

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

Original Application No.286/2000

this the 20th day of April, 2001

HON'BLE MR. KULDIP SINGH, MEMBER (J)
HON'BLE MRS. SHANTA SHAstry, MEMBER (A)

1. Amitabh Kumar
working as Executive Engineer (Civil)
South II, MTNL,
Worli Telephone Exchange Building,
5th Floor, Mumbai-400018
and residing at Flat No.44,
Building No.20, MTNL Quarters,
Bandra Reclamation, Bandra (West),
Mumbai-400 050.
2. M.K. Tyagi
working as Executive Engineer (Civil)
Telecom Civil Division-II,
P&T Colony, Mulund (West),
Mumbai-400 080
and residing at C/76, P&T Colony,
Wadala (West), Mumbai-400 031.
3. S.N. Parate
working as Executive Engineer
(Civil), Telecom Civil Division,
Akola 303, Navjivan Terrace,
Jathar Peth, Chowk, Akola,
Maharashtra-444 005
and residing at Rajesh Building,
Kedia Plots, Jathar Peth,
Akola, Maharashtra-440 005.
4. S.R. Srivastava
working as Executive Engineer (Civil),
Telecom Civil Division,
2nd Floor, Shri Shyam Chambers,
Station Road, Aurangabad,
Maharashtra-431 001
and residing at E-3, Telecom Officers'
Staff Quarters, Town Centre, CIDCO, Aurangabad,
Maharashtra.Applicants

By Advocate: Shri R. Ramamurthy)

Versus

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

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2. Senior Deputy Director (BW),
Telecom Commission,
Sanchar Bhavan,
New Ashoka Road,
New Delhi-110 001.
3. The Chief Engineer (Civil),
Department of Telecommunication,
Maharashtra, CTO Compound,
Juhu Danda, Santacruz (West),
Mumbai-400 054.

... Respondents

By Advocate: Shri V.S. Masurkar.

ORDER

Hon'ble Mr. Kuldip Singh, Member (J)

This is a joint application filed by 4 applicants wherein they have prayed for the following reliefs:-

- (i) That this Hon'ble Tribunal be pleased to hold and declare that the applicants are entitled to count their ad hoc service/continuous officiation in the cadre of Executive Engineer (Civil) for the purpose of seniority, promotions, etc. with all consequential benefits.
- (ii) That this Hon'ble Tribunal be pleased to direct the respondents to fix the seniority of the applicants in the cadre of Executive Engineer (Civil) by taking into account ad hoc/ officiating service of the applicants No.1 to 3 from 12.11.1992 and applicant No.4 from 20.5.94 and interpolate their names in the seniority list of Executive Engineer (Civil) at the appropriate place with all consequential benefits flowing therefrom.

2. Facts in brief are that the applicants are the direct recruits to the post of Assistant Executive Engineer (AEE for

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short). All of them were appointed through UPSC under the respondents. The next promotion is to the post of Executive Engineer (EE for short). But for the promotion to the post feeder of EE there are two different cadres, i.e., of AEEs and that of AE, as per the Recruitment Rules of the Department of Telecommunication. Initially the Recruitment Rules were framed in the year 1976 known as Post and Telegraph Civil Engineers (Civil Gazetted Officers') Recruitment Rules, 1976. Under the said rules the promotion quota for both these grades were 2:1. The rules were, however, later on amended and new rules have come into force w.e.f. 1994. Under the new rules, the ratio between the AEE and AE was revised from 2:1 to 1:1.

3. The applicants allege that they were promoted on seniority-cum-fitness basis within their quota as EE (Civil) vide an order dated 12.11.1992 in respect of applicants Nos. 1 to 3. However, the applicant No. 4 was promoted on 20.5.1994. Though they had been granted regular promotions but had been labelled as ad hoc.

4. It is further pleaded that the said promotions were granted by the competent authority, namely, the President of India and the said appointments were continued by further orders from time to time and all of them had been appointed on regular basis vide a Notification dated 18.7.96. issued by the President of India.

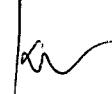
5. The applicants further submit that as per the Recruitment Rules their promotion is on non-selection basis by a DPC alone, so they are entitled to count their service rendered on ad hoc basis.

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basis in the said posts till they are regularly appointed for all purposes. They also state to have made various representations but to no effect so they claim that they are entitled to count their ad hoc service/continuous officiation in the cadre of Executive Engineers for all benefits.

6. Respondents are contesting the petition. The respondents in their reply have pleaded that the applicants are not entitled to the reliefs as prayed in this application as the date of effective promotion is from the date one is approved for regular promotion by the DPC and the recommendations are accepted by the appointing authority and not from the date of ad hoc appointments.

7. Respondents also pleaded that there had been lot of litigation over the seniority between various groups and various Benches of the CAT had given different decisions so in the absence of stable seniority list, regular promotions to the grade of EEs from the AEs stream could not take place for nearly 20 years, and as stated that the seniority list in the grade of EEs comprised of officers promoted from both AEE and AEs stream so it is felt that if regular promotions are made from one stream then the other stream is deprived of this benefit which will lead to imbalance in the seniority list and will create structural problems. Therefore, with the approval of the competent ad hoc authority it was decided to make/promotions from AEEs only. After the seniority disputes of AEs were settled, a proposal was sent to the UPSC to hold the DPC for regular promotions in the grade of EEs were ordered. So it is prayed that in this case only



ad hoc promotions were given so the applicants are not entitled to count the ad hoc period till they are regularly promoted by the DPC in the year 1996.

8. We have heard the learned counsel for the parties and have gone through the records of the case.

9. The respondents were also directed earlier to produce all the relevant papers regarding DPC for the perusal of the Court.

10. Learned Shri Ramamurthy, counsel appearing for the applicants submitted that in this case as on the date of promotion of the applicants when so called ad hoc promotions were made there existed vacancies which were available in the quota of AEs and the promotions of the applicants had been made after holding a proper DPC when the cases of all the applicants were considered so the applicants are entitled to count their period of ad hoc service as if they had been regularly promoted on the said date of promotion.

11. On the contrary Shri Masurkar appearing for the respondents submitted that when the promotions were made in the year 1992 itself the same were not regular promotions, the same were made on ad hoc basis and it was so mentioned in the promotion order.

12. Shri Masurkar further submitted that no DPC was at all held in the year 1992. He has placed on record extracts of certain notes on the basis of which the promotions were made in the year 1992 and after referring the same the counsel for the department submitted that this note itself shows that no regular DPC was held ~~certainly~~ in the year 1992 so the promotions

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granted to the applicants are to be considered as ad hoc promotions and the applicants are not entitled to count period of their ad hoc promotions as if the same were regular promotions.

13. We have also gone through the record.

14. The short question to be seen is whether in the year 1992 when these promotions were made, any regular DPC was held or not. For this purpose we have to revert to the Recruitment Rules for the year 1976 as the promotions are alleged to be made in the year 1992. As per 1976 Rules the composition of DPC should be as follows as per Column 12 to Schedule:-

Promotion

(i) Member of the UPSC - Chairman

(ii) Two Members of the Posts and Telegraphs Board - Members

15. Shri Ramamurthy has submitted that the Board of Posts and Telegraphs never existed so the Association of Chairman of the Board was not possible, the other members were competent to hold the DPC and referring to the note submitted that the promotions were made in the year 1992. The counsel for the applicants further submitted that the Sr.DDG (BW) and Member (P) who constituted the DPC were competent enough to hold the DPC and recommend the persons for promotion.

16. However, on going through the note particularly paragraph 5 which is on page 3 of the note does suggest that though these members had assembled to consider the promotions but they had not approved promotions strictly in accordance with the Recruitment Rules

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and they had made promotions in the year 1992 only on the basis of seniority and they had even dispensed with ^{the going} down in the seniority list of the officers to locate for SC officers since they were clear in their mind that they had to make ad hoc promotions. Thus the committee which met to grant promotions in the year 1992 cannot be said to have formed regular DPC so the promotions made on the basis of the recommendations of this committee cannot ~~at all~~ ^{be} said to be regular promotion and as the promotions given to the applicants earlier were ad hoc, so we are of the considered opinion that the applicants are not entitled to count their ^{period of} ad hoc promotion ~~towards regularly holding of SE.~~

17. In view of the above, OA has no merits and the same is accordingly dismissed. No costs.

Shanta
(MRS. SHANTA SHAstry)
MEMBER (A)

Kuldeep
(KULDIP SINGH)
MEMBER (J)

Rakesh