

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 313 of 2011

w i t h

C.P.(C) No. 129/2010 in O.A. No. 520/2009

Tuesday, this the 13th day of March, 2012

CORAM:

**HON'BLE Mr.JUSTICE P.R.RAMAN, JUDICIAL MEMBER
HON'BLE Mr. K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

1. O.A. No. 313/2011 :

1. V.R. Gopinathan, S/o. V.I. Kumaran,
Aged 59 years, Divisional Engineer,
Transmission Maintenance Center
Telephone Exchange, Trivandrum,
Residing at D4, BSNL Officers Quarters,
Kailas Nagar, Kesavadasapuram,
Trivandrum.
2. N.K. Narayanan Unni, aged 59 years,
S/o. Late V. Krishnan Unni,
Divisional Engineer Telecom, Ollur,
Trichur, Residing at Chitti,
Engineering College PO, Trichur.
3. C.K. Kuriakose, aged 59,
S/o. C.K. Korah,
Divisional Engineer, Phones,
Sreekariyam, Trivandrum,
Residing at T.C. 14/741,
Chirayilmyalil, Chettikunnu,
Kumarapuram, Trivandrum.
4. G. Jayakumar, aged 59 years,
S/o M. Gopalan Nair,
Divisional Engineer, D-Tax & EWST, BSNL,
Medical College, Trivandrum,
Residing at Sreelakshmi, TC 22/234,
SNRA-98, Swathi Nagar Lane-1,
Perukada, Trivandrum.
5. V.M. Mohandas, aged 58 years,
S/o. Late Madavan,
Divisional Engineer, Telecom, Vaikom,
Residing at Sivakripa, Peruva, PO, Kottayam.
6. P.N. Rajappan Pillai, Aged 59 years,
S/o. P.K. Narayanan Pillai,
Divisional Engineer, Telecom, Kanjirappilly,
Residing at Plathanettu, Erattuvadakkekara PO,
Manimala, Kottayam.



7. **Mariamma Sunny, Aged 59 years,**
W/o. Sunny Philip,
Asst. General Manager, BSNL, Kottayam,
Residing at Ponachiparambil Bliss,
Muttampalam PO, Kottayam.
8. **Chinnamma Thomas, aged 58 years,**
W/o. A.P. Thomas,
Asst General Manager, Office of PGMT, Kottayam,
Residing at Ambattu, Mallusery PO, Kottayam.
9. **K.C. Seethadevi, aged 58 years,**
W/o. T.V Somasekharan Nair,
Divisional Engineer WLL, Gandhinagar,
BSNL, Kottayam,
Residing at Chitram House,
Kanakkary PO, Kottayam.
10. **Mariamma Joseph, Aged 59 years,**
W/o. M.T. Joseph,
Asst. General Manager, BSNL,
Office of PGMT, Kottayam,
Residing at Mattathukunnumel House,
Muttampalam PO, Kottayam.

... **Applicants**

(By Advocate Mr. G.D. Panicker)

versus

1. **The Chairman and Managing Director,**
BSNL, Corporate Office, 102-B,
Statesman House, Janpath, New Delhi-1.
2. **The Chief General Manager, Telecom, BSNL,**
Kerala Circle, Trivandrum.
3. **Sree Veerendra Prasad,**
Additional General Manager(Pers.),
BSNL Ltd. 4th Floor, Bharat Sanchar Bhavan,
Janapath, New Delhi-1.
4. **G. Mohandas, Divisional Engineer (External),**
BSNL, Central Division, Thiruvananthapuram,
Pin-695 003.
5. **K. Vijayakumaran Nair,**
Divisional Engineer (Transmission &
Maintenance), STR, Telecom, BSNL,
MCPO, Thiruvananthapuram, Pin-695 011.
6. **Baby Peter,**
Divisional Engineer (External), BSNL,
Nemom, Thiruvananthapuram, Pin-695 020.
7. **B. Sudhakaran, Divisional Engineer,**
BSNL, Attingal.

... **Respondents**

[By Advocates Mr. George Kuruvilla (R1&2) &
Mr. Vishnu S. Chempazhanthiyil R4-7]



2. C.P.(C) No.129/10 In O.A. No. 520/09

1. G.Mohandas, S/o. V. Gopala Panicker,
Divisional Engineer (External) BSNL,
Central Division, Thiruvananthapuram – 3.
2. K.Vijayakumaran Nair, S/o. V. Kuttan Pillai,
Divisional Engineer (Transmission & Maintenance)
STR, Telecom Bhavan, BSNL, M.C.P.O.
Thiruvananthapuram – 11.
3. S.Ponnu Iyer, S/o. Sankara Narayana Iyer,
Assistant General Manager (O&M),
Office of the CGMT, BSNL, Thiruvananthapuram – 33.
4. Baby Peter, S/o. Varkey Puravathu,
Divisional Engineer (External),
BSNL, Nemom, Thiruvananthapuram – 20.
5. B.Sudhakaran, S/o. V. Bhanu,
Divisional Engineer, BSNL, Attingal.
6. E.Krishna Pillai, S/o. Easwara Pillai,
Divisional Engineer (Retd), Telecom Bhavan,
BSNL, M.C.P.O, Thiruvananthapuram – 11.
7. A.Mariadas, S/o. Amartha Rathan,
Assistant General Manager (RRC),
Office of the CGMT, BSNL, Telecom Bhavan,
M.C.P.O., Thiruvananthapuram – 11.
8. B.Balakrishnan Nair, S/o. A.P. Bhaskara Pillai,
Sub Divisional Engineer (Rtd),
Cable Planning-II, Office of the PGMT,
BSNL, Ernakulam, Kochi – 16.
9. T.D.Yohannan, S/o. Devassy T.V.,
Divisional Engineer (BB&COMP),
BSNL, Telephone Exchange,
Mancheri, Malappuram District.

Petitioners

(By Advocate – Mr. Vishnu S. Chempazhanthiyil)

V e r s u s

1. Shri Premachandra,
(Age and Father's name not known
to the petitioners)
The Chief General Manager
Bharat Sanchar Nigam Limited,
Kerala Circle, Thiruvananthapuram.
2. Shri Gopal Das,
(Age and Father's name not known
to the petitioners),
The Chairman and Managing Director,
Bharat Sanchar Nigam Limited,
Corporate Office, Statesman House, New Delhi.



3. Shri R. Chandrashekhar,
(Age and Father's name not known
to the petitioners)
The Secretary, Department of
Telecommunication/Chairman,
Telecom Commission, Ministry of Communication
Sanchar Bhavan, New Delhi. **Respondents.**

**(By Advocates – Mr. George Kuruvilla for R1-2 and
Mr. Sunil Jacob Jose, SCGSC for R-3)**

The above O.A. & C.P. having been heard on 23.02.2012, the
Tribunal on 13-03-12 delivered the following:

ORDER

HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER

As the above O.A and the C.P. (C) 129/10 have common facts
and issues, they were heard together and are disposed of by this common
order.

2. The above O.A. is filed by the applicants to set aside Annexure
A-6 order to the extent it relates to the revision of seniority of respondents
No. 4 to 7 and for a declaration that the said assignment of seniority to the
party respondents is not in conformity with the judgement of Hon'ble
Allahabad High Court and therefore, not covered by the judgement of
Hon'ble Supreme Court in 1997 (10) SCC 226. The applicants contended
mainly that the respondents 4 to 7 did not have a court order in their favour
so as to make them eligible for the benefits available as per the clarificatory
order of the Hon'ble Supreme Court in (1997)10 SCC 226 and affirmed in
(2000) 9 SCC 71.



3. In the reply statement, the respondents 1 and 2 submitted that the respondents 4 to 7 have orders from the Tribunal in O.A. No. 1788/1991 for grant of benefits to them on the principle laid down by the judgement of the Allahabad High Court. Their promotions to SDE (T) grade have been made on the basis of the eligibility list prepared on the basis of qualifying year. The seniority of the respondents 4 to 7 has to be protected as per the clarification given by the Apex Court in Annexure A-1 judgement dated 28.09.2006 and Annexure A-2 judgement dated 25.03.2008. The seniority of the respondents 4 to 7 herein have been revised with reference to the clarification of the Apex Court. Therefore, there is no illegality in Annexure A-6 order of revision of their seniority.

4. The respondents No. 4 to 7 in their reply statement submitted that they had approached this Tribunal in O.A. No. 1788/19991 claiming the benefit of judgement of Allahabad High Court in the case of P.N. Lal and Brij Mohan (Writ Petition Nos. 2739 and 3652 of 1981). The Lucknow Bench of Allahabad High Court concluded that those who qualified in the departmental examination earlier were entitled to be promoted prior to those who qualified later, irrespective of the year of initial recruitment. O.A. No. 1788/1991 filed by the applicants for the benefits on the principle of seniority laid down by the Allahabad High Court was allowed by this Tribunal on 29.06.1992. The SLPs filed against the aforesaid order of this Tribunal which were numbered as C.A. Nos. 1816-36 of 1993 which were dismissed by the Apex Court on 13.05.1994. Thus, the order of this Tribunal in O.A. No. 1788/1991 has become final and binding.

5. We have heard learned counsel for the parties and perused the records.

/

6. The party respondent Nos. 4 to 7 had passed the qualifying examination in the year 1985 for promotion to higher post. O.A. No. 1788/1991 filed by them was allowed by this Tribunal on 29.06.1992 alongwith connected cases. The relevant part of the order is extracted as under :

"6. The identical question as involved in these cases has come up for consideration before the Principal Bench and several other Benches of this Tribunal. In a batch of cases on OA498/90, 999/90, 1062/90, 93/91, 94/91, 580/91, 612/91, 615/91 and 655/91 on the file of this Bench also, this identical question came up for consideration. As the contentions in the above said batch or cases and the batch of cases before us were identical, the respondents filed a statement adopting the contentions raised by them in OA 1062/90. The respondents have in the statement filed in OA 1062/90, a copy of which has been appended to the statements filed in all these cases, opposed the application on various grounds. Finally, when the batch of cases, including OA 1062/90 came up for final hearing before the Bench, the learned Central Government Standing Counsel submitted that the Department had decided to revise the seniority of officers of TES Group B cadre in terms of the Allahabad High Court's judgment and other judgments of the various Benches of this Tribunal taking the same view which has been taken by the Allahabad High Court on the issue. In a contempt proceedings CCP 256/91, before the Principal Bench of this Tribunal the respondents took the same stand. Since the respondents have given up their contentions and have decided to extend the benefit of the judgment of the Allahabad High Court and to revise the seniority list accordingly, the batch of cases OA498/90, 999/90, 1062/90, 93/91, 94/91, 580/91, 612/91, 615/91 and 655/91 were disposed of by order dated 24.4.1992 with the following observations and directions:-

"We allow these applications and direct the Department as has been done earlier in the order dated 30.3.90 passed by this Bench in OAK 603/88 and OAK 605/88, to extend the benefits of the judgment dated 20th February, 1985 of the High Court of Allahabad in Writ Petition Nos. 2739 and 3652 of 1981 to the applicants herein and to promote them to the Telecommunication Engineering (Group B) service with effect from dates prior to the dates of such promotions of any Junior Engineer, who passed the departmental qualifying examination subsequent to the passing of such examination by the applicants and revise



their seniority in the TES Group B cadre on that basis. The Department is further directed to grant the applicants pay and allowances from the respective revised dates of promotion."

7. In view of the fact that the contention of the parties in the above batch of cases and these cases are identical following the above judgment, we allow these applications and direct the respondents 1 & 2 to extend the benefits of the judgment dated 20th February, 1985 of the High Court of Allahabad in Writ Petition Nos. 2739 and 3652 of 1981 to the applicants in these cases and to promote them to the TES Group B service with effect from dates prior to the dates of promotion of any Junior Engineer including the 3rd respondents in OA 817/91, 840/91 & 1516/91, who passed the departmental qualifying examination subsequent to the passing of such examination by the applicants and to revise their seniority in the TES Group B cadre on that basis. We further direct the respondents 1 & 2 to revise the pay of the applicants with effect from the revised dates of promotion and to give them all the monetary benefits arising therefrom. Action on the above lines should be completed within a period of 3 months from the date of communication of this order."

The applicants had the above order in their favour for getting seniority on the basis of year of passing the qualifying examination extending the benefit of the judgement of the Allahabad High Court in P.N. Lal and Brij Mohan (Writ Petition Nos. 2739 and 3652 of 1981). The said order had become final with the disposal of Civil Appeal Nos. 1816-36 of 1993 on 13.05.1994. Subsequently, they had another order in their favour in O.A. No. 520/2009 which was upheld by the Hon'ble High Court in O.P. (CAT) No. 63/2010 dated 27.09.2010.

7. The clarification of the Hon'ble Supreme Court in *Union of India vs. Madras Telephone SC & ST Social Welfare Assn.*, (2006) 8 SCC 662, reads as under:

"19. We, therefore, direct that such of the applicants whose seniority had been determined by the competent authority, and who had been given benefit of seniority and promotion pursuant to the orders passed by courts or tribunals following the principles laid down by the Allahabad High Court and approved by this Court, which



orders have since attained finality, cannot be reverted with retrospective effect. The determination of their seniority and the consequent promotion having attained finality, the principles laid down in later judgments will not adversely affect their cases.

20. This Court has clearly clarified the position in its aforesaid judgment. The observations made by this Court while disposing of the appeal of Parmanand Lal are also pertinent. This Court clearly laid down the principle that the seniority fixed on the basis of the directions of this Court which had attained finality is not liable to be altered by virtue of a different interpretation being given for fixation of seniority by different Benches of the Tribunal. Consequently, the promotions already effected on the basis of seniority determined in accordance with the principles laid down in the judgment of the Allahabad High Court cannot be altered.

21. Having regard to the above observations and clarification we have no doubt that such of the applicants whose claim to seniority and consequent promotion on the basis of the principles laid down in the Allahabad High Court's judgment in Parmanand Lal case have been upheld or recognised by the Court or the Tribunal by judgment and order which have attained finality will not be adversely affected by the contrary view now taken in the judgment Madras Telephones. Since the rights of such applicants were determined in a duly constituted proceeding, which determination has attained finality, a subsequent judgment of a court or Tribunal taking a contrary view will not adversely affect the applicants in whose cases the orders have attained finality. We order accordingly".

8. In view of the settled position of law as above, we do not find any merit in the argument of the applicants that no order has been passed by the competent authority in favour of the respondents 4 to 7 so as to include them within the ambit of the clarification given by the Apex Court. There is no illegality in the impugned order of revision of seniority of the respondents 4 to 7. The O.A. deserves to be dismissed.

9. The C.P.(C) No. 129/2010 was filed for non implementation of the direction given by this Tribunal dated 04.08.2010. in O.A. No. 520/2009.



The respondents in their reply affidavit have stated that the seniority of the contempt petitioners in TES Group-B has been revised by the competent authority as per order dated 30.03.2011 (Annexure R1(a)) of the Additional General Manager (Personnel), Bharat Sanchar Nigam Limited, New Delhi, and thereafter given ad hoc promotion to STS grade with effect from 14.09.2002, the date on which Shri M.R. Belani, with reference to whom the contempt petitioners' seniority is to be determined, was promoted to STS grade. Subsequently, the contempt petitioners 1, 2 and 5 were given regular promotion to DE grade on 16.08.2010 and are now placed as officiating DGM in the JAG grade. The contempt petitioners 4 and 9 also were given officiating promotion as DGM on 20.04.2011 and they are being considered for promotion to regular DE and their seniority in DE grade will be fixed after they are regularly promoted in the grade. Further, it was submitted that in the case of the contempt petitioners, no such promotion orders to SDE were issued based on their eligibility in JTO grade on qualifying year basis and therefore, the restoration of their promotions to STE grade does not arise. In view of the substantial compliance of the directions given by this Tribunal, this contempt petition is liable to be dismissed.

10. In view of the above, the O.A No. 313/2011 and the C.P.(C) No. 129/10 in O.A. No. 520/2009 are dismissed. No order as to costs.

(Dated, the 13th March, 2012)


K GEORGE JOSEPH
ADMINISTRATIVE MEMBER


JUSTICE P.R.RAMAN
JUDICIAL MEMBER