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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 29th day October, 2010

CORAM:

HON'BLE MR.M.L.CHAUHAN, MEMBER (JUDICIAL)
HON'BLE MR. ANIL KUMAR, MEMBER (ADMINISTRATIVE)

ORIGINAL APPLICATION No.485/2008

1. Mohar Singh s/o Shri Cheta Ram r/o Village Jaisingpura, Post Barwasi, Distt. Jhunjhunu.
2. Ramawtar Gupta s/o Shri Dwarka Prasad r/o P-29, Ganesh Colony, Gangapur City, Sawaimadhopur.
3. Mohal Lal Vijay s/o Shri Prahlad Ram Vijay r/o H-16, Keshav Nagar, Sawaimadhopur.
4. Shiv Bux s/o shri Durga Ram r/o Vill. Udamsari, Post Gangiasar, Distt. Sikar.
5. C.R.Agarwal s/o Shri Hariram r/o 125, Gandhi Nagar, Sriganganagar.
6. D.R.Katariya s/o Shri T.L.Kataria r/o Village 11, Indian Cold Storage, Distt. Sriganganagar.
7. Hansraj Gupta s/o Shri Gulabrai r/o Village 9, Ranapratap Colony, Distt. Sriganganagar.
8. Rameshwar Lal Meel s/o Shri Pema Ram Meel r/o Village & Post Kotrathal, Distt Sikar.
9. M.C.Gupta s/o Shri Babu Lal r/o C-2, Keshav Nagar, Distt. Sawaimadhopur.
10. Ramawatar s/o Shri Sardara Ram r/o Q.No.IV/3, Telecom Colony, Distt. Jhunjhunu.
11. Rambharosi Koli s/o Shri Haari Lal Koli, r/o 28, Virendra Nagar, Sawaimadhopur.
12. Tarlochan s/o late Shri Balwant Singh r/o A-25, Kunj Vihar, Sriganganagar.

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13. K.D.Nehra s/o Mohan Lal r/o Vill. & Post Harsawa Bara, Tehsil Fatehpur Shekhawati, Distt. Sikar.
14. K.S. Verma s/o Shri Mali Ram r/o Chaudhary Colony, Khetri Nagar, Distt. Jhunjhunu.
15. R.K.Godha s/o Shri H.L.Godha r/o Quarter Type-III, Microwave Building Udaipur.
16. Giriraj Prasad Gupta s/o Shri Hanuman Shoran r/o H.No.750, Dodahori, Kota.
17. A.K.Atreya s/o Shri Preetam Singh Sharma r/o 3/C/114-A, Chitrakoot Yojana, JDA Colony, Jaipur.
18. Anil Marwal s/o Late Shri Omkar Singh r/o A-75, Jagdamaba Nagar, Jaipur.
19. B.S.Chauhan s/o Puran Singh r/o 14, Madhukar Nagar, Ajmer.
20. D.S.Punia s/o late Shri Kajormal r/o K-1/13, LIC Flats, Sec. 6, Vidhyadhar Nagar, Jaipur
21. H.N.Sharma s/o Shri Ram Chandra Sharma r/o 11/147, Kaveri Path, Mansarovar, Jaipur
22. H.P.Goswami s/o Shri S.P.Goswami r/o 30, Shiv Nagar, Udaipur.
23. H.S.Goswami s/o Shri Ramkanwar r/o 1/23, RHB, Jhunjhunu.
24. Kamal Singh s/o Shri Nanag Singh r/o 123/42, Guru Kripa, Dholi Bhata, Ajmer.
25. Mohan Lal Yadav s/o Shri Bhairu Lal r/o D-6/312, Chitrakut Colony, Jaipur.
26. Mahendra Rawat s/o Shri Bishan Narain Rawat r/o Susheela Sadan, 594/27, Ramganj, Ajmer.
27. Mangi Lal Verma s/o Shri Ganpat Ram r/o 99, Ganga Vihar, Mahesh Nagar, Jaipur
28. Mohan Singhal s/o Shri Pyare Lal r/o 1067, Rani Sati Nagar, Amer By pass, Jaipur.
29. Jaipal Singh Shekhawat s/o Shri Ummed Singh Shekhawat r/o Mukhan Post Jakhali, Distt. Jhunjhunu.

30. N.L.Sharma s/o Shri Sita Ram Sharma r/o 1328/4, Lunaka Bhawan, Uniyaron Ka Rasta, Chandpole Bazar, Distt. Jaipur.
31. P.K.Tailor s/o Shri Magan Lal Tailor, r/o D-20, New Colony, Dungapur.
32. R.H.Sharma s/o Shri M.L.Sharma r/o H.No.14, J Block, Hiran Magri, Udaipur.
33. Ram Kamal Vyas s/o Shri Jaigopal Vyas r/o Shriram Bhawan, Pabu Bari, Bikaner.
34. Rewar Mal Sharma s/o Shri Laxmi Nayaran r/o D-2, Nidhivan Colony, New Mandi Road, Dausa.
35. R.N.Sharma s/o C.R.Sharma r/o 99-B, Park Street, Govind Nagar (East), Amer Road, Jaipur.
36. Shrawan Lal Bhatt s/o Shri Poona Ram r/o 13, Ambika Vihar Gali No.2 Baldev nagar, Ajmer.
37. Sita Ram Soni s/o Shri Hemraj Soni, r/o near Chamria Flour Mill, Fatehpur Shekhawati, Distt. Sikar.
38. Sardul Singh Rajput s/o Shri Sultan Singh r/o 286, Gandhi Nagar, Bikaner.
39. Shel Raj Sharma s/o Shri Raj Bihari Sharma r/o 160, Ashok Vihar Vistar, Gopalpura, Jaipur.
40. Todar Mal Jat s/o Shri Govinda Ram r/o Haripura, Post Palsana, Tehsil Sikar, Distt. Sikar.
41. Y.C.Sharma s/o Shri Bala Sahai sharma r/o 26, Ram Nagar Colony, 60 Feet Road, Alwar.
42. Hanuman Ram Jat s/o Shri Moti Ram jat r/o G-59, Balabh Garden, Sudarshan Nagar, Bikaner.
43. Manveer Singh s/o late Shri Pratap Singh r/o C-35, Bapu Nagar, Distt. Chittorgath.
44. O.P.Jat s/o Shri Bhagwan Singh r/o 46, Jamunapuri, Murlipura Scheme, Jaipur.
45. Ranjeet Singh Gehlot s/o Megh Singh r/o 180/39, Vigyan Nagar, Distt. Ajmer.
46. Ranjeet Singh s/o Mukunda Ram r/o 5A, Chanchal Vatika, Jhotwara, Jaipur

47. Ajay Kumar Bhargava s/o Late Shri Laxmi Narayan Bhargava r/o B-3-73, Sudarshan Nagar, Bikaner.
48. Achal Bhayana s/o Shri Avinashi Lal Bhayana, r/o Village 113-A (1/9), Setia Colony, Distt. Srigananagar.
49. Kishan Lal Sunar s/o Shri Tola Ram Sunar r/o 7-B-53, JNV Colony, Bikaner.
50. Lalit Narayan Sharma s/o Shri Ram Narayan Sharma r/o B-1-65, Sudarshan Nagar, Bikaner.
51. Shish Ram Verma s/o Shiv Karan r/o H.No.1/10, R.H.B. Colony, Jhunjhunu.
52. T.C.Beniwal s/o Shri Nathu Ram r/o B-1(A), Basant Vihar, Jhunjhunu.

.. Applicants

(By Advocate: Shri Tanveer Ahmed, proxy counsel for Shri Praveen Balwada.)

Versus

1. Bharat Sanchar Nigam Limited
(A Govt. of India Enterprises),
Through its Chairman cum Managing Director,
Corporate Office,
Bharat Sanchar Bhawan,
Janpath,
New Delhi.

.. Respondents

(By Advocate: Shri Tej Prakash Sharma)

TA No.2/2008 (SB Civil Writ petition No.11423/2008)

1. Om Prakash s/o Shri Jhaman Lal r/o 42, Ganesh Vihar, Model Town, Jaipur
2. Inder Chand Swarankar s/o Shri Nathmal Swarankar, r/o Q.No.6th BSNL Colony, Nagaur.
3. R.K.Jain s/o Shri Chandmal Jain r/o 202-B, Shastri Nagar, Bhilwara.

[Signature]

4. Gokul Chand Saini s/o Shri Raju Ram Saini r/o DE (Admn.) O/o GMTD, Banswara.
5. Karan Singh s/o Shri Chandar Singh r/o 4th/1, BSNL Colony, Indra Nagar, Jhunjhunu
6. Phool Chand s/o Shri Sukhdeo Ram r/o C-205, Nirmal Nagar, Jaipur
7. J.P.Sharma s/o Shri Radhey Shyam Sharma r/o D-126, Nirman Nagar, Jaipur
8. B.S.Bisht s/o Shri Kushal Singh s/o M-29, Shiv Path, Ram Nagar Colony, Jaipur.
9. M.L.Aggarwal s/o Shri Chouthmal r/o 60/51, Pratap Nagar, Jaipur
10. B.L.Gadhwal s/o Shri Rekha Ram r/o 2/266, Vidhyadhar Nagar, Jaipur
11. Sita Ram Saini s/o Shri Hanuman Prasad Saini r/o Ward No.16, Loyalka Kothi Ke pass, Pilani, Jhunjhunu.
12. Dhuda Ram s/o Shri Hardewa Ram r/o J-II/3, LIC Flats, Sec.2, Vidyadhar Nagar, Jaipur
13. Mohan Singh Karnawat s/o Shri Prabhu Singh r/o 62-63, Gopal Sadan, Syopur Road, Pratap Nagar, Jaipur.
14. C.K.Gupta s/o P.N.Gupta r/o 833, Churukon Rasta, Chaura Rasta, Jaipur
15. R.P.Goyal s/o Shri Kalyan Gupta r/o 24, Vinod Nagar, Sec.11, Malviya Nagar, Jaipur
16. B.L.Mundra s/o Shri Bhim Raj Mundra r/o 64, Rawji Ka Hatta, Udaipur.
17. Prahlad Singh Saini s/o Shri Devi Ram Saini working as Officiating DE (OP) O/o GMTD, Bharatpur
18. V.P.Bansal s/o Shri Ram Dhan Lal Agarwal r/o 2/89, SFS Shcme, Agarwal Farm, Mansarovar, Jaipur.

... Applicants

(By Advocate: Shri Tanveer Ahmed proxy counsel for Shri Praveen Balwada)

W.L.

Versus

1. The Union of India through the Secretary, Department of Telecommunications, Sanchar Bhawan, Ashoka Road, New Delhi.
2. Bharat Sanchar Nigam Limited (A Govt. of India Enterprises) through its Chairman cum Managing Director, Corporate Office, Bharat Sanchar Bhawan, Janpath, New Delhi.

.. Respondents

(By Advocate: Shri Tej Prakash Sharma)

ORDER

Per Hon'ble Mr. M.L.Chauhan, M(J)

By this order we propose to dispose of this OA and TA as common question of facts and law is involved.

2. The grievance of the applicants in these cases is that although the benefit of the judgment dated 28.9.2006 of the Hon'ble Apex Court as further clarified vide order dated 25.3.2008 passed in Contempt Petition (reference has been made hereinunder) has been extended to the persons who have obtained order in their favour but the same has not been extended to them being similarly situated. Thus, the sum and substance of the case is that seniority as assigned to them in the year 1997 was disturbed vide order dated 28.3.2001 pursuant to the judgment of the Apex Court in Union of India vs. Madras Telephone SC & ST Social Welfare Assn., 2000 (9) SCC 71 based upon the earlier decision in Union of India vs. Madras Telephone SC & ST Social Welfare Assn., (1997) 10 SCC 226 which judgment was rendered without considering earlier decision of the Apex Court rendered in 1993 and 1994 which cannot be made applicable to them in the light of the clarification subsequently

issued by the Apex Court vide aforesaid decision dated 28.9.2006.

The case set-up by the respondents in the reply is that the benefit of the clarificatory decision rendered by the Apex Court is applicable to persons who have obtained favorable order from the Court and not to the applicants who are similarly situated.

3. In order to decide the controversy, few relevant facts may be noticed. The applicants were initially selected and recruited in the Department of Telecommunication and they were given appointment on the post of Junior Engineer, which was redesignated as Junior Telecom Officer (JTO). Subsequently, the applicants also appeared in the TES Group-B qualifying examination, which they qualified. Thereafter, they were given benefit of seniority as per Para 206 of the P&T Manual due to their passing the aforesaid qualifying examination and were also given benefit of promotion as per their seniority. It is the case of the applicants that after granting the benefit of seniority and promotion in the year 2000, their seniority was determined vide letter dated 28.3.2001 in view of the judgment of the Apex Court. It is further stated that various cases were filed before the Central Administrative Tribunal, Hon'ble High Court and Hon'ble Supreme Court of India. Finally, the Supreme Court while deciding different petitions passed different judgments. Originally the dispute was regarding grant of seniority as per year of passing the departmental qualifying examination as per Para 206 of the P&T Manual or the same should be granted as per Recruitment Rules, of 1996. It may be stated here that the Hon'ble Allahabad High Court in WP Nos.

2739 and 3652 of 1981, Parmanand Lal and Brij Mohan Vs. Union of India decided on 20.2.1985 held that those who qualified the departmental examination earlier were entitled to be promoted prior to those who qualified the same later irrespective of the year of their recruitment and that para 206 of the P&T Manual was not in conflict with the rules. The view so taken by the High Court was upheld by the Supreme Court by dismissing the SLP on merit. However, in Union of India vs. Madras Telephone SC & ST Social Welfare Assn. (1997) 10 SCC 226, the Supreme Court held that determination of seniority on the basis of year of passing the examination instead of year of recruitment/appointment would amount to re-writing the rule which decision was also confirmed in the case of Union of India vs. Madras Telephone SC&ST Social Welfare Assn., 2000 (9) SCC 71, but it was further clarified that persons who had already got benefit like Parmanand Lal and Brij Mohan by virtue of judgment in their favour will not be affected by this decision. The respondents in the light of the judgment rendered by the Apex Court re-arranged the seniority of TES Group-B officers on recruitment year basis in accordance with judgment dated 26.4.2000. Since the judgment in Union of India vs. Madras Telephone SC & ST Social Welfare Assn., 2000 (9) SCC 71 was not being followed correctly and the benefit of seniority and promotion was not being given to persons who obtained favourable judgment from the Central Administrative Tribunal as affirmed by the Apex Court, as such, the application for clarification was moved before the Apex Court. The said application for clarification was disposed

of by the Supreme Court vide judgment dated 28.9.2006 reported as 2006 (8) SCC 662, Union of India vs. Madras Telephone SC/ST Welfare Assn. At this stage, it will be useful to quote para 18,19 and 21 of the judgment, which thus reads:-

"18. The question then arises as to whether the applicants can claim the protection of their seniority and consequent promotion on the basis of observations and the clarification contained in the judgment of this Court in Madras Telephone [(2000) 9 SCC 71]. Having considered all aspects of the matter, we are satisfied that those whose cases stand on the same footing as that of Parmanand Lal cannot now be adversely affected by redetermination of their seniority to their disadvantage relying on the later judgment of this Court in Madras Telephones [(1997) 10 SCC 226] as affirmed by this Court in its judgment in Madras Telephone [(2000) 9 SCC 71] (emphasis ours).

19. We, therefore, direct that such of the applicants whose seniority had been determined by the competent authority and who had been given benefit of seniority and promotion pursuant to the orders passed by courts or Tribunals following the principles laid down by the Allahabad High Court and approved by this Court, which orders have since attained finality, cannot be reverted with retrospective effect. The determination of their seniority and the consequent promotion having attained finality, the principles laid down in later judgments will not adversely affect their cases.

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21. Having regard to the above observations and clarification we have no doubt that such of the applicants whose claim to seniority and consequent promotion on the basis of the principles laid down in the Allahabad High Court's judgment in Parmanand Lal case have been upheld or recognized by the Court or the Tribunal by judgment and order which have attained finality will not be adversely affect by the contrary view now taken in the judgment Madras Telephones [(1997) 10 SCC 226]. Since the rights of such applicants were determined in a duly constituted proceedings, which determination has attained finality, a subsequent judgment of a court or Tribunal taking a contrary view will not adversely affect the applicants in whose case the orders have attained finality. We order accordingly."

4. Thus, from the portion as quoted above, it is clear that where the seniority has been determined and consequent operation has attained finality, the judgment of the Apex Court taking contrary view will not adversely affect such rights. It may further be stated here that the direction given vide order dated 28.9.2006 by the Apex Court, as reproduced above, was also considered by the Apex Court in Contempt Petition No.248/2007 in the case of Promotee Telecom Engineers Forum and Ors. Vs. D.S.Mathur, Secretary, Department of Telecommunications, (2008) 11 SCC 579 and in para 16 the Apex Court has recorded the following findings:-

"16. It is obvious that a completely wrong view has been taken by the Government. It was specifically held by this Court in its order dated 28.9.2006 that such of the employees, whose claims for the seniority on the basis of the qualifying year had become final because of the orders of the courts, should not be disturbed on account of its subsequent judgment dated 26.4.2000."

Further, in para 17 the Apex Court held as under:-

17..... This could not have been permitted and it was indeed not permitted by this Court. We cannot accept the so-called interpretation put forward by the respondent on the order that the benefit of the judgment of this Court would be available only to those who were parties in that particular appeal. Such is not the import at all. The observations of this Court in order dated 28.9.2006 are extremely clear." (emphasis ours)

5. Thus, in view of the categorical finding given by the Apex Court in its judgment dated 28th September, 2006 as reproduced above, which direction has further been interpreted by the Apex Court in the contempt proceedings that the benefit of the judgment would be available only to those who were parties in a particular case is not the import of the order dated 28.9.2006. Thus,

contention of the respondents in the reply that clarification as issued by the Apex Court in the case of UOI vs. Madras Telephone SC&ST Social Welfare Assn. (2006) 8 SCC 662 is only applicable to the applicants who have obtained benefit from the court and not to the similarly situated persons who have been granted seniority and consequent promotion on the basis of the principle laid down by the Allahabad High Court in Parmanand Lal's case which judgment and order has attained finality cannot be extended to the similarly situated persons, cannot be accepted.

6. We are, therefore, of the view that the applicants have made out a case for grant of relief. Accordingly, the OA and TA are allowed. The respondents shall work out the seniority of the applicants by extending them the benefit of aforesaid judgment as was done in the case of other persons who have obtained favourable order from the Court and their seniority was accordingly revised in the year 2008. No costs.

(ANIL KUMAR)
Admvt. Member

(M.L.CHAUHAN)
Judl. Member

R/