

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 1307/92

Date of Decision: 8-10-97

Shri Kulkarni Ramchandra Vasudeo Applicant.

Shri G.K.Masand Advocate for Applicant.

Versus

Union of India and others Respondent(s)

Shri R.G.Kotiankar Advocate for Respondent(s)

CORAM:

Hon'ble Shri. Justice R.G.Vaidyanatha, Vice Chairman

Hon'ble Shri, P.P. Srivastava, Member (A)

- (1) To be referred to the Reporter or not? *Yes*
- (2) Whether it needs to be circulated to other Benches of the Tribunal? *No*

R.G. Vaidyanatha
(R.G. Vaidyanatha)
Vice Chairman

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH 'GULESTAN' BUILDING NO:6
PRESCOT ROAD, MUMBAI:1

Original Application No. 1307/92

Pronounced this on 8th day of October 1997.

CORAM: Hon'ble Shri Justice R.G. Vaidyanatha, Vice Chairman
Hon'ble Shri P.P. Srivastava, Member (A)

Kulkarni Ramchandra Vasudeo
Asstt. General Manager (P&T)
O/o Chief General Manager,
Mahanagar Telephone Nigam Ltd.,
Telephone House, V.S. Marg.,
Dadar (W) Bombay - 400 028

... Applicant.

By Advocate Shri G.K. Masand.

V/s.

Union of India through
Secretary to Govt. of India
Department of Telecommunications,
Sanchar Bhavan, 20 Ashoka Road,
New Delhi.

The Director General (Telecom)
Sanchar Bhavan, 20 Ashoka Road,
New Delhi.

Chief General Manager
Mahanagar Telephone Nigam Ltd.,
Telecom House, V.S. Marg.
Bombay.

... Respondents.

By Advocate Shri R.C. Kotiankar.

ORDER


¶ Per Shri Justice R.G. Vaidyanatha, Vice Chairman ¶

This is an application under Section 19 of the Administrative Tribunals Act. The respondents have filed the reply opposing the O.A. We have heard both the sides and perused the materials on record.

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2. The applicant has filed this application challenging the seniority list, which is shown at Exhibit 'A' to the application. The applicant was promoted as Assistant Engineer in 1977. In the seniority list dated 1.2.85, the applicant was shown at Sl.No. 939 and in course of time it came to Sl.No. 692 in 1989, but the respondents have published the impugned seniority list in 1992 wherein the applicant's name is shown at Sl.No. 2551. Many of the persons who were junior to him have been placed above him. The promotional position of the applicant was affected in view of his change in position in the impugned seniority list. Then it is stated by way of amendment that the respondents made the seniority list on the basis of para 206 of the P&T Manual, but according to the applicant the said Rule in Para 206 of P & T Manual is not applicable and the seniority should be governed by the Recruitment Rules 1966. Hence on this allegation the applicant wants the seniority list of the 1992 be quashed and previous seniority list should be restored.

3. The respondents have filed the reply stating that the matter is concluded by the decision of the Principal Bench of this Tribunal and also by the judgement of the Supreme Court. It is further asserted that para 206 of the P&T Manual directly applies to the applicant as far as the question of seniority is concerned. Since the matter is now

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concluded by the Supreme Court, the matter cannot be re-agitated by the applicant by filing the O.A. Hence this application has to be dismissed with costs.

4. The only point for consideration is whether the seniority list of applicant and other Engineers are governed by para 206 of P&T Manual or by Recruitment Rules 1966 ?

After hearing both the sides, we find that the question is no longer res-integra and the matter is concluded authoritatively both by the Principal Bench of this Tribunal and the Supreme Court, the matter cannot be re-agitated by the applicant by filing this O.A.

Earlier there was a decision of the Allahabad High Court in the case of Parmanand Lal V/s. Union of India and others in Writ Petition No. 2739/81 dated 20.2.1985. Zerox copy is made available to us. The Division Bench of the Allahabad High Court held that para 206 of the P & T Manual is applicable. Union of India filed an S.L.P. against the judgement in the Supreme Court which came to be dismissed.

Again the matter was agitated before the Ernakulam Bench in O.A. 498/90 and connected matters and then the order dated 24.4.92 was passed, the Bench followed the decision of the Allahabad High Court and directed the Department to consider the

promotion of the Engineers on the basis of reasoning of the judgement of the Allahabad High Court mentioned above.

We also find that the same matter was re-agitated before the Principal Bench of this Tribunal in O.A. 2407/88 and connected cases and then order dated 22.4.92 was passed where the Principal Bench held that the seniority should be decided on the basis of para 206 of P & T Manual and followed the judgement of Allahabad High Court mentioned above, but however protected their pay, in case they are reverted on the basis of revised seniority list.

5. Again the decision of the Principal Bench was challenged before the Supreme Court in S.L.P (Civil) 9063/92 and also connected writ petition No. 460/92. The Supreme Court by detailed judgement dated 18.9.92 approved the view of the Allahabad High Court and the decision of the Principal Bench and held that the seniority is governed by para 206 of P & T Manual and not by Recruitment Rules 1966.

There is no, and there cannot be any dispute that the decisions of the Supreme Court, Principal Bench, Ernakulam Bench and Allahabad High Court squarely and directly apply to the facts of the present case. In view of these decisions the applicant cannot re-agitate the matter once again by approaching this Tribunal. Further the counsel for the applicant

mentioned that under Recruitment Rules 1966, a notification was issued by the department of Telecommunication which is dated 28.6.66 which prescribed the guide-lines for fixing the seniority list and this notification was not considered by any of the above earlier decisions and therefore the applicant can agitate this matter before this Tribunal to give effect to the notification dated 28.6.66 and fix the seniority of the applicant on that basis, The decision of the Apex Court and Principal Bench notwithstanding; in our view, there is no merit in the submission for one thing that when the highest Court of land had laid down the law, this Tribunal cannot be asked to say that the Apex Court has not considered that point or this point and, therefore, if some points are considered then different view would have been taken etc. Such a course is not permissible and open to any litigant to approach this Tribunal to canvass such a plea. We find that these arguments that the notification dated 28.6.66 was not placed before the Principal Bench or the Apex Court has no factual basis.

6. A copy of the judgement of the Apex Court in T.P. (Civil) No.417/92 in Writ Petition(Civil) No. 460/92 with S.L.P. (Civil) No. 9063/92 (Junior Telecom Officers Forum and Ors. V/s. Union of India and Ors.) dated 18.9.92 has been produced before us.

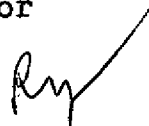
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The Apex Court has quoted the relief prayed for in the Writ Petition, of which prayer (a) is relevant for our present purpose. That prayer is for seeking a Writ of mandamus to direct the Government to give effect to the Recruitment Rules 1966 and memorandum dated 28.6.1966 etc. Therefore, we find that there is a specific prayer, not only for the enforcement of Recruitment Rules but also for implementation of the memorandum dated 28.6.1966, on which strong reliance has been placed on behalf of the applicant. Therefore the memorandum dated 28.6.1966 was very much before the Apex Court and the Apex Court was called upon to decide and enforce the memorandum dated 28.6.1966. Therefore, the submission on behalf of the applicant that the memorandum dated 28.6.1966 was not brought to the notice of the Apex Court and if such a memorandum had been brought to the notice of the Apex Court, the decision would have been otherwise has no merit, since the applicants before the Apex Court very much wanted the implementation of the memorandum dated 28.6.1966. In page 15 of the true copy of the said judgement there is reference to argument on behalf of the applicants before the Supreme Court about the Recruitment Rules 1966 and 1981 and the executive directions. The memorandum dated 28.6.1966 is the executive direction given under enabling provision of 1966 Recruitment Rules. Again in page 17 of the copy of the said judgement it is stated that the argument on para 206 of the P & T Manual cannot over ride the 1966 Rules or the

executive instructions issued there under was liable to be rejected. Even in page 21 there is a reference to the Rules of 1966 and 1981 and the memorandum issued there under. Therefore we find that in many places the Supreme Court has referred to 1966 Rules and the executive instructions or memorandum issued there under and further there is a specific prayer in the Writ Petition on the implementation of the memorandum dated 28.6.66. Hence it is too late in the day now to contend that the memorandum dated 28.6.1966 was not subject matter of dispute before the Apex Court. In our view the Supreme Court was very much concerned not only with the Recruitment Rules 1966 but also the memorandum dated 28.6.1966. The Supreme Court upheld the seniority governed by para 206 of P & T Manual. That is also the view taken by the Principal Bench of this Tribunal and also by the Ernakulam Bench of this Tribunal. There should be some certainty about the position of law, and it cannot be re-agitated, whenever the Government officials feel that the previous determination of law is wrong or requires re-consideration. At any rate we are bound by the decision of the Apex Court and therefore there is no question of re-opening the matter again.

7. It is not and cannot be disputed that if para 206 of the P & T Manual is attracted, then the applicant's seniority has been correctly determined and therefore there is no question of re-opening or

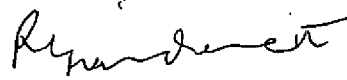


correcting the seniority list issued by the respondents in 1992 as per the judgement of the Principal Bench. Hence in our view the applicant has no right to question the correctness and legality of 1992 seniority list. Needless to add that the applicant is entitled to protection of pay, in case he is reverted as a result of the revised seniority list of 1992.

8. In the result the application is dismissed. However it is made clear that in case of reversion of the applicant on the basis of revised seniority list of 1992, the respondents shall not recover any amount paid to the applicant and further the applicant's pay is protected as in the same lines as directed by the Principal Bench in its order dated 22.4.92 in O.A. 2407/88 and connected cases. In the circumstances of the case there shall be no order as to costs.



(P.P. Srivastava)
Member (A)



(R.G. Vaidyanatha)
Vice Chairman

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