

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.259 of 2013

...THURSDAY, this the 21st day of August 2014

C O R A M :

**HON'BLE Mr.U.SARATHCHANDRAN, JUDICIAL MEMBER
HON'BLE Mr.P.K.PRADHAN, ADMINISTRATIVE MEMBER**

1. K.P.Jayadevan,
Assistant General Manager (EP),
Equipment Planning, O/o.General Manager,
BSNL, Kottayam – 686 001.
Residing at Nandanam, M.L.Road,
Near T.B., Kottayam – 686 039.
2. Jaya M Nair,
Divisional Engineer (Phones),
BSNL, Changanacherry.
Residing at Amrutham, Puzhavathu,
Changanacherry P.O., Pathanamthitta.
3. B.Vasantha Kumari,
Assistant General Manager (Equipment Planning),
O/o.General Manager, Telecom,
BSNL, Palakkad – 678 014.
Residing at Triveni, Chittoor Road,
Palakkad – 13.
4. Mariamma George,
Divisional Engineer (Retired),
BSNL, Pampady, Kottayam.
Residing at Tharayaniil House, Muttambalam P.O.,
Kannikuzhy, Kottayam – 686 004.
5. P.J.Mariamma,
Assistant General Manager,
(Operation Planning) (Retired),
BSNL, O/o.PGMT, Kottayam.
Residing at Moomutheyil,
Chirayil Padam, Kottayam – 686 001.

S

.2.

6. T.Santhakumari Amma,
Divisional Engineer (External) (Retired),
O/o.Divisional Engineer, BSNL, Alappuzha.
Residing at Aswathi, East of Exchange Road,
Alappuzha H.P.O.
7. M.Thulasee Bai Amma,
Area Manager, BSNL,
Karunagappally, Kollam District.
Residing at Dhanya, Neeleswaram P.O.,
Kottarakara – 691 506.
8. Rumold Joe Nettar,
Divisional Engineer (Retired),
O/o.General Manager, Telecom, BSNL, Kollam.
Residing at May Blossom, Kairali Nagar – 78,
Mulankadakam, Kollam – 691 012.
9. R.Surendran Achary,
Assistant General Manager,
(Operation Planning) (Retired),
O/o.General Manager, Telecom, BSNL, Kollam.
Residing at Surabhi, Ampalakkara P.O.,
Valakom (via), Kottarakara, Kollam – 691 532.
10. V.K.Suseela Devi,
Deputy General Manager (Mobile Services),
Panampally Nagar, Ernakulam.
Residing at Mangalath, Alappuzha Town,
Alappuzha. ...Applicants

(By Advocate Mr.Vishnu S Chempazhanthiyil)

V e r s u s

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. ...Respondents

(By Advocate Mr.George Kuruvilla)

✓

.3.

This application having been heard on 7th July 2014 the Tribunal on 21st August 2014 delivered the following :-

ORDER

HON'BLE Mr.U.SARATHCHANDRAN, JUDICIAL MEMBER

M.A.No.338/2013 for permitting the applicants to join together in this OA stands allowed.

2. Applicants, who are members of Telegraph Engineering Services Class II, have approached this Tribunal for the third occasion in connection with their promotion to the post of Assistant Engineer. Their case has been aptly summarized in the order they have obtained last from this Tribunal in O.A.No.116/2011.

" 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

>

.4.

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.....”

3. Annexure A-19 order dated 29.11.2011 the applicants obtained from this Tribunal in OA No.116/2011 reads as follows :

“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.”

4. It is alleged by the applicants that based upon the directions in the above order, 2nd respondent issued Annexure A-20 Office Order dated 25.4.2012. The applicants alleges that Annexure A-20 is totally illegal, arbitrary and is in violation of the directions in the order obtained by the applicants in O.A.Nos.1741/1991 and 616/1991 as well as directions of the Hon'ble Apex Court in judgments/orders reported in 2006 (8) SCC 662 and 2008 (11) SCC 579. The specific direction in Annexure A-1 and Annexure

.5.

A-1 (a) orders was to promote the applicants with effect from the date of promotion of applicant's junior. The applicants further contend that the juniors who had filed similar O.As claiming the benefit of P.N.Lal's case and who had judgments like Annexure A-1 and Annexure A-1(a) in their favour have been granted the benefit of aforequoted judgments of the Apex Court. For example, Shri.G.Mohandas who is junior to the applicants have been granted benefits as per the direction in Annexure A-14 order in O.A.No.520/2009 and his seniority has been revised from 9294 to 5138 as per Annexure A-16 order. Similarly, the seniority of Shri.Baby Peter was revised from 14286 to 5138. This benefit was denied to the applicants. While the applicants were recruited in the year 1971, Shri.G.Mohandas was recruited in 1972 and while the applicants passed the qualifying examination in 1982, Shri.G.Mohandas passed the examination only in 1985. Therefore, according to the applicants, they are entitled to be granted seniority at 5138 and its consequential benefits.

5. Respondents filed a reply admitting the different judicial pronouncements made by different Tribunals including the Hon'ble Apex Court in this matter. It is also admitted by the respondents that the Apex Court had further decided that the persons who have already got the benefit like Paramanand Lal and Brij Mohan (who obtained the order from the Allahabad High Court enable to secure the seniority from the date of passing the examination) will not suffer and their promotion already made

will not be affected by the subsequent decision of the Hon'ble Apex Court as reported in (1997) 10 SCC 226. Thereafter, pursuant to Annexure A-3 judgment, the seniority of the applicants were revised by the Department vide Order No.15-28/2003-STG-II dated 19.5.2008. The Department thereafter decided to prefer Special Leave Petition before the Supreme Court as the representations received from different similar officers required clarifications. Accordingly, BSNL has filed Special Leave Petition (Civil) No.23889/200 (Union of India v. Sohanlal Sayal and others) and the same stands converted as Civil Appeal No.4389/2010 and the same is still pending. On the same issue the BSNL has now filed S.L.P.(Civil) Nos.18886/2012 to 18902/2012 against the order of the High Court of Punjab and Haryana dismissing the writ petition filed against the decision of the Principal Bench of this Tribunal. The said S.L.Ps were admitted and are pending before the Apex Court converted as Civil Appeal Nos.8929/2012 to 8945/2012. Similar S.L.P.(Civil) CC No.10360/2010 (Union of India and others v. Mariamma John and others) has also been admitted by the Hon'ble Supreme Court vide order dated 19.7.2010 and the same is tagged with Civil Appeal No.4389/2010. According to the respondents, the matter is still under consideration of the Hon'ble Apex Court. Respondents pray that in view of the pendency of the S.L.Ps filed by BSNL seeking clarification in the matter, the applicants' claim may be kept in abeyance till the outcome of the decision of the Apex Court.



6. A rejoinder was filed by the applicant reiterating the pleas in the OA and contending that in spite of the order of this Tribunal in O.A.No.1741/1991 and O.A.616/1991 allowing the benefits of Allahabad High Court's judgment to the applicants and in spite of the clarificatory orders issued by the Hon'ble Supreme Court reported in 2000 (9) SCC 71 and in Annexures A-2 and A-3 judgments of the Apex Court, denying the benefits of fixation of seniority to the applicants and its consequences including arrears of pay is illegal and arbitrary.

7. We have heard Shri.Vishnu S Chempazhanthiyil, learned counsel for the applicant and Shri.George Kuruvilla, learned counsel for the respondents.

8. Learned counsel for the respondents referring to Annexure A-20 order, which is under challenge in this OA, pointed out that in obedience to the order of this Tribunal in OA No.116/2011 and as a consequence to the exercise of revision in accordance with order dated 28.9.2006 of the Hon'ble Supreme Court in I.A.No.16 in C.A.No.4339/1995 (Annexure A-2), the seniority of the applicants have gained substantial improvement.

9. It is interesting to read the Annexure A-20 Office Order dated 25.4.2012 issued by the 2nd respondent :

✓

" In compliance to order dated 29.11.2011 of CAT, Ernakulam Bench in OA No.116/2011, the claim of the following officers for revision of their seniority on qualifying year in SDE(I) grade as per para 206 and in accordance with order dated 28.9.2006 of Hon'ble Supreme Court of India in I.A.No.16 in CA No.4339/1995 has been examined. Their seniority, if so revised, will come down as per details given below.

<i>Sl.No.</i>	<i>Name (S/Shri/Smt)/ ST.Number/Category</i>	<i>Seniority No. prior to order dated 26.4.2000 as per qualifying year</i>	<i>Existing seniority No. after order dated 26.4.2000 as per Rec. Yr.</i>	<i>Reference No. of Tribunal order in favour of the applicant</i>
1	K.P.Jayadevan ST No : 11901 CAT : OC	9096 SL XIV-P.22	7156	OA 1741/91
2	Jaya M Nair ST No : 11861 CAT : OC	9054 SL XIV-P.21	7115	OA 1741/91
3	B Vasantha Kumari ST No : 11807 CAT : OC	9001 SL XIV-P.20	7062	OA 1741/91
4	Mariamma George ST No : 11818 CAT : OC	9010 SL XIV-P.20	7073	OA 1741/91
5	P J Mariamma ST No : 11706 CAT : OC	8899 SL XIV-P.17	6962	OA 1741/91
6	T Santhakumari Amma ST No : 11662	8856 SL XIV-P.17	6917	OA 1741/91
7	V K Suseela Devi ST No : 11606 CAT : OC	8860 SL XIV-P.17	6921	OA 616/91
8	Rumold Joe Nettar ST No : 11849 CAT : OC	9042 SL XIV-P.19	7103	OA 616/91
9	R Surendran Achari ST No : 11749 CAT : OC	8941 SL XIV-P.19	7005	OA 616/91

✓

Sl.No.	Name (S/Shri/Smt)/ ST.Number/Category	Seniority No. prior to order dated 26.4.2000 as per qualifying year	Existing seniority No. after order dated 26.4.2000 as per Rec. Yr.	Reference No. of Tribunal order in favour of the applicant
10	M Thulaseebai Amma ST No : 11710 CAT : OC	8904 SL XIV-P.19	6966	OA 616/91

Accordingly, the seniority of the above officers in SDE(T) grade equivalent to TES Group B will remain unchanged since their seniority has improved after revision of their seniority as per Hon'ble Supreme Court order dated 26.4.2000 in CA No.4339 of 1995."

(emphasis supplied)

10. It appears to us that the cleverly worded Annexure A-20 Office Order is a document which does not confer any relief to any of the applicants. The words "their seniority, if so revised," do not confer any right to the applicants. Learned counsel for the applicant submitted that what the applicants prayed for in the Annexure A-1 and Annexure A-19 cases was a seniority as per the benefit they sought in accordance with the Allahabad High Court's judgment. As the applicants obtained Annexure A-1 order of this Tribunal long back, what they are entitled to is not an improvement in their seniority; they are entitled to get their seniority fixed based on the date on which they have passed the departmental examination. In our view Annexure A-20 order is an "eye wash" employed by the respondents to make it appear that there was substantial compliance of the order in OA No.116/2011 (Annexure A-19 order). It has to be remembered that applicant had approached this Tribunal with OA No.116/2011 having found

✓

.10.

that no relief was given to them by the respondents in spite of having obtained Annexure A-1 order. Although the *ratio* of the Allahabad High Court's judgment was subsequently disapproved by the Hon'ble Apex Court, by Annexure A-2 order it was clarified by the Apex Court that those who have obtained orders on the basis of the Allahabad High Court's judgment (which was subsequently confirmed by the Apex Court in an earlier decision) will be protected. We have no hesitation to hold that the applicants in this case squarely fall within that category. As observed earlier, the observations in Annexure A-20 that the applicants have improved their seniority position is not the relief they have been seeking and have been fighting for till date.

11. Respondents state that the subject matter in this case is again pending before the Hon'ble Supreme Court in the aforementioned S.L.Ps, Civil Appeals. One can see that all those S.L.Ps and Civil Appeals have been filed by the respondents themselves even though it was made clear in Annexure A-2 judgment that the officers who have obtained favourable orders in accordance with the *ratio* of Allahabad High Court's order are protected. Therefore, from this it is clear that the respondents are not inclined to grant the benefit of Annexure A-1 and Annexure A-2 orders to the applicants and also the benefits of the orders subsequently passed by this Tribunal in Annexure A-19 to the applicants.

S

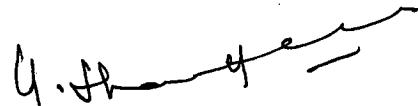
.11.

12. From the available facts and circumstances and considering the fact that the applicants have been fighting their cause since 1991, in order to bring quietus to the protracted litigation it is highly essential that prayer in this OA has to be allowed once again. Accordingly we allow the OA. However, it is made clear that this order would be subject to the result of the aforementioned Civil Appeals pending before the Apex Court.

13. The OA is disposed of accordingly.

(Dated this the 21st day of August 2014)


P.K.PRADHAN
ADMINISTRATIVE MEMBER


U.SARATHCHANDRAN
JUDICIAL MEMBER

asp