

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

MUMBAI BENCH, MUMBAI.

1. ORIGINAL APPLICATION NO. 589 OF 92.
2. ORIGINAL APPLICATION NO. 770 OF 93.

25th, this the 25th day of June 1997.

Coram: Hon'ble Shri B.S.Hegde, Member(J),
Hon'ble Shri M.R.Kolhatkar, Member(A).

1. A.K.Bhattacharya,
B-19, Reshma Co-operative
Housing Society, Sector 9A,
Vashi,
New Bombay - 400703.

.... Applicant in
(O.A.589/92 and
O.A.770/93).

2. P.T.Gopalan,
IV/3/15 Telecom Township,
Deonar, Bombay 88.
3. S.K.Banerjee
Manager (Officiating),
Telecom Factory,
Kharagpur, West Bengal.
4. A.K.Bakshi,
III/4/22 Telecom Township
Deonar, Bombay - 88.
5. Telecom Factories Engineers
Association Telecom Factory,
Bombay - 88.

.... Applicants in
(O.A. 589/92).

V/s.

1. Union of India
through the Secretary,
Department of Telecommunications
Sanchar Bhavan,
New Delhi.
2. Secretary,
Department of Telecommunications,
Sanchar Bhavan,
New Delhi.
3. The Director General,
Department of Telecommunications
Sanchar Bhavan,
New Delhi.
4. The Deputy Director General,
Department of Telecommunications
Sanchar Bhavan,
New Delhi.
5. Shri S.C.Garg,
Director(Project),
Telecom Factory, Deonar,
Bombay-88.
6. Shri D.K.Gupta,
Manager, Telecom Factory,
Bhilai, M.P.

.... Respondents in
(CA Nos.589/92
and 770/93).

7. Shri R.P.Nigam
Director (Project), Telecom Factory
3-A, Chowringhee Place, Calcutta 700 013
8. Shri Abdul Majid
Director (TFS), Sanchar Bhavan
New Delhi - 110 001
9. Shri H.N.Singh
Manager, Telecom Factory
Richhai, M.P.
10. Shri A.C.Sahana
Manager
Telecom Factory, 248, AJC Bose Road
Calcutta - 700 027
11. Shri P.Thangavellu
Senior Engineer, Telecom Factory
Wright Town, Jabalpur - 482 002
12. Shri P.Verghese, Senior Engineer
Telecom Factory, Wright Town
Jabalpur - 482002
13. Shri V.S.Parmeswaran
Manager, Telecom Factory
Kharagpur
14. Shri Satyarthi S.K.
Senior Engineer, Telecom Factory
Wright Town, Jabalpur - 482 002
15. Shri T.Kaliprasad
Senior Engineer, Telecom Factory
Wright Town, Jabalpur - 482 002
16. Shri Mahabir Singh
Senior Engineer, Telecom Factory
Bombay-88
17. Shri Rajesh Kumar
Senior Engineer, Telecom Factory
Wright Town, Jabalpur - 482 002
18. Shri Jitendra Vyas
Senior Engineer, Telecom Factory
Bombay-400 088
19. Shri Rajesh Kumar
Senior Engineer
Telecom Factory
248, AJC Bose Road
Calcutta - 700 027

O R D E R

¶ Per Shri B.S.Hegde, Member(J)¶

Heard the applicant in person and Shri V.S. Masurkar, counsel for the respondents.

2. The applicant has filed O.A. No.589/92 along with others in a representative capacity and he has also filed O.A. 770/93 praying the very same relief.

Therefore, it is felt that both the O.As. can be disposed of by passing a common order.

3. In these O.As. the applicants are praying for quashing and setting aside the seniority list dt. 1.9.1987 and further that the continuous officiation of the applicants should be accountable for determining their seniority in the cadre and direct the respondents to grant consequential benefits with a direction to the respondents to promote the applicants notionally to the next higher grades and to give financial compensations with effect from the dates of their juniors who were actually promoted to these grades. The C.A. was admitted on 26.4.1993, thereafter on completion of pleadings time was given to parties.

4. It is submitted that certain applicants had filed a Writ Petition (W.P. No.794/79) before the Delhi High Court which came to be transferred under section 29 of the Administrative Tribunals Act and it was re-numbered as T.A. No.476/85 and it came up final hearing. It is conceded by the Respondents that the said writ petition was filed by similarly situated aggrieved officials and the

...4.

said writ petition (T.A. No.476/85) was heard by the Principal Bench of this Tribunal vide its order dt. 8.5.1987, which reads as follows:

"In the facts and circumstances discussed above, we allow the petition to the extent of quashing the seniority lists 1/4.4.1978 and 10.7.1978 and direct that these seniority lists should be revised as in 1978 by keeping the promotees who were promoted as AMFs in the promotion quota before 5.2.1972 enbloc above the direct recruits who were appointed as AMF after 5.2.1972. So far as the petitioners who were promoted after 5.2.1972 are concerned, their inter-se seniority vis-a-vis direct recruits appointed after 5.2.1972 will be determined on the basis of the 1971 rules read with the Home Ministry's O.M. of 23.12.1959 and will be subject to the various relevant rulings of the Supreme Court governing such cases. The seniority list so revised should be circulated by inviting objections within a month and should be finalised within two months thereafter. A review DPC should be held on the basis of the revised seniority list so finalised and those of the petitioners who are found suitable for promotion to the next higher grade should be so promoted."

5. Shri V.S.Masurkar, counsel for the respondents submitted that the contentions raised in the O.As. has no substance. As a matter of fact, pursuant to the decision of the Principal Bench in A.M.Krishnan & Ors V/s. Union of India & Ors. (T.A. No.476/85) the respondents revised the seniority list and as per the revised seniority list notional promotions were given to many officers. It has been succinctly stated in the reply that various faces had to be undergone in the revision of the seniority list. In the year 1979, Shri A.N.Krishnan a departmental promotee Officer in the grade of Asstt. Manager of Telecom Factories Organisation along with others moved the High Court at Delhi with a request to set aside the seniority list in the grade of Asstt. Managers dt. 1/4.5.1978 and 10.7.1978 and a few promotion orders

based on the said seniority list, these being in violation of the Recruitment Rules. The said petition was subsequently transferred to the CAT, Principal Bench, New Delhi and CAT pronounced its Judgment on 8.5.1987. Pursuant to the decision of the CAT the seniority list ^{was} revised and as per the revised seniority list notional promotions were given to many officers. Till revision of the said seniority list, ad-hoc promotions were being made in accordance with the earlier seniority list.

6. The draft seniority list pursuant to the decision of the C.A.T. was circulated on 22.6.1987 inviting objections, if any, from concerned officers to the said seniority list. The applicant also submitted a representation on 8.7.1987 raising certain objections to the said seniority list. The main issues raised in the representation were as under:

- "i) According to para-9 of the judgment pronounced by the CAT, a revised seniority list of Asstt. Managers should be prepared keeping all the Asstt. Managers promoted before 5.2.1972 enbloc senior than those Direct Recruits who were appointed after 5.2.1972. As per records available with the Department, all the Asstt. Managers upto Shri S.K.Agrawal who were Asstt. Managers before 5.2.1972 should enbloc rank senior in the list and thereafter the inter-se seniority of the Asstt. Managers followed on the basis of 1971 Rules read with Home Ministry's O.M. No.9-11/55/RTS dt.22.12.59 i.e. departmental promotee Asstt. Manager will take the first position and the direct recruit Asstt. Manager take the next position followed by departmental promotee and direct recruit in the ratio of 1 : 1 respectively. Accordingly, the name of Shri S.D.Banerjee in the list should therefore appear above the name of Shri S.C. Garg and then followed under the purview of 1971 Rules.
- ii) The date of appointment in the grade of Asstt. Manager is to be taken as 2.7.1979 instead of 3.8.1983 since appointment in the grade of Asstt. Manager was continuous from 2.7.1979. "

7. Apparently, the applicant is claiming the benefit

of ad-hoc service rendered by him in the grade of Asstt. Manager from 2.7.1979 whereas he was promoted to the grade on regular basis w.e.f. 3.3.1982. Therefore, the benefit of counting ad-hoc service for the purpose of seniority was considered at length in this office before finalisation of the said seniority list. However, it was decided that giving the benefit of ad-hoc service will not be administratively prudent as Asstt. Manager's post is a 'Selection' post and strictly speaking that merit plays the prominent role within the zone of consideration determined by the seniority position. This entails quite often placement of a junior at a higher position in the select list whereas ad hoc appointments are made on the basis of seniority-cum-fitness which means by 'Non-selection' method. In other words, an officer who may not be promoted if a DPC is held under the process of Selection as required under the Recruitment Rules, gets benefit some times by ad hoc appointments. The position regarding counting of ad hoc service for the purpose of seniority was got clarified from Department of Personnel & Training and Ministry of Law. In the case of the applicant the period of ad hoc promotion was just for 3 years. Moreover, the Department of Personnel & Training categorically advised as under :

"Seniority list for any grade will consist only of those officers who have been appointed on regular basis either by direct recruitment or by promotion to that grade. Since these officers have not been approved by the DPC for promotion to this grade, question of including their names in the seniority list will not arise."

Needless to mention that for the purpose of promotion not only promotees should have at least 5 years of

service for consideration for promotion to the post of Senior Engineer, even the direct recruits should complete the requisite number of years of service for consideration for promotion. The revised seniority list was prepared on the basis of the directives of the CAT and in accordance with the DOP & AR O.M. dt. 22.12.1959. Since this seniority list has been prepared in accordance with relevant orders which automatically supercedes all the earlier seniority lists prepared prior to the CAT Judgment. Therefore, challenging the seniority list amounts to challenging the decision of the Tribunal. Further it is stated that as per the Recruitment Rules for the post of Assistant Manager (Factories), 50% posts are filled up by direct recruitment and 50% posts by promotion amongst Asstt. Engineers and Metallurgists. Due to non-availability of direct recruits through UPSC some of the departmental officers were promoted on ad-hoc basis and were continuing for quite some time till the announcement of the Judgment by the CAT, Principal Bench, New Delhi in 1987. The promotee officers demanded that for the purpose of seniority their ad-hoc service should also be taken into account and they should be treated as Asstt. Managers from the date they were appointed as Assistant Manager on ad hoc basis. This contention of the applicant has not been agreed to by the department. It is incorrect to state that the Asstt. Managers, Probationers are taken against temporary posts. In each recruitment year the regular vacancies arising out of retirement, resignations etc. are taken into account and divided

equally among direct recruits and departmental promotees as per the provisions laid down in the Recruitment Rules. The vacancies meant for direct recruits are communicated to the Union Public Service Commission for filling up from the Engineering Services Examination conducted by the UPSC on yearly basis. Insofar as the date of regular appointment it is stated that it is the date on which they join the organisation as probationers. These probationers have to successfully complete their probation period and also qualify a departmental examination before they are confirmed in the grade. Not qualifying the Departmental examination, only affects their confirmation and not their appointment in the grade.

8. The department had communicated to the applicant as far back as 29.4.1988 that his request for revision of seniority could not be considered and again on 27.5.1992 the department again reiterated the position by stating that it was in pursuance of the decision of the CAT in A.M.Krishnan & Ors. the seniority list was revised and as per the revised seniority list notional promotions were given to many officers. Till revision of the said seniority list, ad-hoc promotions were being made in accordance with the earlier seniority list. After the revision of the seniority list as per the decision of the CAT Shri Gajbiye and Shri Satyarthi (Direct Recruits) became junior to the applicant and accordingly the applicant being senior to Shri Ghajbiye was promoted notionally to the grade of Senior Engineer w.e.f. 4.2.1986 i.e. the date of regular

appointment of Shri Gajbhiye to the grade of Senior Engineer. The seniority list was prepared after due consultations with the Department of Personnel & Training. Since the date of regular promotion of Shri Gajbhiye was 4.2.1986, the notional promotion to the applicant was with reference to his junior Shri Gajbhiye i.e. w.e.f. 4.2.1986 only. Since the applicant had no complaint against his seniority position for 4 years, he just wanted to get the dates of his juniors changed from 4.2.1986 to 29.5.1984 so as to get benefits of notional promotion from 29.5.1984 instead of 4.2.1986. Obviously, the applicant was satisfied with his own position in the seniority list which was revised in pursuance of the Judgment of the CAT. The Judgment of the Supreme Court in the case of Direct Recruit Class-II Engineers Officers' Association & Ors. V/s. State of Maharashtra & Ors. cannot be made applicable to cases which have already been settled.

9. Considering the pleadings of the parties and the arguments of both sides and carefully going through the records, we find the contentions raised by the applicant has already been decided by the Principal Bench decision and as against the revised seniority list it is clear that pursuant to the judgment of the CAT it was recasted and finalised in the year 1987-88. Therefore, in our view it is not open to the applicant to adjudicate the very same issue once again. It is a settled principle of law that seniority once settled cannot be reopened at the instances of an individual at a belated stage, especially in these matters the applicant himself was a party to the earlier O.A. which was disposed of by the Tribunal on merits.

10. In the result, we are of the view that there is no merit in the OAs and the same are dismissed.

No order as to costs.

(M.R.KOLHATKAR)
MEMBER (A)

(B.S.HEGDE)
MEMBER (J).

B.