by Shri T. Sudhakar for being impleaded as parties, which application was granted and Mr P.R. Mridul, learned Senior Counsel appeared for them. Therefore, the case of direct recruits has not gone unrepresented and the contention can be negated on this short ground. However, there is a more cogent reason why we would not countenance this contention. In this case, appellant does not claim seniority over any particular individual in the

Q

background of any particular fact controverted by that person against whom the claim is made. The contention is that criteria adopted by the Union Government in drawing up the impugned seniority list are invalid and illegal and the relief is claimed against the Union Government restraining it from upsetting or quashing the already drawn up valid list and for quashing the impugned seniority list. Thus the relief is claimed against the Union Government and not against any particular individual. In this background, we consider it unnecessary to have all direct recruits to be impleaded as respondents. We may in this connection refer to G.M., South Central Railway, Secundrabad v. A.V.R. Siddhanti⁷. Repelling a contention on behalf of the appellant that the writ petitioners did not implead about 120 employees who were likely to be affected by the decision in the case, this court observed that [SCC para 15, p. 341 : SCC (L&S) p. 296] the respondents (original petitioners) are impeaching the validity of those policy decisions on the ground of their being violative of Articles 14 and 16 of the Constitution. The proceedings are analogous to those in which the constitutionality of a statutory rule regulating seniority of government servants is assailed. In such proceedings, the necessary parties to be impleaded are those against whom the relief is sought, and in whose absence no effective decision can be rendered by the court. Approaching the matter from this angle, it may be noticed that relief is sought only against the Union of India and the concerned Ministry and not against any individual nor any seniority is claimed by anyone individual against another particular individual and therefore, even if technically the direct recruits were not before the court, the petition is not likely to fail on that ground. The contention of the respondents for this additional reason must also be negatived.

14. The above dictum of the Apex Court applies in all the four to the facts of the present case and thus, the technical objection as to non-joinder of parties is overruled.

15. Before going into the merit of the case, it is appropriate to refer to the mandate as directed by the High Court: Vide para 6 of the Annexure A-19 judgment of the High Court, it has been held as under:-

6. Even during the pendency of these two Original petitions, this court passed an interim order on 21.8.01 directing the writ petitioners to conduct the examination as directed in the impugned orders. The said examination had already been



conducted in November, 2003. Later by yet another order dated 11.2.2005, this court directed to effect promotions of the candidates who had come successful in the examination depending upon the vacancies. Pursuant to this Ext. R3 order dated 22.3.2005 had been passed stating that certain incumbents named therein were entitled for promotion. Accordingly, they were promoted but no seniority has been assigned. None has so far challenged this. It is not pointed out to us. Now the administration is taking a stand that they had been absorbed with effect from 1.10.2000 and will be given seniority only from the date of absorption or only from the date of taking charge. This contention cannot any more be countenanced in the light of the order of the Supreme Court and the order in OA No. 1497/96 and connected cases, because the direction therein was to fill up the vacancies that had arisen before 22.7.1996 based on Annexure-A1. Necessarily, assignment of vacancies based on the examination now conducted shall be to those arisen before 22.7.1996, placing the incumbents concerned over those who had been promoted to the vacancies occurred later than 22.7.1996. Merely because such placing would affect others in the matter of seniority, the petitioners cannot avoid its implementation. They have to give sufficient notice by publication in the news papers inviting the objections if any from the concerned incumbents and shall have to give effect to the order of the Supreme Court and as well as the earlier order of the Supreme Court and as well as the earlier order of the tribunal in OA No. 1497/96 giving proper ranking to the incumbents promoted as per Ext. R3(d) in OP No. 37134/01 assigning them proper vacancies that had occurred before 22.7.1996. In this regard, we make a time bound direction that, assigning of vacancies shall be done within 2 months from the date of receipt of the copy of this judgment and the publication there of shall be effected inviting objections in news papers having wide circulation within two weeks, giving three weeks to file objections. The final order of assignment vacancies shall be given to the incumbents promoted as per Ext. R3(d) mentioned above, at any rate within 4 months from the date of such publication."

16. The direction as extracted above, "They have to give sufficient notice..... and shall have to give effect to the order of the Supreme Court as well as the earlier order of the Tribunal in O.A. No. 1497/96, giving proper ranking to the incumbents promoted as per Ext. R3(d) in O.P. No. 37134 assigning them proper vacancies that had occurred before 22-07-1996." has to be duly implemented.


17. The order of the Supreme Court referred to in the High Court Judgment is the one passed on 26-10-1996 in SLP(C) No. 26071/96 referred to in para 14 of the order dated 1st May 1998 in OA No. 1497/96. Though the said full text of the order of the Supreme Court

is not available in the pleadings in the instant case, para 14 of the order in OA 1497/96 goes to state, *"The present stand taken by the Department in these O.As is that in view of the above position and in compliance with the order of the Hon'ble Supreme Court in SLP(C) No. 26071/96 dated 26-10-96 available in Annexure A-7 in O.A. 1497/96, where the Hon'ble Supreme Court disposed of the said appeal quoting the submission made by the department that they would fill up the vacancies existing up to the date of the notification of 1996 Recruitment Rules only in terms of the provisions of the earlier Recruitment Rules, there is no need to hold the Qualifying Examination from 1992 onwards."*

18. And, the order in OA 1497/96 vide para 23 thereof reads as under:-

"We are, therefore, constrained to strike a balance between the technical requirement of the pre-1996 Recruitment Rules and what is feasible administratively for achievement of the limited and residual objectives of those Rules in these circumstances. In our considered view, such a balance can be achieved if for the entire period between 1992 and 1996, the Combined Departmental Examination is held for enabling the SC/ST quota in the TES Group B cadre and the 1/3rd quota in that cadre earmarked for the competitive officers to be filled, before further regular promotions are thereafter effected in terms of the amended Recruitment Rules for the TES Group B brought into effect from 22-7-1996 without the requirement of any such examination, except for the Competitive quota."

24 In other words, only one combined Departmental Examination need be held for the year 1992 to 1996, following the spirit of the order of the Gleason's Supreme Court in SLP(C) No. 26071/96 dated 25-10-96 which has become final and considering the fact that the Department cannot legally be permitted to contravene the statutorily prescribed Recruitment Rules of 1981, 1986 and 1987, which incorporated the requirement of holding this combined Departmental Examination, while, at the same time, recognizing the fact that the JTOs already qualified are to be treated, in any case as senior to those who will now qualify, merely at the Qualifying part of the combined Departmental Examination. We, therefore, answer the first issue directing that the Department must hold one Combined Departmental Examination comprising both the Qualifying and Competitive Examination for the years from 1992 onwards upto 1996 for the vacancies



existing upto 22.7.1996 within six months from the date of receipt of a copy of this order. "

Recruitment Rules provide for filling up of the post of Assistant Engineers by promotion by the following mode:- .

66-2/3 per cent of the promotion quota:

By selection on the basis of Departmental Qualifying Examination conducted in accordance with provisions laid down in Appendix I, Appendix II and Appendix III to these rules.

33-1/3 per cent of the promotion quota:

By selection on the basis of Limited Departmental Competitive Examination conducted in accordance with provisions laid down in Appendix I, Appendix II and Appendix III to these rules.

(Later on the above ratio had been varied, with which we are not concerned in this O.A.)

19. For becoming eligible to appear in the Limited Competitive Examination, one has to clear the qualifying examination as well.

20. The applicants had cleared the said qualifying examination in 1984, 1985, 1994 as the case may be. They were all promoted under the seniority quota in 1994 or earlier.

21. When the department decided to hold the competitive examination in 2000 and the applicants desired to participate in the examination, they were informed that since they are already in the promotional post, they would not be permitted to sit in the competitive examination. When the 2000 examination was followed by the supplemental examination in 2002, certain other individuals were denied the opportunity to sit for the examination on the ground that they had already been promoted. Annexure A-20 refers. The same ratio is to be applied to the applicants also, notwithstanding the fact that they would not have specifically applied to sit for the examination. As stated earlier, in the 2000 examination, some of them were held as ineligible vide Annexure A-21 (Serial No. 8).

22. When the competitive examination took place, the same was for a number of years together and as many as 147 individuals were successful. Of them some would have cleared the qualifying examination along with some of the applicants or and some later. Nevertheless, their promotion in the wake of their success in the competitive examination has been much after the promotion of the applicants. This is the admitted fact.



23. Coming to the issue relating to seniority, evidently, the respondents tried to accommodate on the basis of merit in the slots of 1/3rd quota for the previous years. Thus, a 1980 recruit, having passed the qualifying exam in 1988, on passing in the competitive examination seems to have been afforded seniority far ahead of the applicants who stood promoted much earlier. The legal validity of the same is in question in this O.A.

24. Such a situation arose in the case of *R.P.F. Commr. v. G. Latchumi*, 1999 SCC (L&S) 1070 and the Apex Court has held as under:-

1. The short question involved in these appeals relates to the date with effect from which the seniority of Respondents 1 to 3 in the post of Head Clerk is to be reckoned.

2. There are two methods of promoting Clerks to the post of Head Clerk. 75 per cent are promoted by selection and 25 per cent are promoted on the basis of a departmental examination. In the instant case, the examination for clearing the backlog of the vacancies for Scheduled Castes and Scheduled Tribes was specially held and results were declared and Respondents 1 to 3 were appointed in the year 1991. The Tribunal, on an OA being filed by the said respondents, had directed that these respondents will reckon their seniority with effect from 3-4-1990 on a notional basis and would be entitled to all consequential benefits legally eligible to them.

3. It appears that prior to the holding of the present examination limited to Scheduled Caste and Scheduled Tribe candidates, the Department had issued circulars dated 26-7-1989, 8-8-1989, 31-10-1989, 3-4-1990, 1-11-1990 and 27-2-1991. Pursuant to the circulars earlier than 3-4-1990, the Scheduled Castes and Scheduled Tribes were not selected and that is what necessitated the holding of a special limited departmental examination for them pursuant to the said circular of 3-4-1990. It appears to us to be only proper that their seniority must be reckoned in the higher post of Head Clerk with effect from the date when they are promoted to the said post after being successful in the limited departmental examination and that they be given promotion from the retrospective date cannot arise.

4. For the aforesaid reasons, the appeals are allowed and the order of the Tribunal is set aside.



25. Though both the two-third quota by way of seniority and one-third quota by way of competitive examination fall under 'promotion' while considering fixation of seniority, the two are comparable to promotion and direct recruitment quota. In that event, inter se seniority would be only on the basis of actual promotion/recruitment as held in the case of *Suraj Parkash Gupta v. State of J&K*, (2000) 7 SCC 561, wherein the Apex Court has held as under:-

"Point 4

Direct recruits cannot claim appointment from date of vacancy in quota before their selection

80. We have next to refer to one other contention raised by the respondent direct recruits. They claimed that the direct recruitment appointment can be ante-dated from the date of occurrence of a vacancy in the direct recruitment quota, even if on that date the said person was not directly recruited. It was submitted that if the promotees occupied the quota belonging to direct recruits they had to be pushed down, whenever direct recruitment was made. Once they were so pushed down, even if the direct recruit came later, he should be put in the direct recruit slot from the date on which such a slot was available under the direct recruitment quota.

81. This contention, in our view, cannot be accepted. The reason as to why this argument is wrong is that in service jurisprudence, a direct recruit can claim seniority only from the date of his regular appointment. He cannot claim seniority from a date when he was not borne in the service. This principle is well settled. In *N.K. Chauhan v. State of Gujarat* Krishna Iyer, J. stated:

Later direct recruits cannot claim deemed dates of appointment for seniority with effect from the time when direct recruitment vacancy arose. Seniority will depend upon length of service.

Again, in *A. Janardhana v. Union of India* it was held that a later direct recruit cannot claim seniority from a date before his birth in the service or when he was in school or college.

Similarly it was pointed out in *A.N. Pathak v. Secy. to the Govt.* that slots cannot be kept reserved for direct recruits for retrospective appointments.

26. This was affirmed in a later case of *Subba Reddy vs A.P.SRTC*



(2004) 6 SCC wherein the observation of the Apex Court reads as under:-

32. It is trite that a direct recruit is considered to be borne in the cadre from the date of his recruitment. This aspect of the matter has been considered by a Division Bench of this Court in *Suraj Parkash Gupta v. State of J&K* wherein almost all the decisions operating in the field including *State of W.B. v. Aghore Nath Dey* and *N.K. Chauhan v. State of Gujarat* were noticed.

27. Again, in *Arvinder Singh Bains v. State of Punjab*, (2006) 6 SCC 673, it has been held as under:-

(1) *Ajit Kumar Rath v. State of Orissa*, SCC at paras 13 and 14 (2 Judges):

"13. It was also contended on behalf of the respondents before the Tribunal, and is also reiterated here, that the respondents are entitled to reckon their seniority from 1970 and 1971 as they were appointed against the vacancies of those years. It is pointed out that the advertisement in 1970-71 for direct recruitment on the posts of Assistant Engineer was issued by the Public Service Commission on 6-12-1971 and the result was thereafter published which indicated that all the respondents had been selected. They were also directed to appear before the Medical Board. The order of appointment was, however, passed on 3-1-1972. The respondents, therefore, claim seniority with effect from 1970 and 1971 on the ground that they were appointed against the vacancies of 1970 and 1971. They claim that their seniority may be antedated.

14. This plea is wholly unfounded and is liable to be rejected as without substance and merit. The law on this question has already been explained by this Court in *Jagdish Ch. Patnaik v. State of Orissa* and it was categorically held that the appointment does not relate back to the date of vacancy."

(2) *Suraj Parkash Gupta v. State of J&K*, (2 Judges):

"Point 4

Direct recruits cannot claim appointment from date of vacancy in quota before their selection" (emphasis in original)

28. In *M. Subba Reddy vs APSRTC* (2004) 6 SCC 729, the decision in *Suraj Parkash Gupta* was not endorsed by the majority, while the dissenting judge had relied upon the same. While referring to the said case in *AFHQ/ISOs SOs (DP) Assn. v. Union of India*, (2008) 3 SCC 331, the Apex Court through a three judges Bench has held as under:-

43. The contention of the appellants before this Court



was that they had a right to be promoted within their quota during the years 1981 to 1987, when vacancies for promotees' quota became available. M. Subba Reddy, the appellant in that case, was regularized from 27-12-1986 vide order dated 9-9-1988, when no direct recruits were available and, therefore, it was improper for the Corporation to place direct recruits above the promotees. The appellant submitted that in such a case the quota in Item 3(1) of Annexure 'A' to the Recruitment Rules would not apply; that the said item prescribed only quota and not rota for seniority and that the direct recruits could not claim appointment from the date of vacancy in their quota before their selection.

44. They added that seniority was dealt with only by Regulation 3 of the Service Regulations, 1964 and not by Regulation 34 of the Recruitment Regulations, 1966. That in view of the 15-9-1995 amendment, Regulation 34 referred to only allocation of vacancy and not for determination of seniority. A total ban on direct recruitment was imposed by the State from the year 1977 to 1988 and, thus, the purported quota-and-rota rule contained in Item 3 of Annexure 'A' could not have been given effect to.

45. The majority view of this Court was that where there is inaction on the part of the Government or employer or imposed ban on direct recruitment in filling up the posts meant for direct recruits, it cannot be held that the quota has broken down. We, with respect, do not support the view of the learned Judges that in the facts and circumstances of the case the quota has not broken down because of inaction on the part of the Government in imposing ban in filling up the posts meant for direct recruits. The appellants in the said case were promoted in a regular manner having been regularized in service with retrospective effect. Their services were not regularized from the date of their initial ad hoc promotion but with effect from the date when the vacancies became available. Their services after regularization would not be by way of a stopgap arrangement. The direct recruits who were appointed in the years 1990 and 1991, in terms of Item 3 of Annexure 'A' would be considered to have been appointed only after their successful completion of training. They were borne in the cadre in the years 1990-1991 and, thus, prior thereto they cannot claim seniority. The learned third Judge, dissenting with the learned two Judges, has held that the direct recruit can claim seniority from the

2

date of his regular appointment, but he cannot claim seniority from a date when he was not borne in the service. Thus, the direct recruits of 1990 and 1991, by reason of the impugned seniority list, could not have been placed over and above the appellant promotees because the purported quota-and-rota rule contained in Item 3 of Annexure 'A' could not have been given effect to because the State Government had imposed total ban on direct recruitment from the years 1977 to 1988. In such a situation, the said quota rule became inoperative. We agree with the dissenting view of the learned Judge that in the facts of the case, the quota rule became inoperative because the direct recruits were borne in the cadre when they were appointed against the vacancies meant for them. Therefore, the majority view in *M. Subba Reddy* is of no assistance to the AFHQ Civil Service (Direct Recruits) Officers' Association as the relative seniority between the direct recruits and regularly appointed/promoted candidates within their respective quota, in the present case, shall be determined by the length of the continuous officiation in the grade of ACSOs from their respective appointment to the substantive vacancies in terms of Schedule III within their quota as held by CAT in *M.G. Bansal* case, which has attained finality after dismissal of SLPs filed against the said order of the Tribunal.

29. Reference to the decision of *Suraj Parkash Gupta* has also been made in extenso in a very recent case of *State of J&K v. Javed Iqbal Balwan*, (2009) 4 SCC 529.

30. Though the private respondents relied upon the decision of the Apex Court in the case of *Union of India v. Madras Telephone SC & ST Social Welfare Assn.*, (2000) 9 SCC 71, the same relating to relative supremacy of statutory rules over executive instructions and the Rules thereof being of 1966, whereas the rules applicable to the facts of this case are of 1981 as amended, the said decision does not come to the rescue of the private respondents. In any event, the latest decision of the Apex Court by a larger bench has been taken support of. It is also pertinent to mention here that the applicants were promoted as early as in late eighties or early nineties. To change their seniority to their detriment at this juncture would mean unsettling the settled affair. The 147 candidates whose seniority has been reflected in the impugned order qualified in the competitive examination in 2002 in which event, the settled seniority of the applicant who stood promoted long back cannot be unsettled. Perhaps it is for this reason that the Tribunal in its order in OA No. 1497/96 administered a caution that those who stood passed in the qualifying examination prior in point of time would all be senior to those who qualify



subsequently.


31. In view of the above, the O.A. is allowed. The impugned seniority at Annexure A-7 and the Annexure A-32 promotion order issued based on the Annexure A-7 seniority are hereby quashed and set aside. Respondents are directed not to disturb the seniority of the applicants and similarly situated individuals by interpolating the seniority of the combined competitive exam qualified individuals (147), whose seniority has to be below that of those who had passed in the qualifying examination prior to 1996. Seniority list should therefore be recast accordingly. Further promotion to the post of Executives {TES Group B (Telecom)} should be on the basis of the recast seniority. No cost."

5. The respondents in their reply has taken the preliminary objection that this OA is hit by limitation as the challenge is against the provisional seniority lists dated 28.7.2004 and 2.12.2004. They have also submitted that OA is liable to be dismissed for non-joinder of necessary parties. On merits they have submitted that the applicant herein was promoted as SDE along with similar others working all over India under 75% seniority cum fitness quota by Annexure A-1 order. They had conducted an examination for promotion to the grade of SDE Telecom in BSNL against 25% departmental examination quota for filling the vacancies pertaining to the period from 1996-97 to 2000-2001 vide Annexure A-3. The first respondent passed Annexure A-4 order promoting the candidates who were qualified in Annexure A-3 examination. Based on Annexures A-1 and A-4 orders the respondents have circulated Annexures A-5 & A-6 provisional seniority lists of SDEs. The applicant has been promoted as TES Grade-B under seniority quota as per DPC recommendations dated 6.12.2001 against the vacancy year 1999-2000. Whereas the competitive quota officers promoted under competitive quota vacancies were from 1996 to 2000-2001 vacancy



years on the basis of departmental competitive examination held on 1.12.2002. Their seniority has been interpolated with the seniority of promotee officers as per the rotation of vacancies prescribed in the 1996 recruitment rules. The respondents have also submitted that against the impugned provisional seniority lists the applicant has not made any objections till the Annexure A-11 representation is made in the year 2008.

6. We have heard learned counsel for the applicant and learned counsel for the respondents. Admittedly the Annexures A-5 and A-6 seniority lists have not attained their finality. They are still at the provisional stage. Therefore, the objection of limitation raised by the respondents have no force. Moreover, the issue involved in this OA is on the principle adopted by the respondents in determining the seniority of candidates promoted to the post of TES Group-B officers. In our considered view the order of the Chandigarh Bench of this Tribunal in the case of Dewan Chand (supra) is directly on the said issue. It has been specifically held in that order that the seniority of the incumbents have to be determined on the basis of the dates of their actual joining and not on notional basis by allotment of slots. The aforesaid position of law has also been confirmed by a Co-ordinate Bench of this Tribunal in the case of V. Govindan (supra). We, do not find any valid reasons for any departure from the aforesaid two decisions. Accordingly, we quash and set aside the Annexures A-5 and A-6 provisional seniority lists Nos. 6 & 7 of TES Group-B officers issued on 28.7.2004 and 2.12.2004 respectively. The respondents shall recast the seniority on the basis of the order of the Chandigarh Bench of this Tribunal

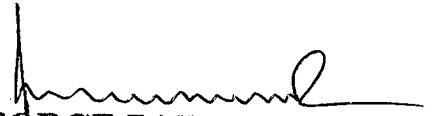


in Dewan Chand's case (supra) followed by the order of this Tribunal in V. Govindan's case (supra). They shall issue revised provisional seniority lists of TES Group-B officers and invite objections/representations, if any, from the persons concerned within four months from the date of receipt of a copy of this order. Further, the respondents shall consider the objections/representations, if any, received and issue the final seniority lists within two months, thereafter.

7. There shall be no order as to costs.



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER



(GEORGE PARACKEN)
JUDICIAL MEMBER

"SA"