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(21) A4

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH AT HYDERABAD

C.P.NOS. 18/93 in O.A. 178/92
19/93 in O.A. 196/92
20-/93 in O.A. 359/92 &
21/93 in O.A. 360/92.

Date of Order: 5-1-96.

1. G.S.Ramprasad
2. M.Narasimha Rao.
3. K.V.L.N.Murthy.
4. J.S.Prasad.
5. D.Hanumantha Rao.
6. D.V.Sastry.
7. C.R.Sharma.
8. Durga Prasad.
9. B.Venkateswarlu.
10. B.Nagoji Rao.
11. K.S.N.Raju.
12. Md.Karimuddin.
13. N.S.Murthy.
14. S.Ratnagopala Rao.

15. B.Nagesh Rao.
16. B.L.B.Venkata Rao.
17. N.P.V.R.Satyanarayana.
18. P.M.Krishna Rao.
19. G.Harikrishna.
20. G.V.Nageswara Rao.
21. G.Venkateswarlu.
22. B.Kotilingeswara Rao.
23. D.Mallikarjuna Rao.
24. T.Suryanarayana.
25. A.Satyamurthy.
26. K.A.Suryanarayana.

.. Applicants in C.P.18/93
OA.178/92.

1. S.Sudhakar Gupta.
2. D.Ramachandra Reddy.
3. C.S.N.Prasad.
4. M.Satyanarayana.
5. N.Anjaneya Murthy.
6. A.Jaramppa.

.. Applicants in C.P.19/93
in O.A. 196/92.

1. N.V.S.Prakasam.
2. K.Singaiiah.
3. M.Subba Rao.
4. M.R.S.Prakasa Rao.
5. G.S.Prakasam.
6. P.Suryaprakasam.
7. Y.S.V.Subbaiah Sastry.
8. D.R.Krishnama Naidu.
9. D.V.S.S.R.Annaneyulu.
10. R.Koteswara Rao.

11. Kaveti Sangameswara Rao.
12. R.Jyothinath.
13. J.Gopalakrishnaiah.

..Applicants in
C.P.20/93 in O.A.359/92.

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1. K.V.Narasimha Rao.
2. D.Venkatarayana.
3. S.Subya Rao.
4. K.S.S.Bhavachari
5. T.Ramaswamy.
6. S.Satyanarayana.
7. I-Venkataramana.
8. J.Venkateswarlu.

.. Applicants in C.P.21/93
in O.A. 360/92.

and

H.P.Wagle, Chairman
Telecom Commission
Ministry of Communication Dept.,
Telecommunications, Sanchar Bhavan,
New Delhi.

.. Respondent in All CPs.

Counsel for the Applicants: Mr.K.Lakshminarasimha, Advocate in All CPs

Counsel for the Respondents: Mr.N.R.Devraj, Sr.CGSC. in C.P.19/93
and CP21/93

Mr. N.V.Raghava Reddy, Addl.CGSC. in C.P.18/93

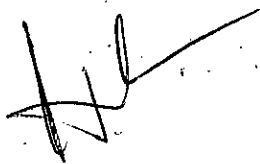
Mr. N.V.Ramana, Addl.CGSC. in C.P.20/93.

CORAM:

THE HON'BLE MR.JUSTICE V.NEELADRI RAO : VICE-CHAIRMAN

THE HON'BLE MR.A.B.GORTHY : MEMBER(ADMN)

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CP 18/93 in CA 178/92.

CP 19/93 in CA 196/92.

CP 20/93 in CA 359/92 &

CP 21/93 in CA 360/92.

Dt. of Order: 5-1-96.

(Order passed by Hon'ble Justice Shri V. Neelgiri Rao,
Vice-Chairman).

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As the same point is involved in all these contempt petitions, they are being disposed of by a common order.

2. It is necessary to refer to the following facts which are not in controversy for consideration of these contempt petitions. All these petitioners were direct recruits to the post of Jr. Engineer, Tezgaon. The next promotion is to the post of Asst. Engineer. The eligibility for consideration for promotion to the post of Asst. Engineer is 5 years and they have to qualify TES Group-B Examination. The seniority as per panel position at the time of selection as Jr. Engineer was taken as basis for consideration for promotion to the post of Asst. Engineer. ~~They~~ ^{Those} who were selected in the earlier year were placed above those who were selected in the later year for consideration for promotion to the post of Asst. Engineer.

3. But some of the Jr. Engineers filed MP No. 2739/81 in the Allahabad High Court praying for direction to the respondents therein i.e. the concerned authorities to take into consideration the year of passing in the qualifying examination of TES Group-B for fixation of seniority for consideration for promotion to the post of Asst. Engineer. Pending disposal of

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the writ petition, the Jr. Engineers, who passed the qualifying examination were considered for promotion to the post of Asst. Engineer on the basis of the seniority as per panel position at the time of selection as Jr. Engineers, and by further following the placement of those who were selected as Jr. Engineer in the ^{earlier} ~~later~~ year over those who passed in the later year.

4. The Writ Petition No. 2739/81 was allowed by the Allahabad High Court on 20-2-85. Then various Jr. Engineers, who passed in the qualifying examination ^{you} ~~earlier~~ to the date on which their seniors as per the panel position or the ~~order~~ or selection, ~~passed~~, filed the CAs on the file of the various benches of the C.A.T., These petitioners also filed CAs 178/92, 195/92, 359/92 and 360/92 on the file of this Bench. The C.A. filed by some of the Jr. Engineers in the Principal Bench was registered as CA 1599/87 and Batch and ^{it was} allowed on 7-6-91 by following the Judgement of the Allahabad High Court in W.P. 2739/81. The C.A. ~~referred to herein before~~ ^{referred to herein before} on the file of this bench, were allowed by following the judgement of the principal bench in CA 1599/87 & Batch. Special Leave Petition as against the said order was dismissed on 6-1-92.

5. The operative portion of the order in CA 1599/87 & Batch is as under :-

"In view of the various judgments passed by this Tribunal in accordance with the spirit of the judgment given by the Hon'ble High Court of Allahabad as upheld by the Hon'ble Supreme Court of India in the case of Sri Parmanand Lal and Sri Grij Mohan, we direct that the benefits of the said

judgment be extended to the applicants herein also and they shall be deemed to have been promoted with effect from the date prior to a date of promotion of any person who passed the departmental examination subsequent to the applicants and their seniority be revised in T.E.S. Group 'B' cadre. They shall also be entitled to refixation of their pay with effect from the said date. This order shall be implemented within a period of three months from the date a copy of this order is received by the respondents. There shall, however, be no order as to costs."

6. But when in 2407/88 and Batch on the file of the principle Bench in regard to the similar matter had come up for consideration, the same was disposed of by the bench comprising one of us (member (Administrative)- who ^{was} then specially deputed to the Principal Bench), denied backwages; but followed the judgement of the Principal Bench in UA 1599/87 in regard to the fixation of seniority of Jr. Engineers on the basis of the ^{date} order of passing the qualifying examination for consideration for promotion to the post of Asst. Engineer. The Civil Appeal No. 1814/93 and Batch, ^{on the file of Apex court} against the said order was disposed of by judgement dt. 13-5-94. Therein it was observed that ^{as} the Apex Court already affirmed Judgment of the Allahabad High Court in WP 2739/81 (T.P. Civil) No. 417/93 in WP (Civil) No. 460/92) ~~the judgement of the Allahabad High Court and~~ hence there was no need to ^{deal with} dwell on the same again.

7. While referring to the relief of backwages, the Apex Co-

conserved as under :-

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"The only question which survives relates to declining the order for payment of back wages from the due date of promotion to the petitioners before the Tribunal and some of the appellants/petitioners before us.

It would be noticed that the judgment of the Allahabad High Court was delivered in Writ petitions which were filed by two individuals as far back as 1981 and the judgment was delivered in 1985 which was affirmed by this Court on 8th April, 1986. Most of the petitioners before the Tribunal filed their applications claiming promotion from earlier date on the basis of the Allahabad High Court Judgment only in 1988. They will get refixation of their seniority and notional promotion with retrospective effect and would be entitled to fixation of their present pay which should not be less than to those who are immediately below them and the question is only whether they would be entitled to back wages from the date of notional promotion. We are of the view that the Tribunal was justified, in view of the peculiar circumstances of the case and enormity of the problem dealing with 10,000 persons. In declining to grant back wages except with effect from the date they actually worked on the higher post. The same view was taken by this Court in the aforesaid judgment of Paluru Ramakrishnaiah & others where this Court declined similar reliefs.

Learned counsel for the petitioners relied upon the decision of this Court in Union of India & others Vs. K.V. Jankiraman & others (1991 (4) SCC 109).

It will be noticed that Jankiraman's matter related to a case where the point involved was as to what benefits an employee, who is completely or partly exonerated in disciplinary criminal proceedings, is entitled to and from which date in case involving sealed cover procedure. The Bench in Jankiraman's

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case was not dealing with the case of due date of promotion on revision of seniority as a result of any decision of the Court effecting thousands of employees and revised seniority list being prepared in pursuance thereof and notional promotion being granted with retrospect effect. The Special Leave Petition No.16698 of 1992 is accordingly dismissed." (emphasis supplied).

8. The case of the petitioners is that in view of the emphasised portion of the judgment of the Apex Court, their pay in the post of Asst.Engineer had to be notionally fixed on the date on which their respective junior was promoted as Asst.Engineer and basing on the same their pay on the date on which each of them assumed the charge of Asst.Engineer has to be fixed, and accordingly the arrears have to be paid and as they are not paid, they were constrained to file ^{these} CPs.

9. But the contention for the respondents is that in view of the judgement of the Allahabad High Court in Parmanand Lal's case (WP No.2739/81), the seniority list of A.E.s was revised by taking into consideration the date of passing the qualifying examination in TES Group-B, and they were adjusted in the vacancies that were available from time to time and the dates of the promotion of so called juniors (i.e. the seniors who were promoted on the basis of panel position or year of selection as J.E.S., but had become juniors as per revised seniority list) ^{was} revised downwards by fitting them in the post of A.E. on the date on which the



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turn for each of them on the basis of revised seniority had arisen, and that date was taken as basis for the notional promotion of the seniors, and hence it was ^{not} ~~mere~~ a case of gaining seniority in the cadre of AEs, and the question of payment of arrears ^{does not} ~~if any~~ ~~arise~~ ~~on that basis.~~

10. For the sake of convenience, we will repeat the emphasised portion of the Apex Court order, and it is as under :-

"They will get refixation of their seniority and notional promotion with retrospective effect and would be entitled to fixation of their present pay which should not be less than to those who are immediately below them".

It was stated by the Apex Court that the seniors as per the revised seniority list will be entitled to notional promotion with retrospective effect. The notional promotion has to be given from the date on which the junior as per the revised seniority list actually assumed the charge as AE. The Apex Court had not given any direction to re-cast the dates of promotion of the so called juniors to the dates on which the vacancy in the post of AE would have been actually available to them. The learned standing counsel for respondents had not brought to our notice any rule or instruction where by proceedings can be issued to postpone the date of promotion of an employee/officer who was working in promotion post on being regularly promoted. It is not a case where the so called juniors were promoted purely on adhoc basis. If on the basis of the judgements of the Court or Tribunal some have to be placed

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above these who were already promoted, ^{the} former have to be given the regular or notional promotion as ordered, from the date on which the juniors actually promoted on regular basis assumed charge of promotion post. If it were to be a regular promotion ^{with retrospective effect}, from the date on which the junior assumed charge, such senior will be entitled to the arrears from that date itself. But if it is a case of notional promotion, the pay of that senior has to be fixed notionally in the promotion post as on the date on which the junior assumed promotion post on regular basis, and then his pay in the promotional post on regular basis and then his pay in the ~~promotional post~~ as on the date on which he actually assumed charge in the promotion post has to be re-fixed, and accordingly he will be entitled to the arrears from the date on which he actually assumed promotion post. The Apex Court observed that as it was a case where about 10,000 employees have to get the benefit of promotion, and hence in the peculiar circumstances, the backwages were declined, ^{but} ~~and hence~~ the order in regard to notional promotion was affirmed.

11. Of course, if on the basis of the orders of the Tribunal/Court a number of employees have to be placed above the junior in the promotional post, and if thereby it is found that the number of vacancies are less than the number of promotees, then the concerned authority may either create supernumerary posts or revert ~~from the~~ the junior ~~post~~ as per the revised seniority list, in regard to the excess of the

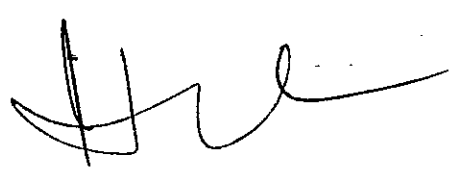
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promotees. In such a case one who was actually promoted earlier may get reverted while the senior who was actually promoted later may continue in the promotion post, but the question of postponement of the date of promotion does not arise.

12. Anyhow when the respondents had not brought to our notice any rule or principle where by an order can be issued to re-cast the date of promotion for giving effect of promotion from later date, when on the basis of ^{earlier} order of promotion the employee was working, ^{we feel that in such a case,} the date of promotion cannot be re-fixed so as to be effective from later date. // But the question of reducing the place in the seniority list can be by way of punishment. Even then he will not lose the pay that was already accrued to him by virtue of the promotion which he got on a particular day. Even in cases of such punishment, the question of re-fixation of the pay in the promotion post, by treating the date of promotion of the senior on the basis of his placement in seniority list on punishment, as the date of his promotion does not arise.

13. The date of promotion is of importance for consideration of ^{for} the fixation of pay, and also for the placement in the seniority list. The pay of the employee who is ~~next~~ promoted had to be fixed in the scale applicable to promotion post as on the date on which he assumed the charge in the promotional post. The same cannot be altered except



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by way of punishment, as long he continues to work in the same promotion post. Ofcourse if on the basis of the orders of the Courts/Tribunals a number of employees have to be promoted and placed above one who was already promoted and if sufficient number of vacancies are not available in the promotion post, and if supernumerary posts are not created to adjust them, the question of reversion may arise and there by the pay of that erstwhile promotes has to be fixed in the payscale of lower post as on the date of reversion. One may lose the seniority if a number of employees are placed above him, but there by his pay will not be effected so long as he is not reverted. It is not the case of the respondents that the so called juniors were reverted in implementation of the judgement of the Allahabad High Court in Parmanand Lal's case or the judgements of the various Benches of the C.A.T. which were affirmed by the Apex Court.

14. With due respect to the learned Single Member who delivered the judgement dt.17-10-95 in OA 451/94 and Batch on the file of the C.A.T., Ahmadabad Bench (a copy of which was filed before us), we feel that it is not in consonance with judgement in ^{Civil Appeal Appeal} OA 1814/93 on the file of Supreme Court. It was not observed by their Lordships of the Supreme Court that after revising the seniority list of Junior Engineers on the basis of date of passing qualifying examination, they have to be given notional promotion as A.E. on the date on which their turn ^{would have} ~~had~~ come. Though

Parmanand Lal's case was decided by Allahabad High Court after the ~~date of~~ amendment of relevant Recruitment Rules for AEs, ^{has} ~~come into effect~~, it was ordered that the cases of applicants therein have to be considered as per pre-amended Rules, as those who passed the qualifying examination later to the date of passing the qualifying examination ^{of applicants therein} were promoted earlier to the date on which amended Rules ^{had} come into effect. Can it then be stated that they have to be given notional promotion from a date later to the date on which amended Rules had come into effect? Hence when the Apex Court held that the seniors as per the revised seniority list are entitled to the notional promotion, it means promotion from a date earlier to the date of their actual promotion ^{had arisen as} as such a situation, ~~arises~~ ^{where}, the juniors were promoted earlier to the date on which the seniors were promoted. Hence when it was stated that the seniors as per revised seniority lists are entitled for notional promotion, the only meaning that can be given is that they are entitled for notional promotion from the date on which their respective junior assumed charge in the promotional post.

15. Hence we find that these petitioners have to be

① given notional promotion from the date on which the respective junior as per the revised seniority list, actually

assumed charge as Asst.Engineer, and as on that date the

pay of each of them in the post of Asst.Engineer has to be

② fixed and thereafter the pay of each of them on the date on which he actually assumed as Asst.Engineer has to be ^{fixed} ~~fixed~~

③ and the arrears have to be paid basing on the same. If an

one is entitled to stepping up, such benefit also has to be given as ordered by Apex Court.

16. The revised seniority list which we are referring to is the seniority list whereby the year of passing the qualifying examination has to be taken as the basis, and if more than one passed in the qualifying examination in same year, their seniority as per the panel position at the time of selection or the year of selection has to be taken as the basis.

17. Time for compliance is by 30-4-1996 failing which the arrears carry interest at the rate of 12% per annum from 1-5-1996. It will be without prejudice to the right of the applicants to move for contempt, if so advised.

18. The Contempt petitions are disposed of accordingly. //

प्रमाणित प्रति
CERTIFIED TO BE TRUE COPY

[Signature]
29/1/96
न्यायालय अधिकारी
COURT OFFICER
केन्द्रीय प्रशासनिक न्यायालय
Central Administrative Tribunal
बेंगलूर
BANGALORE
HEAD BENCH

To

1. Shri H.P. Wagale, Chairman, Telecom Commission, Ministry of Communication Dept., Telecommunication, Sanchar Bhavan, New Delhi.
2. One copy to Mr. K. Lakshminarasimha, Advocate, 16-11-20/13, Saleemnagar-2 Hyderabad-36.
3. One copy to Mr. N.R. Devraj, Sr. CGSC. CAT. Hyd.
4. One copy to Mr. N.V. Ramana, Addl. CGSC. CAT. Hyd.
5. One copy to Mr. N.V. Rachava Reddy, Addl. CGSC. CAT. Hyd.
6. One copy to Library, CAT. Hyd.
7. One spare copy.

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