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THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

Original Application No.513/98
Original Application No.543/99
Original Application No.52/2000
Original Application No.78/2000

Dated this Friday the 30th Day of March 2001.

Coram: Hon'ble Shri B.N. Bahadur, Member (A)
And
Hon'ble Shri S.L. Jain, Member (J)

1. Shri A.K. Mukati,
working as Executive Engineer,
in the Department of Tele-
Communications, Maharashtra Circle,
in the Telecom Civil Division,
3rd Floor, R.S.A., Compound,
Near K.C. Park,
Nagpur 440 001,
and residing at Type V/8,
Sanchar Vihar, Civil Lines,
Nagpur - 440 001.

2. Shri N.K. Verma,
working as Executive Engineer,
in the Department of Telecommunications
Maharashtra Circle,
Telecom Civil Div. III,
3rd Floor, Sion Post Office
Building, Mumbai 400 022.
and residing at D-40, P & T,
Quarters, R.A. Kidwai Marg,
Wadala (West), Mumbai 400 031.

3. Shri P.P.Gupta,
working as Executive Engineer,
in the Department of Telecommunications,
Maharashtra Circle,
Telecom Civil Divn. I.,
Telephone House, cadell Road,
Dadar (West), Mumbai 400 028.
and residing at B/44, P & T Quarters,
R.A. Kidwai Marg,
Wadala (West), Mumbai 400 031.

4. Shri Subir Khare,
working as Executive Engineer,
in the MTNL, Mumbai as Executive Engineer (C)
East, M.T.N.L.
5th floor, Thane Charai Tele,
Exchange Building, and residing at Transit Quarter
No.601,
Telecom Staff Quarters, Opp.
I.I.T.Powai, Mumbai 400 078. .... Applicants.
in O.A.513/98

(Represented by Shri R.Ramamurthy, Advocate)

1. Shri A.T.Natarajan,
presently working as
Executive Engineer (Civil)
in MTNL, residing at B/45,
Tarang Vihar,
P &T Colony,
R.A.Kidwai Road,
Wadala (West),
Mumbai 400 031. .... Applicant in
O.A.No.543/99

(Represented by Shri A.I.Bhatkar, Advocate)

1. Shri Ramesh Chandra Gupta,
presently working as
Executive Engineer (Civil)
on adhoc basis under Department of
telecommunications & residing at
B-13, Transit Quarters, P.K.Roa,d
Mulund (W), Mumbai 400 080. .... Applicant in
O.A.No.52/2000

(Represented by Shri A.I.Bhatkar, Advocate)

1. Shri Atmaram Kisan Magare,
prsently working as
Executive Engineer (Civil)
on regular basis under Department
of Telecommunications Services and
residing at
A/14, Ajinkaya Tara Co-op. Hsg.
Society, Swastik Park, Chembur,
Mumbai 400 071. .... Applicant in
O.A.No.78/2000

(Represented by Shri A.I.Bhatkar, Advocate)

Vs.

1. Union of India, through
The Chairman, Telecom Commission,
Department of Telecommunications,
Sanchar Bhavan, 20, Ashoka Road,
New Delhi 110 001.

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2. The Senior Deputy Director
General (B/W), Telecom
Commission, Sanchar Bhavan,
20, Ashoka Road,
New Delhi 110 001.
(Common in OA No.543/99, 52/2000, 78/2000)

3. The Chief Engineer (Civil)
Maharashtra Telecom Zone.,
C.T.O. Compound,
Administrative Building
Juhu Tara Road,
Santacruz (West).
Mumbai 400 054. (in O.A.No.513/98 only)

4. Smt. Nasreen Quaddri }(In O.A.No.513/98 only)
5. Shri A.T.Natarajan }
6. Shri Sanjiui Joshi }
C/o Advocate Shri A.I. Bhatkar) .... Respondents

7. Shri M.K.Verma, Ex.Engr.} (Common in
Dept. of Telecom. } O.A.543/99, 52 & 78/2000)
Maha. Circle, Mumbai. }

8. The Secretary, UPSC, } (Common in OA.52 & 78/2000)
New Delhi-110 001

9. The Secretary,
dept. of Personnel & Trg.
Ministry of Personnel,
North Block,
New Delhi 110 001. (Respondents in OA78/2000 only)

10. A.K. Mukati, } (Common Respondent in
Executive Engr.& } O.A.No.52 & 78/2000)
Applicant in }
O.A.513/98 }

11. Shri M.K. Verma, } (Common Respondent in
presently working as } OA 543/99, 52 & 78/2000)
Ex. Engr. Dept. of Telecom }
Residing at Type IV Qtrs. }
MTNL Staff Qutrs, }
Powai, Mumbai 400 078. }

12. Shri P.P.Gupta, } (Common Respondent in
Surveyor of Works, } OA.52/2000 & 78/2000)
Off. of Suptdg. Enggr. }
Telecom Civil Circle, }
K/5, WHC Road, }
Lakshmi Nagar,Nagpur }
440 002.

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13. Shri Subir Khare,
Presently working as
Executive Engineer (C)
Thane Cherai TE
5th floor,
Thane West. Thane.

(Common Respondent in OA.No.52/2000 & 78/2000)

14. Shri S.K.Babbar,
S.E. Telecom Civil Circle-1
Yoga Yog Bhavan,
36 C..R. Avenue
Calcutta 700 012.

15. Shri P.K.Jain,
Dy.G.M. (South)
MTNL,
9th floor,
Bandra TE Bldg.
Bandra (West), Mumbai 50

16. Shri Niraj Goel, SE (Civil)
3rd floor, Telecom Bldg.
Mettupalyam road,
Coimbatore 641 043.

Respondents at Sr.No.14 to 17 in OA.72/2000 only

17. Shri B. Venugopal SE (HQ)
O/o Chief Engr. (Civil)
Telecom 5th floor, Hal
Complex,
Exhibition Road,
Patna 800 001.

18. Shri P. Srinivasan,
Suptdg. Engineer (HQ)
O/o Chief Engr (Civil)
Telecom Karnataka Zone,
Administrative Bldg. 3 flr.
GTO Compound,
Raj Bhavan Road,
Bangalore 560 001.

Respondents at Sr.18 28 only in O.A. 543/99.

19. Shri R.K.S. Yadava,
UD-11 P &T Staff Qtr.
Dev Nagar, New Delhi.

20. Shri H.S. Kasotiya,
Superintending Engineer (HQ)
Office of Chief Engineer (Civil)
127 MP Nagar, Zone II
Bhopal 11.

21. A.S.Gulati,
Superintending Engineer (Civil) Dvn.II
3rd floor, Abhishek Complex.
Ankur Road, Naranpura,
Ahmedabad 380013.

22. Shri S.C.Shrivastava,
Dy. General Manager (Civil) W-I
Bandra Telephone Exchange Bldg.
9th floor,
Bandra (W), Mumbai 400 050.

23. Shri P.D.Vashista,
Superintending Engineer,
Telecom Civil Circle,
A-2/E-2, Curzon Road Barracks,
Kasturba Gandhi Marg,
New Delhi 110 001.

24. Shri S.C.Arora,
Surveyor of Works II
Office of Superintending Surveyor of Works,
Civil, Telecom North Zone,
A.R.A. Centre,
Ist floor, E-2, Jhandewalan,
New Delhi 110 055.

25. K. K. Paul,
Executive Engineer,
Telecom Civil Divn.,
Mazumdar Brothers Bldg.,
407 Station Feeder Road,
Siliguri 734 405.

26. Shri A.K.Mitra,
Suptdg. Engineer,
Postal Civil Circle,
4th floor, 36, C.R.Avenue,
Calcutta 700012.

27. Shri A.K. Gangopadhyay,
Executive Engineer,
Telecom Civil Divn. II,
20 HA Block, Salt Lake,
Calcutta 700 091.

28. Shri P.V.Damodaran,
Executive Engineer (HQ)
O/o Chief Engineer (Civil)

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Telecom Karnataka Zone,
Administrative Bldg. 3rd floor,
CTO Compound,
Raj Bhavan Road,
Bangalore 560 001.

Respondents in O.A.No.513/98 represented by Shri V.S. Masurkar, Counsel for R.1 to R.3 and Shri Shri A.I. Bhatkar, Counsel for R.4.
(In O.A. 543/99 Shri V.S.Masurkar, Counsel for R-1 & R.2, Shri Rmamurthy, Intervenor)
(In O.A.52/2000 Shri V.S. Masurkar, Counsel for R-1 to R-3, Shri Ramamurthy, Counsel for R-4 to R-7)
(In O.A.78/2000 Shri V.S. Masurkar, Counsel for R-1 & R-2 Shri M.S.Ramamurthy for R-9 to R-12)

O R D E R

PER : Shri B. N. Bahadur, Member (A).

We are dealing with batch of four OAs. bearing Nos.513/98, 543/99, 52/2000 and 78/2000. As the issues in these O.As. are similar/inter linked, they were heard together (by consent of learned Counsels on all sides) and are being disposed of through this common order.

2. Let us take the facts in O.A. No.513/98 and the case made out by the four Applicants therein. The Applicants were directly recruited by UPSC in Group A posts, in the Department of Telecommunications, as Assistant Executive Engineers (A.E.E. for short). They were promoted subsequently as Executive Engineers (EE) on regular basis, from dates indicated in the O.A., the first 3 of them being promoted in June, 1990, and Applicant No.4 in April, 1992 (Ex.A to D). It is averred by Applicants that the next promotion to the post of Superintending Engineer, requires (as per the Recruitment Rules of 1976) that

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Executive Engineers should have five years service in the Grade. Also, that the post of Executive Engineer itself is filled up on promotion in the ratios of 2:1, by A.E.E., and Assistant Engineers (AE) respectively. The latter i.e. Assistant Engineer (A.E.) is a group B post. AEEs require 4 years of service and the AEs required a 8 years of service in these grades to become eliible for consideration for promotion.

3. Further averrments are made to the effect that the 1976 Recruitment Rules were superceded in 1994, (copy at Exh.E). The changes made in the Rules are described in detail in the Application, specially to make the point that all existing Officers in Group A holding these posts on regular basis shall form the initial constituent (IC) Members of the Service. The Applicants contend that the Respondents have not been following the amended rules for promotion to the category of Superintending Engineers. One O.A. (No.1104/94) was filed by one A.K.Gupta, before Principal Bench of C.A.T. on 31.8.1994, for direction to the Respondents to follow the Recruitment Rules for further promotions and to draw up seniority lists of Executive Engineers (Civil). Some other litigation decided by the Tribunal have also been mentioned. It is further alleged that Seniority Lists were not drawn up properly and that certain Assistant Engineers, who have been working as adhoc Executive Engineers have been allowed to hold charge as Superintending Engineers, vide Order dated

and that these persons have been illegally regularised. The applicants further allege that juniors have been granted two adhoc promotions, and wrongly so.

4. The Applicants had initially come up with this O.A. apprehending the promotions of some others as Superintending Engineers and seeking directions that Recruitment Rules as published on 6.8.1994 should be followed in letter and spirit. Also that Respondents be asked to be restrained from giving promotions as per (Draft) seniority published on 25.11.1994. Thereafter, following certain developments, the Applicants have amended the Applications, bringing on record these developments, and also amending the clauses of relief sought. The Applicant seek the relief that the Tribunal hold that the seniority lists of Executive Engineers (Civil) published vide O.M. dated 11.1.1991 is not prepared in accordance with the Recruitment Rules/ judgements of the Supreme Court and thus hold that it is liable to be quashed and set aside.

5. The Respondents in the case have filed a written reply dated 31.7.1998. A separate reply is filed on behalf of private Respondetns viz. Respondents 4 to 6 on 30th Ocotber, 1998. Various replies to Miscellaneous Petitions filed from time to time are also seen.

6. In the aforesaid Written Reply of Official Respondents, the Respondents resist the claims of the applicants

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It is stated that, as per the Recruitment Rules of 1976, the posts of A.E. were to be filled on 50:50 basis by direct recruitment through UPSC and by promotion of Junior Engineers with 8 years service. They then describe the promotion process to the posts of A.E., and the disputes of seniority that had come about historically. Respondents also refer to certain directions given in relevant cases decided by different Benches of this Tribunal, and how seniority lists had to be drawn up and revised from time to time. It is averred that the process of regular promotion of Assistant Engineers to E.E. Grade could not be taken up, due to prolonged litigation, until June, 1994. However, adhoc promotions were given right from 12.9.78 onwards. Eventually, when the seniority of Assistant Engineers was finalised, a proposal was sent to UPSC for holding a DPC, for considering regular promotions against 1/3 quota earmarked for A.E.S during the year 1976 to 1993-94. The DPC was held in February 1997 and 44 Assistant Engineers were promoted to the Grade of Executive Engineers in March, 1997 on regular basis and against those vacancies that fell to their quota between the period from 1976 to 1993-94.

7. It is further averred by Respondents that in 1994, when additional posts were created in the grade of S.E., A.Es made the plea that had regular promotions been made to the grade of E.E. from their cadre at appropriate time some of them would have got

promoted on regular basis earlier than those from A.E.E. category. The decision of this Tribunal in O.A. 1140/94 filed by Shri A.K.Gupta is then described and it is stated that provisional seniority list of Executive Engineers combining officers from the two categories of A.E.E. and A.E. was prepared and issued on 25.11.1994. This was drawn up on the basis of the judgement in the aforesaid O.A. It is averred that the Department has been promoting Executive Engineers on adhoc basis to the grade of S.E. by following this list issued in 1994 as per direction of the Principal Bench of this Tribunal.

8. In the Written Statement filed by Respondents No.4 to 6, these Respondents also resist the claim of the Applicants, and state that all the Applicants are junior to the Respondents No.4 to 6. It is unfortunate, they aver, that they (R.4 to R.6) could not be regularlised earlier, and that their services came to be regularised only in the year 1996-1997. However, their contention is that their services have been regularised against the vacancies or earlier years, viz. the years 1986, 1978, and 1990-91, respectively for Respondents NO.4 to 6. No vacancies were available for the Applicants quota when they were regularised in 1991-92, and it is averred that in fact, the direct recruits were regularised in the quota meant for the Assistant Engineers.

9. The private Respondents further reiterate the grievance that, due to administrative reasons, the vacancies in the cadre of E.E. falling in the quota of Assistant Engineers like themselves (AEEs), could not be filled up on regular basis from 1976 on wards, whereas the quota of A.E.s have been regularly filled up on regular basis. Thus it is contended that even though they have been regularly promoted w.e.f 28.3.1997, they are entitled to seniority and counting of earlier services from the year of vacancy against which they have been selected. This is exemplilfied by their stating that R.4 is working as Executive Engineer on adhoc basis from 1992, R.5 from 1978 and R.6 from 1993 and these are the years from which seniority would need to be applied. This argument is further developed in the written statement, during arguments made on behalf of private Respondents, by their learned Counsels.

10. We have heard the Learned Counsels on the respective sides. To recapitulate, Shri Ramamurthy represents the Applicants in O.A. 513/98, the intervenor in O.A.453 the Respondents No 4 to 7 in O.A 52/00 and (R-9 to R-12) O.A.78/2000. Similarly Shri Masurkar represents Officials Respondents in all the cases Shri G.K. Masand with Shri A.I.Bhatkar, appeared for the Applicants in all O.As. barring O.A. 513/98.

11. Arguing the case on behalf of Applicants in O.A. 513/98, Shri Ramamurthy first reiterated the facts of the case, and

stated that the seniority lists in respect of the A.E. Cadre had been creating a problem which in turn became a problem, of the Seniority list in the E.E. Cadre. It was argued that the decision in the case of Abraham Jacob has still not been implemented. The learned Counsel took us over the judgement made in the case of Shri A.K. Gupta, and made the point that the Seniority lists were issued in view of the judgement in this case. The provisional Seniority Lists of Executive Engineer (Civil) dated 25.11.1994, was finalised vide OM dt. 11.1.1999 (Page 89A). It was contended by Shri Ramamurthy, that this list was not finalised on correct lines, and was certainly faulty in so far as the four applicants in O.A.513/98 were concerned. The contention was that the date on which DPC was convened by UPSC, was the relevant date for Seniority for others and not any date earlier to this.

12. Shri Ramamurthy further argued on this point to contend that Selections/promotions decided upon by UPSC are always prospective and seniority cannot be backdated. Providing backdated seniority would amount to counting of ad-hoc service. The Seniority List will undergo changes if the I.C. clause is implemented and, similarly, if the decision in Abraham Jacob's case is implemented. Shri Ramamurthy further made the point that the Direct Recruits (Applicant) had not consumed the quota of promotees. Learned Counsel stated that it was the O.M. dated

11.01.1999 that was being challenged. Once the above seniority list is quashed, further promotion to SE level would have to be made accordingly, and only those who have put in 5 years at least would be eligible as per Rules.

13. Arguing the case on behalf of Official Respondents, their learned Counsel, Shri V.S. Masurkar, sought to bring to our attention, first, the following two cases (1) M.K.Shanmugham vs. UOI 2000 (2) SC SLJ 47 (2) Suraj Prakash Gupta vs. State of J & K 2000 (1) SC SLJ 427. It was argued that the prayers at sub para (b) of original Para (8) of the OA, urging restraining promotion was not relevant, and what was really in challenge in this OA, was the seniority list of 11.1.1999. Hence, Shri Masurkar asserted, that specifics were necessary, in terms of clear statements i.e. as to who was shown in wrong seniority and by whom he was superceded etc. None of the parties were not arrayed in the case in such manner.

14. Continuing his argument, Shri Masurkar made the point that the basic difficulty came, because the Seniority lists of A.E. was not finalised for long, due to litigation in progress. In the action taken by the Respondents, it cannot be argued that the quota of A.E.E.s has been taken away by A.E.s. The learned Counsel produced for our perusal, the relevant Office file.

15. It was ascertained that the quota was maintained as pointed out at page 305 of he paper Book. Shri Masurkar alleged delay and laches on the part of Applicants, stating that they were coming up very late and were in effect, challenging action taken in 1978. He then sought to depend on and reiterate, certain portions of the reply statement of respondents on MP. 203/99. For example, he referred to para 6 at page 299, to make the point that the seniority list in the grade of Executive Engineer had been finalised in compliance of directions given by this Bench of the Tribunal. The point made at para 12 of the same referred to above (page 303) were also stressed upon and the judgement of Bangalore Bench dated 20.12.1991, in O.As. No.1108 and 1110/89 was sought to be depended upon, to contend that adhoc service was counted towards senioirty in the grade of A.E. No manipulation in regard to the initial constitution (I.C.), clause was being made.

16. The case was argued for private respondents by Shri Masand, with Shri A.I.Bhatkar. While adopting the stand/arguments taken by the Respondents Counsel, the following points were made/expounded on behalf of the Private Respondents/Intervenors.

(a) The quota Rule cannot said to have been broken down, because, all along, eligible officers were available for promotion. It was only that a DPC was not being held.

(b) Even the direct Recruits had been promoted earlier on adhoc basis as can be seen from the statements at page 99.

(c) It was asserted that UPSC had turned down the proposal for holding a Review DPC; attention was invited to page 14 of the O.A. No.78/2000.

(d) It was argued that *Shanmugham's* case, relied upon by the Applicant was not relevant and so also the case of Shri S.P.Gupta.

17. Learned Counsel for the Applicant Shri Ramamurthy reargued the case to make certain points on the arguments made by learned Counsel for Respondents. He made the point that non-consultation with UPSC was a major flaw in the entire process, and, in fact it could be concluded in view of this infirmity that there was no regular DPC (or valid DPC) held. The judgements relied upon would help these arguments, it was asserted. Shri Ramamurthy further stated that he was challenging the matter on principles and therefore, it was not necessary for him to pinpoint "who and by whom" is superceded, as argued by Learned Counsel Shri Masurkar. In any case, he argued that even assuming UPSC permission was taken later, it is only for 11 persons, whereas what had happened was that even persons who were not eligible for promotion (due to lack of 8 years service) had been regularised. Shri Ramamurthy added that the judgement of the Bangalore Bench could be treated as being *per incurrium*.

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18. Now the salient fact is, that there are two channels of promotion to the post of E.Es., namely A.E.E. and A.E. There are recruitment rules governing these, but what has happened is, that the promotions from the quota of A.Es. could not be made on a regular basis from 1976 onwards. Ad hoc promotions have been made from time to time but seniority has become the moot point, since actual regular promotion was affected only in March, 1997. This is the point that has to be decided, with reference to the rules/recruitment rules necessarily, but also in the peculiar facts and circumstances that have obtained in this case. We will need to consider first the case of Shri A. K. Gupta, which has been dealt with by this Tribunal as referred to above. In this case decided on 31.08.1994, in fact, the case only notes that the counsel for the parties have agreed to certain courses of action, as have been recorded by the Tribunal. These are really in the nature of interim arrangement and will not help in deciding our case.

19. What has happened is that, in view of the difficulties due to litigation regarding seniority, mainly within the cadre of A.Es., the D.P.C. was held only in 1997. The question therefore has arisen as to whether the seniority will be reckoned from the date of the D.P.C. or a later date i.e. the date of order or whether it should be reckoned in individual cases from the date on which a particular incumbent has been promoted on ad hoc

basis, subject ofcourse, as per the Recruitment Rules applicable at a particular time (since amendments have been made to the 1976 rules). The Learned Counsel, Shri Ramamurthy, argued that the seniority can be given either from the date of D.P.C. meeting or a later date i.e. the date of order, but cannot be given from any date earlier as there was no reason why ad hoc service should be counted under any circumstances. He also made the point that even if we agree that the 45 persons who were promoted took care of the quota of A.Es., even then, they cannot get seniority. Various discrepancies in the seniority list were brought out.

20. We have seen the case law cited by the Learned Counsel on both sides, including the judgement of the Bangalore Bench of this Tribunal, one in O.A. 877/99 and the other in O.A. 878/99, both pronounced on 03.08.2000. We would like at the start to 20.

21. We must note that we will also not violate the decision of the Bangalore Bench of this Tribunal quoted above but it was virtually agreed on all sides that an assumption seems to have been made by that Bench to the effect that the D.P.C. of March 1997 was a regularly constituted D.P.C. This is admittedly not the correct position on facts and therefore, these judgements need not be followed by us. We would like at the start to consider the judgement that we have pronounced in another case recently, on 13.11.2000. This judgement to which both of us were parties, was made in O.A. No. 1133/94 and batch Bunch. This was a case which

pertains to promotion to the post of Group-A of I.R.S.E.E. Engineers and the two channels of promotion therein to the post of Executive Engineer were : (a) direct recruits and (b) Promotees. In our view, although the case pertains to Engineers in the Indian Railways and though individual details may be different, there is a striking and significant similarity in the issues involved in the two cases. The basic point of similarity is, that for a large number of years, no regular promotions were made from one particular stream and only ad hoc promotions were made. (In fact, in the other O.A. No. 1133/94 there was even a provision that unutilised quota of promotion was to be diverted to direct recruitment on a recruitment year basis.) There also the departure was not of marginal nature but a large number of people were involved and violation of Recruitment Rules was alleged even though the stand was that this was done as a one time basis after consulting U.P.S.C.

22. In that case, the Hyderabad, Madras and Jabalpur Benches of the Tribunal had gone into the matter, as also the Principal Bench. The decision had been carefully made and we find it useful to record it here. The operative part of the judgement (para 29) is reproduced below :

(i) It is held that Railways were not competent to appoint as many persons by promotion as they like, in disregard of the provisions of Rule 4 which stipulates the quota for promotion and direct recruitment.

(ii) Vacancies not filled in a year -whether in the direct recruitment quota or promotee quota can be carried over, but all

such vacancies have to be filled in the subsequent years, by both methods on the basis of the quota mentioned in Rule 4.

(iii) If it is necessary, the seniority list should be revised and finalised based on the above principles.

(iv) Above order shall be implemented within a period of four months from the date of receipt of a copy of this order.

(v) No recovery shall however, be made in respect of promotions already granted to the Officers on adhoc basis, or otherwise. Also, no retrospective benefits shall be granted to the Applicant in respect of pay and allowances, even if they become eligible to them."

23. In this case also, what is necessary is that on the one hand giving seniority with a very technical view i.e., , from or after the date of D.P.C., will not be fair to the A.Es. since for years together their quota was left unfulfiled and it will not be fair and just that a view should be taken as urged by one Learned Counsel to the effect that those who went in litigation must suffer. On the other hand, there should be no question of allowing a situation or a decision which will violate the Recruitment Rules. We may recall that even in O.A. No. 1133/94 we have taken the view that Recruitment Rules can be changed only by amendment and not by a general relaxation.

24. Justice in the case to both parties can thus be done by providing for seniority in E.E.'s cadre, to be reckoned on a year to year basis in earlier years but with stipulation that the Recruitment Rules shall be followed in each and every year. In

other words, the decision will be to allow carry forward only to the extent of the percentage to which promotion of A.Es. is allowed by the Recruitment Rules operating in any particular year and subject to those persons promoted in any particular year being fully qualified and fit at that time. No relaxation in Recruitment Rules as such can be provided.

25. We have carefully gone through the case law cited. The case of Suraj Prakash Gupta has been seen, and we feel that in the decision we propose to give in the above lines, the ratio of this case would not be violated. 26. In regard to the case of M. K. Shanmugam & Others V/s. Union of India (2000 (2) SC SLJ 47), it is seen that ad hoc service was rendered on the promotional post of Executive Engineer before regular selection was made, was held that such ad hoc service cannot be counted for seniority. The Headnote of this case, as reported, reads as under :

> A) Seniority-Promotion-Ad hoc Service-Promotion to the post of Executive Engineer in the Telecommunication department-Promotion to be made from two categories i.e. Assistant Engineers Class 1 with 5 years regular service on seniority cum fitness basis in the 2/3 quota and Assistant Executive Engineers Class II with 8 years regular service on seniority cum merit basis in the 1/3 quota-Ad hoc service rendered on promotional post (Executive Engineer) before the regular selection - Whether can be counted for seniority-Held no-- Tribunal view that ad hoc service to count for seniority must be rendered continuously till the date of regularisation for 15 years or more, upheld-Ordered accordingly.
>
> B) Seniority-Ad hoc Service - Promotion - Where the recruitment had been made on ad hoc basis and

it was subject to the same process as it had been made in the case of regular appointment and not as a stop gap arrangement- Service rendered on ad hoc basis would be counted for seniority."

We would naturally take this into account while rendering our judgement on the relief sought. Now basing our relief on the principle and ratio adopted in the batch of cases referred to above, namely O.A. No.1133/94 and others, it will be appropriate to decide this case on the following lines. It must be noted that such a case must appropriately be decided on principles, as indeed argued by Counsel for the applicant. Individual reliefs shall flow accordingly based on facts. In the first place, we have to hold that the basic requirement of the Recruitment Rules cannot be changed or modified/relaxed, in that, if in any year an officer from either stream is considered for promotion on a regular basis, then he should have completed the number of years required and other qualifications and should have been found fit in the D.P.C. The basic fact that yearwise promotions are being considered in respect of promotees cannot be overlooked in the facts and circumstances of the case. In other words, the blanket view that is being taken by the Applicants to the effect that seniority will date only from the date of D.P.C. in 1997, cannot be taken, as it will entail grave injustice to the promotee candidates for something that has happened due to no fault of theirs. For reasons of dispute in seniority and/or other

reasons, admittedly, their regular promotion could not be undertaken and to take a view as propounded at one stage by Learned Counsel for Applicant to the effect that if they were agitating for seniority, they should suffer, would not be a very just view to take.

27/26. In other words, we will have to hold that promotions provided on ad hoc basis to the promotee officers, namely Assistant Engineers, will hold good with reference to the particular year, provided the recruitment rules are not infringed at any point of time in regard to the number of years of service and percentages of quotas vacancies based are available.

28/27. Under the circumstances, we are disposing of the O.A.s in terms of the following orders/directions. Individual reliefs including further promotions at all levels will be regulated accordingly, based on individual facts:

(i) Vacancies not filled in a year - whether in the direct recruitment or promotee quota, can be carried over but all such vacancies have to be filled, by either methods (direct recruitment/ promotion) in the subsequent years, strictly on the basis of requirements of Recruitment Rules prevailing at that time. Ad hoc promotions, if not in violation of the above, continued till regular promotion shall be reckoned for the purpose of seniority of the official concerned in the said cadre.

(ii) Seniority list should be examined, reviewed and finalised on the basis of above principles within a period of six months.

(iii) No recovery of salary, allowances and other payments ~~be~~ made in respect of promotions granted on ad hoc basis or otherwise. Similarly, no retrospective benefit for payment of arrears in respect of pay & allowances shall be provided, even if some officers become eligible to it.

(iv) No order as to costs.

(S.L.JAIN)
MEMBER(J)

(B.N.BAHADUR)
MEMBER (A)

B.