

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O.A. No. 241 & 243 of 1990
XXXXXX

DATE OF DECISION 9-11-1990

MPS Nambeesan _____ Applicant (x) in OA-241/90
PJ Sangry - Applicant in OA-243/90

M/s AK Avirah & Krishnamoorthy Advocate for the Applicant (s) in
both the cases
Versus
Union of India & 2 others Respondent (s)

Mr V Krishnakumar, ACGSC Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. SP Mukerji, Vice Chairman

&

The Hon'ble Mr. AV Haridasan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? *No*
2. To be referred to the Reporter or not? *~*
3. Whether their Lordships wish to see the fair copy of the Judgement? *~*
4. To be circulated to all Benches of the Tribunal? *~*

JUDGEMENT

(Mr AV Haridasan, Judicial Member)

As similar facts and law are involved in these two cases, they are being considered and disposed of together.

2. The applicants in both these cases are working as Officer Engineering in the Telecommunication Department. The applicants have in these applications filed under Section-19 of the Administrative Tribunals Act prayed that the orders dated 25.10.1989 of the Ministry of Communications, Department of Telecommunications, New Delhi signed by the Assistant Director General (SGT) deciding that the judgement of the Allahabad High Court in W.P. No. 2739/81 relates to the applicants therein only

and it was not possible to revise the seniority of the officers in the grade of TES Group B may be quashed and that the respondents may be directed to promote the applicants to the cadre of Assistant Engineers with effect from the dates prior to the dates of promotion of persons who passed the qualifying examination subsequent to them and to adjust their seniority declaring that the applicants who had passed the Departmental Qualifying Examination were entitled to be promoted to the cadre of Assistant Engineer with effect from a date prior to the date of promotion of persons who had passed the qualifying examination subsequent to them. The facts of the cases as averred in these applications can be briefly narrated thus.

3. The applicant in OA-241/90 joined the Telecommunication Department as Junior Engineer in the year 1965 and the applicant in OA-243/90 joined the Department as Junior Engineer in the year 1966. The method of promotion ^{of} ~~to~~ Junior Engineers to the grade of Assistant Engineer in the Telecommunication Department is provided for in paragraph 206 of the P&T Manual which reads as follows:

"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 T.E.&W.S 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 occasion, 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."

The Telegraph Engineering Service Group B Recruitment Rules, 1966

also provide that recruitment to the service shall be entirely by promotion on the basis of selection from amongst Junior Engineers through departmental examination. Therefore, in view of the provisions contained in paragraph 206 of the P&T Manual, those Junior Engineers who passed the Departmental Qualifying Examination earlier are entitled to be promoted prior to those who passed the examination later. The applicants in these two cases passed the Departmental Qualifying Examination for promotion to TES Group B in the year 1974. But overlooking their claim for promotion, several persons who passed the examination subsequent to the passing of the examination by the applicants were promoted between 1974 and 1981 and the applicants were promoted to TES Group B only in the year 1981. When some of the Junior Engineers similarly placed as the applicants approached the Hon'ble High Court of Allahabad challenging the promotion of Junior Engineers who passed the Departmental Qualifying Examination later than them before they were promoted, though the Department resisted the application, the Hon'ble High Court In W.P.No.2739/81 allowed their claim and directed the respondents to promote the applicants therein with effect from the date of promotion of any person who passed the Departmental Examination subsequent to them and to adjust their seniority accordingly and pay them salary and

allowances accordingly with effect from the said dates.

Though the Union of India took up the matter before the Supreme Court, the Hon'ble Supreme Court dismissed the SLP on merits. As the respondents did not implement the spirit of the judgement of the Allahabad High Court in the case of the applicants, the applicants in both these cases made representation to the second respondent praying that in the light of the judgement of the Allahabad High Court, their seniority in the blue list may be corrected and the benefits given to the applicants before the Allahabad High Court may be extended to them also. Since there was no response, both the applicants submitted a reminder each. As there was no response still the applicants filed OA K-493/88 and OA K-494/88 respectively before this Tribunal praying that a direction may be issued to the respondents to promote them to the cadre of Assistant Engineer with effect from the dates prior to the dates of promotion of persons who passed the qualifying examination subsequent to them. These original applications were disposed of by this Tribunal on 28.6.1989 directing the Director General, Telecommunications to dispose of the representation made by the applicants within a period of two months from the date of receipt of communication of those orders. It was pursuant to this direction that the impugned orders have been passed stating that the judgement of the Allahabad High Court in W.P.No.2739/81 relates to the two petitioners in that case only and that it was not possible to review the seniority of the officers in the grade of TES Group B at this stage. Aggrieved by these orders, the applicants have filed these applications.

4. Even though several opportunities were given to the respondents to file reply affidavit in these cases, no reply affidavit was filed. The learned counsel for the applicant brought to our notice that OAK-112/88 for identical relief by similarly situated persons as in these cases was allowed submitted that and /this case may also be disposed of on the basis of the above *✓* decision. Though the Additional Central Government Standing and Counsel admitted that the dispute involved in these cases/in OAK-112/88 was similar, he submitted that similar applications are pending before the Principal Bench and that steps are being taken for having these cases transferred to the Principal Bench. On the basis of the above submission of the ACGSC, on 1.10.1990 we adjourned the case to 15.10.1990. ~~xxxxxxxxxxxxxxxxxxxx~~ *✓* ~~xxxxxxxxxxxxxxxxxxxx~~ mentioning clearly that the case would be finally heard on 15.10.1990. On 15.10.1990, when the case came up for hearing, we noticed that no reply statement was filed by the respondents. So we had no other alternative but to hear the arguments of the learned pleadings and counsel on either side on the basis of the available/documents.

5. Hon'ble Hon'ble
As observed by/Shri UC Srivastava(J) and/Shri SC Mathur
(J) in judgement in W.P.No.2739/81, paragraph 206 of the P&T Manual does not come into conflict with the TES Group B Recruitment Rules, 1981. It only supplements the same. Therefore, in making promotions to TES Group B, the provisions of paragraph 206 of the P&T Manual cannot be ignored. It is on that basis the Allahabad High Court in the W.P.No.2739/81 held that the

petitioners in that case were entitled to be promoted to TES Group B with effect from the date of promotion of any person who passed the Departmental Qualifying Examination subsequent to them. According to paragraph 206 of the P&T Manual, Junior Engineers who pass the Departmental Qualifying Examination earlier are to rank senior to those who passed the examination subsequently. Therefore, we are in respectful agreement with the decision of the Allahabad High Court in the above said writ petition. Accepting the above dictum, we have in OA-112/88 held that the applicants in that case were entitled to be promoted as Assistant Engineers with effect from the date of promotion of any person who passed the Departmental Qualifying Examination subsequent to them. The learned counsel for the respondents submitted that the decision of the Allahabad High Court is applicable to the two applicants in that case and/it does not have any general application and that on that ground the impugned orders in these cases are justified. He also submitted that it will create difficulties, if seniority already determined years back is ordered to be reopened at this stage. Going through the judgement of the Allahabad High Court referred to in the application, we find that the applicants in those cases were found to be entitled to be promoted with effect from the dates of promotion of any person who passed the Departmental Qualifying Examination after they had passed the examination based on the provisions contained in paragraph 206 of the P&T Manual and not basing on any special circumstance peculiar to the applicants in that case. The

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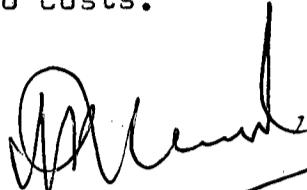
provisions of paragraph 206 of the P&T Manual are applicable to all the Junior Engineers of the P&T Department. Therefore, there is absolutely no justification for the Department to say that the decision of the Allahabad High Court is applicable to the applicants in that case only. When the Allahabad High Court gave the decision and when the Department implemented the decision in the case of the applicants therein, the Department should have revised the seniority giving the benefit to all similarly situated persons or atleast when the applicants made representation in that behalf, the respondents should have done so. It was only after this Tribunal directed the second respondent to dispose of the representations made by the applicants that the impugned orders have been passed. As stated by us earlier, the reasoning in the impugned order that the decision of the Allahabad High Court is applicable to the applicants in that case/and that therefore the applicants herein are not entitled to any relief claimed in their representation does not stand to reason. The learned counsel for the respondents submitted that similar applications are pending before the Principal Bench and that it would be better to await the decision of the Principal Bench in order to avoid conflict of decisions. But though on earlier occasions the learned counsel submitted that steps are being taken for transferring these cases also to the Principal Bench, we find no steps taken and the respondents did not even file a reply statement. The averment in the application that an

SLP filed before the Supreme Court challenging the decision of the Allahabad High Court in W.P.No.2739/81 was dismissed on merits has not been disputed by the respondents. Therefore the principle enunciated in W.P.No.2739/81 that on the basis of the provisions contained in paragraph 206 of the P&T Manual those Junior Engineers who have ~~not~~ passed Departmental Qualifying Examination earlier are entitled to be promoted prior to the promotion of those Junior Engineers who passed the examination subsequently has to be accepted as binding precedent. Therefore we are of the view that the claim of the applicants that they are entitled to be promoted with effect from the dates prior to the date of promotion of persons who passed the Departmental Qualifying Examination subsequent to them is perfectly valid and has to be accepted.

6. In view of what is stated above, we allow the applications OA-241/90 and OA-243/90, quash the impugned orders in these cases dated 25.10.1989, declare that the applicants in these ^{two} cases are entitled to be promoted to the grade of Assistant Engineers with effect from the dates prior to the promotion of any person who passed the Departmental Qualifying Examination subsequent to them and direct the respondents to promote the applicants in these two cases to the cadre of Assistant Engineer with effect from the dates prior to the dates of promotion of any person who passed the Departmental Qualifying Examination subsequent to them and to adjust their seniority



accordingly and to pay them the arrears of pay and allowances accordingly with effect from those dates. Action on the above lines should be completed within a period of two months from the date of communication of this orders. There is no order as to costs.


(AV HARIDASAN)
JUDICIAL MEMBER

9/11/90


(SP MUKERJI)
VICE CHAIRMAN

9-11-1990

trs

8.7.91 Mr. Krishnamurthy - for the petitioner.

Mr. Ajith Narayanan - for respondents. SPM&AVH

The learned counsel for the original respondents seeks some time to file a reply to the contempt petition and undertakes to do so within four weeks with a copy to the learned counsel for the petitioner. Accordingly list for further directions on 8.8.91.

A copy of the above order may be given to the counsel for the respondents by hand.

8.7.91

8-8-91
(17)

SPM & AVH

Mr AK Avirah for petitioner

Mr Ajith Narayanan for respondents

The learned counsel for the respondents states that the petitioner has since been promoted w.e.f. 12.5.77 and his seniority revised. He is directed to file a statement within 2 weeks with copy to the petitioner.

List for further directions on 28.8.91

A copy of this order be given to the learned counsel for the respondents by hand.

8-8-91

28-8-91
(24)

SPM & AVH

Mr Avirah

Mr Ajith Narayanan

The learned counsel for the respondents has produced a statement enclosing a copy of the order issued by the respondents dated 5.8.91 sanctioning the applicant the dates of promotion w.e.f. 12.5.77 and seniority and arrears of pay & allowances. The learned counsel for the petitioner seeks some time to give his reaction to the same.

List for further direction on 9.9.91

28-8-91

9.9.91

SPM

Mr. Avirah
Mr. Krishnakumar.

Heard the learned counsel for both the parties. The learned counsel for the applicant states that the order of this Tribunal has been complied with and he does not wish to press the CCP any more. Accordingly the CCP is closed and the notice of contempt discharged.

Sd/-
9.9.91

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