

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 254/2003

FRIDAY THIS THE FIFTH DAY OF MAY, 2006

C O R A M

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. GEORGE JOSEPH, JUDICIAL MEMBER**

1 A.R. Krishna Kurup S/o Raghavan Pillai
Sub Divisional Engineer (Phones), BSNL
Erattupetta
residing at Arackal, Panachipara
Poonjar PO, Kottayam District.

2 V. Mohandas S/o K. Viswanathan Nair
Sub Divisional Engineer (Call centre)
Central Telephone exchange, Trivandrum
residing at TC 33/1957, Viswas, Nethaji Road
Vattiyoorkavu, Trivandrum.

3 P.U. Chacko S/o Mathew Uttuppan
Sub Divisional Engineer (Phones),
Telephone Exchange, Neendoor
Kottayam,
residing at Plankoottathil
Karapuzha, Kottayam.

Applicants

By Advocate Mr. Shafik.

Vs.

1 Union of India represented by Secretary to the
Government of India, Department of Telecommunications
Ministry of Communications, New Delhi.

2 The Chairman cum Managing Director
Bharat Sanchar Nigam Limited
Sanchar Bhavan, New Delhi.

3 The Chief General Manager,
Telecommunications
Kerala Circle,
Trivandrum.

4 Sri K. Sukumaran Chettiar
Divisional Engineering Telecom, Aryanad,
Trivandrum.

5 Sri T.C. Paulraj
Divisional Engineer (Vigilance)
Office of the General Manager (Mobile Services)
RTP Building, Lukes Lane,
Trivandrum.

Respondents.

By Advocate Mr. C. Rajendran for R 1 - 3

ORDER

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

The applicants are Sub Divisional Engineers working in the Dept of Telecommunications (now absorbed in BSNL) and are aggrieved by the Annexure A1 order dated 17.3.03, issued by the third respondent, promoting their juniors on adhoc basis to the STS of ITS Group-A in preference to them.

2 The applicants were appointed in the 1972 batch of JTOs. After 22 years of service they were promoted as TES Group-B officers as per order dt 17.10.96 (Annexure A2). As per the Recruitment Rules in force till 1996, the method of promotion to TES Group-B was through a competitive examination, but as per an amendment made to the Recruitment Rules on 22.7.96, promotion to TES Group-B came to be purely based on seniority. in the cadre of Junior Telecom Officer. Since the qualifying examination was not conducted since 1990, the promotions issued to the applicants as per Annexure A-2 order is purely based on seniority and hence it is contended by the applicants that their further promotion to the posts of JTS and STS of Group-A should also be based on seniority in TES Group-B which again is determined by seniority in the JTO cadre. As a prelude to appointment under ITS, seniormost SDE(TES Group-B) are granted local

officiating promotion into Group-A purely by the method of seniority cum fitness as per instructions in Annexure4. It is further averred that the promotions to TES Group-B have been the subject matter of a number of proceedings before the Hon'ble Supreme Court as well as this Tribunal and after the decision of the Supreme Court a major exercise of recasting the seniority lists has been undertaken by the respondents. However the promotions effected after the issue of Annexure A-3 Recruitment Rules have not been reflected in the seniority list and without preparing such an integrated list the respondents are going ahead with making promotions, thereby the applicants who are 1972 batch JTOs are left out of even ad hoc promotions while granting such adhoc promotions to the 1973 batch also.

3 The following are the reliefs prayed for :

- (i)To call for the records relating to AnnexureA1to A10 and to declare that the applicants are eligible to be considered for promotion to JTS and STS of Its Group- A in preference to those individuals included in Annexure A1 on the basis of their seniority and to declare Annexure A1 to the extent it excludes the applicants as illegal and arbitrary. and to quash the same
- (ii)To direct the applicants to consider the applicants also for promotion to JTS and STS of ITS Gr A in the available vacancies
- (iii)To direct the respondents to immediately prepare a seniority list of TES Group-B officials of the circle after Annexure A3 Recruitment Rules is issued and to make promotions to JTS STS of ITS Group-A on the basis of such seniority.
- (iv)To consider and dispose off Annexure A9 and A10 and similar representations immediately
- (v)To issue such other appropriate orders or directions this Honourable Court may deem fit ,just and proper in the circumstances of the case and
- (vi) To grant the costs of this Original Application.

4 The respondents have contended that though the applicants belong to 1972 recruitment year of JTOs, they did not qualify in the departmental qualifying examination for Group-B and hence some of the qualified officers from the same and subsequent years of JTOs became seniors to them in the seniority list of TES Group-B as per rules on the subject. Up to the year 1996, the seniority in the cadre was fixed on the date of passing the examination, subsequently the pre-requisite of passing the examination was withdrawn and JTOs are to be considered for promotion to TES Group-B on seniority cum fitness. They have relied on the instructions issued by DOT in AnnexureR1. According to Annexure R1 letter the applicants who have not cleared the qualifying examination ranked junior to those who have passed the qualifying examination and promoted earlier to the applicants to Group-B. It is also submitted that as per directions of the Supreme Court revised seniority lists on all India basis are being issued. So far only Lists 4 to 5 have been published, the applicants may find place in List 6 or subsequent ones and they will be promoted when their turn comes.

5 The second respondent viz. BSNL also filed a reply statement to the effect that the applicants have been permanently absorbed into the BSNL vide Presidential order dated 1.10.2000. and that the Hon. Tribunal has no jurisdiction to deal with the service matters of the employees of the BSNL being a Corporation which is not notified under the Section 14(2) of the CAT Act. and hence the OA may be closed.

6 Th applicants have filed a rejoinder urging that there is no seniority list in which the applicants find a place and the Kerala Circle is not drawing up a seniority list in accordance with the guidelines issued by DOT. They also drew attention to the Hon Supreme Court's directions in the matter of seniority.

7 We have heard the Learned counsel on both sides. The main point for consideration is the determination of seniority between the applicants who belong to the 1972 batch of JTOS and the private respondents who belong to the subsequent batches, in the cadre of TES Group-B as it is based on this seniority that the next promotions to the cadre of ITS Group-A have been made in the impugned orders. Both the parties agree that seniority was determined on the basis of the qualifying examination up to 1996 and thereafter the amended Recruitment Rules came into effect incorporating the provision that when juniors are promoted on the basis of qualifying service seniors should also be considered. The applicants were admittedly promoted on seniority basis vide order at Annexure A-2 dated 17.10.96. which is after the amended Rules came into force. There is no precise averment as to when the respondents were promoted. It is indicated in the reply statement that there were promoted earlier than the applicants However the Recruitment Rules do not say anything about the manner in which the seniority is to be determined for which the respondents rely on R1 order dated 26.9.96. These orders are not specifically dealing with seniority but are guidelines for making officiating arrangements, which can only be taken as indicative of seniority. It says that the JTOS who have qualified in the TES Group-B examination may be given preference over the non-qualified JTOS for the posts created prior to

23.7.96 i.e the date of coming to force of the new Recruitment Rules. Therefore it is clear that preference was confined to posts prior to 1996 and thereafter no such distinction would be maintained. It is not clear from the pleadings whether the respondents herein were promoted to posts which existed prior to 1996. In fact there are no clear pleadings from both sides on this and other points as well and hence we are unable to arrive at any clear findings.

8 As far as seniority is concerned ,both sides rely on the Supreme Court judgement in OA4339/95 dated 26.10.2000. The relevant portion which has been extracted by the applicants in their rejoinder.

"Once a statutory recruitment rule has come into force and procedure has also been prescribed under the said rule for preparation of eligibility list of officers for promotion for Engineering class II by notification dated 28.6.96, it is that procedure which has to be followed and the earlier administrative instructions contained in para 206 of the P&t Manual cannot be adhered to."

9 The DOT also in Annexure A-4 letter dated 5.9.2000 confirmed this position and stated that the combined seniority list of JTOS will be prepared strictly on the basis of the year of recruitment in the JTOS cadre. Now the question is whether the seniority as prescribed above has been followed or not in making the impugned promotions to the ITS Group- A cadre. No such seniority list circle-wise or on all India basis has been produced before us. The respondents have stated that only two lists have been issued so far and the rest are under preparation, but the applicants are not finding place in the published list. Only after the complete lists are prepared and circulated can the applicants have an opportunity to verify whether the

guidelines have been followed or not. On the basis of the vague and sketchy statements of facts in the OA, no definite conclusions can be arrived at. However we note that the promotions made are only adhoc arrangements and would have to be reviewed after the finalization of the seniority.

10 The question of maintainability has been raised as the applicants have been since absorbed in BSNL with retrospective effect. When the Application was filed the applicants were DOT employees and in a common order of this Tribunal has already held that in matters relating to their service in the erstwhile Dept, if the matter was already pending in the Tribunal at the time of absorption, the Tribunal will continue to have jurisdiction. And hence we consider that the OA is maintainable.

11 In the result OA is disposed off with the following general directions:

1 The respondents shall finalise the seniority lists of officials of the TES Group- B after the publication of the Recruitment Rules in accordance with the guidelines in the Annexure A-4 letter and the observations of the Hon'ble Supreme Court.

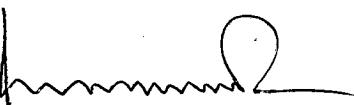
2. Consider the representations at Annexure A-9 & A-10 in accordance with the seniority as decided above.

3 And if by such determination the applicants gain seniority over the respondents they shall be entitled to

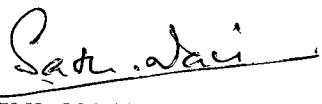
consequential benefits in BSNL service if any such benefits are extended to the respondents.

4 The above exercise shall be completed within a period of four months. No costs.

Dated 5.5.2006



GEORGE PARACKEN
JUDICIAL MEMBER



SATHI NAIR
VICE CHAIRMAN

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