

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH: MUMBAI

ORIGINAL APPLICATION NO. 448/96

Date of Decision: 22.10.2001

Shri S. Sadasivan & 2 Ors.

Applicant

Versus

Union of India & another

... Respondents

Shri P.M. Pradhan.

Advocate for Respondents

CORAM: HON'BLE SHRI S.L. JAIN. MEMBER (J)  
HON'BLE SMT. SHANTA SHAstry. ... MEMBER (A)

- (1) To be referred to the Reporter or not?
- (2) Whether it needs to be circulated to other Benches of the Tribunal? | Y
- (3) Library ✓

*Shanta*  
(SMT. SHANTA SHAstry)  
MEMBER (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH 1 MUMBAI

ORIGINAL APPLICATION NO. 488/96

THIS, THE 22<sup>nd</sup> DAY OF OCTOBER, 2001

CORAM: SHRI S.L. JAIN.  
SMT. SHANTA SHAstry.

MEMBER (J)  
MEMBER (A)

1. S. Sadasivan.
2. Smt. Sobha.T. John.
3. Smt. Pushpaja Bhaskaran. ... Applicants

All working as Junior Telecom Officers in the office of Deputy General Manager (Maintenance-II) Telephone Exchange, Dombivli (East) 421 203.

In person

Versus

1. The Chief General Manager  
Telecommunications,  
Maharashtra Circle,  
Bombay-400 001.
2. Union of India represented by  
Chairman, Telecom Commission,  
Sanchar Bhavan, Ashoka Road,  
New Delhi-110 001. ... Respondents

By Advocate Shri P.M. Pradhan.

O R D E R

Smt. Shanta Shastry. Member (A)

The applicants in this case are aggrieved by the gradation list of Junior Telecom Officers (JTO for short) published vide letter dated 1.5.1995 showing the position as on 1.7.1992 as well as by the letter No.1-53/78 (Part III) dated 10.7.80 issued by the Director General P & T New Delhi and the letter dated 11.12.95 from the Chief General Manager Telecom, Maharashtra Circle, Bombay.

2. The applicants are working as JTOs in the Telephone Exchange at Dombivli, Thane. They are directly recruited as JTOs in the Maharashtra Circle. They had applied in response to an advertisement dated 25.2.1989 notifying 268 vacancies and the selection was finalised in September 1989 and the applicants were sent for training in cross-bar specialisation for 33 weeks at the Regional Telecom Training Centre, Trivandrum vide memo dated 20.11.1989. On completion of the training, orders were issued on 20.7.90 directing them to join their places of posting. Postings were ordered vide memo dated 23.8.90. Appointment orders were issued vide letter dated 1.8.90 showing the date of appointment according to the dates on which the applicants joined, namely 23.7.90, 25.5.90 and 23.7.90 respectively.

3. Thereafter, again 425 vacancies were advertised in March, 90 and candidates were selected in 1991. Similarly examination for promotion of departmental candidates for about 135 vacancies was also held in February, 90 and the results were announced on 8.1.91 and they were sent for training on or after 11.3.91 vide memo dated 29.1.91.

4. Thereafter, the circle gradation list was issued by Maharashtra Telecom Circle vide impugned letter dated 1.5.95 showing the position as on 1.7.92. In this list, according to the applicants, their

seniority has been shown wrongly. Because directly recruited candidates of 1989 selection have been clubbed along with the direct recruits, who appeared in the examination of 1990, was also departmental promotees, who qualified in February, 1990 examination. For example Shri Anup Kumar Mishra, who <sup>was</sup> selected as a direct recruit in 1990 is placed at S.No. 2114 i.e. above the applicant No.1 <sup>when</sup> placed at S.No.2171 so also Shri M.N. Raut has been placed at S. No.1891. This is in contravention of the DOP & T OM dated 3.7.1986, according to which persons appointed as a result of earlier examination are to be seniors to those appointed as a result of subsequent selection.

5. The applicants submit further that direct recruits, who occupied a lower position in the select list of 1989 and were sent for training later than the applicants and were also appointed after the applicants have been shown above the applicants in the gradation list. For example Shri M. Nerone appointed on 10.9.90 and Shri Rampal Narendranath appointed on 21.12.90 have been shown seniors to the applicants.

6. Besides, 19 SC/ST departmental candidates, who appeared in the departmental promotion examination for JTOs in the year 1984, but failed and were subsequently declared qualified on review of their results vide letter dated 24.3.93 were conferred seniority below the officers whose results were declared on 30.5.1985. They

were sent for training in 1993 and were appointed in June, 1994. But they were accorded seniority above the applicants.

7. The applicants, therefore, submitted a representation on 11.10.95 followed by representations on 20.10.95, 8.11.95 and 22.1.96 to the Chairman, Telecom Commission. The representation dated 20.10.95 is replied by the Chief General Manager, Telecom, Maharashtra Circle, Bombay vide letter dated 11.12.95.

8. The applicant No.1, who argued in person on behalf of all the applicants, contended that retrospective promotion cannot be given from the date when the person was not born in the cadre <sup>so</sup> as to adversely affect others. Marks obtained in the post training examination irrespective of the technology/speciality and date of deputation for training has resulted in discrimination and disparity. The applicant No.1 has relied on the judgment in the case of Hyder Hussain Vs. Union of India reported in 1996 (1) ATJ 235 wherein, it has been held by the Hyderabad Bench of the Tribunal that whenever candidates are selected in pursuance of a particular notification and are sent for training by batches by following panel position in the list, those who were sent in later batchs <sup>or</sup> have to be placed below those who were sent in earlier batches.

9. The applicants have further stated that Rule 31 of the P & T Manual Volume IV provides that "Following general rules apply equally to officers of all the different branches of service unless it is otherwise expressly specified as applicable to a particular branch or to a particular class of Government servants". Rule 429 provides for recruitment and training of candidates for the cadre of Engineering Supervisors (now known as JTOs) and shall apply in the case of JTOs also. According to the basic rule laid down in Rule 32-E, "subject to any specific rule prescribed for any particular service, the seniority of an official in the cadre, to which he belongs should be fixed according to the date of his permanent appointment to that cadre and in case of two or more officials having the same date, the seniority should be fixed according to the merit in the competitive examination held at the time of the recruitment or the selection."

10. The applicant No.1 has further submitted that in the judgment of the Supreme Court, in Direct Recruits Class II Engineering Officers Association Vs. State of Maharashtra 1990 (2) SCC 715, it has been clearly laid down that once an incumbent is appointed to a post according to the rule, his seniority has to be counted from the date of his appointment. In pursuance of this judgment the DOP & T issued consolidated instructions under OM dated 4.11.92 delinking seniority from confirmation. Therefore, the stand taken by the

In short, the date of appointment combined with the order of merit in the post training examination should together determine the seniority. This provision of the railways is also in conformity with the general principles laid down by the DOP & T.

12. The applicants were given reply to their representation on 11.12.95, not agreeing to their request. According to the applicants, they were sent for training in the first batch of 1989 as per merit and were appointed on successful completion of the prescribed training. The seniority list was required to be prepared on the basis of the marks obtained at the end of training, batch wise. According to the applicant, even those who were selected after the applicants were selected and appointed much later than the applicants, have been shown above the applicants. The impugned gradation list shows nearly 500 officials as seniors to the applicants even though their appointments are of later dates. The action of the respondents in clubbing together all the batches of the appointees including those appointed in the next year's recruitment and the departmental promotees promoted in 1991 and arranging their names according to the post training marks is totally unreasonable and illogical. The applicants are sent for training to different training centres, where the content of training as well as question papers for the examination are not similar. Therefore, the action of the respondents to solely go by the marks obtained in

Department of Telecom that interse seniority of all the recruits shall be fixed in the order of marks obtained at the time of training, irrespective of the date of appointment is at variance with the general orders of the DOP & T. Another grievance made is that according to the training procedure for JTO induction, training as circulated vide letter dated 14.7.92 bonus marks are to be awarded to the extent of 100 marks for discipline and 50 marks for extra curricular activities. In a particular batch, the positions such as Monitor, Assistant Monitor, Club Secretary, Club Treasures, Mess Manager, Mess Cashier are available only to some of the trainees who stand to gain advantage over other trainees on securing more marks on this count. This system is discriminatory. This no doubt, gives advantage to a few trainees further leading to higher seniority.

11. The applicant has also referred to Rule 303 of the Indian Railway Establishment Manual Volume-I wherein the seniority is ordered to be determined as under:-

"Candidates who are sent for initial training to training schools will rank in the seniority in the relevant grade in the order of merit obtained at the examination held at the end of the training period before being posted against working posts. Those who join the subsequent courses for any reason whatsoever and those who pass the examination in subsequent chances will rank junior to those who had passed the examination in earlier courses."

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the post training examination for determining the seniority has led to inequalities. The applicants have also challenged the memo dated 10.7.80 under which such seniority is conferred ~~was~~ as bad in law and violative of the equality provisions in the Constitution. These orders of 10.7.80 are at variance with the orders conveyed under the DOP & T which is the Nodal Ministry ought to prevail. The orders of 10.7.80 are also in conflict with Rule 32-E of the P & T Manual Volume IV. The statutory rules framed under Article 309 of the Constitution must prevail over executive instructions of 10.7.80.

13. The applicants have also assailed orders dated NIL .6.1993 at Annexure A9 whereby 19 reserved candidates have been conferred retrospective seniority dating back to 9 years prior to date of appointment.

14. The applicants have, therefore, prayed to quash and set aside the impugned orders and to show, the outsiders recruited through 1990 exam|the departmental promotees who qualified in the examination held in February, 1990 and the 19 SC/ST candidates declared qualified in 1993 enblock juniors to the applicants and to revise the circle gradation list according to the dates of appointment on the basis of their position in the select list and to award costs.

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15. The respondents have opposed the OA. According to the respondents, the gradation list has been prepared according to the prevailing rules. The respondents have also taken the initial plea that the recruitment to the cadre of Junior Engineers is required to be made as per the statuary recruitment rules. Accordingly 65% recruitment is through direct recruitment and 35% of the posts are to be filled by departmental examination as follows:

- 1) 15% by promotion of departmental candidates through a competitive examination.
- 2) 10% by promotion of RSAs, TIS, TIs, AEAs and WO competitive examination and
- 3) 10% by promotion of RSA, TIs, AEAs, and WOs on seniority cum fitness basis through a separate qualifying test.

Thus 65% quota is for outsiders and 35% quota is for departmental candidates. Accordingly, the respondents submit that the selection of outsiders as JTOs was done according to their merit in the required academic qualification for 65% of vacancies and for the remaining 35% of vacancies departmental candidates were considered. The Department of Telecom is segregated into several parts such as cross bar, strowger, lines and cables, etc., etc. The selected candidates are subject to pre-appointment training in various fields at different training centres at different points of time. Outside candidates are required to undergo 36 weeks training, whereas departmental candidates are to undergo



40 weeks before they are actually appointed as JTOs. The seniority list is prepared by the department on the basis of marks obtained at training centre irrespective of the batches for a particular select list of different faculties. While preparing the seniority list the criteria followed was recruitment year, marks obtained in the training centre for different faculties and retaining all vacancies in the ratio of 65% for outsiders and 35% for departmental candidates. The respondents have followed the existing rules as available in the P & T Manual Volume IV and other executive instructions from time to time. The date of appointment is not the only criteria for seniority in so far as the JTOs are concerned. Since the selection of JTOs is to be made for various faculties and those who are selected earlier than the others were entitled for their seniority and merely because of the fact that training could not be given to them earlier than the applicants, the said selected officials of earlier recruitment year cannot be made junior. It cannot be said that the rules have been contravened and the action of the respondents is not just and proper.

16. The respondents in their written reply, have submitted that so far as the case of Anup Kumar Mishra and M.N. Raut are concerned, both belong to 1989 year of recruitment and therefore, they have been rightly

placed at S.Nos. 2114 and 1891 above the applicants. There is no contravention of the OM dated 3.7.1996 of the DOP & T.

17. The respondents have stated that the 19 SC/ST candidates belonging to the recruitment year 1984 were declared successful in a review by the department. Selected candidates in the said review are entitled for fixation of their seniority below those who were considered successful earlier and accordingly the respondents have rightly fixed the seniority of 19 SC/ST candidates as per the existing rules and the guidelines issued by the DOP & T in regard to the SC/ST.

18. The respondents have denied that the candidates are sent for training in batches on the basis of their merit position in the select list. The respondents state that the selected candidates sent in different fields for training are chosen from the general select list. They are in conformity with chronological order vis-a-vis select list. The training was given to the selected candidates on the basis of the recruitment in different faculties and on the basis of the marks obtained by the candidates in the said training. The seniority list was prepared based on the recruitment year as well as the ratio of direct recruits to departmental candidates. Therefore, the contention of

the applicants that candidates sent for training later have been placed in the higher place than those sent for training earlier is baseless.

19. The respondents contend that Rule 32-E of the P & T Manual Volume IV is quite clear on the point of seniority and it is noted at the very beginning of the para that subject to any special rules prescribed for any particular posts, the seniority of the officials in the cadre to which he belongs, should be fixed according to the date of his permanent appointment to that cadre. The respondent department i.e. the Department of Telecom has framed a special rule for preparation of seniority list i.e. marks obtained in the training centre will be the basis for determining the seniority and not the date of appointment. Therefore, the rule framed by the department is in conformity with Rule 32-E of the P & T Manual Volume IV. It cannot be said that the interse seniority prepared by the respondent is contrary to the instructions issued by the DOP & T vide OM dated 4.11.92. The gradation list is prepared as on 1.7.92 when the DOP & T OM had not been issued. The respondents have also tried to defend the allotment of marks to Monitor, Assistant Monitor etc., and tried to justify on the basis of the activities performed by them. Since the department of Telecom are having their own P & T Manual and special rule for fixing seniority. The provisions of para 303 of IREM are not at all applicable in the case of the present applicants. The

respondents have reiterated that according to the requirement of technology, the JTOs are sent for training batch-wise related to a particular technology subject to availability of accommodation in the training centre. They are not trained according to their merit in the select list, but on the basis of requirement of particular technology in different fields. Therefore, the seniority is fixed on the basis of selection in the particular year and also on the basis of the marks obtained in the training. Therefore, the respondents tried to justify their action in issuing the gradation list of 1.5.1995.

20. A point was raised about the non-joinder of certain persons likely to be affected by this OA. The applicant NO.1 submitted that it has not been considered necessary to join persons who have been placed above the applicants in the seniority list wrongly. Because what the applicants are challenging is the policy and the rules in determining the interse seniority.

21. In this connection, the applicant has cited the judgment in the case of Chanderpal Vs. UOI & Others 1986 ATC 595. It has been held in para 21 and 22 of this judgment that non-joinder of parties is not tenable since the petitioner is not claiming any relief as such against them, but claiming seniority, only his due place in the seniority list as a result of his confirmation from the due date. The observations made in para 36 in

A. Janardhana V. Union of India (AIR 1983 SC 769) have been relied upon in this. It is observed therein that "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 Union Government and not against any particular individual."

22. The applicant has further cited the judgment in the case of V.P. Srivastava & Others Vs. State of Madhya Pradesh & Others (1996 (1) SCSLJ 253). In this case also the principle of determination of seniority made by the State Government was under challenge. Only the State Government will be necessary party to be impleaded.

23. In support of his contention that the seniority has to be counted from the date of appointment, according to the year of recruitment, the applicant is referring to the judgment in the case of Union of India Vs. Madras SC & ST Welfare Social Association in Civil Appeal No. 4339/95 wherein it has been held that the

eligibility list has to be prepared according to the year of recruitment and not confirmation. The case only relates to promotees while the applicants are direct recruits.

24. Another judgment relied upon in this context is that in the matter of Direct Recruits Class II Engineering Officers Association Vs. State of Maharashtra (1990 13 ATC 348. The applicant further cited the judgment in the case of Satpal Antil Vs. Union of India & another 1995 (3) SCALE 84, which also <sup>seniority of b</sup> relates to <sup>seniority of b</sup> promotees between themselves. Srikanth Babu & Others Vs. Union of India & another 1998 (1) AISLJ 234 which relates to rota quota rules. It has been held that in the absence of any specific rule indicating interse seniority to be observed with reference to the date of passing the qualifying examination and promotion to be given on the basis of interse seniority general principle of length of service as a basis for promotion amongst the eligible candidates with qualifying service should be made applicable. In the other case, it was held that mere appearance in selection creates no vested right, so the relevant date was the date of promotion.

25. The applicant, in addition to the above judgements has also produced judgements in G. Deenadayalan Ambedkar Vs. Union of India & Others 1997 (2) AISLJ 198 wherein it has been held that seven persons selected in the same batch with the applicant

and senior to them were sent for training in a later batch, completed training later were made junior to the applicants. It was held that "the rule allowed mischief of pick and choose in sending for training, even otherwise also merit given by service commission cannot be lightly changed". In Shri Sathyamurthy Sharma & Others Vs. Union of India & Others 1996 (1) AISLJ 60 it was held that in P & T for seniority, marks obtained in training after recruitment may also count. The applicant stresses that those who were selected through a later examination than the applicants and who were appointed later cannot be made senior to the applicants merely because they obtained higher marks in the training course. The original merit at the time of selection to the Staff Selection Commission or the Union Public Service Commission needs to be respected. Also the candidates sent for training in different batches for training in different technology cannot be compared and seniority cannot be granted to those securing higher marks ignoring the fact that the applicants had been selected earlier and had been sent for training earlier. The applicant has once again pleaded that the respondents should have considered the criteria laid down by the DOP & T in their OM dated 3.7.86 for determining interse seniority.

26. We have given careful consideration to the rival pleadings and have perused various judgments as well as the rules. We first take up the technical

objection raised by the respondents regarding non-joinder of parties. The applicants have submitted that they are challenging only the process of fixing interse seniority and not the seniority of any particular candidate. The applicant No.1 has cited the judgment to show that wherever the relief claimed is not against an individual but against the procedure followed in such cases, impleading all individuals is not necessary. The applicant have all along, we find, raised lacunae in procedure for fixing interse seniority. No doubt they have named some candidates who are their juniors, however, that we find is, only for illustration purposes. The applicants' contention therefore for non-joinder of individual parties is accepted.

27. That apart, the applicants also questioned the granting of retrospective seniority to 19 SC/ST candidates, while challenging this, they have not impleaded these candidates. If they wanted that the 19 SC/ST candidates should be placed lower than the applicants, because they were selected after review in 1994 then, the SC/ST candidates should have been made parties. In such situation, we do not propose to record any opinion on this issue. In addition to it, letter dated ..6.93 issued from the Chief General Manager Telecom, Maharashtra Circle, Bombay gives to the applicant a distinct cause of action. Hence, it infringes Rule 10 of CAT (Procedure) Rules, 1987.

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Further, the applicants have filed this OA beyond the period of one year of passing the said order and the applicants have not represented against the said cause to the respondents. On perusal of the reliefs claimed by the applicants, we find that the applicants have not sought for quashing the letter dated ..6.1993. We therefore, restrain ourselves from granting any relief in respect of the said letter.

28. On merits the question for consideration is whether the action of the respondents in counting marks obtained at the end of the training course for determining interse seniority in accordance with the letter dated 10.7.1980 of the Director General of Posts and Telegraph is in order and whether the Rule 32-E of the P & T Manual Volume IV will prevail over the letter dated 10.7.1980. We have perused the relevant rules as well as the letter dated 10.7.1980. According to Rule 32-E of the P & T Manual Volume IV seniority is to be determined on the basis of the date of permanent appointment. Whereas according to para 6 of the letter dated 10.7.1980 the training marks are to be counted for determining the seniority. The contention of the applicants is that the letter of 10.7.1980 being in the nature of administrative instructions, has no force of law and the Rule 32-E of the P & T Manual will, therefore, prevail. We find that even the rules under the P & T Manual do not have any statutory force. Therefore, the letter dated 10.7.1980 cannot be ignored

or set aside. It is also not that the letter of 10.7.1980 is not in conformity with the provisions of the P & T Manual. We note that the Chapter 10 Rule 429 of the P & T Manual Volume IV deals with the recruitment and training of candidates. According to this all selected candidates have to undergo a course of training for a period not exceeding 12 months, the details are given in Appendix 15 to Rule. It further states that candidates, who have successfully completed the course of training shall be appointed on trial for a period of one year subject to availability of vacancies. It is thus obvious that the actual appointment is to be given only after successful completion of the training. The letter dated 10.7.1980 only prescribe yardstick for successful training and provides that the training marks shall count for seniority. This cannot, therefore, be said to be in conflict with the P & T Manual. In fact the letter can be said to be supplementary to Rule 32-E. The position that emerges is that the appointment is to be given only after successful completion of training course. Therefore, the seniority will count from the date of permanent appointment as has been rightly stated in rule 32-E of the P & T Manual.

29. Further, the Principal Bench of this Tribunal has also upheld the counting of marks obtained in training after recruitment for seniority in in P & T in OA No.8550/93 in the matter of Sathyamoorthi Sharma & Ors. Vs. Union of India. We, therefore, hold that the

31. In view of the discussions and the reasons recorded above, we are of the considered view that the interse seniority of candidates should be based on the date of actual appointment after successful completion of training from among the candidates who were recruited through the same examination. Candidates recruited through subsequent examination will have to be junior to those recruited earlier. Accordingly we set aside the impugned seniority list published vide letter dated 01.5.1995 and direct the respondents to recast the seniority in the light of the observations made above. The respondents shall ignore the 50 marks awarded for extra curricular activities while considering the marks obtained in the training course. This exercise shall be carried out within a period of three months from the date of receipt of a copy of this order. In the facts and circumstances of the case, the OA is allowed. We do not order any costs.

*Shanta S*  
(SMT. SHANTA SHAstry)  
MEMBER (A)

*S.L. J*  
(S.L. JAIN)  
MEMBER (J)

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

REVIEW PETITION NO.77/2001  
IN O.A. NO.488/1996

Dated : 29. /8/2002

CORAM:HON'BLE SHRI S.L.JAIN, MEMBER(J)  
HON'BLE SMT.SHANTA SHAstry, MEMBER(A)

S.Sadasivan and 2 Ors. .... Applicant

V/s.

Union of India & Another .... Respondents  
(Review Petitioners)  
By Advocate Shri V.S.Masurkar

(Order)

Per Smt.Shanta Shastry, Member(A)

The present Review Petition is filed by the respondents in OA No.488/96. The OA was disposed of on 22/10/2001. According to the review petitioners, there is patent error of law on the face of the record. According to the review petitioners, the Circle gradation list prepared in 1995 was based on the existing departmental rules and strictly in accordance with Rule 32-E of the P&T Vol. No.IV. Therefore, the general policy of the Government of India on the matter of seniority as contained in OM dated 3/7/1986 of the DOP&T will have no application in the instant case. The review petitioners are relying on the judgement of the Supreme Court in the case of Mangal Das K Desai V/s. Shashikant R Desaid and Others reported in (2000) 9 SCC 28. It is further submitted that the three applicants in the original application were direct recruits and they had not undergone any examination for their recruitment and the examination at the end at the training centre is the deciding factor for fixing seniority as per the order of recruitment. Therefore, the

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grievance of the applicant is totally outside the purview of the statutory rules governing the seniority including the interse seniority. The action of Maharashtra Circle and all other circles is identical and nobody raised grievance in any of the other circles and hence implementing the order of the Tribunal will result in very big exercise to prepare a seniority list of the cadre on the basis of date of appointment in the cadre. It will not only have effect on the circle gradation list but also have effect on all other circles and the All India seniority list will have to be revised.

2. Further, in the case of the SC/ST candidates against unfilled reserved vacancies of Departmental Competitive Examination. The applicants are totally differently situated in the recruitment process and cannot compare themselves with SC/ST candidates.

3. The learned counsel for the respondents i.e., the review petitioners took the objection, that the OA suffers from non-impleadment of affected parties. Atleast some affected parties ought to have been impleaded in the interest of justice and fair play. This is a serious error apparent on the face of the judgement.

4. The learned counsel for the review petitioners again argued that the Tribunal cannot brush of or reject the review petition on the ground that "even if the Tribunal has committed a mistake, it cannot be corrected in a review. It is for the Supreme Court to correct the same. Such a view of the Tribunal is not conducive to the proper functioning of the judicial service when a patent error is brought to the notice of the Tribunal, the Tribunal is duty bound to correct with grace its

mistake of law by way of review of its orders/directions" as has been held in the judgement of the Supreme Court in the case of Surjit Singh V/s. Union of India, AIR 1997 SC 2693. According to the review petitioners, therefore this is a fit case for review and the Tribunal may review the same accordingly.

5. The applicant appearing in person also filed a reply to the review petition refuting the grounds taken by the review petitioners. He referred to the judgement of the Supreme Court dated 26/4/2000 in the case of SC/ST Social Welfare Association in Civil Appeal No. 4339/95 reported in (2000)9 SCC 71 which has been considered in the judgement wherein it was held that para-206 of P&T VolIV (Est) had lost its efficacy and relevancy from 28/6/1966 after the Telegraph Engineering Service (Gr.B) Recruitment Rules 1966 notified on 15/6/1966 under Article 309 of constitution of India. The Supreme Court upheld on 13/2/1997 in 1997 SCC 226, the statutory instructions issued under the para-5 of Appendix-I of the Telegraph Engineer Service Recruitment Rules 1966. These Recruitment Rules of 1966 were further superseded on 7/5/1981. These rules also were superseded on 23/7/1996 which are the rules applicable for promotion of the applicants from the post of JTO to Sub Divisional Engineer(SDE). This has been decided by the Supreme Court on 25/10/1996 in the case of Shobana V/s. Union of India and Ors. According to the applicants merely because others had not raised any grievance in respect of seniority list has no meaning. The applicants were recruited on the basis of merit on academic qualification and successful completion of training. Therefore it is not proper to compare the marks obtained by candidates in one course with marks in

other courses or examination. The applicants have cited the same judgements which had been cited by them during the course of hearing of the OA and which have been referred to in the judgement of the Tribunal.

6. We have heard the applicant in OA on review represented through Shri S.Sadashivan and the learned counsel for Respondents, Shri V.S.Masurkar.

7. We find that the learned counsel for the review petitioners have tried to put forth the same arguments which were put across during the course of the hearing of the OA. All that the Tribunal has held is that the seniority should be decided on the basis of the year of recruitment and the date of appointment after the marks obtained at the end of the training course. However, the persons undergoing training in different batches and appearing in different examination at the end of the training cannot be compared. Comparison can be only between equals i.e. those who belong to the recruitment of 1989 and among all appearing in the same examination at the end of the same training course.

8..... As regards SC/ST, this Tribunal has refrained from giving any finding as the SC/ST candidates were not made a party to the OA. Similarly, though the point regarding non joinder of the parties was made out by the respondents in the OA, this Tribunal held the view that it was not necessary to join the persons who were placed above the applicants wrongly in the seniority list. The relief is claimed against the Union Government and not against any particular individual. The contention is regarding

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the criteria adopted by the Union Government in drawing up the impugned seniority list. The Tribunal thus had taken note of the objections raised by the respondents.

9. In our considered view, no new points have been raised by the review petitioners which would call for a review of the judgement and order dated 22/10/2001. Accordingly, the review petition is dismissed.

*Shanta*  
(SMT.SHANTA SHAstry)  
MEMBER(A)

*SLJ*  
(S.L.JAIN)  
MEMBER(J)

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ORDERS ON MP NO. 256 OF 2005  
IN  
C.P. NO.92/2003  
AND  
MP 258 OF 2004  
IN OA NO. 488 OF 1996

Date: 15.9.2005

Present: Applicant Shri Sadashivan in person.  
Shri V.S. Masurkar for respondents.

Heard both sides.

The respondents have moved MP No.256/05 for clarification of the order dated 29.9.2004 praying inter alia to define the principle of seniority so as to remove the difficulties in implementation of the order of this Hon'ble Tribunal dated 29.9.2004 in CP No.92/2003 and MP No.258/04 as it is not practicable to give effect to the order of the Tribunal dated 22.10.2001 with meticulous care as the Tribunal in the same order dated 29.9.2004 has directed the respondents considering the difficulties expressed, to circulate the gradation list and after receiving objection and on the basis of the information, as far as possible; since both directions are contrary to each other.

2. The applicant has filed detailed reply to the MP 256/05. In para 2 it is stated that this Hon'ble Tribunal order dated 29.9.2004 is under challenge before the Hon'ble High Court vide W.P. No.3186/2004 and the said WP has been admitted by the Hon'ble High Court on 19.01.2005. therefore, passing any order by this Hon'ble Tribunal would

*Shrivastava*

cause prejudice to the proceedings in the above said WP No. 3186/2004 and prayed for dismissal of the MP.

3. The order in question, which is sought to be clarified by the respondents is under challenge before Hon'ble High Court vide order dated 19.01.2005. In view of this aspect of the matter, we do not consider appropriate to pass any clarificatory order vis-a-vis order which is under challenge before the Hon'ble High Court. MP 256/05 is therefore rejected. No order as to costs.

  
(MUZAFFAR HUSAIN)  
MEMBER (J).

  
(A.K. AGARWAL)  
VICE CHAIRMAN.

PG