CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA Nos.1891/93, 2060/93, 2091/93
and 317/94

Thursday, this the 19th day of October, 1995

C O R A M

HON'BLE MR JUSTICE CHETTUR SANKARAN NAIR, VICE CHAIRMAN

HON'BLE MR PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

....

OA No.1891/93

Pradeep Nettur, Executive Engineer,
Telecom Electrical Division,
Kozhikode--2.

....Applicant

By Advocate Shri G Sasidharan Chempazhanthiyil.

vs

1. Union of India represented by its
Secretary, Ministry of Communications,
New Delhi.

2. The Director General,
Telecommunications, New Delhi.

3. The Superintending Engineer (Elect),
Telecom Electrical Circle, Madras.

4. The Executive Engineer,
P&T Electrical Division, Trivandrum.

5. Shri KR Ramanandan, Surveyor of Works,
(Electrical) Telecom Electrical Circle,
160, Greams Road, Madras--6.

....Respondents

R.1-4 by Mr PR Ramachandra Menon, Addl Central Govt Standing Counsel.

R.5 by Advocate Mr MK Damodaran.

OA No.2060/93

Sanjeev Kumar Bhuchar,
Executive Engineer (Elect) Telecom,
Electrical Division, 4th Floor, Telecom,
Administrative Building, Unit 9,
Bhubaneswar--751 007.

....Applicant

By Advocate Shri G Sasidharan Chempazhanthiyil.

vs

1. Union of India represented by its
Secretary, Ministry of Communications,
New Delhi.

2. The Director General,
Telecommunications, New Delhi.

contd.

3. The Superintending Engineer (Elect),
Telecom Electrical Circle, Madras.

4. The Executive Engineer,
P&T Electrical Division, Trivandrum.

5. Shri KR Ramanandan, Surveyor of Works,
(Electrical) Telecom Electrical Circle,
160, Greams Road, Madras--6.

....Respondents

R.1-4 by Mr C Kochunni Nair, Senior Panel Counsel.

R.5 by Advocate Mr MK Damodaran.

OA No.2091/93

Pilla Sitarama Patrudu, Executive Engineer (E),
Telecom Electrical Division,
Muthavarapu Building, 1st Floor,
Opp: Maristella College,
Ring Road, Vijayawada--520 008.

....Applicant

By Advocate Shri G Sasidharan Chempazhanthiyil.

vs

1. Union of India represented by its
Secretary, Ministry of Communications,
New Delhi.

2. The Director General,
Telecommunications, New Delhi.

3. The Superintending Engineer (Elect),
Telecom Electrical Circle, Madras.

4. The Executive Engineer,
P&T Electrical Division, Trivandrum.

5. Shri KR Ramanandan, Surveyor of Works,
(Electrical) Telecom Electrical Circle,
160, Greams Road, Madras--6.

....Respondents

R.1-4 by Mr MHJ David, J, Addl Central Govt Standing Counsel.

R.5 by Advocate Mr MK Damodaran.

OA No.317/94

1. Praveen Varshney, Executive Engineer (E),
Telecom Electrical Division,
Plot No.9, SSI Estate, Gultekadi, Pune--37.

2. AK Tyagi, Executive Engineer (E),
Telecom Electrical Division, Gadwal Compound,
Nampally Station Road, Hyderabad--1.

3. R Ramesh Babu, Executive Engineer (E),
Telecom Electrical Division, Bembalgi Complex,
Lamington Road, Hubli--20.

contd.

4. SK Virmani, Executive Engineer (E),
Telecom Electrical Division No.I,
Asaf Ali Road, New Delhi--110 002.

....Applicants

By Advocate Shri G Sasidharan Chempazhanthiyil.

vs

1. Union of India represented by Secretary,
Ministry of Communications, New Delhi.

2. Director General,
Telecommunications, New Delhi.

3. Superintending Engineer,
Telecom Electrical Circle, Madras.

4. KP Ramanandan, Surveyor of Works (Electrical),
Telecom Electrical Circle,
160, Greams Road, Madras--600 006.

....Respondents

R.1-3 by Mr TPM Ibrahim Khan, Senior Central Govt Standing Counsel.
R.4 by Advocate Mr PV Mohanan.
....

These applications having been heard on 12.10.1995, the Tribunal delivered the following on 19th October, 1995:

O R D E R

PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

The prayers in all these applications are the same and they are, therefore, being disposed of by this common order.

2. KP Ramanandan, the fifth respondent in OAs 1891/93, 2060/93 and 2091/93, who is the fourth respondent in OA 317/94, was an Assistant Engineer (Electrical) [AE (E) for short] in the Department of Telecommunications. For convenience, he is referred to as the fifth respondent in this order. While working as Planning Engineer in Bharat Heavy Electricals Limited (BHEL), Hyderabad, he appeared for the Combined Engineering Services Examination, 1977 and was selected. He is a member of a Scheduled Caste. His actual appointment was delayed and finally he was appointed as AE(E) by order dated 28.4.81. He was assigned 1977 seniority. He wrote

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the Departmental Examination in November, 1983, but since, according to him, the results were not published, he again wrote the examination in 1984. He was declared to have passed. Fifth respondent, however, claimed that his passing the examination should relate to his appearing for the examination in 1983, and that his increments should be ordered accordingly.

3. Aggrieved regarding his clearance of probation, drawal of increments, fixation of seniority in the grade of AE(E) and promotion to the grade of Executive Engineer (Electrical) [EE(E) for short] he represented to the respondents for relief. Respondents issued AV (in OA 1891/93) letter dated 26.6.85 rejecting the claim. Certain adverse entries were communicated to the fifth respondent in letter dated 18.5.85. The fifth respondent thereupon approached the High Court of Kerala in OP No 7226 of 1985 praying that the above two letters dated 26.6.85 and 18.5.85 be quashed, that he be given proper seniority in the batch of 1977, that his probation be declared and increments due be paid and that he be promoted as EE(E). He obtained an interim order dated 30.7.85 that all further promotions to the posts of EE will be subject to the result of the OP. The OP was subsequently transferred to the Tribunal and numbered TAK 773/87. Later, the TAK was amended on 1.3.89 and the fifth respondent challenged the seniority lists dated 18.9.87, 13.11.87 and 11.1.89 in the grade of AE(E) and seniority list dated 11.1.89 in the grade of EE(E).

4. The Tribunal in its order dated 31.1.90, observed that the applicant (fifth respondent here) had passed the departmental examination held in November, 1983 and that his completion of probation should be ordered on that basis. The Tribunal also observed that the applicant (fifth respondent here) as a Scheduled

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Caste candidate, was entitled to two years relaxation in respect of the requirement of eight years of service for promotion to the grade of EE(E) and that he became eligible for consideration by a Departmental Promotion Committee (DPC) for a vacancy in the year 1984. It may be noticed here that though applicant (fifth respondent here) repeatedly claimed that he had passed the departmental examination in November, 1983--it was an admitted position that he took that examination--the respondents in TAK 773/87 while stating that he had passed only in 1984, had no case that he had failed in the November, 1983 examination. It was also an admitted position that there was a vacancy reserved for Scheduled Castes in the grade of EE(E) in 1984. Regarding the relaxation of the requirement of eight years' service, the respondents in TAK 773/87 never stated that there was no such relaxation available, even though applicant in the TAK had stated so specifically (para 25 of TAK), though there is a broad denial of "the statement" made in para 25 (there are several statements in para 25, and which one was denied is not clear). There is also a statement in the additional reply statement in TAK 773/87 that he is

> "eligible for promotion only after having rendered 8 years of service in the grade".

It appears, however, from the reply statement in OA 1891/93 that the fifth respondent was

> "considered against a vacancy of 1986, along with his batch mates in accordance with the provisions under clause 2 of the Rule 4-B of the P & T Civil Engineering (Electrical Gazetted Officers) Recruitment (Amendment) Rules, 1984, even though he had put in only 5 years regular service."

Rule 4-B, clause (2) reads:

> "In the Schedule...all persons senior to him in the post shall also be considered notwithstanding that they have not rendered the requisite period of service."

Further, in CCP 85/91 filed in TAK 773/87, in the reply, it is stated:

> "The applicant joined service on 1.6.81. If the 8 year service condition is reckoned in this case, he becomes eligible for promotion only in June, 1989. But he was considered for promotion against a vacancy of 1986, when he had put in only 5 years of service. Thus, in fact, he had a relaxation of about 3 years when he was considered for the post of EE(E)."

Thus, apparently, a general relaxation available to all irrespective of Scheduled Caste status under Rule 4-B, clause (2) which resulted in a relaxation of about three years in terms of actual service was interpreted as a relaxation of two years available to Scheduled Caste employees and applied to service including notional service, since the fifth respondent who joined in 1981 was nevertheless given 1977 seniority as AE(E) and, therefore, in 1986, he had an actual service of only five years but a service including notional service of eight years.

6. Be that as it may, the Tribunal directed that the fifth respondent be deemed to have completed his probation of two years in November, 1983, that he should be given his second increment "from November, 1983", and that a review DPC should consider his promotion as EE against a reserve vacancy, if any, for the years 1984,

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1985 and 1986, and if he is found fit for promotion in any of these years, his promotion should be preponed to that year and his seniority amongst EEs fixed accordingly. In pursuance of these directions, the impugned orders AVI dated 21.2.92 declaring completion of probation of the fifth respondent on 1.11.83, AVII dated 20.10.92 appointing him as EE(E) with effect from 1.6.84 and AVIII dated 23.3.93 revising his seniority as EE(E) from 50 to 20-A, were passed. Applicants in these OAs challenge these three orders.

7. Applicants are AE(E)s or Assistant Executive Engineers (Electrical) [AEE(E) for short]. They do not belong to the Scheduled Castes. They challenge the impugned orders on the ground that (a) they were not impleaded in TAK 773/87; (b) the fifth respondent cannot be promoted before passing the departmental examination, which he did only in December, 1984; (c) that fifth respondent cannot be placed above them in the seniority list; and (d) that fifth respondent cannot be considered for any vacancy in EE(E) which arose before 1986.

8. AE(E) and AEE(E) are two feeder categories to the post of EE(E), each with its own quota and each with its own separate seniority lists. The fifth respondent has objected to the applicants who are AEE(E)s challenging his promotion, since he, the fifth respondent, was promoted under the quota set apart for AE(E)s and so an AEE(E) cannot claim to be adversely affected by his ,(the fifth respondent's) promotion. We see considerable force in this objection. Further, none of the applicants, including the applicants who are AE(E)s and so prima facie can claim to be adversely affected by the promotion of another AE(E), belong to the Scheduled Caste and fifth respondent, who was directed by the Tribunal in TAK No.773/87 to be considered against a vacancy reserved for Scheduled Castes, and who admittedly, as stated in the impugned

order AVII, was considered only against a reserved vacancy, has objected to the applicants challenging his promotion, since they not belonging to the Scheduled Caste cannot be adversely affected by his promotion against a reserved vacancy. We see considerable force in this objection also. These applications deserve to be dismissed on the ground of lack of locus standi.

9. The applicants state that they were not parties to TAK 773/87 and so their seniority cannot be altered as a consequence of a decision in that TAK. It is to be noticed that the fifth respondent as applicant in TAK 773/87 was only claiming what he considered was due to him under the rules and his grievance was against the government respondents, that they did not grant him what was due to him under the rules. He advanced no claim based on the seniority position of the applicants herein. If the case of the applicant in TAK 773/87 was considered under the rules correctly (as interpreted by the Tribunal) and his promotion granted and seniority fixed accordingly, applicants cannot legitimately ask for a quashing of those orders on the ground that they were not impleaded in TAK 773/87. That would make no difference as fifth respondent falls in a slot unattainable for applicants. This view is supported by the decision in A Janardhana vs Union of India and others, (1983) 3 SCC 601, where it is stated, at page 625:

> "It was contended that those members who have scored a march over the appellant in 1974 seniority list having not been impleaded as respondents, no relief can be given to the appellant. In the writ petition filed in this High Court, there were in all 418 respondents. Amongst them, first two were Union of India and Engineer-in-Chief, Army Headquarters, and the rest presumably must be those shown senior to the appellant. By an order made by the High Court, the names of respondents 3 to 418 were deleted since notices could not be served

on them on account of the difficulty in ascertaining their present addresses on their transfers subsequent to the filing of these petitions. However, it clearly appears that some direct recruits led by Mr Chitkara appeared through counsel Shri Murlidhar Rao and had made the submissions on behalf of the direct recruits. Further an application was made to this court by nine direct recruits led by Shri T Sudhakar for being impleaded as parties, which application was granted and Mr PR Mridul, learned senior counsel appeared for them. Therefore, the case of direct recruits has not gone unrepresented and the contention can be negatived on this short ground. However, there is a more cogent reason why we would not countenance this contention. In this case, appellant does not claim seniority over any particular individual in the background of any particular fact controverted by that person against whom the claim is made. The contention is that criteria adopted by the Union Government in drawing up the impugned seniority list are invalid and illegal and the relief is claimed against the Union Government restraining it from upsetting or quashing the already drawn up valid list and for quashing the impugned seniority list. Thus the relief is claimed against the Union Government and not against any particular individual. In this background, we consider it unnecessary to have all direct recruits to be impleaded as respondents. We may in this connection refer to GM, South Central Railway, Secundrabad v AVR Siddhanti, (1974) 4 SCC 335. Repelling a contention on behalf of the appellant that the writ petitioners did not implead about 120 employees who were likely to be affected by the decision in the case, this court observed that [page 341] the respondents (original petitioners) are impeaching the validity of those policy decisions on the ground of their being violative of Articles 14 and 16 of the Constitution. The proceedings are analogous to those in which the constitutionality of a statutory rule regulating seniority of government servants is

assailed. In such proceedings, the necessary parties to be impleaded are those against whom the relief is sought, and in whose absence no effective decision can be rendered by the court. Approaching the matter from this angle, it may be noticed that relief is sought only against the Union of India and the concerned Ministry and not against any individual nor any seniority is claimed by anyone individual against another particular individual and therefore, even if technically the direct recruits were not before the court, the petition is not likely to fail on that ground. The contention of the respondents for this additional reason must also be negatived."

We would also remind ourselves that though the applicants were not impleaded in TAK 773/87, the contentions they have now advanced against the decision in that TAK have not gone unnoticed, as they were advanced by the government respondents. In fact, the stand of the government respondents in TAK 773/87, RA 52/93 and these applications is the same as that of the applicants.

10. All this apart, the main ground advanced by the applicants is:

"A. Annexure III judgement is erroneous on the face of the record and interest of justice requires that the same is reviewed and the adverse consequences suffered by the applicant as a result of Annexure III is done away with."

[Emphasis added]

It is difficult to see how an erroneous judgement of the Tribunal can be reviewed and corrected by means of an original application before the Tribunal. It may be noticed that one of the applicants had already filed a review petition RA 52/93 in TAK 773/87 raising

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the very same contentions raised here that the judgement was based on wrong presumptions. The review petition was dismissed by the Tribunal, stating:

> "...learned counsel for the review applicants submitted that the applicant in the TAK 773/87 passed the departmental examination for all the subjects only in the year 1984 and the statement in the judgment that he has passed in the examination held in November, 1983 is a wrong statement. It is further stated that the original applicant became eligible for two years relaxation in 1984 is also wrong because there is no provision in the Recruitment Rules for granting such relaxation.
>
> 3. Fifth respondent in the RA has filed a reply statement in which he has stated as follows:
>
> "For the reasons stated herein above it is submitted that Department do not have objections in review applicants' prayer being allowed."
>
> 4. First respondent, who is the original applicant in the TA filed a detailed objection to the review and contended that the review applicant has no locus standi. There is apparent collusion between the review applicants and the fifth respondent. However, according to the first respondent, the review applicants have no locus standi to move this RA. There are no factual mistakes in the judgment as contended by the review applicants. Even if there are factual mistakes as contended by the review applicants, they do not affect the operative portions in the judgment. In fact, they have no relevance and there are no grounds for reviewing the judgment.
>
> 5. After careful consideration of the contentions in detail, we are of the view that the review

applicants do not belong to SC/ST community and their right or interest has not been affected by the judgment. Really, they are not aggrieved persons particularly when the operative portion of the judgment is very clear and specific that the review DPC should consider the promotion of the original applicant, as Executive Engineer, against a reserved vacancy, if any, for the years 1984, 1985 and 1986.

6. In this view of the matter, we are satisfied that, if at all there is any factual mistake in the judgment as contended by the review applicants, they do not affect the rights of the applicants for getting any service benefits legally due to them. We do not see any ground for review of the judgment of this Tribunal rendered on 31.1.90."

It, therefore, appears that these applications virtually call for a second review, and that too, in the guise of original applications. It is surprising to note that the government respondents state before us that the Tribunal's order in TAK 773/87 was not correct and that they implemented the Tribunal's direction under threat of contempt in CCP 85/91 in TAK 773/87 (para 10 of their reply). It is not known, why, in that case, the government respondents did not even file a review petition themselves or go in appeal against the order. The RA 52/93 was dismissed on the ground of locus standi which would not have been the case if government respondents had filed a review application. It is not proper for the government to contend that they issued orders which they believed to be not correct, just because there was a contempt petition filed, when they had not cared to exercise their privilege of filing a review/appeal petition. Learned counsel for fifth respondent contended, and rightly too, that the applicants are trying to reopen a matter which had attained judicial finality. The attempt is to get the decision in TAK 773/87, which had become final, reversed through a

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collateral challenge, arguing that the decision to which they were not parties has prejudicially affected them. Learned counsel for fifth respondent cited AR Antulay v RS Nayak and Another, AIR 1988 SC 1531, to support his contention that this is not permissible. In that case, Venkatachaliah, J (as he then was), in his minority view, said (at page 1587):

> "139: Re: Contention (h): The argument is that the appellant has been prejudiced by a mistake of the Court and it is not only within the power but a duty as well, of the Court to correct its own mistake, so that no party is prejudiced by the Court's mistake: Actus Curiae Neminem Gravabit.
>
> I am afraid this maxim has no application to conscious conclusions reached in a judicial decision. The maxim is not a source of a general power to reopen and rehear adjudications which have otherwise assumed finality. The maxim operates in a different and narrow area. The best illustration of the operation of the maxim is provided by the application of the rule of nunc pro tunc. For instance, if owing to the delay in what the court should, otherwise, have done earlier but did later, a party suffers owing to events occurring in the interregnum, the Court has the power to remedy it. The area of operation of the maxim is generally, procedural. Errors in judicial findings, either of facts or law or operative decisions consciously arrived at as a part of the judicial exercise cannot be interfered with by resort to this maxim. There is no substance in contention (h).

On collateral challenge, His Lordship further stated:

> "123. Courts are as much human institutions as any other and share all human susceptibilities of error. Justice Jackson said:

"...Whenever decisions of one Court are reviewed by another, a percentage of them are reversed. That reflects a difference in outlook normally found between personnel comprising different courts. However, reversal by a higher court is not proof that justice is thereby better done. There is no doubt that if there were a super-Supreme Court, a substantial proportion of our reversals of State Courts would also be reversed. We are not final because we are infallible, but we are infallible only because we are final."

[See Brown v Allen (1944 US 443 at 540)].

In Cassell v Broome, (1972) AC 1027 at p.1131 Lord Diplock said:

"...It is inevitable in a hierarchical system of courts that there are decisions of the supreme appellate tribunal which do not attract the unanimous approval of all members of the judiciary. When I sat in Court of Appeal I sometimes thought the House of Lords was wrong in overruling me. Ever since that time there have been occasions, of which the instant appeal itself is one, when, alone or in company, I have dissented from a decision of the majority of this House. <u>But the judicial system only works if someone is allowed to have the last word and if that last word, once spoken</u>, is loyally accepted."

.....

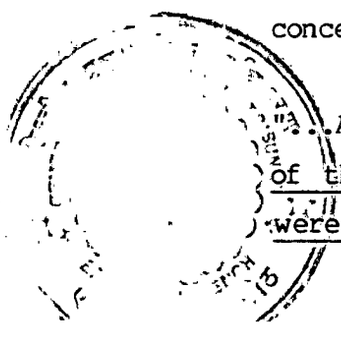
125. The expression "jurisdiction" or the power to determine is, it is said, a verbal cast of many colours. In the case of a Tribunal, an error of law might become not merely an error in jurisdiction but might partake of the character of an error of jurisdiction. But, otherwise, jurisdiction is a 'legal shelter'--a power to bind despite a possible error in the decision. The existence of jurisdiction

does not depend on the correctness of its exercise. The authority to decide embodies a privilege to bind despite error, a privilege which is inherent in and indispensable to every judicial function. The characteristic attribute of a judicial act is that it binds whether it be right or it be wrong. In Malkarjun v Narahari, (1900) 27 Ind App 216 the executing Court had quite wrongly, held that a particular person represented the estate of the deceased judgment-debtor and put the property for sale in execution. The judicial committee said:

"In doing so, the Court was exercising its jurisdiction. It made a sad mistake, it is true; but a court has jurisdiction to decide wrong as well as right. If it decides wrong, the wronged party can only take the course prescribed by law for setting matters right and if that course is not taken the decision, however wrong, cannot be disturbed."

129. In regard to the concept of Collateral Attack on Judicial Proceedings it is instructive to recall some observations of Van Fleet on the limitations--and their desirability--on such actions.

"One who does not understand the theory of a science, who has no clear conception of its principles, cannot apply it with certainty to the problems; it is adapted to solve. In order to understand the principles which govern in determining the validity of Rights and Titles depending upon the proceedings of judicial tribunals, generally called the doctrine of Collateral Attack on Judgments, it is necessary to have a clear conception of the Theory of Judicial Proceedings..."



"...And as no one would think of holding a judgment of the court of last resort void if its jurisdiction were debatable or even colorable, the same rule

must be applied to the judgments of all judicial tribunals. This is the true theory of judicial action when viewed collaterally. If any jurisdictional question is debatable or colorable, the tribunal must decide it; and an erroneous conclusion can only be corrected by some proceeding provided by law for so doing, commonly called a Direct Attack. It is only where it can be shown lawfully, that some matter or thing essential to jurisdiction is wanting, that the proceeding is void, collaterally.

It is the duty of the courts to set their faces against all collateral assaults on judicial proceedings..."

11. It, therefore, follows that the challenge to the impugned orders issued in pursuance of the directions of the Tribunal cannot be countenanced. The applications are accordingly dismissed, however, without costs.

Dated the 19th October, 1995.

PV VENKATAKRISHNAN
ADMINISTRATIVE MEMBER

CHETTUR SANKARAN NAIR (J)
VICE CHAIRMAN

CERTIFIED TRUE COPY
Date 25.10.95
Deputy Registrar

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