BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,
BOMBAY BENCH.

1. Original Application No.113/92.

i) Sharada Nand Prasad
ii) Vijay Kumar Shrivastava
iii) Ashok Ganeshrao Desai
iv) Anil Ramchandra Morone
v) Girmallappa Shivalingappa Khilare
vi) Subhash Chandra Mehta
vii) P.K.Mohandas
viii) Narendra Mohan Verma and
xi) Potukuchi Venkata Surya Rao. ... Applicants.

V/s.

i) Union of India through
The Director General/
Chairman, Telecom Commission
Department of Telecommunications
(STG - II Section)
Sanchar Bhavan,
New Delhi - 110 001.

ii) The Chief General Manager,
Telecommunications,
Maharashtra circle,
G.P.O. Compound, Fort,
Bombay-400 001.

iii) The Chief General Manager,
Mahanagar Telephone Nigam Ltd.,
Telephone House - V.S. Marg,
Prabhadevi,
Bombay - 400 028. ... Respondents.

2. Original Application No.137/92.

i) V.K.Mahuli
ii) M.Iqbal Hussain
iii) S.S.Yussuf
iv) A.D.Shenoy
v) G.R.Kulkarni
vi) B.V.Patil
vii) V.Muthiah
viii) D.I.Singh
ix) A.B.Halyal
x) A.D.Bablad
xi) T.Kotresy
xii) C.A.Wareemani
xiii) P.C.Parsai
xiv) Bhavikatti
xv) N.Lakshmikantha ... Applicants.

V/s.

i) The Union of India through
The Director General,
Deptt. of Telecommunications,
New Delhi.

ii) The Chief General Manager,
Bombay .1.

iii) The Chief General Manager,
Bombay.28.

iv) Shri J.P.Kalyan Shetty,
A.E(R/C) DCM(NM) MTNL,
Parel Telephone Complex,
Bombay.12.

...2.

v) Shri S.Ramachandran,
A.E., DGM(ENGG) MTNL,
2nd Floor, Telephone House,
Prabhadevi, Bombay.28.

vi) Shri M.S.Kanti, A.E.(AVM - III)
MTNL, Alankar Building,
241, S.V.P.Road, Bombay.4.

vii) Shri B.C.Biradar, AE., (EC-III-SI)
MISC Installation - Salsette Island,
Telephone House, 16th Floor,
Prabhadevi - Bombay - 400 028. ... Respondents.

3. Original Application No.677/91.

i) Mr.A.V.Kalghatgi,
ii) Mrs. C.K.Saroja,
iii) Mrs. Radha Chandran,
iv) Mrs. B.Antony,
v) Mr.P.K.Narayanan,
vi) Mr.V.Sivakumar,
vii) Mr.B.S.Shaikh,
viii) Mr.P.Soundarajan,
ix) Mr.P.Jothirajan,
x) Mr.S.Vaidyanathan,
xi) Mrs.Arya A.M.
xii) Mr.P.Manohran,
xiii) Mr.M.Ambalakuthan,
xiv) Mr.A.Ramchandran,
xv) Mr.Ramakant, and
xvi) Miss. Usha R.Mutalik. ... Applicants.

V/s.

The Union of India & Ors.
(same as O.A. No.137/92). ... Respondents.

4. Original Application No.678/91.

i) A.P.Sivaraman Nair,
ii) P.T.Thomas, and
iii) E.N.Ramachandran. ... Applicants.

V/s.

The Union of India & Ors.
(Same as O.A. No.113/92.).

5. Original Application No.716/91.

i) Mrs. C.P.Kusumkumari Amma,
ii) Mr.Ramachandra G.Shet,
iii) Mr.B.A.Kudtarkar,
iv) Mr.D.S.Ramasubramanian,
v) Mr.A.V.Savant,
vi) Mr.G.Sethuraman,
vii) Mr.P.Guruswamy,
viii) Mr.M.Nagarajappa,
ix) Mr.B.P.Sinha,
x) Mr.S.R.Sholapur,
xi) Mr.J.B.Balegar,
xii) Mr.M.Rajaram,
xiii) Mr.H.P.Sharma,
xiv) Mr.V.Manickkam,
xv) Mr.M.D.S.D.Gowda,
xvi) Mr.A.N.Ramamurthy,
xvii) Mr.M.R.Patil,

V/s.

...3.

Union of India & Ors.
(Same as O.A. No.137/92). ... Respondents.

6. Original Application No.717/91.

i) Mrs. Janaky Jagadish, and
ii) Mr.S.G.Mahajan, ... Applicants.

V/s.

The Union of India & Ors.
(Same as O.A. No.137/92). ... Respondents.

7. Original Application No. 718/91.

i) Mr.V.N.Savadekar,
ii) Mr.V.Irundayaraj,
iii) Mr.S.R.Sakhare,
iv) Mr.B.S.Holi,
v) Mr.G.Bheemappa,
vi) Mr.R.Padmanabhan,
vii) Mr.C.U.Gade,
viii) Mr.R.Vijayakumar,
ix) Mr.A.A.Kumbar,
x) Mr.Chakrapani Adiga,
xi) Mr.Basavaiah,
xii) Mr.C.D.Naik, and
xiii) Mr.L.M.Bastikar. ... Applicants.

V/s.

The Union of India & Ors.
(Same as O.A. No.137/92). ... Respondents.

8. Original Application No.719/91.

i) Mr.H.Mariyappa,
ii) Mr.V.Balakumar,
iii) Mr.B.S.Raut,
iv) Mrs.Rathy S.Panicker,
v) Mrs. S.S.Bolar,
vi) Mr.A.N.Kulkarni,
vii) Mr.R.Ravindran,
viii) Mr.Madhukara Kamath,
ix) Mr.M.K.Shimpi,
x) Mr.S.Hariprasad,
xi) Mr.M.N.Mahishi,
xii) Mr.M.Sarat Chandrakumar,
xiii) Mrs.Meera A.Dharmatti,
xiv) Mr.S.Srinivasan. ... Applicants.

V/s.

The Union of India through
the Director General,
Department of Telecommunications,
(STG -II Section), Sanchar Bhavan,
NEW DELHI.1.

The Chief General Manager,
Telecommunications, Maharashtra
Circle, Fort, Bombay.1.

The Chief General Manager,
MTNL, Telephone House, Prabhadevi,
Bombay.28.

Shri S.V.Kulkarni, A.E.(AWD-IV),
MTNL, Wadala T.E. Bldg, Bombay.31.

...4.

Shri S.G.Barve (AMX-601) A.E.,
MTNL, Kandivli T.E., S.V.Road,
Kandivli(W), Bombay.67.

Shri M.V.Pathak, A.E., MTNL,
Ghatkopar T.E., L.B.S.Marg,
Ghatkopar(W), Bombay.86. ... Respondents.

Coram: Hon'ble Member(A), Shri M.Y.Priolkar,
Hon'ble Member(J), Shri V.D.Deshmukh.

Appearances:-

Applicants by Mr.C.Nathan.
Respondents by Mr.R.C.Kotiankar.
Private Respondents by Mr.G.K.Masand.

Oral Judgment:-

(Per Shri M.Y.Priolkar, Member (A)) Dated: 2.2.1993.

The applicants in all the above applications are either Junior Engineers officiating or regular Assistant Engineers of the Department of Telecommunications. All of them have the grievance that some other Junior Engineers have been promoted as Assistant Engineers earlier to the applicants although they had passed the departmental qualifying examination later than the applicants. Since the issues involved and the reliefs prayed for are essentially the same in all these applications, they were heard together and are being disposed of by this common order.

2. The dispute in these cases is whether the applicants and persons similar to them are entitled to promotion from the grade of Junior Engineers to the next higher grade in the Telecom Engineering Service Group B (Assistant Engineers and equivalent posts) on the basis of the year of passing the qualifying Departmental Examination envisaged in para 206 of the P & T Mannual and not on the basis of the respective seniority as had been adopted and followed by the respondents. The Allahabad High Court in two Writ Petitions filed by Parmanand Lal and Brij Mohan

...5.

(W.P. No.2739/81 and 3652/81) ordered by its judgment dt. 20.2.1985 that the Petitioners before them who were similarly placed as the present applicants may be promoted w.e.f. the date prior to a date of promotion of many persons who passed the departmental examination subsequent to them and adjust their seniority accordingly and pay them salary and allowances accordingly w.e.f. the said date. An S.L.P. filed against this High Court Judgment was dismissed on merits by the Supreme Court on 8.4.1986. The Principal Bench of this Tribunal by its judgment dated 7.6.1991 also followed the above High Court decision. A Special Leave Petition against this judgment of the Principal Bench was also dismissed by the Supreme Court on 6.1.1992. However, by its subsequent judgment dt. 22.4.1992 the Principal Bench also held inter alia that while the applicants before them were entitled to the benefit of the Judgment of the Allahabad High Court dt. 20.2.1985 ~~but~~, in the event of re-fixation of seniority and notional promotion with retrospective effect, they would be entitled only to refixation of their present pay which should not be less than that of those who were immediately below and that they would not be entitled to back wages.

3. This controversy has now been finally settled with the decision of the Supreme Court dt. 18.9.1992 in S.L.P. filed against the above Principal Bench decision of 22.4.1992 and two Writ Petitions (417 and 460/92) in which the Supreme Court has held that the issues raised therein having been already adjudicated, it was not permissible to once again re-agitate the matter, thus putting the seal of finality on the decision of the Allahabad High Court and of the Principal Bench of the Tribunal cited above, as upheld by the Supreme Court.

...6.

4. On behalf of the respondents a Circular dt.26.1.93 has been produced before us in which the progress made in implementing the judgment of the Principal Bench dated 22.4.1992 has been outlined. It is stated therein that the work involved the collection of basic data in respect of more than 30,000 officers pertaining to the last 30 years or so, issue of provisional lists and then the final eligibility lists of the years from 1973 onwards and then holding of review DPCs for each of those years. It is stated in the Circular that complete implementation of the judgment is likely to take another three months i.e. that the judgment would be implemented fully by the end of April, 1993.

5. With the above judgment of the Principal Bench dt. 22.9.1992 directing re-fixation of seniority and notional promotion with retrospective effect on all India basis, the grievance of the applicants herein has been largely met. Their only grievance which still subsists according to the learned counsel for the applicants is that the Principal Bench has held that the applicants would not be entitled to back wages but only for notional promotion. The learned counsel argued thatvarious other Benches of the Tribunal and also the Allahabad High Court had allowed arrears and back wages in full without any restriction. The direction given by the Principal Bench for non-payment of back wages, as explained at para 22 of that judgment, is based on the Supreme Court judgment in the case of Palura Ramakrishniah and others V/s. Union of India (1989(1) SCALE 830) in which it is held that it is a well settled rule that there has to be no pay for no work, although after due consideration a person is given a proper place in the gradation list having deemed to be promoted to the higher post w.e.f. from the date his junior was promoted, and at the most he would be entitled

...7.

to re-fixation of his present pay on the basis of the notional seniority granted to him so that his present salary is not less than those who are immediately below. Although the learned counsel for the applicants contended that the facts are distinguishable, we do not see any reason why this principle should not be equally applicable to the facts of the present case before us. Here also the applicants will be given proper places in the gradation list and deemed to be promoted to the higher post w.e.f. the date their juniors were promoted. In the circumstances, in our view, the applicants should be entitled only to re-fixation of their present pay on the basis of the notional seniority granted to them so that their present salary is not less than those who are immediately below them. The learned counsel also brought to our notice an order dt. 6.1.1992 of the Supreme Court of India in the case of Union of India & Ors. V/s. Daljit Kumar & Ors. where certain SLPs directed against the Judgment of the Principal Bench dt. 7.6.1991 were dismissed. The contention of the learned counsel is that since the Allahabad High Court in its decision dt. 20.2.1985 and the Principal Bench which followed the Judgment of the Allahabad High Court on 7.6.1991 had already granted arrears or back wages, it should be understood that the Supreme Court has also specifically endorsed that the back wages should be payable in accordance with those judgments. However, as we have stated above, the subsequent judgment of the Principal Bench dt. 22.4.1992 makes it clear that it was considering a batch of applications filed both in the Principal Bench and also those transferred from other Benches to avoid conflict of decisions and it has also relied on the Supreme Court decision

...8.

in the case of Paluru Ramakrishniah (supra) and this Judgment of the Principal Bench has also been upheld by the Supreme Court Judgment dt. 18.9.1992. We do not therefore see any reason to differ from the finding of the Principal Bench that the applicants will not be entitled to back wages in the event of re-fixation of seniority and notional promotion.

6. Respondents 4 to 7 had filed a written reply on 11.6.1992 contending against the applicability of para 206 of the P & T Mannual vis-a-vis the recruitment rules for appointment to Group 'B' posts in the Telecom Engineering Service. The learned Counsel for the respondents stated today that he is not pressing any of those contentions as they stand negatived already by the Supreme Court Judgment dated 18.9.1992 referred to above. The learned counsel, has, however, filed to day an additional written statement contending that a vital aspect relating to these rules and provisions in the Mannual had not been brough to the notice of either Allahabad Court, the Tribunal or the Supreme Court when they had delivered their earlier judgments on this issue. Apart from the fact that this additional written reply has been filed only to day when the case was already part-heard and is at the concluding stage, we are not inclined to re-open this concluded issue in view of the following observations in the Supreme Court Judgment dt. 18.9.1992 (Supra) :-

> "..... The order made by this Court in SLP(c) Nos.3384 to 86 of 1988 interfering with the judgment of the Allahabad High Court to a limited extent is an order made on the merits of the case as is quite apparent from the expressions used in their order and is a binding precedent. The issues were again raised and agitated by the Union of India as well as JTOA in SLP (c) Nos.19716-22/91 against the Judgment of the Principal Bench CAT dated 7.6.1991 unsuccessfully. Those judgments have settled the controversy and have become final and binding in respect of the questions debated therein and issues settled thereby and as was observed by a Constitution Bench of this Court

...9.

in Mackanlal Waza and others v. State of Jammu & Kashmir and others 1971(3) SCR 832, the Union of India and its officers are bound to follow the same even if the members of the forum or a majority of the Engineers were not individually parties in the case before the Allahabad High Court.."

7. On the basis of the foregoing discussion we direct that the benefit of Principal Bench Judgment dt. 22.4.1992 should be made available to the applicants in all these cases within a period of three months from the date of receipt of copy of this order. There will be no order as to costs.

Certified True Copy
Date.....

Section Officer
Central Admn, Tribunal,
Bombay Bench.