

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO:591/94, 831/94 and 988/94

TUESDAY the 27th day of FEBRUARY 2001

CORAM: Hon'ble Shri Justice Ashok C.Agarwal, Chairman
Hon'ble Ms. Shanta Shastry, Member(A)

1. Parameshwaraiah
2. C.G. Kulkarni
3. S.K. Khot
4. R.Suriya Narayanan
5. S.Swaminathan
6. A.Augustine
7. K.Gopalakrishnaiah
8. T.N.Shankar
9. Smt. R.Hemavathi
10. D.Sundararaj
11. R.Muthalagan
12. R.Ramesh
13. D.Lakshminarayanan
14. D.V.Nehata
15. B.V.Kulkarni
16. S.Jayaraman
17. R.Ramesh
18. V.N.Kadalaskar
19. N.Harikrishnan
20. S.Yogeswaran
21. G.Kaliappan

...Applicants in
OA 591/94

1. S.V.Kakhandaki
2. P.K.Deshpande
3. S.Balasubramaniam
4. V.S.Srikumar
5. S.Sridhar
6. M.Ramanathan
7. V.Gurumurthy
8. C.Muralidharan
9. J.Sekar
10. R.Ravi
11. T.K.Ramanujam
12. D.I. Kagi
13. P.Manivannan
14. M.G.Akkalkot
15. G.Chinnathambi
16. R.Srinivasan
17. Ramegowda
18. G.Ramaiah
19. M.K.Suresh
20. A.R.Jagdale
21. B.N. Patil
22. K.S. Ramalinga
23. K.Ganesan
24. D.D. Halundi
25. S.J. Patil
26. P.H. Kardkal
27. Brajendra Singh
28. V.Mohan

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29. G.S.H. Pendari
30. N.K. Yadav
31. R.S. Yadav
32. Sachchidanand Upadhyay
33. U.S.S. Prakash Rao
34. N.M. Pathak
35. M. Subramaniam

...Applicants in
OA 831/94

All are JR Telecom Officers Employed
with Mahanagar Telephone Nigam Ltd.,
Bombay.

1. K.P. Ravindra Kumar
2. A.Ramadevi
3. R.D.Gavi
4. C.G. Murteli
5. Chander M
6. K.Ulaganathan
7. R.P. Gupta
8. Revathi Balasubrramanian
9. A.D.Kulkarni
10. M.N. Annal
11. Balkrishna Dwivedi
12. P.K.Singhal
13. S. Senthilnathan
14. S.Velvasagam
15. N. Ramamoorthy
16. Chandrahasa
17. P.K. Gupta
18. S.B. Kittur
19. Abdul Naseer
20. V.Pattabiraman
21. M.S. Krishnamoorthy
22. K. SasiKumar
23. B.S. Pundir
24. A.V.S. Krishna Prasad
25. Selvan P.S.
26. B.G. Patil
27. D.S. Suryavanshi
28. L.R. Patil
29. R.R. Shukla
30. A.K. Srivastava
31. J. Yedukondalu
32. B.H. Salunkhe
33. S.P. Singh
34. Pankajchandra
35. R.K. Srivastava
36. M. Subrahmanian
37. P. Murugan
38. Mrs.Pahade M.P.
39. Mrs.Mini N. Nambudiripad
40. B.K. Srivastava
41. M. Manisekharan
42. V.Prahalathan

...Applicants in

All are Jr. Telecom Officers Employed
with Mahanagar Telephone Nigam Ltd.
Bombay.

V/s

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1. Union of India
Ministry of Communications
Through the Director
Department of Telecommunications
Sanchar Bhavan
New Delhi.
2. The Chief General Manager,
Telecommunications
Maharashtra Circle
G.P.O. Compound
Bombay.
3. The Chief General Manager
Mahanagar Telephone Nigam
Limited, Telephone House
Prabhadevi, Bombay

By Advocate Shri R.C. Kotiankar.

4. A.K. Gangopadhyay
5. S.P. Ekhe
6. B.M. Nag
7. Jagannath Rao
8. Zaiul Islam

...Respondents.

All Junior Telecom Officers of
MTNL Bombay.

By Advocate Shri M.S. Ramamurthy

ORDER (ORAL)

{Per Ms. Shanta Shastry, Member (A)}

These are three OAs 591/94, 831/94 and 988/94. An identical issue is involved in all the three OAs, therefore we are disposing these OAs by a common order. None present on behalf of the applicants in all the three OAs. They were absent on previous occasions also. We are therefore proceeding in terms of Rule 15 of the CAT Procedure Rules to dispose of the applications on merits and on available pleadings.

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3. The applicants are Junior Telecom Officers due for promotion as Assistant Engineers, now designated as Sub-Divisional Officers in TES Group 'B' post. According to the recruitment rules for the post the applicants are required to put in 5 years service and are required to pass qualifying examination before they are considered on the basis of seniority cum fitness.

4. Para 206 of P & T Manual reads as follows:

206(1) All Junior Engineers recruited after 1st January 1929 under the new system after serving for 5 years in Engineering branch may be permitted to appear at the departmental qualifying Examination, which will be held from time to time in the subjects enumerated below, provided they have a good record. This qualifying examination is intended to test the general ability of Junior Engineers and their knowledge in the latest developments in Telegraphy and Telephony. A pass in this examination is an essential condition for promotion to Telegraph Engineering and wireless service group 'B'

206(2) Promotion to the T.E. and W.S. Group 'B' will be made according to the principle of seniority cum fitness but the junior Engineers who pass the qualifying examination earlier will rank senior as a group to those who pass the examination on subsequent occasions i.e. officials who passed the examination held in 1956 will rank as enblock senior to those who passed in 1957. Their seniority inter-se will, however, be according to their seniority in the cadre of Junior Engineers'

Thus according to clause (2) of para 206, whoever passes the qualifying examination earlier gets promotion earlier irrespective of his seniority. The respondents vide letter dated

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15.4.1992 have abrogated para 206 of P&T Manual Vol IV. It has been further stated that promotion to the post of Sub-Divisional Engineer from JTO will be governed by Statutory recruitment rules for promotion to the grade TES in existence from time to time. All these instructions would come into force for promotion to the TES grade in respect of the vacancies for the year 1994 onwards.

4. The applicants have stated that though they have passed their qualifying examination in 1989-90, they have been denied their promotions because of the impugned letter dated 15.4.1994. The applicants have sought interim relief, which was granted to them, to stay the operation of the impugned letter until final decision of the OA.

5. The applicants in their OA submitted that the matter had been taken up in various Courts and the Allahabad High Court, Lucknow Bench held the validity of para 206 of P&T Manual and had ordered promotion of two persons that is Shri Paramanand Lal and another. They had passed the qualifying examination earlier than their seniors. The matter came up before different Benches of Tribunal including the Principle Bench of this Tribunal. The authority of Para 206 of P & T Manual was upheld by all most all the Benches of the Tribunal. S.L.P. was also filed against the judgement of Allahabad High Court, which came to be dismissed. It is therefore the prayer of the applicants that the benefit of the judgement of Allahabad High Court should be extended to them as they are similarly placed persons. The respondents have

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opposed the same on the ground that Para 206 of P&T Manual is only an executive instruction whereas the recruitment rules provide otherwise. According to the recruitment rules Junior Engineers of particular year of recruitment / appointment who qualify in earlier examination shall rank en block senior to those officers of the same year of recruitment / appointment. Thus it is confined to one particular year. This matter was taken up to the Supreme Court again seeking a clarification by the respondents. This was referred to a Larger Bench and the judgement has now become available. Pending the judgement of the Supreme Court all these OAs had been kept in sine die list. Now as the judgement has become available it is seen that the Hon'ble Supreme Court has held that the Statutory recruitment rules would prevail over the administrative instructions as given in para 206 of P & T Manual. The conclusion drawn in para 17 of the judgement of the Hon'ble Supreme Court Bench comprising of three judges in the case of Union of India V/s SC/ST Staff Welfare Association etc. reported in 2000(2) SC SLJ is as blow:

The judgement of Allahabad High Court proceeded by interpretation of para 206 of P & T Manual which was an administrative instruction. The recruitment rules are framed under provision of 309 of the Constituion. Once statutory recruitment rules have come into force and the procedure has also been prescribed under the rules of preparation of eligibility list of officers for promotion to the Engineering Class II by notification dated 28.6.1996 then that procedure has to be

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adopted and earlier administrative instructions contained in para 206 of the P & T Manual cannot be adhered to. At the same time the Hon'ble Supreme Court also stated that the promotions given to the earlier two applicants on the basis of the Allahabad High Court judgement was not liable to be altered.

6. In view of the latest judgement of the Larger Bench of the Hon'ble Supreme Court as cited above, in our view these OAs are not maintainable. Accordingly the OAs are dismissed. We do not order any costs. Interim relief granted earlier gets vacated.

(Ms. Shanta Shastri)
Member(A)

(Ashok C. Agarwal)
Chairman

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