CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 110/97 & 387/97.

Dated this Monday, the 5th day of November, 2001.

C. G. Arekar & Others, Applicants.

Shri G. K. Masand, Advocate for the Applicants.

VERSUS

Union of India & others, Respondents.

None present Advocate for Official Respondents.

By Advocate Shri S. S. Karkera, Advocate for Pvt. Respondents.

CORAM : Hon'ble Shri B. N. Bahadur, Member (A).

Hon'ble Shri S. L. Jain, Member (J).

(i) To be referred to the Reporter or not ? Yes

(ii) Whether it needs to be circulated to other Benches of the Tribunal ? No

(iii) Library. No

(B. N. BAHADUR)
MEMBER (A).

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CORAM : Hon'ble Shri B. N. Bahadur, Member (A).
Hon'ble Shri S. L. Jain, Member (J).

APPLICANTS IN O.A. NO. 110/97.

1. C. G. Arekar.
2. M. S. Hegde.
3. C. M. Kulkarni.
4. R. A. Hattiholli.
5. B. D. Acharya.
6. V. M. Kulkarni.
7. V. V. Apte.
8. A. B. Puranika.
9. V. D. Benadikar.
10. V. D. Gawde.
11. M. L. Lopes.
12. M. A. Karogal.
13. M. K. Ahuja.
14. J. S. Kanade.
15. A. S. Warang.
16. A. H. Gite.
17. M. V. Gaikwad.
18. K. B. Dawani.
19. K. B. Bharucha.
20. N. H. Suryavanshi.

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21. A. L. Naik.

22. A. P. Mangalvedhe.

23. R. D. Kotwal.

24. D. G. Bandgar.

25. Smt. S. A. Tilak.

26. V. K. Mhatre.

27. R. J. Iroy.

28. Smt. M. A. Puranik.

29. P. G. Kapse.

30. B. A. Parab.

31. L. B. Patil.

32. S. S. Purohit.

33. L. V. Kulkarni.

34. R. D. Shinde.

35. C. K. Sawant.

36. D. K. Borbade.

37. Smt. A. S. Naik.

38. S. H. Shirangi.

39. S. R. Sawant.

40. Smt. K. P. Dravida.

41. D. S. Ghadi.

42. Kum. N. D. Hotwani.

43. V. S. Sakpal.

44. Smt. S. Radha.

45. R. S. Parab.

46. L. G. Narkar.

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47. P. A. Mahapankar.

48. H. S. Ranadive.

49. G. D. Punwatkar.

50. Smt. P. R. Issac.

APPLICANTS IN O.A.NO. 387/97.

1. Smt. S. N. Kharade.

2. T. R. Machchi.

3. I. M. Shaikh.

4. S. M. Borkar.

5. P. C. Mhatre.

6. C. G. D'Silva.

7. V. M. Godbole.

8. C. B. Namjoshi.

9. B. D. Navre.

10. V. M. Dolhare.

11. M. R. Upadhye.

12. R. M. Shelatkar.

13. S. B. Jahagirdar.

14. Smt. K. P. Pilankar.

15. R. A. Kadam.

16. C. G. Ganacharya.

17. S. B. Deshpande.

18. R. N. Joshi.

19. S. S. Tiwari.

20. Y. N. Bhoir.

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21. A. M. Mhadgut.

22. R. D. Adhav.

23. S. Y. Dethe.

24. P. B. Rathod.

25. P. V. Bansode.

26. Smt. M. Natrajan.

27. Smt. S. V. Chhatre.

28. H. G. Gurubaxani.

29. M. Y. H. Shaikh.

30. Smt. P. M. Rao.

31. Smt. L.A. Pavse.

32. R. B. Taware.
33. G. M. Khavanekar.

(All are working in the cadre of Telegraphist at Central Telegraph Office, Mumbai - 400 001.)

(By Advocate Shri G. K. Masand)

V E R S U S

1. Union of India through
The Secretary in the Department
of Telecommunication,
Sanchar Bhavan, New Delhi.

2. Chief General Manager,
Telecommunications,
Maharashtra Circle, G.P.O.
Building, Mumbai - 400 001.

3. Chief Superintendent,
Central Telegraph Office,
Mumbai - 400 001.

4. Shri N. P. Nandanwar.

5. Shri M. B. Pendam.

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6. Shri R. S. Mandavi.

7. Shri V. K. Raravikar.

8. Shri G. R. Dara. ... Respondents.

(Nos. 1 to 7 as Respondents in O.A. No. 110/97. Nos. 1 to 8 as Respondents in O.A. No. 387/97.

Nos. 4 to 8 working as Chief Telegraph Master in the scale of Rs. 2000-3200 (RPS) in the Office of Chief Superintendent, Central Telegraph Office, Mumbai-400 001.)

(By Advocate - None for the official Respondents and Shri S. S. Karkera for the Official Respondents.)

O R D E R (ORAL)

PER : Shri B. N. Bahadur, Member (A).

We have heard together two O.As. bearing No. 387/97 and 110/97. Since, admittedly, the basic issue and facts therein are similar, these two O.As. are being disposed of by this common order. For the sake of convenience, we take the facts in O.A. No. 387/97. We have heard Learned Counsel, Shri G. K. Masand who appears for the Applicants (50 in number in O.A. No. 110/97 and 33 in number in O.A. No. 387/97). We have also heard the Learned Counsel, Shri S. S. Karkera, for the Private Respondents in both the O.As. We have not had the benefit of hearing the Learned Counsel for official respondents in both the cases, since he is not present. Since considerable time has elapsed in the matter, we proceed to hear the cases in the absence of Counsel for official respondents. We will of course refer to the relevant papers, including the replies filed by the official respondents and the arguments taken by Learned Counsel, Shri S. S. Karkera, inter alia.

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2. The facts in this case are some what simple, in that, the Applicants are challenging the promotion of private respondents, they allege, are junior to them in the basic grade. It is a stated position that the private Respondents were promoted to the One Time Bound Promotion (O.T.B.P.) and Biennial Cadre Review (B.C.R.) grades prior to the Applicants on the basis of relaxation, on consideration of their belonging to SC/ST. At the outset, Shri Masand, admitted that those promotions cannot be challenged now by Applicants because they were not challenged at the appropriate time. However, the later promotion that is being challenged relates to the elevation to B.C.R. Grade IV, which is restricted in strength to 10% of the cadre. This then is the crucial and only point before us. The Applicants in O.A. No. 387/97 thus come up with this grievance seeking the relief, inter alia that the Applicants' claim for promotion to Grade-IV of B.C.R. Scheme (Rs. 2000-3200) should be considered from the date of elevation of their juniors to various grade [prayer clause (e) page 19].

3. The Official Respondents R-1 to R-3 have filed a Written Statement as early as on 05.12.1997. This date is being mentioned to highlight the fact that this date is prior to the dates of subsequent judgements that are relevant to the issues in this case. The Written Statement describes, in detail, the system of provision of O.T.B.P. and B.C.R. and also gives facts in respect of the persons who are stipulated as being juniors to the Applicants by the Applicants themselves. These are, inter alia, Mr. L. G. Gokhe and Shri Dara. It is stated that these

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persons were promoted as Telegraph Masters, which is in the equivalent pay scale of B.C.R. and hence maintained their seniority in Grade-III to be promoted to B.C.R. Grade-IV. Thus, the seniority on the basis of their actual promotion is really sought to be depended upon and relied in the Written Statement. It is also stated that the rules provide reduced number of years for SC/ST candidates for filling up the shortfall of vacancies and, hence, the relaxation in the number of years of service (16 years) can be provided. The Written Statement seeks to meet parawise the averments made in the O.A. in the further part. A reply has been filed by Private Respondent Nos. 4, 5, 6 and 8 and a separate reply has been filed by Respondent No. 7. These have also been perused. In fact, the relevant reply has been depended upon at length during arguments made by Learned Counsel, Shri Karkera.

4. We have read the papers in the case and have heard the Learned Counsel on both sides, as stated above.

5. At the outset, the Learned Counsel, Shri Masand points out that this case is now covered by two important judgements and further developments which he brought to our notice. We will come to these straightaway. The first refers to the judgement of the Principal Bench of this Tribunal in the matter of Smt. Santosh Kapoor & Others V/s. Union of India & Others decided on 07.07.1992 in O.A. No. 1455/91, a copy of which has been appended by Applicants at exhibit 'E'. In fact, it was brought to our notice that this matter went upto the Supreme Court, which

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disposed it of on 09.09.1993 deciding that there was no case for interference in the Appeal and thus dismissing the Appeal. The second case referred to, is the case decided by this Bench of the Tribunal in O.A. No. 455/94 on 06.07.1999 (P. B. Kulkarni & Another V/s. Union of India & Others). In fact, this O.A. became the subject of two Contempt Petitions, copies of which have also been provided to us and to Learned Counsel for the other side. The Learned Counsel, Shri Masand, as stated above, sought to depend very heavily on this judgement and took us through various paras of the judgement during the course of his argument. In fact, the judgement dated 06.07.1999 also refers to another judgement viz. judgement of the Ahmedabad Bench of this Tribunal.

6. Learned Counsel, Shri Karkera, argued the matter for the private Respondents, also drawing our attention to the various judgements. He pointed out that there have been certain developments after this judgement and it was his contention that the private Respondents at one stage had come to be reverted and had moved this Bench of the Tribunal later. They had been provided protection by this Bench in its judgement in O.A. No. 307/2000 and 405/2000 decided on 03.05.2001.

7. We have carefully gone through all these judgements in the Court today with the assistance of Learned Counsel on both sides. We come straight to the judgement made in the matter of P. B. Kulkarni and J. P. Tare, viz. judgement dated 06.07.1999 made by this Tribunal (supra). It is seen that the

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basic fact in that case and the present O.A. before us are identical. In the judgement the issues have been discussed very clearly and views taken and judgement pronounced. The said judgement analyses the judgement of the Principal Bench in the case of Smt. Santosh Kapoor (supra) and also refers to an unreported judgement of the Ahmedabad Bench of this Tribunal dated 11.04.1997 in O.A. No. 623/96. The issue whether the reservation policy will apply to upgraded post or not has also been discussed. The circulars of Telecommunication Department on the subject, which came after the judgements of the Gujarat High Court have also been reproduced in para 5 and 6 of this judgement and have been commented upon. It is also stated today before us that the judgement of the Ahmedabad Bench of this Tribunal has subsequently been upheld by the Gujarat High Court. A copy of that judgement has also been produced before us by the Learned Counsel, Shri Masand. Part of para 5 of the judgement of this Bench is reproduced, which reads as follows:

> "In both the Circulars mentioned above, the government has taken a policy decision to implement the judgement of the Ahmedabad Bench of the Tribunal in O.A. 623/96 viz. that reservation roster will not apply for promotion from BCR to Gr. IV. The only condition put by the Government is that this direction is subject to the outcome of Writ Petition filed in the Gujarat High Court which is still pending. In other words, the Government has decided to implement the decision of the Ahmedabad Bench of the Tribunal subject to the orders that may be passed by the High Court in Writ Petition filed by the Government challenging the order of the Ahmedabad Bench of the Tribunal.
>
> Hence as on to day the Government has committed itself to implement the directions of the Ahmedabad Bench of the Tribunal that reservation will not apply to the 10% upgraded

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posts in Gr.III which is called as Gr. IV subject to the decision of the Gujarat High Court in the Writ Petition. Hence, no further direction is necessary by this Tribunal, since government itself has agreed to follow the directions of the Ahmedabad Bench of the Tribunal."

8. As was stated, the matter was taken to the Gujarat High Court. It is also stated that the Gujarat High Court has decided the matter on 24.03.1999. Be that as it may, it has only added finality to the judgement of this Bench. The important issue has been decided that the basic grade seniority will be counted and that Applicants will not suffer in regard to promotion to B.C.R.IV merely because of the fact that they were not promoted earlier than the Private respondents to O.T.B.P./B.C.R.

9. In view of the fact that this issue has been squarely decided by the Mumbai Bench judgement referred above and the fact that the judgement in Smt. Santosh Kapoor's case (supra) has been confirmed at the level of Hon'ble Supreme Court, we do not find it necessary to record further reasons to arrive at a conclusion that the basic grade seniority will need to be the basis for provision of benefits for elevation to B.C.R. Grade-IV scheme, namely - to the pay scale of Rs. 2000-3200. This benefit is deserved by the Applicants and in all justification in view of the judgements as discussed above, will have to be provided to them.

10. An argument was raised by the Learned Counsel, Shri Karkera, trying to differentiate the applicability of the basic grade principle to B.C.R. and O.T.B.P. as against regular

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promotion. We do not feel that there is any merit in this argument. The ratio of basic grade seniority will clearly apply also to elevation in O.T.B.P. and B.C.R., since it has been settled by the Hon'ble Supreme Court in the number of judgements. Thus, the argument taken by Shri Karkera does not hold ground at all. Shri Karkera also brought the aspect regarding protection of reversion of private respondents. It may be mentioned that we are not issuing any order or giving any direction regarding their reversion, etc. The decision taken by the official Respondents with reference to Court judgements, etc. will prevail.

11. The basic issues and facts in the other O.A., namely - 110/97, being similar, the benefits to be granted there will be on the same lines as in O.A. No. 387/97.

12. In the consequences, the O.As. bearing No. 110/97 and 387/97 are allowed to the extent and in terms of the following orders :

(i) The promotion to B.C.R. Grade-IV (Rs. 2000-3200) should be on the basis of base grade seniority.

(ii) The Respondents are directed to consider the claims of all Applicants in both these O.As. as per rules on the basis of their basic grade of seniority. Applicants who are found fit for promotion should be given retrospective

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notional promotion from the time their immediate junior was given promotion to Grade-IV. Their pay should be fixed notionally and notional increments will be granted from time to time as per rules. Actual monetary benefits, however, shall be provided from 01.04.1997 in O.A. No. 387/97 and 01.01.1997 in O.A. No. 110/97.

(iii) The Respondents shall comply with this order within a period of three months from the date of receipt of a copy of this order.

(iv) No order as to costs.

(S. L. JAIN)
MEMBER (J).

(B. N. BAHADUR)
MEMBER (A).

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I. ... 299/02

For Extension of Time / Fixed for hearing on 19/4/02

17/4/02

33/02

For orders Fixed on 19/4/02

16/4/02

16) 19.4.2002

Shri GK Nasand, Counsel for applicant.

Counsel for applicant has pointed out that another CP. in OA 387/97 have been filed. Let this CP be listed together with that CP in OA 387/97 on 26/4/2002.

(Smt. S. Shastry) M(A)

(B Dikshit) V/C

H.

(3) 26.4.2002

Present: Shri G.K. Masand for applicants
Shri V.S. Masurkar for respondents.

The C.P. is on the Board together with an MP for extension of time. It appears from C.P. and M.P. that order passed in O.A. has not been given effect despite direction that order will be given effect by respondents within three months from the date of receipt of a copy of order. It is not disputed that it has not been given effect though time granted to implement the order has expired ~~and~~ it appears from M.P.

We have heard Shri G.K. Masand for applicants and Shri V.S. Masurkar for respondents. It has been brought to our notice by Shri V.S. Masurkar that a Writ Petition No.651/2002 has been filed before High Court of Judicature at Bombay in which Rule has been issued on 01st February, 2002. Rule has also been issued on stay matter. Considering that the Writ Petition is pending before High Court we grant another two months from today to respondents to implement the order in case no interim order is passed in the Writ Petition. M.P. No.299/2002 is allowed.

As we have granted two months time on Miscellaneous Application, let C.P. be listed on 28.6.2002.

(SMT. SHANTA SHASTRY)
MEMBER (A)

(BIRENDRA DIKSHIT)
VICE CHAIRMAN.

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dtd. 26.4.2002,
~~Judgement~~ despatched
to Applicant/Respondent (s)
on 27.5.2002.

516.

3) 28/6/2002

Smt. S. S. Marne for shri G.K. Masand, Ld. counsel for original Petitioner and shri V.S. Masurkar for original Respondents.

Shri Masurkar states that the matter has been stayed by the High Court of Judicature at Bombay. In view of this, we cannot proceed with the C.P. which is hereby disposed of. subject to the decision of the High Court in case the present petitioner finds fresh cause, he will be at liberty to approach Tribunal as per law.

No costs.

(Shankar Raju)
M(J)

(B.N. Bahadur)
M(A)

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W.P No. 651/02 filed in High Court against CAT Order dtd. 05/11/01 is Stayed by High Court vide Order dt. 04/7/02 & Same is enforced in High Court Registral Sr No. 1941/-