

CENTRAL ADMINISTRATIVE TRIBUNAL, MUMBAI BENCH

OA No. 686/2001

Mumbai, this the 06<sup>th</sup> day of ~~April~~<sup>MAY</sup>, 2002

Hon'ble Shri Govindan S. Tampi, Member(A)  
Hon'ble Shri K.V. Sachidanandan, Member(A)

1. R.K. Srivastava  
A-1, Room No. 203  
Akal Society, JB Nagar  
Andheri(E), Mumbai
2. S.D. Shembekar  
E-8, Debonar Apt. Ameda Road  
Thane(W)
3. S.N. Hablikar  
6-B, Pereira Nagar CHS  
NR. Pratap Cinema, Kolbad, Thane
4. J.N. Inamdar  
AB-502, OM Sai Nivas  
Subhash Road, Vile Parle(W), Mumbai
5. J. Verghese  
C-2, Lavanya, Gurupriya Nagar  
Mulund(W), Mumbai
6. Thomas Menezes  
3B-337, Vahatuk Nagar  
Caeser Road, Andheri(W), Mumbai

Applicant

(Shri K.C. Sivaramakrishnan, Advocate)

versus

Union of India, through

1. Secretary  
Department of Telecommunication  
Sanchar Bhavan, New Delhi
2. Member(Services))  
Telecom Commission, New Delhi
3. Ram Avtar  
Asstt. Director General(SGT)  
Dept. of Telecommunication  
New Delhi

(Shri V.S. Masurkar, Advocate)

4. S. Ramani Iyer  
Chief General Manager, MTNL  
Prabhadevi, Dadar(W), Mumbai
5. D.I. Singh  
Divisional Engineer(EXTL. II)  
MTNL, Mazgaon, Mumbai
6. Avadh Narayan Upadhyay  
Divl. Engineer, MTNL  
Marol Tel. Exchange  
Andheri(E), Mumbai
7. Mrs. K. Rufus  
Divl. Engineer, MTNL  
Marol Tel. Exchange  
Andheri(E), Mumbai

Respondents

(Shri G.K. Masand, Advocate)

## ORDER

Shri Govindan S. Tamai

Revision in the seniority of the applicants vide respondents' order No.15-78/99-STG-II dated 1.2.01 is under challenge in this OA.

2. Shri K.C.Sivaramakrishnan, learned counsel appeared for the applicants while S/Shri Vinay S.Masurkar and G.K. Masand, learned counsel represented the <sup>official and</sup> ~~original~~ private respondents during the oral submissions.

3. All the applicants are Sub-Divisional Engineers (SDE) belonging to Telegraph Engineering Service Group B [TES(B)] in the Department of Telecommunications (DoT) presently working as Divisional Engineers (DE) in Mahanagar Telephone Nigam Limited (MTNL). So are the private respondents. A limited departmental competitive examination (LDCE) was notified on 10.3.87 for filling up the 94 vacancies in TES(B) to be held in May, 87 including 14 for SC candidates and 7 for ST candidates. However 103 individuals were selected instead of 94. By notification dated 30.8.88 another LDCE was held for filling up 118 vacancies in TES(B). In terms of TES Group B Recruitment Rules, 1981 (RRs) posts of SDEs were to be filled up two-thirds by promotion of JTOs, who have passed Departmental Qualifying Examination (DQE) and one third by LDCE from JTOs who have qualified-similarly referred to Q and C quotas. Till '81 all posts were filled up only by promotion. All the applicants were promoted as SDEs against Q quota in 1990 while the respondents were promoted in the same quota in 1993-94.

Following the challenge to the combined seniority list of SDEs of 1990, OAs were filed before Ernakulam (982/95) and Bangalore (961/99) Benches of the Tribunal which were allowed on 3.2.98 and 30.6.99 respectively. None of the applicants had been impleaded in those OAs. In the meanwhile, a few officers challenged their seniority in terms of 1966 Rules, wherein all promotions were under 'Q' quota as not having been properly given. This was allowed by the Allahabad Bench of the Tribunal and finally settled by the Hon'ble Supreme Court in UOI & Ors. Vs. Madras Telephone SC/ST Social Welfare Association {2000 SCC (L&S) 835}. Following this, a provisional seniority list was circulated on 5.10.2000 including names of only Q quota promotee with C quota promotees to be interpolated subsequently. On 1.2.01 came the supplementary list of those who had cleared LDCE in 87 and 88 and the list had 270 names (64+206). These vacancies were not notified earlier and none of them was of reserved category. This order was declared as having been issued in terms of the Hon'ble Supreme Court's judgement in CA 4339/95 as well as in terms of the orders of Bangalore and Chandigarh Benches. However, all the persons concerned were promotees against Q quota and promoted much later than the applicants. They were also not parties in the OAs before Bangalore or Chandigarh Benches. Some of the persons included in the list of 270 had not passed the LDCE or had not been eligible to take the concerned LDCE. The applicants voiced their protest at being pushed down in the seniority by their representations dated 23.02.01 and 5.3.01 which had not been replied to. Hence this OA.

## 4. Grounds raised in this OA are that:-

- i) the promotion of the 270 officers by the impugned order dated 1.2.01 was illegal and in the absence of reservation against the rule;
- ii) earlier only 94 vacancies were notified for 87 and therefore further selection of 64 in the same test was improper;
- iii) unnotified vacancies cannot be filled up from the waiting list as repeatedly held by the Hon'ble Supreme Court in Gujarat State Dy. Ex. Engineers Assn. Vs. State of Gujarat 1994 Supp 2 SCC 541 and Prem Singh & Ors. Vs. HSEB & Ors. {1996(001) SCC 0283};
- iv) vacancies notified for 88 were also filled up in that year itself and therefore selection of further 206 individuals for that year was irregular;
- v) respondents had committed an error in not declaring 270 additional vacancies if they actually existed and those could have been filled only by a separate examination;
- vi) any individual who had failed in 87 or 88 could not be given the benefit in 2001 and therefore what has been done was illegal;
- vii) Ernakulam Bench had only directed that action be taken to fill up the unfilled vacancies of 83 in 'C' quota by successful candidates and no direction has been issued for carrying over of vacancies. Tribunal had failed to apply the law of limitation in this case;
- viii) Bangalore and Chandigarh Benches had passed orders in violation of Section 21 of the AT Act, 1985 and against the directions of the Hon'ble Supreme Court in the case of State of Karnataka Vs. M. Kottrayya & Ors. {(1996) 6 SCC 246};
- ix) the above decisions do not provide that unnotified vacancies can be filled up;
- x) retrospective promotion of 270 officers in 'C' quota was made without application of mind as it included even those who were not qualified to take LDCE in the relevant year;
- xi) the above 270 candidates had not challenged their failure earlier and cannot after 14 years be given the promotion that too retrospectively;
- xii) respondents should have assumed the extra vacancies immediately after 87 and 88 and taken action to fill them up in accordance with law which they had not done;:::

xiii) reliefs granted by Ernakulam, Bangalore and Chandigarh Benches were not in rem but in persona;

xiv) reference to the Apex Court's decision in Madras SC/ST Employees Welfare Assn. was misleading as it did not deal with 'C' quota;

xv) fundamental rights of the applicants under Articles 14 and 16 had been violated; and

xvi) the order was illegal as Rules did not provide for grant of retrospective seniority.

5. All the above pleas were forcefully repeated by Shri Sivaramakrishnan, learned counsel for the applicants.

6. Refuting the pleas by the applicants, it is pointed out in the counter affidavit filed by the official respondents that their action had been strictly in accordance with rules as well as directions issued by the various Benches of the Tribunal whom the concerned applicants have approached like OA 982/95 of Jolly Jacob Vs. UOI decided by the Ernakulam Bench on 3.2.98, OA 961/91 by K.S. Hegde Vs. UOI given by Bangalore Bench on 3.6.2000, OA 473/HR/99 of J.R. Nair Vs. UOI pronounced by Chandigarh Bench on 31.7.2000, OA 305/01 of T. Nagarajan & Others decided by Chennai Bench (along with WP No. 21961/01 in UOI Vs. UOI & Ors) and finally decision of the Hon'ble Supreme Court in UOI & Others Vs. Madras Telephone SC/ST Employees Social Welfare Assn. {2000(4) SCALE 241}. OA therefore has to fail, plead the respondents.

7. Further, the present applicants having filed this OA on 27.4.01 i.e. three years after the judgement of the Ernakulam Bench, the OA suffered from delay and laches. Respondents referred to and relied upon among others the following decisions:

- i) P.S.Sadasivaswamy Vs. State of Tamil Nadu AIR 1974 SC 2271
- ii)) S.S.Rathore Vs. State of Madhya Pradesh 1989(2) ATC 228
- iii) L.Chandrakumar Vs. UOI 1997(2) SLR SC 1
- iv) Bhup Singh Vs. UOI AIR 1992 SC 1414
- v) Ramesh Chand Sharma Vs. Udhari Singh Kaul & Ors.

The present OA challenging the order dated 1.2.2001 issued following the decisions of the Bangalore and Chandigarh Benches also suffered from non-joinder of necessary parties, whose seniority is being disputed. As the order declaring the results of LDCE held in May, 1987 and November, 88 was issued in terms of the decisions of Bangalore and Chandigarh Benches and as the seniority list of TES(B) had been revised in terms of Hon'ble Supreme Court's order dated 26.4.2000 nothing remained to be done. Respondents finally assert that the applicants were only attempting to reopen the issues already settled for which no sanction existed in law.

8. Shri Masurkar appearing for the official respondents forcefully repeated the above contentions.

9. In the rejoinder on behalf of the applicants it is pointed out that all the judgements relied upon by the respondents including that of the Hon'ble Supreme Court are distinguishable from the facts of the present OA. All those decisions being in personam cannot affect the applicants who were not parties in any of the OAs. This

Bench can therefore take a different view and set aright the injustice done to the applicants pleads Shri Sivaramakrishnan.

10. In the reply filed on behalf of the private respondents No.5 to 7, it is pointed out that the results of LDCE 88 having been declared vide Government order No. ST/TES.Gr.B/Comp.Nov.88/DPC dated 30.5.89, the applicants who either did not take the test or having taken the test did not qualify in the same cannot agitate the issue in 2001. The applicants who did not appear in the test or who did not clear the LDCE cannot challenge the selection of the respondents who have cleared the LDCE. The issue having been decided by the Benches at Ernakulam, Bangalore and Chandigarh <sup>such decision</sup> have become precedents to others. Decision of the Chennai Bench which has differed on the aspect of seniority has been stayed by the Madras High Court on 15.11.01. In terms of the R/Rules, 1981 promotion to the post in TES 'B' was directed by two methods i.e. by promotion by DPC of those with qualifying service who had cleared DQE and those who have have cleared DQE and thereaftsr successful in LDCE. Seniority is fixed in the ratio of 2 : 1 with promotees gaining the first position. During LDCE of 1982 and 1986, as against notified vacancies of 600 and 472 only 233 and 365 were declared passed and the remaining 474 posts instead of being carried forward were diverted to promotee quota. Similarly, in LDCE of 1987 and 1988, only 91 and 113 were promoted leaving 64 and 207 qualified persons not promoted. On account of this improper diversion, a number of promotees gained seniority which they did not deserve. This led to the

filings of OA 982/95 by Jolly Jacob & 12 others before the Ernakulam Bench of the Tribunal. The said Bench on 3.2.98 recorded its disapproval and unhappiness and directed that remedial step be taken to restore the 1/3 quota by working on year to year and carry over basis. Similar directions were issued by Hyderabad Bench on 22.4.98 in OA 507/94. This was done upto the vacancies of 1986. Thereafter on the basis of the decisions of Bangalore Bench in OA 961/99, on 13.6.2000 and Chandigarh Bench in OA 473/HR/99 on 31.7.2000 resultant vacancies were carried over to 1988. Similarly placed 31 employees, including the private respondents No.5 & 6 filed three OAs (573 & 653/99 and 160/2000) before this very Bench but they were disposed of as infructuous on 9.4.2001, taking into consideration the order dated 1.2.2001 which had given the benefit to them also. It would thus be clear that the private respondents have only been granted their rightful seniority on the basis of 1988 LDCE by readjusting them in LDCE quota. Chennai Bench in its decision dated 23.11.001, also did not find fault with the decisions of Ernakulam and Bangalore Benches. As all the issues have been duly gone through by the various Benches of the Tribunal, the instant applicants cannot agitate the issue as it is hit by resjudicata. They are only attempting to find fault with the decisions of the various Benches which they are not entitled to do. Not having cleared LDCE, they can only come through the normal promotion channel of 66 2/3% ("Q" quota) and cannot claim any seniority over the present respondents. Official respondents have acted only correctly and they cannot be faulted as they have gone by the decisions of the Tribunal. OAs in the circumstances

deserved to be dismissed, the respondents state, their plea being reiterated during the oral submissions by Shri G.K. Masand, learned counsel appearing on their behalf.

11. In the final submissions, Shri Sivaramakrishnan, appearing for the applicants rely upon the decision of Madras Bench dated 28.9.2001, whereunder the Tribunal had declined to give the benefit of seniority to those covered in the impugned order, on the ground that they have been wrongly granted seniority prior to their passing LDCE. He also placed for our perusal decision of the Hon'ble Supreme Court in State of Bihar and Anr. Vs. Man Mohan Singh & Ors. (Civil Appeal No.4561-62/92 and of Rajasthan High Court in A.C.Kiradu Vs. State of Rajasthan & Others 1999(6) SLR 177 in support of his plea that for unfilled vacancies, those from waiting list cannot be appointed. The learned counsel therefore prayed that the OA be allowed and relief granted to them.

12. We have carefully considered the rival pleas and perused the papers brought on record including the various decisions and judicial pronouncements relied upon by the contesting parties. Applicants who have been promoted to TES B Group against the 66 2/3% promotion quota - Q quota - are aggrieved at the revision of seniority ordered by the impugned order dated 1.2.01, whereunder as many as 270 individuals have been declared as having cleared LDCE of 1987 and 1988. According to them, these promotions have been done against vacancies not notified in the relevant years as LDCE vacancies i.e. for promotions against 'C' quota. On the other hand the official respondents point out that the impugned order

has been issued in pursuance of the orders passed by the various Benches of the Tribunal and by the Hon'ble Supreme Court in UOI & Ors. Vs. Madras Telecom SC/ST Employees Welfare Association (supra) and the same cannot be assailed. Private respondents 5 to 7 declare that the action initiated by the respondents was legal and proper.

13. Facts are not disputed. Promotions to TES Group B <sup>h</sup> A 78 ordered in terms of the Recruitment Rules, 1981, 466 2/3% by normal promotion of those who have cleared DOE and 33 1/3% by LDCE from those who have cleared DOE. All the applicants belong to "Q" quota while those who have been promoted by the impugned order of February, 2001 <sup>hw</sup> <sup>have</sup> originally been promoted against "Q" quota in their turn but thereafter transferred to "C" quota as having been declared to have passed LDCE 87 & 88. This arose on account of the fact that from 1982 onwards adequate number of persons were not declared as passed in LDCE 1982 onwards and the unfilled vacancies in that quota were diverted to promotion quota. An imbalance therefore arose in the share of both categories and the seniority of those who came to be promoted through LDCE was adversely affected. This gave rise to OA No.982/95 filed by Jolly Jacob & Ors. before the Ernakulam Bench of the Tribunal. This was the first of the cases to be decided. Ernakulam Bench examined the issue in detail and while allowing the application held that the diversion of the unfilled vacancies of C quota to Q quota (LDCE quota to promotion quota) was incorrect and the same would have to be rectified. The relevant portion of the decision of the Ernakulam Bench reads as follows:

24. We are thus constrained to observe that for reasons best known to them, the official respondents have chosen to shift their stand continually. It is only when they have been forced to implement the specific directions of the Hon'ble Supreme Court or some other judicial Forum, including the Hyderabad Bench of the CAT, that they have shown some consideration for implementing correctly the provisions of the Recruitment Rules. Admittedly, these Rules have been framed and brought into effect by none other than the respondent Department. Their apparent reluctance particularly in respect of allocation of rightful positions for the competitive officers in the seniority lists of TES Group B officers has become noticeable.

25. We are unhappy, therefore, with the manner in which the respondent department appears to have acted so far in discharging a statutory duty cast upon them for implementing the provisions of the Recruitment Rules. In fact, we recall in this context that the Hon'ble Supreme Court in their judgement in Civil Appeal No.2183/84 at R1 have specifically referred to the pressures exerted by the lobby of Junior Engineers belonging to the group of qualifying officers against the implementation of the scheme of competitive examination itself for 1/3rd quota in the vacancies of the TES Group B cadre meant for the competitive officers. It is unfortunate that time and again the respondent Department has shown itself vulnerable to the pressures from this lobby of the qualifying officers.

26. We are of the considered view that the shifting stands adopted by the respondent department discussed above do not exactly cover them with glory nor do they indicate that the Department have been able to act so far in a fair and unbiased manner. We hardly need to remind them that these statutory Rules provide the only relevant legal framework within which they are required to act.

27. We have observed specifically that though as many as 150, 229 and 102 vacancies were available for the years 1983, 1984 and 1985, respectively, for the competitive officers against the 1/3rd quota meant for them in the TES Group B cadre, the competitive officers who qualified as eligible at the competitive examination held in 1986, were not appropriately accommodated against these vacancies. Some of these positions, particularly for the year 1983, were utilised in favour of the qualifying officers. The reasons put forth by the official respondents to explain this phenomenon are that certain standards are prescribed for the competitive officers and all those competitive officers who qualify at the competitive examination need not necessarily be found fit for the purpose of

filling up the 1/3rd quota quota of the vacancies meant for them. We can only observe that such a vague reasoning totally unsupported by any provision in the Recruitment Rules is not going to show up the respondent department in any less unfavourable light as far as their illegal bias for the qualifying officers is concerned.

28. In fact, there is a good reason for us to believe that some vacancies against the one third quota for the years 1983 to 1985 meant for the competitive officers were improperly and illegally filled up with the qualifying officers upto 1983 by the respondent Department, only to protect their earlier decision of granting them seniority over the competitive officers who could qualify at the competitive examinations subsequently. They, therefore, accommodated the qualifying officers as a group against the vacancies available first fully upto 1982 and then partly in 1983, when they were compelled to carry out the direction of the Hon'ble Supreme Court of India for granting appropriate positions for the competitive examination held in March, 1982.

29. As regards the contention of the party respondents in this context that the 1/3rd vacancy set apart for the competitive officers cannot be carried over from year to year, we have not found any support for this contention in the Recruitment Rules or in the Appendices thereto. All that clause 2(ii) of Appendix III of the Recruitment Rules on which these party respondents depend, says is that if a candidate qualifies at the competitive examination but is unable to find a berth because of inadequacy of vacancies, though securing the same marks with another candidate who is senior to him, his name will not be carried over for the next selection of the competitive officers. That clause specifically prescribes that "no competitive list will be carried over to the next selection" (underlining ours). Automatic lapsing of the 1/3rd quota meant for the competitive officers for a particular year because of inadequacy of the number of qualified competitive officers in that year, however, cannot take place in the absence of specific provisions in the Rules. On the contrary, the carry over of vacancies for the competitive officers, as distinct from a list of competitive officers prepared after a particular competitive examination to fill up vacancies for a particular year, is permitted. That is how in the year 1986 under A2, it became permissible for the respondent Department to hold a competitive examination for the vacancies for competitive officers for the year 1983, 1984 and 1985, i.e. for years earlier to 1986 for which these 1/3rd quota was carried over.

30. We have also taken note of the contention made by the party respondents that the official respondents should not have held the second competitive examination in 1986, except for those who had already qualified at the departmental qualifying examination held before the commencement of the Recruitment Rules in 1981. It is true that the Apex Court in the Civil Appeal mentioned above did uphold the validity of clause 4 of Appendix I of the Recruitment Rules which is to that effect. However, we have to observe here that the respondent department apparently acted in compliance with the totality of the directions issued by the Hon'ble Supreme Court in the Civil Appeal. One such direction was that the next competitive examination must be held by December 31, 1985 by the respondent Department (actually held in 1986). That direction did not restrict the eligibility for the said competitive examination to those officers who had qualified at the qualifying examination held earlier to the commencement of the Recruitment Rules. Whatever should have been the correct interpretation of that direction of the Hon'ble Supreme Court in the overall context of the provisions of the Note mentioned above being held valid by the same court, the respondent held the competitive examination in 1986 for all eligible officers including those who had qualified in the qualifying examination held in 1985. If the party respondents had felt aggrieved by that decision of the respondent department, they should have agitated the matter in time and appropriately. Admittedly, they have done so. Further, the respondent department having not only held the competitive examination in 1986 for all those who had qualified at the qualifying examination including those who qualified at the qualifying examination held in 1985, but also having actually promoted the officers based on the results of that examination against competitive vacancies arising from the year 1983, have clearly created legitimate expectations in the minds of such promoted officers. At this distance of time, the right of such officers to those promotional posts cannot be curtailed by advancing the reason that a particular direction of the Hon'ble Supreme Court was not properly appreciated by the respondent department and was wrongly implemented."

In view of the above necessary reliefs were granted to the applicants.

14. The above decision was followed by the Hyderabad Bench on 22.4.98, while disposing of OA No.507/94. Respondents implemented the above decision but remitted the carry over of the vacancies upto LDCE 1986. Aggrieved by the action of the respondents, OA No.961/91 was filed before the Bangalore Bench of the Tribunal which held on that the carry forward of the vacancies should be taken further till the diversion from quota 'C' to Quota 'Q' is fully neutralised. The relevant portion of the said decision is reproduced below:

"11. A further assertion has been made in the reply statement filed by the respondents in the case that while implementing the principles laid down by the Ernakulam Bench of CAT, some decision was taken internally, with the approval of the competent authority, that there would be no further carry forward of the unfilled slots meant for the officers qualifying at the competitive examination. We observe that the Recruitment Rules, as already held by the Ernakulam Bench, do not permit such a dispensation. Therefore the said decision cannot be considered as a tenable ground for withholding the benefit of promotion to officers like the applicant who qualified at the competitive examination held in 1988. Even if there was such an internal decision, though the respondents have not given any specific reference to the number and date of such a decision nor have they produced a copy of such a decision, that decision can only be held as invalid for the primary reason that the respondents, even after taking such alleged decision, had nevertheless gone ahead and held the competitive examination in 1988. They could not have done so, except for filling up the unfilled vacancies against 1/3 quota meant for the officers who would qualify at that competitive examination. Such unfilled vacancies obviously could not have been related to a particular year, when the Recruitment Rules do not provide for any such dispensation. We therefore hold that the respondents were not competent to take any such internal decision for not carrying forward these vacancies till 1988.

12. In the event we find that the action of the respondents in not carrying forward the unfilled vacancies falling under the 1/3 quota meant for the officers qualifying at the competitive examination from the time that 1/3

quota for them was prescribed under the Recruitment Rules and in not giving the benefit of promotion to the applicant against one such carried over vacancy cannot be sustained. We, therefore, allow the OA and direct the respondents to treat the applicant as eligible for promotion against any of the carried over vacancies falling under the 1/3 quota meant for officers who qualify at the competitive examination from the year 1982 onwards till the year 1988 when the applicant qualified at the competitive examination. The respondents are directed further to give him all the consequential benefits arising from such promotion, if he is otherwise eligible except that the applicant will not be eligible for the pay of a TES Group B Officer from 1988 till he actually started working as a TES Group B officer. However, we make it clear that he will be eligible for allotment of a suitable seniority position and all other benefits, based on his retrospective appointment to the TES Group B cadres against the 1/3 quota in terms of the directions given by us above. These directions shall be carried out by the respondents within a period of four months from the date of receipt of a copy of this order. There shall be no order as to costs."

15. This decision was followed by Chandigarh Bench of the Tribunal on 31.7.2000 in OA No.473/HR/99. Decision of the Allahabad Bench of the Tribunal and that of the Hon'ble Supreme Court in Madras Telecom SC/ST Welfare Association case came thereafter. This led to the revision of seniority in TES B by the impugned order dated 1.2.2001 was thus brought about. The directive portion of the said order reads as below:

"This is in compliance with Hon'ble CAT, Bangalore judgement dated 30.6.2000 in OA No.961/99 in the matter of Sh. K.S.Hegde Vs. Union of India and others and Hon'ble CAT, Chandigarh judgement dated 31.7.2000 in OA No.473/HR/99 in the matter of J.R. Nain and others Vs. Union of India and others."

16. Evidently the impugned order whereby 270 officers came to be declared as having passed LDCE 87-88 had its roots in the above decisions. As is brought on record

these were persons who had qualified in the LDCE of 87 and 88 but were not promoted and whose vacancies were diverted to the promotees. These officers have also been shown earlier against 'Q' quota but had been readjusted against C quota against LDCE results. The applicants in this OA were at considerable pains to show that the decisions of the various benches of the Tribunal did not either settle any points of law or if they did it, it was bad law. The basic plea raised by them is that filling up of posts remaining unfilled in LDCEs 1982-1988, on a much later date amounted to retrospective promotion for which there was no sanction in law. According to them, diversion of unfilled vacancies in LDCE quota to the promotee quota was the only correct step. They also state that unfilled vacancies cannot be filled by taking persons from the waiting list. These arguments do not merit acceptance and are accordingly rejected. When quota are specifically fixed in the feeder cadre for promotion, the same should be maintained and strictly adhered to and diversion from one to the other could be permitted in rarest of rare cases and that too as a purely stop gap arrangement and the correct position should be revived at the earliest and the balance ~~restored~~ <sup>achieved</sup>. In the respondents organisation this was not done at the proper time, primarily on account of the role played by pressure groups who did not want to face any adverse circumstances, as correctly pointed by the Ernakulam Bench. The respondents' order dated 1.2.2001 is only meant for rectifying the mistake and irregularity which had taken place in question. Learned counsel for the applicants, did indeed refer to a few decisions in support his proposition that vacancies which remained

unfilled in a year could not be filled up from the waiting list. These decisions do not come to the assistance of the applicants as the vacancies remained unfilled in the relevant year not because of the non-availability of qualified candidates, but on account of wrong assessment of vacancy position by the respondents. On their realising their error and in view of the various Benches of the Tribunal, the respondents have taken proper corrective action. The same has led to the issuance of the impugned order dated 1.2.2001. The same deserves full endorsement.

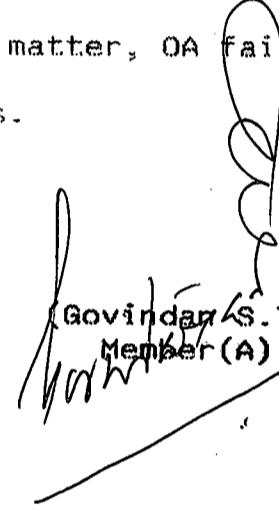
16. Our attention has also been drawn to the decision of the Madras Bench of the Tribunal on 28.9.01 in OA No.305/2001 filed by T.Nagarajan & Others. The said Bench has also adopted the reasoning of the Ernakulam and Bangalore Benches but had declined to extend the seniority to those persons who have been given promotion by the impugned order. The Bench has held that the individual concerned have been granted seniority for having cleared LDCE <sup>67</sup> when the results themselves were announced only in 2001. The above decision of the Bench has already been stayed by the Hon'ble Madras High Court. Even otherwise, we respectfully differ from the findings recorded by the Madras Bench as we are convinced that the individuals have been declared as having passed in LDCE 87 and 88 and promoted accordingly and only the declaration of results was late. As such what the present respondents 5-7 have been granted was readjustment in seniority on the basis of rectification ordered by the Tribunal and in adherence to the principles laid down by the apex court. This represents

the correct position in law and cannot be called in question. In addition to the decisions of Ernakulam, Hyderabad, Bangalore and Chandigarh, three OAs filed before this very Bench on the above subject as having become infructuous following issue of the impugned order. All the above disposals being proper in law and are at one with our own view, we have to hold that the action of the respondents was correct and the OA has to fail, as having no merits.

17. In the above view of the matter, OA fails and is accordingly dismissed. No costs.



(K.V. Sachidanandan)  
Member (J)

  
Govindaraj S. Tampi  
Member (A)

/gtv/