

(12)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW
.....

Original Application No. 407 of 1992
this the 16th day of May'2000.

HON'BLE MR D.V.R.S.G. DATTATREYULU, MEMBER (J)
HON'BLE MR S. MANICKAVASAGAM, MEMBER (A)

M.D. Choudhary

2. Radhey Lal

3. Ram Kishore

4. A.N. Singh

5. B.D. Rawat

6. Ram Awatar

7. J.P. Narain

... Applicants

Versus

Union of India through the Director General, Department of
Telecommunication, New Delhi.

2. The Chief General Manager, Telecommunication, U.P. Telecom.
Circle, Lucknow.

3. Sri K.S. Dikshit, Senior Accountant

4. Sri Visram Verma, Senior Accountant

5. Sri D.S.L. Srivastava, Senior Accountant

.. Respondents

None : Advocate for the Applicant

Sri A.K. Chaturvedi : Advocate for the Respondents

O R D E R

D.V.R.S.G. DATTATREYULU, MEMBER (J)

The applicant in this case, pray for giving a direction to the respondents to revise the seniority of the applicant by quashing the tentative seniority list under Annexure-1 dated 30.5.89.

2. The case of the applicants is that the seniority of the respondent nos. 3, 4 & 5 in the seniority list at sl. nos. 8, 9 & 10 respectively; whereas the applicants are below them. The applicant

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case is that they passed the relevant examination within the prescribed time of two years, they ought to have been above the respondent nos. 3, 4 & 5, but they were wrongly placed below to them, hence this prayer for quashing of the seniority list was made.

3. The respondents have filed Counter affidavit in which it is stated that the present Seniority list is only a tentative one and the applicants are at liberty to make a representation as per the seniority list proposed under Annexure-1. It is also stated that the seniority was properly fixed taking into consideration the note 1 & 2 to the rule regarding passing of the examination. According to the respondents that rules were amended in 1980 itself stating that even they passed even within three years, their seniority need not go down. Hence, the seniority proposed is correct.

4. We have heard the learned counsel for both sides and also considered the various documents and Annexures filed by both sides.

5. The point for consideration is whether the directions sought for by the applicant is to be issued or not ?.

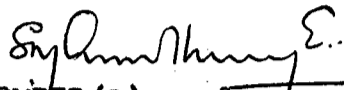
6. We are in agreement with the arguments advanced by the learned senior Counsel Sri A.K. Chaturvedi that the Annexure-1 is only a tentative one for the reason that it is for circulation amongst the staff. The said order also contemplates representation regarding the wrong fixation of seniority ^{if any} has to be made within three months, so that the department can take a final decision and publish the final seniority list, so the right to approach the Tribunal has not accrued to the applicants and the application is pre-mature, except one of the applicant, out of the five applicants have not made any representation. Even this representation made by the one of the applicant ^{was} after ^{the} lapse of three months. On that ground itself, the application is liable to be dismissed. But we do

application on this point. We want to put the litigation at rest giving considered opinion whether the points raised by the applicants ^{are} is correct or not. According to the applicants, as per note 1 & 2 of the departmental rule, a candidate who passed an examination after two years i.e. availing after four chance and qualified ⁱⁿ the examination has to be ranked below to the candidates, who passed the departmental qualifying examination within four chance. But it is brought to our notice under Annexure that a clarification was issued regarding this matter that the note was amended as long as back in the year 1980 itself stating that even though one qualifies in the departmental examination in the fifth and sixth chance, his ranking will not be affected. Therefore, the contention of the respondents is that the seniority proposed in the list ^{is} according to the rules. Here, one point requires for consideration. This clarification was issued in the year 1980 regarding note 2 of the service rules. The service rules are framed under article 309 of the Constitution of India. It is not brought to our notice that the rules ^{are} itself ^{what was then} is amended. ~~What are~~ ^{What} may be a clarification that is issued goes to show that the seniority of the respondent nos. 3 4 & 5 is properly fixed.

7. Apart from that, it is seen that the stand taken by the respondents in the Counter that the seniority list of the candidates was published in the year 1977 itself and the same was not questioned by the applicants. The applicants have stated in their Rejoinder that the said list was not circulated, Therefore, they were not aware of the said earlier seniority list of 1977. But there is no ~~para-material~~ ^{para-material} that the seniority of 1977 was not circulated. The stand of the respondents in the Counter is that it was circulated. This statement made by both sides on oath. Therefore, the respondents being responsible official, their stand has to be given preference vis a vis to the applicants. Therefore, on that ground also, there is no grounds to be agitated now by

the applicants.

8. In view of the discussion made above, there are no merit in the application and the same is, therefore, dismissed. No costs.


MEMBER (A) 16/5/2000


MEMBER (J)

LUCKNOW: DATED:

GIRISH/-