

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 298/2003

FRIDAY, THIS THE 17th DAY OF SEPTEMBER, 2004

C O R A M

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. H.P. DAS, ADMINISTRATIVE MEMBER

1. T.N. Peethambaran S/o Narayanan
Divisional Engineer (Phones)
BSNL, Palai
residing at Arunapuram House,
N.E. Ward, Vaikom.
2. Mariamma John W/o E. John
Assistant General Manager (OP)
Office of the General Manager Telecom
Kottayam
residing at Koodarathil
Muttambalam, Kottayam-4.
3. B.R. Nair S/o G. Balakrishnan Nair
Asst. General Manager (MM)
Office of the PGMT, Thiruvananthapuram
residing at Sangeetha, Podujana Lane
Kumarapuram, Trivandrum.
4. S. Sankaran Potty s/o late K. Sankaranarayanan
Potti, Asst. General Manager
Office of CGMT, Kerala Circle,
Thiruvananthapuram
residing at Ganga TC NO. 3/2126, LIC Lane
Trivandrum-25
5. P. Vidhyadharan S/o late V. Padmanabhan
Divisional Engineer Telecom, BSNL
Nedumangad, Trivandrum District
residing at TC NO. 3/122
Ramkamal, Paruthypara, Trivandrum-25
6. A. Venkitachalam S/o late V. Anantha Subramania
Iyer, Assistant General Manager (PR)
Office of the CGMT, Kerala Circle
Thiruvananthapuram
residing at TC 28/2655, Chettikulangara
Trivandrum
7. M. Venkiteshwaran S/o Mahadeva Iyer
Assistant General Manager(Establishment)
Office of the Dy. General Manager (Administration)
Chennai Telephones, 89 Miller road
Chennai-600010
residing at B1, 144 Kendriya Vihar, Velappan Chavady
Ponamally High Road, Chennai-77
8. S. Vikraman Nair S/o late V. Sreedharan Nair
Assistant General Manager (NS)
Office of the CGMT, Thiruvananthapuram-4
residing at H.No. 35-A, Sree Nagar,
Paruthypara, Trivandrum-25

9. Sunny Philips s/o late C. Philips
Divisional Engineer (Vigilance)
Office of the GMT, Kottayam
residing at Bliss, Muttaambalam,
Kottayam-4

10. T.M. Santhamma W/o Radhakrishnan
Divisional Engineer (DTD & OCB) Telephone Exchange,
Kottayam
residing at Telecom Quarters,
Thazhathangady, Kottayam. Applicants

By Advocate Mr. Shafik M.A.

Vs.

1. Union of India represented by the Secretary
Department of Telecommunications
Chairman, Telecom Commission
Ministry of Communications
Sanchar Bhavan, New Delhi.

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

3. The Chief General Manager Telecom
BSNL, Keraala Circle,
Trivdandrum. Respondents

By Advocate Mr. Dinesh R. Shenoy

The Application having been heard on 21.6.2004 the Tribunal
delivered the following on 17.9.2004.

O R D E R

HON'BLE MR. H.P. DAS, ADMINISTRATIVE MEMBER

The issue to be decided here is as to whether certain
benefits claimed to have been granted to the applicants by
this Tribunal relying on a judgment of the Allahabad High
Court as upheld by the Apex Court, can be withdrawn in
implementation of a later judgment of the Apex Court that
reversed the earlier judgment relied upon by this Tribunal.
The applicants, who joined service under the respondents in

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different cadres were working as Junior Engineers when they appeared and passed a qualifying examination for promotion to the rank of Assistant Engineers as provided under Para 206 of the P&T Manual:

"206. 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. The 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 occasions, i.e. officials who passed the examination held in 1956 will rank as en block senior to those who passed in 1957. Their seniority inter se will, however, be according to their seniority in the cadre of Junior Engineers."

2. The Telegraph Engineering Service (Class-II)
Recruitment rules 1966 also provided that recruitment to the service shall be entirely by promotion on the basis of selection of Junior Engineers through qualifying examination. The applicants on being aggrieved by their promotion as AE from a date later than that granted to those who passed the qualifying examination later, approached this Bench for grant of promotion on the basis of the date of passing the qualifying examination in OAs K-112/88, K603/88, K-605/88 and 311/1990. These OAs were allowed by this Tribunal. The grounds on which the applications were allowed by this Tribunal would become clear from the relevant extract of the judgment in OAs K-112/88 and K-7603/88 reproduced below. (In OA 311/1990, the Bench followed the earlier decisions of the Tribunal in K 112/88 etc.)

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(Para 5 of A2 (K-112 of 1988)

5. The applicant was confirmed in the cadre of Junior Engineer with effect from 1.3.1976. That he passed the Departmental Qualifying Examination in 1977 is not disputed. As per the rule 194 in Chapter VII of the P&T Manual appointment to the grade of Assistant Engineers will be made by selection of the best men available in the lower grade. Rule 206 of the P & T Manual reads as follows:

"206. 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. The 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 occasions, i.e. officials who passed the examination held in 1956 will rank as en block 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 (Class-II) Recruitment Rules, 1966 provided that recruitment to the service shall be entirely by promotion on the basis of selection of Junior Engineers through qualifying Examination. These rules have been superseded by the Recruitment Rules of 1981. In 1981 rules laid down that recruitment to the service shall be by promotion from Junior Engineers by method of selection as indicated below:

(i) 66 2/3 percent by a duly constituted DPC from the officials who have qualified in the Departmental Qualifying examination, and

(ii) 33 1/3 percent through Limited Departmental Competitive Examination on the basis of relative merit."

The contention of the applicant is that both under the 1966 Recruitment Rules and under the 1981

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Recruitment Rules promotion by selection is to be made from among the Junior Engineers by selection and that this selection is to be made in the light of the provision contained in rule 206 of the P&T Manual which provides that Junior Engineers who had passed the Departmental Qualifying Examination earlier would rank senior to those who passed the same subsequently and that the promotion of the fourth respondent who passed the Departmental Qualifying Examination in 1985 and many others who passed the examination after the applicant has passed is against the provisions of Rule 206 and that therefore the applicant is entitled to be promoted as Assistant Engineer in Telegraph Engineering Group-B Service on a date prior to the date on which any person who passed the Departmental Qualifying Examination after the date on which he passed has been promoted. In support of this contention, the learned counsel for the applicant invited our attention to the decision of the Hon'ble High Court of Allahabad, Lucknow Bench in writ petition Nos. 2739 and 3652 of 1981 a copy of which has been made available. In those cases, the applicants had passed their Departmental Qualifying Examinations in the year 1974. They challenged the promotion of persons who had passed the Qualifying Examinations in later years. The High Court has held that the applicants therein were entitled to be promoted with effect from the date prior a date of promotion of any person who passed the Departmental Qualifying Examination subsequent to that and to have their seniority adjusted accordingly and also to salary and allowances accordingly with effect from the respective date. The applicant concerned in this case were Junior Engineers of the Telecommunication department who had passed the Departmental Qualifying Examination which is a condition for eligibility for promotion to Telegraph Engineering Group-B Service. The Union of India and others who were respondents in that writ petitions filed a petition for special leave before the Hon'ble Supreme Court. A copy of the order of the Supreme Court has been made available. It reads as follows:

"Special Leave Petition is dismissed on merit. In the facts and circumstances of the present case, we are not inclined to interfere with the judgment of the High Court except to a limited extent. We modify the direction made by the High Court requiring the petitioners to deposit a sum of Rs. 79,100 paise 50 for payment to respondent NO. 1 Parmanand Lal, alleged to be due towards arrears of his salary. We direct instead that the petitioners shall deposit half the amount for payment to respondent NO. 1 as arrears of his salary within one month from today, subject to adjustment."

The learned counsel for the respondents argued that the decision of the Allahabad High Court upheld by the Hon'ble Supreme court in the writ petitions

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mentioned is not applicable to this case since the facts of the case under citation were different from the instant case. The learned counsel argued that the Hon'ble High Court of Allahabad took into consideration the fact that the panel for promotion in respect of the applicants concerned in that case was prepared before the commencement of 1981 Recruitment Rules and that therefore the rules which applied to them was the 1966 Rules. In this way, the learned counsel tried to distinguish the decision on the basis of facts. But there is in no merit in this argument. The rule 206 of the P&T Manual only supplements the Recruitment Rules and it is not in conflict with them. The Allahabad High Court in its judgment has adverted to this question also. It is relevant to extract the following portion of the judgment of the Allahabad High Court:

"In this case reference may also be made to the contention which has been raised on behalf of the opposite party that para 206 of the Post and Telegraph Manual will have no applicability after coming into force statutory rules. Para 206 of the Post and Telegraph Manual was in existence when the Rules of 1966 came into Force. Para 206 does not come into conflict with Rules of 1966 or of 1981. It only supplements the same as para 206 supplement the Rules. The same could not be ignored and promotions were to be made in accordance with statutory rules with para 206 of the Post and Telegraphs Manual.

Though the Union of India and others challenged this judgment of the Allahabad High Court before the Hon'ble Supreme court of India in SLP, the same was dismissed on merits. Therefore it cannot be disputed that in making promotion to the Telegraph Engineering Group B Service under the Recruitment Rules of 1981 to 66 2/3 of promotion quota the instructions contained in Rule 206 of P&T Manual cannot be ignored. Therefore the applicant who passed the Qualifying Examination in 1977 is entitled to be promoted to the post of Telegraph Engineering Group-B Service on a date prior to the date of promotion of any person who passed Departmental Qualifying Examination subsequent to 1977 and have his seniority adjusted accordingly. The contention of the fourth respondent that this promotion cannot be challenged because he joined the service earlier and that he is senior to the applicant in the cadre of Junior Engineer cannot be accepted in the face of the instructions contained in Rule 206 of the P&T Manual wherein it has been laid down that a person who has passed the Departmental Qualifying Examination earlier would be senior in rank to those who pass the same subsequently.

Para 5 of A3 (K-603/88 and K-605/88)

We have heard the arguments of the learned counsel on either side. An identical question was

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raised by one Sri TN Peethambaran, another Junior Engineer of the Telecom Department in OAK-112/88. In that case also the respondents 1 to 3, the Union of India represented by the Secretary, Communications New Delhi, the Director General, Telecommunications, New Delhi and the General Manager, Telecommunications, Trivandrum did not file any reply statement. Anyhow, the 4th respondent in that case one Mr. TV Krishnan whose promotion given earlier than the applicants' therein was also inter alia challenged on the ground that he passed the Departmental Qualifying Examination only on a later date than the applicant in that case had filed a counter statement justifying his promotion on the ground that he was senior in service and that the judgment of the Allahabad High Court did not lay down the correct position of law. We have considered the rival contentions in that case and have held that in view of the provision contained in Rule 206 of P&T Manual, the persons who have passed the Qualifying Examinations earlier were entitled to be promoted to the post of Telecom Engineering Service Group-B on a date prior to those who had passed the Departmental Qualifying Examination in a later years. A copy of our order in OAK-112/88 has been made available for our perusal. In making promotions to the Telecom Engineering Group-B Service as per the Recruitment Rules, the Department is bound to follow the instructions contained in Rule 206 in Chapter VII of the P&T Manual since these instructions are supplementary to the Recruitment Rules. Therefore the action of the respondents in promoting the Junior Engineers on the basis of their seniority in the cadre of JEs without considering the dates of passing of their Qualifying Examination is found to be against rules. The Allahabad High Court at its Lucknow Bench has in the writ petition Nos. 2739 and 3652 of 1981 considered this question and have held that the department is bound to follow the the instructions contained contained in Rule 206 of the P&T Manual in making promotions to Telecom Engineering group-B Service as these provisions of P&T Manual are supplementary to the recruitment rules. The SLP filed against these judgments have been dismissed on merits by the Hon'ble Supreme Court based on the decision of the Allahabad High Court which is confirmed by the Hon'ble Supreme Court and also in view of the rules position we have held in OAK-112/88 that the department was bound to promote Junior Engineers who had passed the Departmental Qualifying examination on an earlier date than those who passed the examination later though the latter were seniors in the cadre of Junior Engineers. Therefore, we have no hesitation to hold that the applicants have a legitimate grievance and that they are entitled to be promoted prior to the dates of promotion of persons who had passed the Departmental qualifying examination on later.

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3. It is abundantly clear from these extracts that this Tribunal relied entirely on the judgment of the Allahabad High Court in WP 2739 and 3652 of 1981 and the dismissal of the SLP against it by the Apex Court. Eventually, in implementation of the orders of the Tribunal in these cases, the applicants were promoted from different dates as A.E. and were allotted seniority with reference to their seniority in the panel for promotion. The matter rested there, until the Apex Court on 26.4.2000 in Union of India Vs. Madras Telephone SC & ST Social Welfare Association (2000 SCC (L&S) reversed their earlier judgment, now giving primacy to the Recruitment Rules over the administrative instructions. In Para 19 of the Judgment, the Apex Court observed as follows:

"We have also indicated that the promotions already effected pursuant to the judgment of the Allahabad High Court, which was upheld by this Court by dismissing the special leave petition filed by the Union of India, will not be altered in any manner. This being the position and the judgment of the Allahabad High Court in favour of Parmanand Lal having attained finality, he having received the benefit of the said judgment and having been promoted, could not have been reverted because of some later judgments and directions given either by the Tribunals or by this Court."

4. In pursuance of this judgment, the respondents have by A1 orders declined to grant the benefit of fixation of seniority to the applicants who were petitioners in OP NO. 13598 of 1998. In disposing of OP 13598 of 1998 on 3.10.2001 the Hon'ble High Court of Kerala had remitted the matter for reconsideration in the light of Para 19 of the Judgment of the Apex Court extracted above leaving the matter regarding the issue of identicality of status between the applicants and Parmanand Lal (a beneficiary of the Allahabad High Court Judgment) to the respondents. Now in the impugned A1 order,

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the respondents contended that the applicants were not comparable to Parmanand Lal, hence special dispensation available to Parmanand Lal under the Apex Court judgment would not be available to them. The learned counsel for the applicant however has persisted in persuading us that the question of identicality in the application of law must be seen in the similarity of circumstances and not in the literal import of a declaration. The Apex Court, the learned counsel argued, knew very well that until the Madras Telephones the field was held Parmanand Lal and all decisions taken in pursuance of the earlier judgment were required to be protected. That is why the exception was provided and that is how the exception must be read. The applicants were granted promotion pursuant to the judgment of the Allahabad High Court as upheld by the Apex Court as the two decisions of the Ernakulam Bench of CAT would show. As a matter of fact, this Tribunal had based its decisions on the ruling of the Court that held the field at that point of time and a subsequent decision of the Apex Court cannot take away what an earlier decision conferred. Further, the learned counsel submitted, it has already been established that an order already made final cannot be reopened because of a later decision. Apart from citing certain decisions of the Courts in this regard he invited our attention to the following portion of the text of the Apex Court judgment in the Madras Telephone case already extracted earlier.

5. We note that para 19 is to be read in this context. The learned counsel for the respondents referring to R 3(a)

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argued that the claim put forth in this OA was already subjected to judicial scrutiny by the Principal Bench of CAT in OA NO. 1269/2001 and the considered decision of the Tribunal was that the exception of para 19 of the Supreme Court judgment would apply only to those who were parties to the Allahabad High Court judgment which was affirmed by the Apex Court. Since the observations of the Hon'ble Supreme court were in reference to and in the context of what that court was considering in a previous para (hence the cross-reference in para 19), the exception was to be made only in respect of persons who like Parmanand Lal got the benefit because of the Allahabad High Court judgment and because of the dismissal of the SLP against it. Those who were neither the parties in that case, nor were the direct beneficiaries of the judgment cannot claim protection by mere citation of relevance without showing how their benefits attained finality as in the case of Parmanand Lal. He showed us how A10 orders were issued clearly mentioning that the implementation of the orders of CAT Hyderabad Bench was subject to any further orders that are likely to be delivered in course of time. The learned counsel for the respondents also invited our attention in this context to A8 orders of this Tribunal which had already gone into the matter and had declared the position of law and facts.

6. Heard. The first question we consider is whether the promotions in the case of the applicants had already been effected pursuant to the judgment of the Allahabad High Court which was upheld by the Hon'ble Apex Court by dismissing the Special Leave Petition. Though a trifle unwillingly, but

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necessarily, we have to get into the literal-circumstantial nexus of the Apex Court's formulation. What we understand from para 19 of the judgment in focus is that promotions in order to be covered by the protection granted must already have been effected pursuant to the judgment of the Allahabad High Court. The applicants in this OA were not promoted in pursuance of the Allahabad High Court judgment. The Allahabad High Court judgment was most certainly followed by this bench of the Tribunal in granting the benefit of promotion to the applicants, but the applicants cannot legitimately claim that they were promoted pursuant to the judgment of the Allahabad judgment. The judgment of the Allahabad High Court directly benefitted the petitioners and by the time the Supreme Court was considering the SLP, the promotions had already been effected. Para 19 of the judgment has to be read with the previous observations which relate to the petitioners and none else. There is no declaration of principle here, it is a straightforward directive indicating how the rules should be applied and what exception was to be made. we accept the contention of the respondents that para 19 should not be invested with more meaning than what the text of the judgment invests. The Hon'ble High Court of Kerala in disposing of OP No. 13598 of 1998 had of course taken the view that the claims of applicants deserved consideration in the light of the Supreme court judgment. But then the orders clearly mentioned that the rights of the parties would be regulated by the orders that might be passed by the respondents in the light of para 19 of the judgment of the Supreme Court. In disposing of CCC NO.265 of 2002 the Hon'ble High Court, in a direct reference to the order passed by the respondents had categorically

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stated that if the parties are aggrieved, they have to challenge the orders if they are so advised. The Court had also refused to express any opinion about the order. Apparently, this OA is that challenge. While we recognise the context in which this challenge is being pressed, we fail to see how a principle of universal application can be derived from para 19 of the judgment which evidently applies only to the petitioners. Paragraph 19 only reiterates what was stated more explicitly earlier. Even the second sentence in the same paragraph refers only to the case of Parmanand Lal in whose favour the judgment of the Allahabad High court had attained finality. We are also in respectful agreement with the views of the Principal Bench of CAT in OA 1269/2001.

7. In the result we dismiss the application leaving the parties to bear their own costs.

Dated the 17th September, 2004.

H. P. DAS
ADMINISTRATIVE MEMBER

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A. V. HARIDASAN
VICE CHAIRMAN