

**FREE COPY U/R 22**  
**OF C.A.T. (PROCEDURE) RULES**

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O.A. 1497/96, 297/98, 629/97, 1106/97

FRIDAY, THIS THE 1ST DAY OF MAY, 1998.

C O R A M:

HON'BLE MR. A. V. HARIDASAN, VICE CHAIRMAN "

HON'BLE MR. S.K. GHOSAL, ADMINISTRATIVE MEMBER

O.A. 1497/96

1. K. C. Jose S/o Iype Cheriyan  
Junior Telecom Officer,  
Central Telephone Exchange, Kozhikode

2. B. Krishnan S/o Chandu  
Junior Telecom Officer (Planning)  
Office of the General Manager,  
Telecom, Calicut-2

..Applicants

By Advocate Mr. M.R. Rajendran Nair

Vs.

1. The Chief General Manager, Telecom Circle,  
Thiruvananthapuram.

2. The Chairman, Telecom Commission  
New Delhi.

3. Union of India represented by the  
Secretary to Govt. of India, Ministry of  
Communications, New Delhi.

4. P.V. Sreedevi, Sub Divisional Engineer (Computer)  
Office of the General Manager,  
Telecommunications, Kalathiparambil Road,  
Kochi-16.

5. P.K. JOse, Sub Divisional Engineer  
(Installation), Office of the Sub Divisional  
Engineer (Installation), Jose Trust Building,  
Kochi-35.

6. Anil Kumar P, Sub Divisional Engineer  
(Cable Planning) Office of the General Manager,  
Telecommunications, 1st Flor, Catholic Centre,  
Broadway, Kochi-31

7. K. Premarajan, S/o Achuthab,  
Junior Telecom Officer, Cannanore "D-TAX

8. Raveendranathan P.  
Sub Divisional Officer (Phones)  
North Alaphey

9. K. Lekha  
Junior Telecom Officer,  
Telephone Exchange,  
Tripunithura.

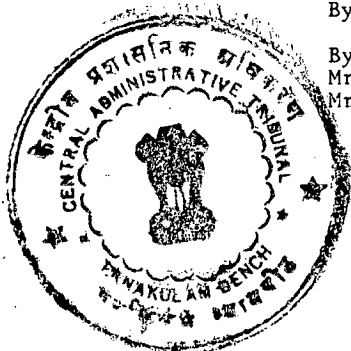
..Respondents

By Advocate Mr. T.P.M. Ibrahim Khan, SCGSC for R 1-3

By Advocate Mr. TCG Swamy for R-7

Mr. O.V. Radhakrishnan for R-6

Mr. Sasidharan Chempazhanthiyil for R 8 & 9



DA No.297/98

P.A. Velayudhan  
S/o Kunjappan  
Sub Divisional Engineer  
(Officiating)  
Acceptance Testing Kerala Circle  
N.T.I. Complex  
West Hill, Calicut-5  
R/o No.33/5320(Prabatham)  
Chevarambalam  
Calicut-17.

...Applicant

(By advocate: Mr TCG Swamy)

Versus

1. Union of India represented by  
The Secretary to the  
Govt. of India  
Ministry of Communications  
New Delhi.
2. The Chairman  
Telecom Commission  
New Delhi.
3. The Chief General Manager  
Telecom Kerala Circle  
Trivandrum.
4. George Varghese  
Sub Divisional Engineer  
(Officiating) Cable Construction  
Directorate of Telecom  
Jos Trust Buildings, Chittoor Road  
Ernakulam, Kochi.
5. P. Senthilkumaralingam  
Junior Telecom Officer  
Office of the Divisional Engineer  
(Power & Air Conditioning)  
Telephone Exchange, Mungambhagam  
Chennai - 600 034 .

...Respondents.

(By advocate Mr TPM Ibrahim Khan, SCGSC)

DA No. 1186/97

1. Lekha K  
Junior Telecom Officer  
Telephone Exchange  
Now officiating as  
Sub Divisional Engineer  
Telephone Exchange  
Tripunithura
2. Joseph P.P.  
Sub Divisional Engineer Cables  
Ayyappan Kavu  
Kochi - 18

...Applicants.

(By advocate Mr Sasidharan Chempazhanthiyil)



Versus

- |   |  |
|---|--|
| <p>1. Union of India represented by<br/>Secretary<br/>Ministry of Communication<br/>New Delhi.</p> <p>2. Director General<br/>Telecom<br/>New Delhi.</p> <p>3. Chief General Manager, Telecom<br/>Kerala Circle<br/>Thiruvananthapuram.</p> | <p>4. B. Krishnan<br/>Sub Divisional Engineer<br/>O/o Telecom General Manager<br/>Calicut - 2</p> <p>...Respondents.</p> |
|---|--|

(By advocate Mr TPM Ibrahim Khan, SCGSC)  
Mr MRR Nair (R4)

DA No.629/97

1. K.C. Jose  
S/o Iype Cherian  
Sub Divisional Engineer (Installation)  
Office of the Director Installation  
Calicut  
R/o Kattumkottil House  
Vengeri P.O.  
Paroppady, Calicut.
2. B. Krishnan  
S/o B. Chanthu (Late)  
Sub Divisional Engineer  
(Power and Telecom Coordination Committee)  
Office of the Telecom General Manager  
Calicut-2  
R/o Kanjiramukku  
Pilavally  
Civil Station P.O.  
Calicut.

...Applicants.

(By advocate: Mr MR Rajendran Nair)

Versus

1. Union of India represented by  
Secretary to Govt. of India  
Ministry of Communication,  
New Delhi.
2. Chairman, Telecom Board, New Delhi.
3. Chief General Manager, Telecom, Kerala Circle  
Trivandrum.

K. Lakha, Junior Telecom Officer  
Telephone Exchange, Tripunithura.

...Respondents

(By advocate Mr TPM Ibrahim Khan (R1-3)  
Mr Sasidharan Chempazhanthiyil (R4)



The applications having been heard on 1.4.1998, the  
Tribunal delivered the following on 1.5.1998.

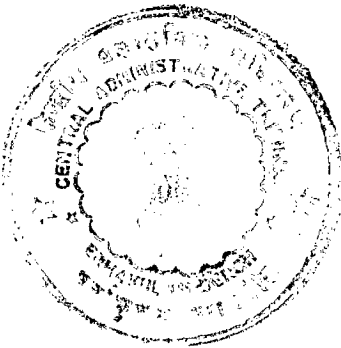
O R D E RHON'BLE MR. S.K. GHOSAL, ADMINISTRATIVE MEMBER

The above O.As along with O.A. 308/98 were consolidated for the reason that the principal issues involved therein are common. Therefore, they were heard together. However, on a careful and further consideration during the stage of hearing it was felt that O.A. 308/98 had some features which were rather unique and distinct and that it would be advisable to deal with that O.A. separately. Hence, a separate order has been passed in that O.A.

2. These O.As essentially are concerned with the methods to be adopted for promotions to the cadre called the Telecommunications Engineering Service (Group-B) (TES GroupB for short) under the Department of Telecommunications, Govt. of India from the feeder category of Junior Engineers (JEs for short), now redesignated as Junior Telecom Officers (JTOs) in terms of the statutory Recruitment Rules (RR for short) which admittedly govern the promotions to TES Group-B.

3. There are two distinct groups of major players in the controversies surrounding these promotions to that cadre.

4. The first group, on the one hand, are those Junior Engineers (JEs) who are the applicants in O.A. 1186/97 and party respondents in other O.As. They have already qualified at the prescribed Qualifying Examinations which have been held upto 1991 (Qualified Officers for short). They claim that they are required to be promoted to all vacancies arising upto 22.7. 1996, when the Qualifying



Examination (QE for short) was no longer prescribed for promotion under the amended Recruitment Rules (1996 Rules for short) in preference to all those who have not passed the Qualifying Examinations (others for short) till then, i.e. till 1991. Those vacancies being less than their number, no further Qualifying Examinations need be held, they have asserted. Their case essentially rests on certain executive instructions, permissible to be issued under the Recruitment Rules issued prior to 1996 Rules, which governed the preparation of the eligibility list of officers for promotion to TES Group-B for consideration by the Departmental Promotion Committee (DPC). Under these executive instructions they will have to be considered to be senior to the others. Their main contention is that seniority, under these validly issued executive instructions, is required to be reckoned, based on the year of passing the prescribed Qualifying Examination and not the year of recruitment to the cadre of JEs/JTOs.

5. The other group of major players involved in these controversies are those who have not qualified so far at the Qualifying Examination prescribed under the pre-1996 Recruitment Rules. They claim that the Department of Telecommunications, the respondent Department in these O.As, should hold the Qualifying Examinations (QEs for short) for the years 1992 upto 1996 in terms of the pre-1996 Recruitment Rules before promoting the first group. According to them, the effect of the earlier executive instructions, prescribing that among the Qualified officers the seniority should be based on the year of passing the QE and not the year of recruitment does not survive after 15.4.94 when the<sup>4s</sup> provisions of Para 206 of the P & T Manual Vol. IV were first abrogated by an executive order, even though through a subsequent



executive order dated 9.4.97 the effect of abrogation was postponed to 23.7.96 to coincide with the coming into force of the 1996 Rules.

6. The third interested party in these controversies has obviously been the Department itself. Unfortunately, the Department has prima facie adopted different positions at different points of time before different judicial fora in the past. However, for the purpose of the present O.As, they have adopted the basic position that endorses, by and large, the stand taken by the first group of JEs.

7. The two Contempt petitions No. CPC 28/97 in O.A. 435/96 and No.CPC 68/97 in O.A. 599/95, involve consideration of pleadings made in some of these O.As listed above. Therefore, CPC 28/97 and CPC 68/97 were also heard together with these O.As. However, the orders in these two CPCs have been passed separately considering the rather special nature of the proceedings involved in consideration of Contempt Petitions and because <sup>a</sup>specific finding on the wilfulness <sup>or otherwise</sup> of alleged disobedience, i.e. non-implementation of the orders of the Tribunal, has to be recorded.

8. The major issues involved in these O.As may be summarised usefully as follows:



- i) Whether the Department of Telecommunications, Govt. of India, which is the administrative Department for all the official respondents in these O.As, is justified in not conducting the Qualifying Examinations (QEs) for the JEs for the years 1992 to 1996. It is admitted that QEs are prescribed under the Recruitment Rules 1981

notified on 7.5.81 available at Annexure R4(e) in O.A. 1497/96 along with its Appendices (1981 Rules for short), read with the amendment to the said Recruitment Rules called the Telegraph Engineering Services (Group-B) posts) Amendment Rules 1986 notified on 2.5.86 available in Annexure R-4(f) of the same O.A.(1986 Rules for short) and the further amendment to the same rules called the Telecommunication Engineering Services (Group-B posts) Recruitment (Amendment) Rules 1987 notified on 4.2.87 (R-4(g) in the same O.A.).

These Recruitment Rules are referred to as 1981 Rules, 1986 Rules and 1987 Rules respectively for convenience.

11) Whether the said Department is similarly justified in making promotions either on ad hoc or on a regular basis against the vacancies in TES Group-B arising upto 22.7.96, when the earlier 1981 Rules, 1986 Rules and 1987 Rules were further amended by the Telecommunication Engineering Services (Group-B posts) Recruitment Rules 1996 notified on 2.7.1996 (called the 1996 Rules for short), dispensing with the requirement of passing the Qualifying Examination for promotion to TES Group-B, treating only those Junior Engineers as eligible for promotion to TES Group-B posts who have passed the Qualifying Examination prescribed under the 1981 Recruitment Rules as amended in 1986 and in 1987 referred to above and treating those who have passed the said prescribed Qualifying Examination (QE) earlier as seniors to those who have passed the QE later, irrespective of their seniority as



Junior Engineers i.e., in the feeder category, in terms of the executive instructions like Para 206 in the P & T Manual Vol. IV (Para 206 for short) or any other similar executive instructions like the circular letter dated 12.11.92 issued by the Department (1992 order for short) superseding earlier instructions dated 24.4.73 and para 206. The executive instructions lay down that for determining the eligibility among the officers who have passed the QE, it is the year of passing the QE and not their year of recruitment as JEs which will be the relevant criterion..

iii) Whether in view of the facts that since 1992 no QEs have been held, that the DPC has not met since 1994 and that no promotions have been effected to the cadre of TES Group-B in terms of the 1981 Recruitment Rules as amended in 1986 and 1987, since 1994, the said Department is no longer required to hold the QEs under these old Rules, but it is required to make promotions to TES Group-B, under the 1996 Rules since they have already come into force and based on the criterion of seniority-cum-fitness as prescribed under the 1996 Rules.

9. The above three issues are crystallised from the various reliefs sought by the applicants in the above O.As. and the defence adopted by the respondents therein in response to the prayers for those reliefs.

10. The majority of the applicants in these O.As have prayed for the reliefs that the Qualifying Examinations should be held at the present point of time for the years





1992 onwards every year for the vacancies which existed upto July, 1996, when the 1996 Rules came into effect and that those who will qualify at the Qualifying Examinations (Qualifying Officers) should be promoted particularly after 15.4.94, irrespective of the year of their passing the Qualifying Examinations, but based on the year of their recruitment as JEs and the inter-se seniority in that feeder cadre among them. The date 15.4.94, we have earlier observed, is the date when under executive orders para 206 was first abrogated. We have also noted that through another administrative instruction from the same Department dated 9.4.97, the effect of that abrogation of Para 206 was modified to 23.7.96 to coincide with the coming into force of the 1996 Rules. In fact, this order dated 9.4.1997 has been specifically impugned in the O.A. No. 297/98 and is marked as Annexure A10 there. Some of these applicants have also pointed out that if the Qualifying Examinations for the years 1992, 1993 and upto 1996 are not held the posts in the TES (Group-B) Cadre which would have been reserved and filled up with the Qualified SC/ST JEs cannot be filled up by them nor could the 1/3rd quota under the 1981 Rules, 1986 Rules and 1987 Rules (subsequently reduced to 1/4th quota under the 1996 Rules) for those JEs, who after qualifying at the Qualifying Examinations could then have qualified at the Departmental Competitive Examinations, be filled up. Some of them have also argued that regular promotions not having been considered since 1994 so far, because the Department, as admitted by it before this Bench in several O.As, was considering amendments to pre-1996 Rules and dispensing with the Qualifying Examinations, promotions to be considered now should be

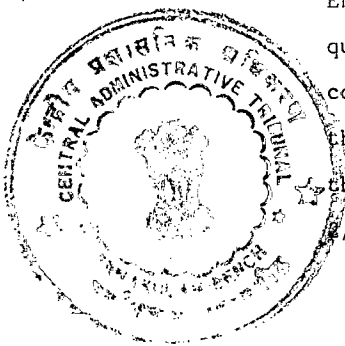


held only in terms of the 1996 Rules and without insisting on the Qualifying Examination which 1996 Rules have done away with, and only based the criterion of seniority-cum-fitness that the 1996 Rules lay down specifically.

11. The applicants in O.A. No. 1186/97, on the other hand, have sought the reliefs that the Qualifying Examinations under the pre-1996 Rules should not be held further and that regular promotions should be effected to the TES Group-B with the officials who have already qualified at the Qualifying Examinations held upto the year 1991, since the number of officials are more than the vacancies available upto July, 1996 and since in any case they are already senior to the other officials who may qualify in any subsequent year at the QEs. They have relied on the modified effect of abrogation of para 206 and the 1992 order in support of their claim of seniority as Qualified Officers over others..

12. Some of these issues have been agitated at multifarious levels in seemingly endless rounds of litigation. The background, therefore, may be briefly described. It is as follows:

13. The 1981 Recruitment Rules as amended from time to time upto 1987 prescribe a combined examination for promotion to the TES Group-B posts for the Junior Engineers. One part of the examination was called the qualifying examination and the other part was called the competitive examination. Under the Recruitment Rules, the Department of Telecommunications was required to hold the combined examination at least once in a year. 66 2/3% of the promotional posts of the TES Group-B under



these Recruitment Rules were to be filled up by Junior Engineers qualified in the first part of the qualifying examination. Another 33 1/3% of the promotional posts in TES Group-B were reserved for those JEs who qualified not only at the qualifying examination, but who also passed the competitive examination. The detailed syllabus and the marks for passing these examinations and qualifying thereat was also prescribed in the Appendices to these Recruitment Rules. The 1981 Recruitment Rules was amended from time to time upto 1987. The Rules inter alia, specifically permit the Govt. to issue executive instructions for regulating the manner in which the eligible list of the officers for promotion to the TES Group-B posts for the purpose of their selection by the Departmental Promotion Committee (DPC) should be prepared. Initially the Department took the view that once the JEs passed the Qualifying Examination and became eligible for consideration against the quota of 66 2/3% of the vacancies in the TES Group-B posts, the inter-se seniority among them would be determined /<sup>with</sup> reference to the year of recruitment. That position was finally rejected by the Hon'ble Supreme Court when it upheld the decision of the Hon'ble High Court of Allahabad (Lucknow Bench) dated 20.2.1985 in W.P.NO. 2739/1981 and the decision of the Tribunal based thereon that the provisions of Para 206 of P & T Manual Vol.IV was to be treated as supplemental to these Recruitment Rules, having been issued as executive instructions as contemplated under those Rules. The para 206, inter alia, lays down that in the eligibility list the officers becoming successful at the qualifying examination earlier would be placed above the officers who passed the same



14. 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 A7 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 arising upto 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 Examinations from 1992 onwards. According to the Official respondents and the Qualified JEs that becomes the only proper and legal course of action for the reason that the JEs who have qualified themselves ahead of others at the Qualifying Examinations (Qualified JEs) upto 1991 in any case will have to be treated as senior to those who may take the Qualifying Examinations after 1991 and upto 1996. The latter group would obviously be junior to such Qualified JEs. The number of these Qualified JEs is reported to be around or less than the number of vacancies available upto 22.7.96 when under 1996 Rules the requirement of passing the Qualifying Examination was removed.

15. The preference given to Qualified candidates by the Department for ad hoc promotions dated 26.9.96 available at A8 in O.A. 1497/96 has been impugned in O.A. 1497/96. However, this was issued before the decision of the Hon'ble



Supreme Court dated 25.10.96 in the SLP (C) No.26071/96 (A7 in O.A. 1497/96). That order of the Apex court has been the basis of the present stand of the Department in these O.As as noted by us above. Incidentally, even their earlier stand at A8 in that same O.A. was found to be in order as per the decision of the Principal Bench of the Tribunal in their order passed in an M.A. dated 27.9.96 in O.A. No. 1870/96 (R1-C in O.A.1497/96).

16. On the other hand, the case of the applicants in O.A. 1497/96 and other O.As above, except in O.A. Nos. 1186/97 and 308/98, is that as decided in the SLP(C) 26071/96 by order dated 26.10.96, the Department is required to follow the provisions of the earlier Recruitment Rules of 1981, 1986 and 1987, till the promulgation of the 1996 Recruitment Rules dated 22.7.96, and, therefore, the Department must hold the Qualifying Examination every year after 1991 i.e., for the years 1992, 93, 94,95 and 96. According to them, it is not open to the Department to implement the order of the Hon'ble Supreme Court dated 26.10.96, mentioned above in part. They have also pointed out that the executive instructions contained in para 206 of the P & T Manual mentioned above having been abrogated in 1994 cannot legally be held having been in operation till 1996 by another subsequent order in 1997 postponing the effect of that abrogation. Therefore, the officers qualifying at the Qualifying Examinations held after 1994 will have to be treated as senior to those who may have passed the Qualifying Examinations earlier, but are junior to them in term of the service as Jr. Engineers based on the year of recruitment, they have contended further.



17. We have carefully gone through the pleadings and the materials placed before us in these O.As. We have also heard the learned counsel appearing for the parties. A large number of rulings have been cited in support of their contentions. Wherever they have been found relevant, we have referred to them.

18. In the foregoing paragraphs we have summarised the main issues involved in these O.As and the basic stand taken by the respective parties. We shall now attempt to answer the questions which have arisen in that context in these O.As.

19. The first issue is whether it is legally permissible for the Department of Telecommunications, Govt. of India not to hold the Qualifying Examinations from the year 1992 onwards upto 1996 i.e. upto 22.7.96 when the 1996 Recruitment Rules came into existence.

20. We observe that the Department had specifically undertaken before the Hon'ble Supreme Court in SLP (C) No. 26071/96 that regular promotions would be effected in the light of the then relevant Recruitment Rules to the vacancies in the TES Group-B cadre arising upto 22.7.96 i.e. the date from which the 1996 Rules doing away with the Qualifying Examination as a pre-requisite for promotions to the TES Group-B cadre was brought into force. It has not been denied either by the official respondents or by the party respondents among the qualified JEs/JTOs that those pre-1996 Recruitment Rules i.e. 1981 Rules, 1986 Rules and 1987 Rules had all stipulated the passing of the Qualifying Examination as part of the combined Examination which was required to be held every year. The Hon'ble Supreme Court as is evident from its order dated 25.10.96 in the said SLP specifically mentioned the above commitment made by the Department



before the Apex Court and observed further that in view of that commitment made before the Apex Court in the SLP no other grievances of the appellants remained to be redressed. In spite of this order of the Hon'ble Supreme Court having become final, the Department is not legally competent to take the decision that holding the Qualifying Examination after 1992 upto 1996, is not required. In our opinion, the qualified JEs/JTOs, who have also fully endorsed this stand of the official respondents, do not have a valid case on this score.

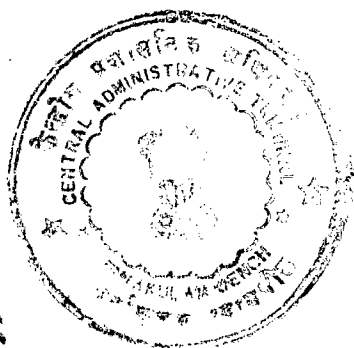
21. The primary reason for the Department and the qualified JEs/JTOs for adopting this stand is that under the executive instructions like para 206 and the 1992 order, in any case those JEs/JTOs, who have already passed the Qualifying Examinations upto 1991 when such Qualifying Examination was held for the last time, have already become senior to any other JEs/JTOs who may take the Qualifying Examination for a later year i.e., after 1991, irrespective of their year of recruitment. Since the number of such qualified JEs/JTOs is around or more than the number of vacancies in the TES Group-B cadre upto 22.7.96, merely holding the Qualifying Examinations annually will not serve any purpose, they have argued.

22. At this stage, it is not necessary to go into the merits of the points urged on behalf of the applicants in O.A. Nos 1497/96, 297/98 and 629/97 about the validity of the order passed in 1997 modifying the date of abrogation of the effect of para 206 from 15.4.94 to 23.7.96. However, we observe that under the pre-1996 Recruitment Rules 1/3rds of the vacancies in the TES Group-B cadre are required to be filled up with JEs/JTOs who qualify in both



parts of the combined Departmental Examination i.e., the Qualifying Examination and the Competitive Examination (Competitive Officers). Obviously, the quota meant for these Competitive Officers in the TES Group-B vacancies cannot be filled at all if the Combined Departmental Examinations are not held. For the conduct of these combined Departmental Examinations, the first of these Examinations namely the Qualifying Examination is a must. Secondly, we have also noticed that the number of posts to be earmarked for SCs/STs in the promotional cadre in the TES Group-B after 1994 have not yet been identified for the years 1992 onwards upto 1996. The entire quota when identified for the SC/STs cannot reasonably be expected to be filled up adequately with only those SCs/STs who have already become qualified upto 1991. For these two reasons alone, action of the Department in not holding the Qualifying Examinations since 1991 upto 1996 cannot be held legally valid.

23. However, we cannot hope to put the clock entirely back and in all conscience order that to meet the two specific and legally prescribed objectives mentioned above, i.e., in respect of filling up <sup>the</sup> quota for Competitive Officers <sup>that for</sup> and the SCs/STs, the DOT must religiously hold a combined Departmental Examination as technically required under the then Recruitment Rules i.e. pre-1996 Rules every year. We have taken judicial notice of the fact that the JTOs who are the applicants before us in the most of the above O.As had an opportunity of appearing at the Qualifying Examinations as a part of the Combined Departmental Examinations. In fact, a large number among them have already appeared at the Qualifying Examination part of the Combined Departmental Examination, but have not become successful. For the reasons explained below, we





have held that these JTOs will have to be considered as <sup>As</sup> Junior to the JTOs who have already qualified themselves by passing the Qualifying Examination part of the Combined Departmental Examination. 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 <sup>regular</sup> 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 Hon'ble 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, recognising the fact that the JTOs already qualified are to be treated in any case as senior to those who will 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 Examinations for the years from 1992 onwards upto 1996 for the vacancies arising upto 22.7.1996 within six months from the date of receipt of a copy of this order.

25. The next related matter is whether after conducting this annual Departmental Combined Examination for the years 1992 onwards upto 1996, the Department can validly to consider those JEs/JTOs who have already qualified at the Qualifying Examinations held upto the year 1991 as senior to the JEs/JTOs who may take the Qualifying Examination part or this combined Departmental Examination subsequently.

26. We have noticed that under all the three pre-1996 Recruitment Rules, the Government has been permitted specifically to issue executive instructions for the purpose of regulating the eligibility list of the candidates who have passed the Departmental Qualifying Examination for consideration of the DPC. This enabling provision is found in clause 6 of Appendix-I and clause-7 of Appendix-II of the 1981 Recruitment Rules called the Telegraph Engineering Service (Group B) Recruitment Rules 1981 notified on 7.5.81. These rules were amended under the Rules called Telegraphs Engineering Service (Group-B Posts) Amendment Rules 1986 notified on 2.5.1986. However, the above provisions enabling the Govt. to issue instructions from time to time regulating the eligibility list of candidates who have passed the Departmental Qualifying Examinations for consideration of the DPC as incorporated in Appendices I & II of the 1981 Rules were not affected. Then came the further amendment to the 1981 Rules called the Telecommunications Engineering Service (Group-B Post)(Recruitment) (Amendment) Rules 1987 notified on 4.2.87. Under these amendment Rules, the provision of para 2, clause 1 and clause 3, of Appendix I of the Rules were amended in the following manner:



27. Clause 1 of Para 2 of Appendix I after the above

amendment will read as that 66 2/3% of the posts in  
TES Group -B shall be filled up from the duly  
constituted DPC, from the officials who have  
qualified at the Departmental Qualifying Examination  
on the basis of seniority-cum-fitness. Similarly,  
sub clause 3 of the same paragraph after the above  
amendment would read as that the inter-se seniority  
of the officials who have in the limited  
Departmental Competitive Examination shall be in the  
ratio 2:1 starting with the officers selected on the  
basis of seniority-cum-fitness (before the amendment  
it was "selected by the method of selection") by the  
Departmental Promotion Committee on the basis of  
Departmental Qualifying Examination.

28. However, it is evident that even by the above amendments under the 1987 Rules, neither clause 6 of Appendix I nor clause 7 of Appendix II of 1981 Rules, which specifically permitted the Govt. to issue instructions from time to time regulating the preparation of eligibility list of candidates, who have passed the Departmental Qualifying Examination, was at all touched. We are of the considered opinion that the main purpose of the amendments carried out under the above 1987 Rules was to take away the element of selection for the promotion of the JEs/JTOs who have already qualified at the Departmental Qualifying Examination by the DPC, and that the purpose of these amendments was to ensure that the DPC was required to select them on the basis of seniority-cum-fitness. It then becomes clear that those amendments have nothing to do with the treatment of the question of seniority of the



qualified officers vis-a-vis others who have not yet qualified for the purpose of inclusion of their names in the eligibility list in a particular year for the purpose of consideration by the DPC. On behalf of the applicant in O.A. 297/98 it has been argued that these amendments effected by the 1987 Rules have the effect of removing the entire discretion earlier left in the hands of the Govt. in the form of executive instructions to be issued from time to time regulating the inter se seniority between the qualified candidates by introducing a principle like that those who have qualified earlier at the Qualifying Examination should be treated as senior to those who qualified later at the same Qualifying Examination. According to him the effect of the amendment made to para 2 of Appendix I of 1981 Rules by the 1987 rules is that the entire body of JEs/JTOs, who qualify at the Departmental Qualifying Examinations, cannot be classified further by the Govt. between who have already qualified in the said Examination and those who qualify themselves later on, by issuing executive instructions in this behalf.

29. We are unable to agree with the above contention for the reasons we have already discussed. That amendment, in our considered view, has nothing to do with the inter-se seniority among the qualified JEs/JTOs based on either the year of passing the Qualifying Examination or the year of Recruitment to the feeder cadre of JEs and JTOs. That matter was left to the Govt. to regulate, if the Govt. chose to do so.



30. The next connected matter that arises for consideration is whether because of the abrogation of para 206, first effected by an executive order on 15.4.96, the normal principle of seniority among the qualified-officers based on the year of their recruitment in the feeder cadre was restored.

31. Even if it is granted that in terms of the ruling of the Hon'ble Supreme Court generally an administrative order cannot have retrospective effect and therefore the 1997 order modifying the effect of abrogation of para 206 from 15.4.94 to 23.7.96 may have to be considered as non est, the order of the same Department of Telecommunications dated 12.11.92 found at R-4(k) in O.A. 1497/96 is, in our opinion an equally competent executive order which was obviously and specifically passed by the Govt. for the purpose of regulating the principle of seniority for the purpose of preparing the eligibility list of JEs/JTOs who qualify at the Departmental Qualifying Examination. No material whatsoever has been placed before us even to suggest that this 1992 order does not hold the field simultaneously with the pre-1996 Recruitment Rule. In these circumstances, following the principle first laid down by the Hon'ble High Court of Allahabd (Lucknow Bench) and upheld finally by the Supreme Court, referred to above, in the context of Para 206, we hold that such an executive order must be deemed to be supplemental to the Recruitment Rules and hence valid. We therefore conclude that the officials who have already qualified at the Departmental Qualifying Examination upto 1991 will have to be treated as senior to those who qualify after them at the same Departmental Qualifying Examination, for the specific purpose of



regular promotions to the vacancies in TES Group-B cadre arising upto 22.7.96, from which date the 1996 rules came into force removing the requirement of passing the Departmental Qualifying Examination for the purpose of promotion.

32. The only other question that remains to be discussed is whether the Department can be permitted to fill up the vacancies which have not yet been filled on regular basis only in the light of the provisions of the 1996 Rules which have done away with the Qualifying Examination for the purpose of promotion to TES Group-B against the 75% quota of such promotional posts. The short answer to this question has to be in the negative for the simple reason that the Department has furnished a solemn undertaking before the Apex Court and that based thereon the Apex Court passed a definitive order dated 25.10.96 in SLP(C) No. 26071/96 which we have discussed at some length above. No case has been made out before us that the Department has consciously left these vacancies unfilled since 1991 because they wanted to fill them up with JEs/JTOs only on the basis of seniority-cum-fitness as prescribed under the 1996 Rules, except certain vague statements made by the official respondents before this Bench. We must observe that those statements all got superseded by the statement made finally by the DOT before the Hon'ble Supreme Court in SLP (C) NO. 26071/996 mentioned above.



33. Further, we take judicial notice of the fact that all the vacancies occurring upto 1993-94 have been filled up with the officers who had already qualified at the Departmental Examinations held upto 1988-89, even though

all the officials who have qualified in the 1989 Qualifying Examination have not yet been fully accommodated. Whatever may be the precise factual position on this score, the fact remains that as late as in 1994, the Department went ahead and filled up the vacancies of TES Group-B with the qualified officers, even though the amendment to the then Recruitment Rules for doing away with the Qualifying Examination had been under the active consideration of the Department since 1992 as admitted by the official respondents.

34. Therefore, the ruling by the Hon'ble Supreme Court in a case, where the concerned Department had made its intention known that pending amendment to the Recruitment Rules no further promotion to the higher posts would be made and in fact acted out that intention and therefore, the Department was justified in not filling up the vacancies occurring during that period in terms of the then unamended Recruitment Rules in force, will not be applicable here, in our opinion.

35. In sum, we direct that the Department shall fill up the vacancies arising upto 22.7.96 only with the officials of JEs/JTOs cadres who have qualified and may qualify themselves at the Qualifying Examination part of <sup>the</sup> one Combined Departmental Examination for the quota of SC/ST vacancies for the TES Group-B cadre earmarked for the Qualified Officers and fill up 1/3rd quota earmarked for the Competitive Officers who have qualified themselves or may qualify themselves at the same Combined Departmental -cum-Competitive Examination. The posts earmarked for SC/STs in the promotional cadre of TES Group-B are



directed to be filled up appropriately with the qualified SC/ST officials from the feeder cadre of JEs/JTOs based on the results of this Examination. As we have already directed, the <sup>OK</sup> Combined Departmental Examination shall be held by the D.O.T. within six months from the date of receipt of a copy of this order.

36. With the above directions, these O.As are allowed only in part in consonance with the directions recorded here.

There shall be no order as to costs.

Dated the 1st May, 1998.

Sd/-  
S K GHOSAL  
ADMINISTRATIVE MEMBER

Sd/-  
A V HARIDASAN  
VICE CHAIRMAN



**CERTIFIED TRUE COPY**

Date 5-5-98

*[Signature]*  
Deputy Registrar



LIST OF ANNEXURES

O.A 1497/96

1. Annexure A- 7 : Copy of the order dated 25-10-96 in S.L.P (C)No.26071/96 by the Hon'ble Supreme Court of India.
2. Annexure A- 8 : Copy of the Memo No.2-95/94-STG-II dated 26-9-96 issued by the Director (ST-I), Government of India, Ministry of Communications, Department of Telecommunication(STG-II Section), New Delhi.
3. Annexure R-1(C): Copy of the order dated 27-9-96 issued by the Principal Bench of this Hon'ble Tribunal in O.A No.1870/96, M.A No.1787/96 and M.A No.1952/96.
4. Annexure R-4(e): Copy of the Recruitment Rules 1981 Telegraph Engineering Service (Group 'B') of the Telegraphs Board.
5. Annexure R-4(f): Copy of the Amendment Rules, 1981 Telegraph Engineering Service (Group 'B') Notification dated 2-5-86 of the C.K. Reddi, Member (Personnel) Telecom.
6. Annexure R-4(g): Copy of the Recruitment (Amendment) Rules, 1981 Notification dated 4-2-87 of the R.N.Kelly, Asst. Director General.
7. Annexure R-4(k): Copy of the letter No.17-1/92-STG-II dated 12-11-92 of the General Telecom District Ernakulam Administration wing.

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O.A 297/98

1. Annexure A-10 : Copy of the order bearing No.2-6-94-STG-II of 9-4-97 issued from the office of the 1st respondent.

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