BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NOs.481,482,483,571,758,780,783,784,785 & 904/1997

Dated this the 16th day of February 2001.

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

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

1. D.L.Moghe (Applicant in OA.No.481/97)
2. V.K.Shrivastava (- do - 482/97)
3. S.N.Prasad
4. G.S.Khilari
5. A.G.Desai
6. A.R.Morone (- do - 483/97)
7. Jade Nagaraj (- do - 571/97)
8. T.C.Joseph (- do - 758/97)
9. J.S.Tomar
10. K.J.C.Kumar
11. Satyanarayana P.V.V. (- do - 780/97)
12. Subramaniyam S
13. Subramaniyan Harihara
14. Ramchander K.S.S. (- do - 783/97)
15. Krishnamurthy.N
16. Prasad L.B.
17. James K.C.
18. Valsalan C.P.Vijaya
19. Jagannathan G.B. (- do - 784/97)
20. Sankaran Kutty.C.
21. Abraham E.T.
22. Sakhare P.B.
23. Bhaskari J.B. (- do - 785/97)
24. Subramanian.V.
25. Ranganathan L.
26. Ali Sood
27. Sethumadhavan K.P.
28. Anavatti V.G.
29. K.S.Kasturirangan (- do - 904/97)
30. R.Doraiswamy
31. John Tharakan
32. B.H.Vikma
33. N.Ravindranathan
34. G.R.Tulasiraman
35. R.Srinivasan
36. B.V.Katti
37. Mrs.P.J.Tharakan

Working as Divisional Engineers, Sub-Divisional Engineers, Assistant General Managers in the Mahanagar Telephone Nigam Ltd., Mumbai ...Applicants

By Advocate Shri S.N.Pillai

V/S.

1. The Chief General Manager, M.T.N.L., Telephone House, V.S.Marg, Dadar (W), 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)}

These are the applications under Section 19 of the Administrative Tribunals Act, 1985 for orders to the respondents to give notional promotion and notional fixation of pay as Assistant Engineers/Sub Divisional Engineers with all consequential benefits, further relief of fixation of pay when they are confirmed as Assistant Engineer/Sub Divisional Engineer with all consequential benefits, difference of arrears of pay and allowances, stepping up of pay in case required with arrears of pay and allowances along with interest at the market rate.

2. In para 1 of the OA. the applicant has stated as under :-

> "1. 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 23.10.1996 with the concerned Judgement and Order in the concerned CPs."

3. If we peruse the grounds for relief, we find that in view of the Apex Court order dated 23.10.1996 arising out of petition for Special Leave to Appeal (Civil) 96/CC-5395-5398/96) from the judgement dated 5.1.1996 in C.P.Nos. 18 to 21 of 1993 in

OAs.178, 190,359 and 360/92 of CAT, Hyderabad. The further ground raised is junior to the applicants in the same cadre drawing pay higher than the applicants attracts the provisions of Articles 14 and 16 of the Constitution of India so much so in denying 'equal pay for equal work', the act of the respondents is arbitrary and discriminatory. The junior drawing more pay than the senior amounts to humiliation.

4. In additional written statement filed by the respondents dated 18.3.1998, in para 18 it is stated that :-

> "18. The Lucknow Bench of Allahabad High Court in its judgement dated 20.2.1985 in the case of Shri P.N.Lal vs. Union of India stated that Para 206 of P&T Manual Vol.IV does not come into conflict with the R/R's of 1966 or 1981 but para 206 is supplement to the R/R's. The Judgement of Allahabad High Court neither struck down the R/R's nor the para 206. Accordingly, the eligibility list was prepared as per Para 206 i.e. JTO's who qualified the examination earlier were shown enbloc senior in the Eligibility list than those who qualified the examination later.
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> The Eligibility list prepared on the basis of above were placed before the Review DPC's and drew Select panels for the DPC's held from 1973 to 1990 as per the provisions of Recruitment Rules. As per the provisions of R/R's, the select panels were drawn adopting the Selection Method upto 1986. In 1987 the method of selection was changed to Seniority-cum-fitness and as such the subsequent select panels were drawn up on the basis of seniority-cum-fitness.
>
> The final seniority lists were circulated based on the basis of select panels drawn as per procedure adopted as stated above."

5. The applicants are claiming the benefits arising from the dismissal of the petition for Special Leave to Appeal (Civil)/96-CC-5393-5398/96) from the judgement and order dated 5.1.1996 in C.Ps.18 to 21 of OA. 178, 190, 359 and 362 of CAT order.

6. On perusal of the said order of Hyderabad Bench in para 3 & 4, the fact regarding Writ Petition (2739/81) filed before Allahabad High Court and judgement passed thereon on 20.2.1985 is stated along with the fact that the proposition of Law laid down by the Allahabad High Court, subsequent OAs. filed before the Hyderabad Bench, Principal Bench, New Delhi following the judgement of the Allahabad High Court. OA.No.1559/87 along with other OAs. filed before CAT, Hyderabad Bench Special Leave Petition against the same was dismissed on 6.1.1992. In para 3 of the said order, the operative part of the order in OA.1599/87 along with others is mentioned. Subsequently, when OA.2407/88 and batch, the matter came for consideration denied back wages. But followed the judgement of principal Bench in OA.1599/87 in regard to fixation of seniority of JUnior Engineers on the basis of on the date of qualifying examination for consideration for promotion to the post of Assistant Engineer. Civil Appeal No. 1814/93 and batch on the file of Apex Court against the said order was disposed of by judgement dated 13.5.1993. Therein, it was observed that "as the Apex Court already affirmed judgement of the Allahabad High Court in Writ Petition 2739/81 (TPC) 417 of 1993 in Writ Petition (Civil) No. 462/92 there was no need to deal with the same again. It was stated by the Apex Court that "they will get refixed their seniority and notional promotion with retrospective effect and that the effect to fixation of their present pay which should not be less than to those who are immediately below them. Regarding back wages, the Apex Court observed that "Tribunal was justified in view of the peculiar circumstances of the case and anomility dealing with 10,000 persons. The same view was taken in case of Pallur Ramakrishnan and others by the Hyderabad Bench.

7. In para 15 of the order, it is held that "notional promotion from the date on which the respective junior as per the revised seniority list actually assumed charge as Assistant Engineer and as on date pay of each of them in the post of Assistant Engineer has to be fixed and thereafter the pay of each of them on the date on which he actually assumed charge as Assistant Engineer has to be refixed and the arrears to be paid based on the same. If anyone is entitled to stepping up, such benefit also has to be given as ordered by the Apex Court.

The OAs.178, 190, 359 and 360/92 in respect of which C.Ps. 18 to 21 of 1993 were decided.

8. The learned counsel for the respondents relied on 2000(2) SC SLJ 1, Union of India vs. Madras Telephone Sc & ST Staff Welfare Association etc. and argued that the benefit available to P.N.Lal is restricted to P.N.Lal only and not to others similarly situated persons. He relied on para 17 & 20 of the said judgement which 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. 4339 of 1995, runs contrary to the judgement of the Allahabad High Court, which stood affirmed by dismissal of the special leave petition Nos.338486 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 & Telegraohs 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 underproviso 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."

9. In view of the principle laid down by the Apex Court, we agree with the submission of the learned counsel for the respondents and arrive to a conclusion that benefit available to P.N.Lal is not available to others similarly situated persons as the aforesaid conclusion is undoubtedly incorrect. The order

passed in C.P.Nos.18 to 21 of 1993 is based on the proposition of law laid down in P.N.Lal's case. The respondents have also prepared the seniority list based on the P.N.Lal's case, but as the said case came for reconsideration in the judgement cited by the learned counsel for the respondents, the said seniority list and any claim based on the said seniority list cannot be up-held as the aforesaid conclusion is undoubtedly incorrect as held by the Apex Court judgement.

The applicants are not entitled to any reliefs as claimed by them.

10. OAs. are liable to be dismissed and are dismissed with no order as to costs.

(S.L.JAIN)
MEMBER (J)

(B.N.BAHADUR)
MEMBER (A)
16/02/04

mrj.