

CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW

Lucknow this the 3rd day of Feb 96.
O.A. No. 148/92

HON. MR. V.K. SETH, MEMBER(A)

HON. DR. R.K. SAXENA, MEMBER(J)

1. P.K. Sharma son of Pt. Shree Ram Sharma, resident of Chandra Lok P&T Colony, Lucknow.
2. D.C. pandey, son of late Sri Narain pandey resident of 51, Tilak nagar, Lucknow.
3. Alok Sinha, son of Sri M.S. Sinha resident of H.I.G. 107, Sector E, Aliganj, Lucknow.
4. Surendra nath Misra, son of Sri Ram Swaroop Misra resident of Qr. 87 Sanchar Colony Sector, D, Aliganj, Lucknow.
5. Wahaja Ullah son of Sri Habeen Ullah resident of 1/235, Vikas nagar, Lucknow.
6. Sridhar Mukherji son of late Sri Dr. mukerji resident of 48, Tarak Mukerji Road, Lucknow.
7. Satish Chandra Awasthi son of Sri Ram Prakash Awasthi resident of 122, Nawayya Ganeshganj, Lucknow.
8. S.L. Srivastava son of Sri J.P. srivastava, r/o 92/IV Sector 'D' Aliganj, Lucknow.

Applicants

By Advocate Shri R.K. Srivastava.

versus

1. Union of India through Secretary, Ministry of Communication, Sanchar Bhawan, New Delhi.
2. Chairman, Telecommunications Commission Sanchar Bhawan, New Delhi.

v. v.

3. The Director General, Department of Telecommunications, Sanchar Bhawan, New Delhi.

Respondents.

By Advocate Shri A.K. Chaturvedi.

O R D E R

HON. MR. V.K. SETH, MEMBER(A)

The applicants numbering 8 have prayed for issue of a direction to the respondents to re-fix their seniority in T.E.S. (Group B) in accordance with T.E.S(Group B) Recruitment rules read with para 206 of the P&T Manual, Volume IV on the basis of the judgment by Lucknow Bench of Allahabad High Court delivered in W.P. No. 2739/81 & 2652/81 in P.N.Lal & Brij Mohan's cases.

2. Despite ample time and opportunity since the filing of the case, the respondents have not filed any counter reply. On 6.7.95, last opportunity was given to the respondents and it was provided that in case the C.A was not filed, within stipulated time, the O.A. may proceed ex parte. In the absence of the counter reply, therefore this O.A. is being decided on the basis of pleadings with documents filed by the applicants.

3. The applicants were recruited to the cadre of Engineering Supervisors, and passed the TES(Group B) examination for being eligible for their promotion to T.E.S. Group B as stipulated in para 206 of the P&T Manual, Volume IV. After passing the said examination they were promoted to T.E.S. Group B based on the recommendations of the Departmental Promotion Committee on various dates. The

applicant allege that the respondents while preparing the seniority list have not determined their seniority in accordance with para 206 of the P&T Manual, Volume IV which stipulated that the Engineering Supervisors who passed the qualifying examination earlier, will rank senior as a Group to those who passed the examination on subsequent occasions. Alongwith the O.A. the applicants have filed a copy of the judgment dated 3rd of September, 91 passed by this Tribunal in O.A. 82/1988(L), and two other connected O.As which dealt with the same subject. They have also cited the judgment in the **case of E.M. Lal vs. Union of India** connected with the case of Brij Mohan vs. Union of India and stated that the benefit of the decision in the afore-mentioned cases was given to the applicants in those cases and not to the applicants of the present O.A. The applicants have therefore, approached this Tribunal for similar benefits.

4. Alongwith the Supplementary Affidavit they have filed the decision of the Hon'ble Supreme Court dated 13.5.94 delivered in the case of Telecom Engineering Services Association vs. Union of India in S.L.P.No. 16698 of 1992(C.A. No. 1814/93 and others) with certain other SLPs and civil appeals.

5. The aforesaid SLP was directed against the judgment dated 29.6.92 passed by the C.A.T, Principal Bench in Review Application No. 195/92 in O.A. No. 2667 of 1991. The decision of the Principal bench related to the same

issue i.e. whether the applicants and persons similar to them were entitled to promotion from the grade of Junior Engineers to the next higher grade in the Telegraph Engineering Service Group B on the basis of the year of passing the qualifying departmental examination as envisaged in para 206 of the P&T Manual and not on the basis of their respective seniority/ as Engineering Supervisors of Hon. Supreme Court / therefore, lays down the law on the subject by which we are bound.

6. As mentioned by their Lordships of the Hon'ble Supreme Court in this judgment, SLP No. 3384-86/96 filed by the Union of India against the judgment of Allahabad High Court in writ petitions Nos. 2739 and 3652 of 1991 (Parmanand Lal and Brij Mohan vs. union of India and others were dismissed by the Hon'ble Supreme Court on merits on 8.4.86. ~~and therefore~~ The Principal Bench of this Tribunal followed the decision in the case of Parmanand Lal and Brij Mohan vs. Union of India.

7. In the light of the foregoing discussions and the judgment in the case of Parmanand and Brij Mohan (supra) as also the ~~xxxxxx~~ ruling of the Hon'ble Supreme Court filed by the applicant with his Supplementary (referred to in para 4 above) Affidavit we order as follows:

i) That the applicants' seniority ^{in TES(Gr B)} will be

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re-fixed on the basis of year of passing the qualifying examination and they will be placed above those who passed the qualifying examination subsequently.

ii) We further direct that on re-fixation of seniority and notional promotion, with retrospective effect, the applicants would be entitled only to re-fixation of their present pay which should not be less than that of a person immediately below but they would not be entitled to back wages.

iii) We further provide that in case the re-drawing of the seniority list results in reversion of some officers who have already been promoted, their interests should be safeguarded at least to the extent of protecting the pay actually drawn by them, in case creation of the requisite number of supernumerary posts to accommodate them in their present posts is not found feasible.

iv) Before parting with the case we would like to express our anguish at the indifference of the respondents who failed to file reply to the O.A. in more than three years' time. In absence of version of the respondents, we were left with no choice but to decide the case on the basis of the documents filed by the applicants.

vi) In the circumstances of the case, there shall be no order as to costs.

Shakeel
MEMBER (J)

Shakeel
MEMBER (A)

Lucknow; Dated: 13.1.96

Shakeel/