

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: MUMBAI

O.A. NO. 39/1999, 40/1999 AND 41/1999

Friday, the 19th day of October, 2001

HON'BLE SMT. LAKSHMI SWAMINATHAN. VICE CHAIRMAN (J)
HON'BLE SMT. SHANTA SHASTRY. MEMBER (A)

O.A. NO. 39/1999

Narinder Khanna,
Executive Engineer (E),
3rd Floor, Sion Post Office
Building, Sion,
Mumbai-400 022.

Applicant

By Advocate Shri Shivaramakrishnan

Versus

1. Union of India through
Director (EW), Ministry
of Communication,
Department of Telecommunication,
1300-A Sanchar Bhavan,
20, Ashoka Road,
New Delhi-10 001.
2. V.K. Dogara SE (E)
3. S.K. Virmani SE (E),
4. K.K. Jindal SE (E)
5. E.M. Palanimuthu EE
6. Radhey Mohan EE.
7. N.K. Dhillon EE
8. K.D. Sawai EE.

Respondents

By Advocate Shri V.S. Masurkar for R1.

O.A. NO. 40/1999

K.J. Suthar,
Executive Engineer (E),
MTNL, Telephone Exchange
Building, 9th Floor, Bandra
(West), Mumbai-400 050.

Applicant

By Advocate Shri A.I. Bhatkar with Shri K.R. Yelwe.

Versus

1. Union of India through
Director (EW), Ministry
of Communication, Department
of Telecommunication, 1300-A
Sanchar Bhavan, 20, Ashoka Road,
New Delhi-110 001.
2. K.P. Ramanandan SE (E)
3. S.S. Dumbhere SE (E)
4. R.K. Jain. AE (E),
5. T.R. Viswanathan EE (E)
6. S.B. Gupta EE (E)
7. M. Aarul Mani EE (E)
8. Sundar Pal EE (E) Respondents

By Advocate Shri V.S. Masurkar for R1 &
Shri R.K. Jain, applicant in person.

O.A. NO. 41/99

Gobind Menghani,
Executive Engineer (E),
MTNL, Telephone Exchange Building
Goregaon West,
Mumbai 400 062.

Applicant

By Advocate Shri Shivaramakrishnan

Versus

1. Union of India through
Director (EW), Ministry of
Communication, Department of
Telecommunication, 1300-A
Sanchar Bhavan, 20, Ashoka Road,
New Delhi-110 001.
2. Prateep Nettur EX (E)
3. D.R. Rao. SE (E)
4. M. Suheendran EX (E)
5. C. Suneja EX (E)
6. Godhan Prakash. (EX (E)
7. V. Rajaram EX (E)
8. Ramdhar Sharma EX (E) Respondents

By Advocate Shri V.S. Masurkar for R1.

O R D E R (ORAL)

Hon'ble Smt. Shanta Shastry. Member (A)

All these three O.As contain a common issue and the facts are similar and the applicants have challenged the common impugned order dated 09.01.1998 and the parties have also agreed to the three O.As being heard together. Accordingly, we proceed to dispose of all these three O.As by a common order.

2. The applicants have challenged the Office Memorandum dated 09th January, 1998 whereby the seniority list in the grade of Assistant Engineers (Electrical) in P & T Civil Wing of Department of Telecom has been revised they have prayed to quash and set aside the aforesaid impugned OM and to direct the respondents to recast the seniority list in accordance with the principles of continuous officiation and further to grant the seniority strictly in accordance with the date of regular appointment in the cadre of Assistant Engineers (Electrical) with all consequential benefits and promotions to the grade of Executive Engineer with effect from November, 1988 and to the grade of Superintending Engineer with effect from June, 1998 i.e. the date from which the applicants' junior had been promoted with arrears of pay and allowances including interest. The applicants have also prayed for a direction to the respondents to comply with the

judgment of Hon'ble Supreme Court reported in 1997 SCC (L&S) 1513 in the matter of I.K. Sukhija & Others Vs. Union of India.

3. The main grievance of the applicants is that their seniority has not been rightly assigned as certain direct recruits like the private respondents have been shown above them in the seniority list though they were appointed much later than the applicants. The learned counsel for the applicants Shri Shivaramakrishnan submits that the applicants' main grievance is with reference to para 3 (three) of the OM dated 09th January, 1998. They agree that the seniority list has to be revised in compliance of the judgment of the Hon'ble Supreme Court in the case of I.K. Sukhija (supra). However, the respondents have rotated the direct recruits and promotees on 1:1 basis from 1969 onwards for determination of interse seniority in accordance with the Ministry of Home Affairs OM dated 22.12.1959. According to the applicants this revised seniority list is in violation of the judgment of the Supreme Court in I.K. Sukhija (supra) and also the five Judges Bench judgment in the case of Direct Recruits Class II Engineers Association Vs. State of Maharashtra reported in 1990 SCC (L&S) 339. The applicant's objection is to the effect that certain direct recruits who were appointed much later have been given seniority of earlier years when they were not even born in the service. For example a person who was appointed in 1977

against the vacancy of a direct recruit has been given seniority of 1970 as the vacancy had arisen during that year. This according to the applicants is arbitrary and unconstitutional. Further, the respondents have not taken into consideration the instructions of the DOP & T dated 07.02.1986 whereby the OM dated 22.12.1959 has been superseded.

4. The learned counsel for the applicants makes another point that the OM dated 22.12.1959 would apply where there is a quota prescribed and there is break down of the rota quota rule. In the present case no definite quota is prescribed as is evident from the recruitment rules for the post of Assistant Engineer (Electrical) (AE (E)). The recruitment rules provide that 50% of the posts shall be filled by direct recruitment failing which by transfer on deputation and 50% to be filled by promotion failing which by transfer on deputation. Since there is a proviso to provide for filling the post through transfer on deputation, it cannot be said that there is a definite quota prescribed and as such the OM of 22.12.1959 is not applicable in the case of the applicants and resorting to such an OM for fixing the interse seniority amongst the promotees and direct recruits is illegal according to the learned counsel for the applicants.

5. The learned counsel submits further that in the judgment of the Supreme Court dated 08.7.1997 in the case of I.K. Sukhija & Others (supra) it was held that the appellants are entitled to their seniority counted from the date they were initially promoted as AEs (E). As is evident the applicants in that case were promoted AEs (E) so also are the applicants in the present application. The learned counsel therefore pleads that the applicants' case being similar to the one in the case of I.K. Sukhija (supra) the applicants are also entitled to count their seniority from the date of their regular promotion as AEs (E).

6. The official respondents have filed their written statement. The learned counsel for the respondents opposes the prayer of the applicants and submits that the respondents have strictly gone by the judgment in the case of I.K. Sukhija (supra) as well as by the OM dated 22.12.1959 which was applicable in case of the applicants. This OM provides for quota rota rule and also states that if direct recruitment is not made in a particular year when the vacancy arose, but if the same is made after a few years at a later date, then the direct recruits recruited in the subsequent year against the earlier vacancy get the seniority from the date of the earlier vacancy against the earlier slot. Accordingly the impugned seniority list has been drawn on that basis. As far as dates of regular appointment of the applicants are concerned they are not disturbed

and, as such, the applicants should have no grievance. Further, the learned counsel for the official respondents submits that in an earlier judgment in OA No.373/1987 filed by Respondent No.4 in OA No.40/1999. This Tribunal has given the judgment on 03.5.1991 which has become final and binding between the parties. The Tribunal directed the respondents therein to prepare a fresh seniority list in accordance with the OM dated 22.12.1959 of the Ministry of Home Affairs. Thus, this gives support to the respondents' action in resorting to the OM dated 22.12.1959 while recasting the revised seniority list of 09.01.1998. In regard to the reference to the OM dated 07.02.1986 by the learned counsel for the applicants Shri V.S. Masurkar, learned counsel for the respondents fairly concedes that the OM dated 22.12.1959 has been amended on 07.02.1986. This amendment took into consideration the various judgments passed by different courts including the Supreme Court in the intervening period between 1959 to 1986 holding that the principle of giving seniority to direct recruits based on the year of vacancy is not legal. Discussions were also held with the National JCM on this issue before issue of the aforesaid OM. This OM provides that the seniority shall be counted only from the date of actual appointment and not from the date of vacancy. The OM further prescribes details regarding the actual working out of the seniority. However, para

7 (seven) of the OM states that the order shall take effect from the first of March, 1986. The relevant extraxt of the OM is reproduced below:

"2. This matter, which was also discussed in the National Council has been engaging the attention of the Government for quite some time and it has been decided that in future, while the principles of rotation of quotas will still be followed for determining the interse seniority of direct recruits and promotees, the present pracatice of keeping vacant slots for being filled up by direct recruits of later years, thereby giving them unintended seniority over promotees who are already in position, would be dispensed with. Thus, if adquate number of direct recruits do not become available in any particular year, rotation of quotas for purpose of determining seniority would take place only to the extent of the available direct recruits and the promotees. In other words, to the extent direct recruits are not available, the promotees will be bunched together at the bottom of seniority list, below the last position upto which it is possible to determine seniority, on the basis of rotation of quotas with reference to the actual number of direct recruits who become available. The unfilled direct recruitment quota vacancieis would, however, be carried forward and added to the corresponding direct recruitment vacancies of the next year (and to subsequent years where necessary) for taking action for direct recruitment for the total number according to usual practice. Thereafter, in that year while seniority will be determined between direct recruits and promotees, to the extent of the number of vacancies for direct recruits and promotees as determined according to the quota for that year, the additional direct recruits selected against the carried forward vacancies of the previous year would be placed en-block below the last promotee (or direct recruit as the case may be) in the seniority list based on the rotation of vacancies for that year. The same principle holds good in determining seniority in the event of carry forward, if any of direct recruitment or promotion quota vacancies (as the case may abe) in the subsequent years.

7. These orders shall take effect from 1st March, 1986. Seniority already determined in accordance with the existing principles on the date of issue of these orders will not be reopened. In respect of vacancies for which recruitment action has already been taken, on the date of issue of these orders either by way of direct recruitment or promotion, seniority will continue to be determined in accordance with the principles in force prior to the issue of this O.M."

The seniority shall be determined in accordance with the existing principles on the date of issue of the orders will not be re-opened. So also in respect of vacancies in which recruitment action had already been taken on the date of issue of the order either by way of direct recruits or promotion, seniority would continued to be determined in accordance with the principles in force prior to the issue of the said OM.

7. The official respondents, therefore, submit that their action in recasting the seniority list as per the OM dated 09.01.1998 is quite in order and therefore, the O.As deserve to be dismissed.

8. We have also heard Shri R.K. Jain - Respondent No.4 in OA 40/99. His grievance is, in regard to the action of the official respondents as according to him the official respondents have regularised the promotions of the applicants only in 1989 and they had not completed eight years of requisite service, but they have been shown to be regularised on dates when they had

not qualified and therefore, these applicants cannot be shown as senior to him. However, he admits that he has not challenged the seniority list of 09.01.1998.

9. Shri A.I. Bhatkar, learned counsel appearing on behalf of applicant in OA 41/99 also adopted the same line of arguments as advanced by Shri Shivaramakrishnan, learned counsel for the applicants in the other two OAs. We have given our careful consideration to the arguments advanced on behalf of the applicants as well as the respondents and have perused the relevant judgments as well as the recruitment rules. We find that the revised seniority list of 09.01.1998 came to be issued in compliance of the directions of the Hon'ble Supreme Court in the case of I.K. Sukhija (supra). As has already been pointed out earlier the Hon'ble Supreme Court held that the applicants therein were entitled to count their seniority from the dates they were initially promoted as AEs (E). We note that in the impugned seniority list the date of regular appointments of the applicants have been shown correctly and this is not disputed. The real grievance is because of granting earlier seniority to the direct recruits who were appointed much later than the applicants against the vacancies which arose in the direct recruitment quota in the earlier years. For purpose of illustration the learned counsel for the applicant draws our attention to the seniority list wherein the applicants are shown at Sl. No. 84, 86 and 93 respectively whereas Respondent

No.3 in OA 39/99 i.e. Shri S.K. Virmani who is a direct recruit of 1977 has been granted seniority at Sl. No.12 although he was actually appointed only on 29.11.1978, whereas the applicants were appointed on 31.10.1977, 18.12.1978 and 07.11.1977 respectively. We therefore, find that there is a force in the contention of the applicants that some of the direct recruits were not even qualified to be in Government job age wise and the minimum qualification wise on those particular dates when the vacancies had arisen. It certainly is anomalous to give them seniority from the dates of the vacancies. However, the respondents cannot also be faulted on the face of it as they have followed the OM of 22.12.1959 as it was in force at least till 07.02.1986 when fortunately they realised the flaw, i.e. the apparent contradiction in such computation of inter se seniority between direct recruits and promotees.

The respondents acknowledged that this practice of showing direct recruits recruited in subsequent year against earlier vacancies in the quota of the direct recruits was ridiculous and rectified the procedure by issuing the OM dated 07.02.1986.

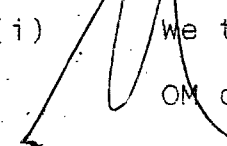
10 We have also perused the judgments relied upon by the learned counsel for the applicants including the recent judgments in the case of Suraj Prakash Gupta & Others Vs. State of J.K. & Others of the Supreme Court of India dated 28.4.2000 reported in 2000 (1) SCSLJ 427. The underlying principle in all these judgments is that

the seniority is normally to be counted from the date of regular appointment. This has also been reflected in the decisions of the official respondents in their own OM reproduced above. In fact, in the judgment in the case of Suraj Prakash Gupta & Others (supra) it has been clearly ruled that direct recruits cannot claim appointment from the date of vacancy in quota before their selection. While we do appreciate that the official respondents have followed the decision of the Tribunal (Bombay Bench) in R.K. Jain (supra) dated 03rd May, 1991 in following the principles laid down in the OM dated 22.12.1959. The respondents could not in any case have ignored the clear principle laid down by the Hon'ble Apex Court. The seniority has to be reckoned from the date of regular promotion in the case of promotees and from the date of appointment in the case of direct recruits irrespective of when vacancy arose. However, as that judgment in R.K. Jain has become final and binding between the parties, that may only be treated as judgment in personam at this stage. But, there is no doubt that the respondents are duty bound under Article 141 of Constitution of India to implicitly follow and implement the judgments of the Hon'ble Supreme Court on the relevant issue.

11. Respondent No.4 had taken objection to the seniority of the applicants on the ground that they were promoted regularly only in 1989. However, in this regard we note that the applicants were granted regular

promotions as a result of the Judgement of the Calcutta Bench of the Tribunal in OA NO. Since the grievance of the Respondent No.4 appears to be against the action of the official respondents and he has not objected to his being impleaded by the applicants as private respondent, we do not consider his above submission as relevant for deciding the issue before us. However, if he has any grievance, liberty is granted to him to proceed with the matter in accordance with law.

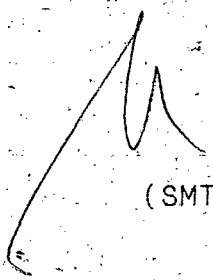
12. We are of the considered view that the revised seniority list issued under O.M. dated 09.0.1998 needs to be recast in the light of the principles laid down by the Hon'ble Supreme Court in various judgments including I.K. Sukhija (supra). In the facts and circumstances of the case, the aforesaid three OAs (OA39, 40 & 41/1999) are allowed to the following extent.

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- (i) We therefore quash and set aside the impugned OM dated 09.01.1998 revising the seniority list of AEs (E);
 - (ii) We direct the respondents to recast the seniority list having regard to the judgments of the Supreme Court and observations made by us in the above paras.
 - (iii) The applicants shall also be entitled to consequential benefits in accordance with law.

This shall be done within a period of four months from the date of receipt of a copy of this order.

No costs.

Let copy of this order be placed in other two OAs.


(SMT. SHANTA SHASTRY)
MEMBER (A)

(SMT. LAKSHMI SWAMINATHAN)
VICE CHAIRMAN (J)

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