

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, HYDERABAD BENCH
AT HYDERABAD.

..

O.A.No.205/95.

Date of decision: April 17, 1997;

Between:

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|-------------------------|--------------------------|
| 1. K.Seshi Reddy. | 14. J.V.Subba Rao. |
| 2. B.L.Somaya July. | 15. P.Mallikharjuna Rao. |
| 3. A.Jagannadha Rao. | 16. M.Sambasiva Rao. |
| 4. G.Venkateswarlu. | 17. V.Eswara Rao. |
| 5. K.Gangajala Rao. | 18. K.Nana Rao. |
| 6. A.Panduranga Rao. | 19. P.Krishna Rao. |
| 7. M.Gagannadha Rao. | 20. Y.Prakash Rao. |
| 8. T.L.Narasimham. | 21. P.Panduranga Rao. |
| 9. V.Laxma Reddy. | 22. E.Sivaramudu. |
| 10.K.S.Ramakrishna Rao. | 23. D.Sangameswara Rao. |
| 11.G.Sambasiva Rao. | 24. K.Nageswara Rao. |
| 12.G.Venkata Rao. | 25. D.Haribabu Prasad. |
| 13.A.N.Murthy. | |

APPLICANTS

A n d

1. Telecom Commission, represented by its Chairman/Secretary, Sanchar Bhavan, Govt. of India, New Delhi 110001.
2. The Chief General Manager, Telecom, Andhra Circle, A.P.Telecom, Nampally, Hyderabad.

RESPONDENTS.

Counsel for the Applicants: Sri P.Naveena Rao

Counsel for the Respondents: Sri K.Bhaskara Rao.

CORAM:

HON'BLE SHRI R.RANGARAJAN, Member (A)

HON'BLE SHRI B.S. JAI PARAMESHWAR, Member (J).

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O.A.205/94.JUDGMENT

(as per Hon'ble Sri R.Rangarajan)


Date of decision: 17-4-1997.

Heard Sri P.Naveena Rao for the applicant and
Sri K.Bhaskara Rao for the respondents.

There are 25 applicants in this O.A. They were promoted as Assistant Engineers on various dates as can be seen from the tabular statement at page 7 of the O.A. The year of assigning the seniority as Assistant Engineer to the applicants was also indicated in the tabular statement at page 7 of the O.A. A Scheme was formulated by the Ministry of Finance by UC No.3827/M(F)/90 dated 24-9-1990 prescribing the eligibility period for consideration of A.Es. in TES Group-D for Senior Assistant Engineers. The instruction in the said U.C., reads as follows:

"Assistant Engineers in TES Group "B" who have completed 12 years of regular and continuous service as Assistant Engineers, will be eligible for consideration for promotion to these posts of Senior Assistant Engineers. The promotion will be on the basis of seniority subject to rejection of unfit. The pay on promotion will be fixed under FR 22(C)".

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The applicants submit that some of their colleagues working as Assistant Engineers were posted as Senior Assistant Engineers even though their dates of assigning seniority as Assistant Engineers were later than them and they were given the scale of pay of Senior Assistant Engineer. The applicants who are senior to them were not given the scale of pay of Senior Assistant Engineers on the ground that they have not completed 12 years of service by the time their juniors completed 12 years of service.

The applicants in this O.A., were promoted as Assistant Engineers on the basis of limited departmental examination quota restricted to 33-1/3% of the vacancies and were given the deemed date of promotion as Assistant Engineers. Their juniors were promoted in their turn against the normal departmental quota. Hence the applicants had not completed the eligibility period of 12 years when their juniors had completed the eligibility service period.

This O.A., is filed to call for the records connected with D.O.T.No.3-2/90-T.E.I dat d 25-9-1990 wherein the insistance of 12 years of service for posting

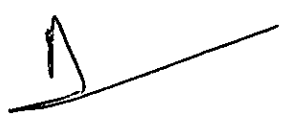


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as Senior Assistant Engineers has been stipulated ,
and for a further declaration that the insistence of
the said 12 years of physical service as Assistant
Engineer for promotion as Senior Assistant Engineer is
arbitrary discriminatory and unconstitutional and
for a consequential direction to the respondents to
promote the applicants herein to the category of Senior
Assistant Engineers on and from the date of promotion
of the juniors as per the existing seniority list of
T.E.S. Group "B" Officers with all consequential benefits
such as pay fixation, arrears of pay etc.

A reply has been filed in this O.A.

The main contentions raised by the applicants
in this case is that their case is similar to the
applicants in O.A.1054/FB/93 of Chandigarh Bench
of the Central Administrative Tribunal decided on
14--1-1997, wherein it was held that if the juniors
are given the scale of pay of Senior Assistant Engineer
than the seniors even though they have not physically
completed 12 years of service be given the pay scale
of senior Assistant Engineer.



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The respondents brought to our notice the very same question agitated in O.A.1070/93 and Bench on the file of this Bench decided on 31-1-1995. In that O.A., the question of granting the pay scale of Senior Assistant Engineers to the Assistant Engineers when their juniors were given that scale was examined at length. In that O.A., while discussing the issues, the directions of Jaipur Bench of the C.A.T., in O.A.No.113/93 decided on 19-8-1994 were taken into account. In that O.A.No.113/93 of Jaipur Bench, the facts of that case were more or less are similar to the facts of O.A.No.1054/PB/93 of Chandigarh Bench of the Central Administrative Tribunal. After considering the case, the Jaipur Bench of the C.A.T., dismissed the O.A., and held that even if the Juniors are given the higher scale on the basis of physical completion of certain years of service the seniors are not entitled for higher scale if the seniors had not completed the number of years of physical service. It may be possible that the judgment of Jaipur Bench of the C.A.T., may not have been brought to the notice of Chandigarh Bench of the C.A.T., while disposing of the O.A.1054/93. Hence placing reliance of Chandigarh Bench decision may not be

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appropriate in view of the judgment of this Bench in O.A.1070/93 and batch. Bangalore Bench of the C.A.T., in O.A.934/93 had held that the seniors are not entitled for getting the scale of pay of Senior Assistant Engineers if they have not completed the physical years of service stipulated, even if the juniors are given the scale as the juniors had completed the stipulated physical completion of years of service. This Bench took the view of the Bangalore Bench while deciding the issue in O.A.1070/93 and batch. It was further held in that Batch of O.As., referred to above that the seniority is the criteria for promotion to the posts of JTS Group "A" service. The posts of Senior Assistant Engineers will be distinct and is outside the cadre of JTS of Group & "A" Service. Hence this Tribunal in O.A.1070/93 and batch dismissed the relief that the applicants are eligible to get the deemed Promotion to the post of senior Assistant Engineer from the dates of their respective juniors were given that position.

The learned counsel for the applicants, further submitted that the posts of Senior Assistant Engineers were sanctioned posts and hence it cannot be held as posts outside the cadre. Any employee to be given higher scale of pay, posts are to be created in that scale. Without

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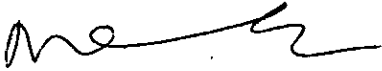
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creation of the posts, no employee can be given higher scale. In that context the creation of posts of Senior Assistant Engineers is to be viewed. Mere creation of posts in the higher scale of pay may not be sufficient to come to the conclusion that these posts are in the same ~~xx~~ hierarchy for promotion. Each case has to be considered on its own merit. In the present case, the creation of posts of Senior Assistant Engineers was held to be outside hierarchy by this Bench in O.A.1073/93 and batch. Hence, we do not find much substance in this contention.

The learned counsel for the applicants further enjoined on us to take a realistic and sympathetic view in this case in view of the fact that the juniors are drawing more pay than the seniors. Our sympathies are with them. But the rules do not give us any leniency to take a view other than the view taken in O.A.1073/93 and ~~xx~~ batch.

In the result, we find no merit in this O.A. Hence, the C.A., is dismissed. No costs.


(B.S. JAI PARAMESHWAR)
MEMBER (J)
12.4.97


(R. RANGARAJAN)
MEMBER (A)

Date 17--4--1997.

sss.

Dictated in open Court.


7-5-97.
D.R. (J)

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Copy to:

- Secretary,
1. The Chairman, Telecom Commission, Sanchar Bhavan, Govt. of India, New Delhi.
 2. The Chief General Manager, Telecom, Andhra Circle, A.P. Telecom, Nampally, Hyderabad.
 3. One copy to Mr. P. Naveen Rao, Addocate CAT, Hyderabad.
 4. One copy to Mr. K. Bhaskara Rao, Addl. CGSC, CAT, Hyderabad.
 5. One copy to D.R.(A), CAT, Hyderabad.
 6. One duplicate copy.

YLKR

9/6/97

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COMPARED BY

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APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

THE HON'BLE SHRI R.R. AGARWAL : M(A)

AND

THE HON'BLE SHRI B.S. JAI PARAMESHWAR :
M(J)

DATED: 17/4/97

ORDER/JUDGEMENT
R.A/C.P/M.A.No.

in
O.A.No. 205/95 4

ADMITTED INTERIM DIRECTIONS ISSUED
ALLOWED
DISPOSED OF WITH DIRECTIONS
DISMISSED
DISMISSED AS WITHDRAWN
ORDERED/REJECTED
NO ORDER AS TO COSTS

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II COURT

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
दिल्ली/DELHI
19 MAY 1997
हैदराबाद बेंच
HYDERABAD BENCH