

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.: 480/97

Date of Decision : 31st January 2001.

V.R.Shah Applicant.

Applicant in person

Advocate for the
Applicant.

VERSUS

Union of India & Ors. Respondents.

Shri V.S.Masurkar

Advocate for the
Respondents.

CORAM :

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

The 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 *no*
Benches of the Tribunal ?
- (iii) Library *yes*

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

mrj*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.480/97

Dated this the 31st day of January 2001.

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

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

V.R.Shah,
Divisional Engineer,
(Datta Circuits)
(Officiating),
Mahanagar Telephone Nigam
Limited, Malabar Hill Telephone
Building, A.6, Bell Marg,
Mumbai.

...Applicant

Applicant in person

V/S.

1. The Chief General Manager,
Mahanagar Telephone Nigam
Limited, Telephone House,
V.S.Marg, Dadar (West),
Mumbai.

2. The Chairman,
Telecom Commission,
Sanchar Bhavan,
New Delhi.

... Respondents

By Advocate Shri V.S.Masurkar

O R D E R

{Per : Shri S.L.Jain, Member (J)}

This is an application under Section 19 of the Administrative Tribunals Act, 1985 for an order to the respondents to give notional promotion and fixation of pay of the

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applicant as Assistant Engineer/Sub Divisional Engineer w.e.f. 1.3.1979 with all consequential benefits, further refixation of pay w.e.f. 23.12.1987 - the date when the applicant was actually confirmed as Assistant Engineer/Sub Divisional Engineer with all consequential benefits along with arrears of pay and allowances, further refixation of pay and allowances and other consequential benefits, if there is any official between the applicant and the said Shivshankaran Pillai in the list of officers of the Department of Telecommunication corrected upto 30.4.1993 drawing pay and allowances higher than the applicant at any point of time on or after 1.3.1979, arrears of pay and allowances, in consequence thereof, with interest at the market rate on all the claims.

2. Para 1 of the OA. is as under :-

"PARTICULARS OF THE ORDER TO WHICH THIS APPLICATION RELATES :

The benefits arising from the dismissal of the Petition(s) for Special Leave to Appeal (Civil)/96/CC-5395-5398/96 (From the judgement and Order dated 5.1.1996 in CPs 18, 19, 20 and 21 of 1993 in OAs.178, 190, 359 and 360 of 1992 of the CAT,Hyderabad). Annexed hereto and marked as EXHIBIT "A" is the copy of the Order of the Supreme Court dated 23.10.96 with the concerned Judgement and Order in the concerned CPs."

3. The above said reliefs are claimed by the applicant in view of benefits arising from the dismissal of the petition(s) for Special Leave to appeal (Civil)/96/CC-5395-5398/96 from the judgement and order dated 5.1.96 in CPs.18,19,20 and 21 of 1993 in OAs.178, 190, 359 and 360 of 1992 of CAT, Hyderabad.

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4. The claim is resisted by the respondents with a prayer of dismissal of OA. with costs.

5. The applicant, who argued the case personally, argued that he is claiming the benefit as were awarded in the case of Union of India vs. P.N.Lal and others SLP No.3384-86/88, which is said to have been followed by CAT, Hyderabad and SLP against the same is rejected.

6. Para 17 & 20 of the judgement reported in A.I.R. 2000 SC 1717, Union of India vs. Madras Telephone SC & ST Social Welfare Association is as under :-

"17. The Allahabad High Court considered the grievances of the applicant before him viz. Parmanand Lal and Brij Mohan on the basis of instructions contained in paragraph 206 of the P & T Manual and the provisions of the Recruitment Rules did not come up for consideration. The petitioners before it viz. Parmanand Lal and Brij Mohan should be promoted with effect from the date prior to a date of promotion of any person, who passed the departmental examination, subsequent to them and adjust their seniority accordingly. When this Court dismissed the Special Leave Petition filed by the Union of India, though it was stated that the special leave petition is dismissed on merits, but in the very next sentence the Court had indicated that in the facts and circumstances of the case, the Court was not inclined to interfere with the judgement of the High Court except to a limited extent. It is, therefore, obvious that while dismissing the special leave petition the Court had not examined the provisions of the recruitment rules and the instructions issued thereunder, providing the procedure for promotion to the service in Class II and, therefore, there was no reason for the Union of India to think that what has been stated in Civil Appeal No.

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4339 of 1995, runs contrary to the judgement of the Allahabad High Court, which stood affirmed by dismissal of the special leave petition Nos.3384-86 of 1986 on 8.4.1986. The Principal Bench of the Central Administrative Tribunal, New Delhi, disposed of OA.NO.2267 of 1991 and the Review Application filed before it was Review Application No. 195 of 1992 was disposed of by the Tribunal on 29th of June,1992, following the views of the Allahabad High Court in interpreting paragraph 206 of the Posts & Telegraphs Manual and against the said judgement, the Telecommunication Engineering Service Association had preferred Special Leave Petition No. 16698 of 1992 and batch, which stood disposed of by judgement dated 13 of May,1994. This Court came to hold that the tribunal was right in following the judgement of the Allahabad High Court in Parmanand's case which has become final by disposal of the Union Government's SLP against the same, which deals with the interpretation of paragraph 206 of the P & T Manual. This Court also took notice of another judgement of the Court dated 18th of September, 1992 passed in T.P.(Civil) No. 417 of 1992 in Writ Petition (Civil) No. 460 of 1992 along with SLP (Civil) Nos. 9063-64 of 1992. In the judgement of this Court dated 18th of September, 1992 in T.P.(Civil) No. 417 of 1992 in Writ Petition (Civil) No. 460 of 1992 in the case of Junior Telecom Officers Forum & Others v. Union of India and others, this Court was of the view that the controversy relates to the mode of promotion to the Telecom Engineering Service Group "B" as well as fixation of seniority of the Junior Telecom Officers/Assistant Engineers in that category and the preparation of eligibility or the approved list for the said purpose by the department in accordance with the recruitment rules and paragraph 206 of the P & T Manual Volume IV. The Court no doubt has noticed the arguments advanced by placing reliance on the provisions of the recruitment rules of 1966 but it ultimately came to the conclusion that the views of the Allahabad High Court has reached a finality because of the dismissal of the SLP against the same and as such the eligibility list is required to be prepared in accordance with paragraph 206 of the P & T Manual. The aforesaid conclusion is undoubtedly incorrect, as the Judgment of the Allahabad High Court proceeded by interpreting paragraph 206 of the P & T Manual, which was an administrative instruction which governed the field until promulgation of the recruitment rules framed

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under proviso to Article 309 of the Constitution. Once the statutory recruitment rules have come into force and procedure has also been prescribed under the said rules for preparation of the eligibility list of officers for promotion to the Engineers Service Class II by notification dated 28th of June, 1966, it is that procedure which has to be adopted and the earlier administrative instruction contained in paragraph 206 of the P & T Manual cannot be adhered to. (Underlined by us)

"20. We make it clear that the seniority of Parmanand in the cadre of Junior Engineers, fixed on the basis of the directions of Allahabad High Court, after dismissal of the SLP against the same by this Court is not liable to be altered by virtue of a different interpretation being given for fixation of seniority by different Benches of the Central Administrative Tribunal. The impugned order passed by the Central Administrative Tribunal is erroneous and we quash the same and also the civil appeals filed by the said Parmanand Lal."

7. The conclusion reached in P.N.Lal's case is held to be incorrect, the benefit granted in his favour though stands but such similarly situated persons are not entitled to the same. In the result, the applicant is not entitled to claim the benefit on the basis of the said authority, i.e. A.I.R. 200 SC 1717, Union of India vs. Madras Telephone SC/ST Social Welfare Association.

8. In the result, there is no merit in the OA., it is liable to be dismissed and is dismissed accordingly with no order as to costs.

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

B. Bahadur
(B.N. BHADUR)
MEMBER (A)

mrj.