

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NOs.120/98, 121/98,125/98,203/98,1130/94,
1140/94,1175/94 & 1391/94.

Dated this the 9th day of April 2001.

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

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

OA.NO.120/98

1. J.P.Kalyanshetti,
Sub-Divisional Engineer,
O/O DGM (MP),Parel Telephone
Complex, Parel, Mumbai.
2. B.C.Biradar,
Sub-Divisional Engineer
(Admn.) E-1, O/o General
Manager (E-1), MTNL,
Kailash Commercial Complex,
Vikhroli, Mumbai.

...Applicants

By Advocate Shri R.Ramesh

V/S.

1. Union of India through
the Secretary,
Ministry of Communications,
Sanchar Bhavan, New Delhi.
2. The Chief General Manager,
MTNL, Telephone Bhavan,
Prabhadevi, Mumbai.
3. The Chief General Manager,
(Telecom), Maharashtra Telecom
Circle, GPO Building, Mumbai.
4. B.K.Sangle,
AGM (Complaints),
O/O G.M. East II,
Charai Telephone Exchange,
Thane.
5. N.H.Nimsarkar,
D.E.(DM-II),
O/O DGM (DM-II), Shivaji Park
Telephone Exchange Building,
Dadar (West), Mumbai.

6. K.L.Tike,
AGM (Op), O/O G.M.East II,
Charai Telephone Exchange, Thane.
7. H.B.Wase,
D.E.(DHCE-I) & DECC-EDR),
O/O DGM(CCS-I) Telephone House,
Prabhadevi, Dadar, Mumbai.
8. P.R.Tambe,
D.E.(DGM)East, Old Telephone
Exchange Bldg., Ghatkopar (E),
Mumbai.
9. G.B.Jaganathan,
D.E.(Computer) City Telephone
Exchange Bldg., Mumbai.
10. M.T.Ganjewar,
D.E.(Ext.) Mulund III,
Mulund Telephone Exchange,
Mulund (W), Mumbai.

...Respondents

By Advocate Shri V.S.Masurkar

OA.NO.121/98

H.C.Solanki,
Assistant Engineer, TES Group,
'B' (Regular) O/O the G.M.(E-1),
MTNL, Kailash Commercial Complex,
Mumbai-400 083.

...Applicant

By Advocate Shri R.Ramesh

V/S.

1. Union of India through
the Secretary, M/o Communications,
Sanchar Bhavan, New Delhi.
2. The Chief General Manager,
MTNL, Telephone Bhavan,
Prabhadevi, Dadar, Mumbai.
3. The Chief General Manager
(Telecom), Maharashtra Telecom
Circle, GPO, Mumbai.

Respondents No. 4 to 10 as in
OA.NO.120/98.

...Respondents

By Advocate Shri V.S.Masurkar

OA.NO.125/98

Bimalendu Das
Sub-Divisional Engineer,
Telephone Exchange, Kalamboli,
New Bombay.

...Applicant

By Advocate Shri R.Ramesh

V/S,

1. Union of India through
the Secretary, Ministry
of Communications, New Delhi.
2. The Chief General Manager,
MTNL, Telephone Bhavan,
Dadar (W), Mumbai.
3. The Chief General Manager,
(Telecom) Maharashtra Telecom
Circle, GPO Bldg. Mumbai.

Respondents No. 4 to 10 same as in
OA.NO.120/98.

...Respondents

By Advocate Shri V.S.Masurkar

OA.NO.203/98

B.Y.Gaikwad,
DMX-C 400,
Marol Telephone Exchange,
M.I.D.C., Central Road,
Andheri (E), Mumbai.

...Applicant

By Advocate Shri B.Dattamoorthy

V/S.

Union of India through
Secretary,
Deptt. of Telecommunication,
Sanchar Bhawan, Ashok Road,
New Delhi and Others.

...Respondents

By Advocate Shri V.S.Masurkar

OA.NO.1130/94

Jagannath Rao
and others working as
Sub Divisional Engineers
(Officiating) with M.T.N.L.,
Bombay.

...Applicant

By Advocate Shri R.Ramesh

V/S.

Union of India through
Secretary, Ministry of
Telecommunications,
New Delhi & Ors.

...Respondents

By Advocate Shri V.S.Masurkar

OA.NO.1140/94, 1175/94 & 1391/94

R.P.Pandey & Ors.,
P.K.Jorapur,
Jagannath Rao & Ors.

All are working as Sub-Divisional
Engineers in M.T.N.L., Bombay.

...Applicants

By Advocate Shri R.Ramesh

V/S.

Union of India
through the Secretary,
Ministry of Telecommunications,
New Delhi & Ors.

...Respondents

By Advocate Shri V.S.Masurkar

..5/-

O R D E R

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

All the OAs. are taken together for the decision for the reason that common question of law is involved in all the OAs. We are mentioning the relief sought in OA.NO.120/98 which is for direction to the respondents to maintain the seniority of the parties to the application in the cadre of Junior Telecom Officers/Junior Engineers, Sub-Divisional Engineers TES Group 'B' according to their year of recruitment/appointment, to interpolate the name of the applicants in the All India Seniority list of Sub-Divisional Engineers/Assistant Engineers in accordance with it and not on the basis of year of passing of the Departmental Qualifying Examination and not according to the promotions which might have been granted on the basis of eligibility list drawn on the basis of the year of passing the Departmental Qualifying Examination, to revise and publish a proper seniority list of Sub Divisional Engineer/Assistant Engineers in accordance with it and promotions be ordered on the basis of eligibility list drawn up on that basis, to grant local officiating promotion to ITS Group 'A' in preference to Respondents No. 4 to 10 along with costs.

We are mentioning the facts of three OAs. (OA.120/98, 121/98 and 125/98) and the defence raised by the respondents in the said OAs. which is similar in other OAs. also.

2. The applicants were recruited as Junior Telecom Officer (JTO), passed the Departmental Qualifying Examination and promoted as Assistant Engineer as mentioned below :-

| | <u>OA.120/98</u> | <u>OA.121/98</u> | <u>OA.125/98</u> |
|---|------------------|------------------|------------------|
| 1.Applicant/s Recruited as Junior Telecom Officer | 1969 | 1970 | 1970 |
| 2.Applicant/s passed the Departmental Qualifying Exam. | 1988 | 1988 | 1987 |
| 3.Applicant/s promoted on regular basis as Assistant Engineer | 19.2.90 | 19.2.90 | 5.12.88 |
| | w.e.f.2.11.89 | (w.e.f.2.11.89) | |
| 4.Respondents No.4 to 8 (in OA.120/98,121/98 & 125/98) | 1985 | 1985 | 1985 |
| a)passed Departmental Examination | | | |
| b)Promoted as Assistant Engineer | 1994 | 1994 | 1994 |
| c)Respondent No.9 & 10 passed Departmental Examination (order dtd.19.11.90) | 1979 | 1979 | 1978 |
| d)Promoted | 1990 | 1990 | 1990 |

3. The grievance of the applicants/applicant are that the respondents are promoted as Divisional Engineers on officiating basis treating them senior on the ground that they passed Departmental Qualifying Examination earlier to the applicants/applicant, the seniority list published after the year 1990 Annexure H based on wrong principle as the order passed by Central Administrative Tribunal, Madras is over ruled by the Apex Court and the Apex Court's verdict has been followed by the Ernakulam Bench in OA.1531/97 decided on 2.12.1997.

4. As stated above, Respondents No. 4 to 10 who have been promoted as Assistant Engineers/Sub-Divisional Engineers later than the applicant, are promoted on local officiating basis as Divisional Engineers in preference to the applicants by treating them as seniors by reason of having passed the Departmental Qualifying Examination earlier than the applicants. The applicants are entitled to regular promotion as well as officiating promotion as Divisional Engineers (STS) (Group A) in preference to Respondents No. 4 to 10 as per Recruitment Rules and in view of the position clarified by the Apex Court in judgement dated 13.2.1997.

5. The first applicant (OA.121/98) has submitted the representation and the Ernakulam Bench has directed the respondents to consider the representation in accordance with law, within a period of four months, keeping in view the rules and precedent on the subject.

6. The applicant No. 1 in OA.121/98 is shown correctly in the seniority list of AE/SDE upto year 1988 but wrongly in the seniority list published after the year 1990.

Hence, these OAs. for the above stated reliefs.

7. The grievance of the applicants are resisted by the official respondents on an averment that the judgement delivered by the Apex Court on 13.2.1997 in case of Union of India vs. Madras Telephones SC & ST Social Welfare Association, where the said Association was representing, no individual was arrayed as applicant/respondent and the judgement of the Apex Court rendered in case of P.N.Lal vs. Union of India (SLP)(c) No.3384-86/86 and TES Association vs. Union of India (SLP (C) No.16668/92) have not been over-ruled either expressly or by implication. Such cases are not referred in the judgement dated 13.2.1997, it is a judgement per in curiam. Hence, it is not considered appropriate to revise the seniority list/eligibility list as the grievance of the applicants is not maintainable in law.

8. It is further alleged that officiating promotions to the cadre of STS Group 'A' from TES Group 'B' are ordered on the seniority of the officers based on the seniority of the officers of the TES Group 'B'. The respondents were actually senior as per the seniority list issued by DOT from time to time. Seniority of Group 'B' officers is fixed by D.O.T. and the local office has to rely on seniority while giving such local promotions.

9. The respondents have taken a decision not to revise the seniority lists of TES Group 'B' on the basis of judgement dated 13.2.1997 as the existing seniority list is prepared as per the

directions of Lucknow Bench of Allahabad High Court in their judgement dated 20.2.1985 up-held by the Apex Court. In view of the facts as stated above, the representation of the applicant is rejected. Prior to the judgement in case of P.N.Lal vs. Union of India, the seniority in TES Gr.'B' was maintained on the basis of recruitment year and not on the basis of year of qualifying the TES Group 'B' examination, which is changed in view of the said judgement. The revised seniority list is placed before the review D.P.C. Hence prayed for dismissal of the OA. along with costs.

10. 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.

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 & 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 judgement 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 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.

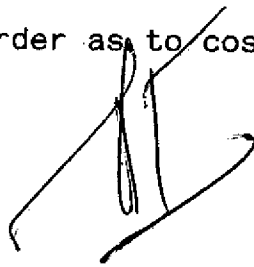
Under the recruitment rules read with Schedule appended thereto and Appendix to the rules, the recruitment to the service in Class II has to be made entirely by promotion on the basis of selection through a qualifying departmental examination. The Departmental Promotion Committee is duty bound to prepare an approved list by selection from amongst the officials who qualify in the departmental examination. In view of the amendment to the rules made on 4th of February, 1987, the criteria for selection is seniority-cum-fitness. In accordance with the prescribed procedure for preparation of eligibility list, notified by the Government on the 28th of June, 1966, the Departmental Promotion Committee has to prepare separate lists for each year of recruitment in the feeder category. In other words, if in 1958, the Departmental Promotion Committee is recommending people for promotion to Class II, then all the eligible candidates who had passed the departmental examination and who had been recruited in 1950, are to be listed separately from those officers who also have qualified departmental examination and were recruited in the year 1951 and so on and so forth. Once, separate lists are prepared by the Departmental Promotion Committee of the officers recruited in Committee of the officers recruited in different recruitment years in the feeder category and the criteria for promotion being seniority-cum-fitness, then it would create no problem in promoting the officers concerned. As to the inter se position of the officials belonging to the same year of recruitment in the feeder category, the procedure to be adopted has been indicated in paragraph (iii) of the Memorandum dated 28th of June, 1966. In this view of the matter, we are of the considered opinion that the judgement of this Court in Civil Appeal No.4339 of 1995 has rightly been decided in interpreting the relevant provisions on the recruitment rules read with the procedure prescribed under the Memorandum dated 28th of June, 1966. We, however, make it clear that the persons who have already got the benefit like Parmanand Lal and Brij Mohan by virtue of the judgments in their favour, they will not suffer and their promotions already made will not be affected by this judgment of ours."

"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."

11. On perusal of the defence raised by official respondents in para 5,6,7 of this order, we are of the considered opinion that the said defence is based on the principles laid down in P.N.Lal vs. Union of India which has been held to be undoubtedly incorrect (The portion underlined by us at page 8 of this order). The seniority list prepared on the basis of the said judgement cannot be allowed to stand in view of the latest pronouncement reported in A.I.R. 2000 S.C. 1717 Union of India vs. Madras Telephone SC & ST Social Welfare Association referred above.

12. Now the seniority list is to be prepared keeping in view the principle that after coming into force of Recruitment Rules under proviso to Article 309 of the Constitution and the ratio of the case referred above and the procedure to be followed as mentioned in para 8 page 10 of this order. The defence raised by official respondents 5,6 & 7 of this order no longer holds the field.

13. In the result, OAs. are allowed. The respondents are ordered to prepare the fresh seniority list based on the above principle based on datas of each individual available in the cadre of Assistant Engineers/Sub Divisional Engineers and thereafter Divisional Engineers within a period of six months. The applicants and the respondents be placed in the seniority list based on the said principle. If any grievance regarding seniority in individual case arises on account of preparation of the seniority list, it may be agitated after the seniority list becomes final by way of O.A. No order as to costs.



(S.L.JAIN)

MEMBER (J)

(B.N.BAHADUR) 9/4/c/
MEMBER (A)

mrj.

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