

**Central Administrative Tribunal
Principal Bench
New Delhi**

OA No.3300/2010

WITH

OA No.1586/2011

Pronounced on 27.02.2017

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. V.N. Gaur, Member (A)**

OA No.3300/2010

1. Shri Raj Pal Singh
S/o Shri Sultan Ram, Group B Post
Age about 48 years
R/o Type IV/24, Sanchar Vihar Colony
Malviya Nagar,
Jaipur-302017,
Rajasthan.
2. Shri K. Vijaya Kumar
S/o K.N. Krishna Murthy, Aged about 49 years
SDE(P&D) Office of the Chief Engineer(Civil)
Telecom Civil Zone, Karnataka
R/o No.28, I Floor, III Main
Amarjyothi Layout, Sanjay Nagar
Bangalore-560094.
3. Shri Amit Garg
S/o Shri Brij Bhushan Gupta
Aged about 44 years
R/o New Bhagat Singh Colony
Bajoria Road, Saharanpur-247001, UP
4. Shri Aman Kumar Rohilla
S/o Late Shri Jaswant Singh
Aged about 43 years
R/o Flat No.B-17, Adarsh Arya Apts
Plot No.39 A, Sector-6
Dwarka, Delhi-110075.
5. Shri Kishore Kumar Behera
S/o Shri Krishna Chandra Behera
Aged about 45 years,

R/o Flat No.C 2
Block-III, Dibag Residency, Pensionpara
Chandmari, Guwahati-781003.

6. Shri P.V.V.S. Murthy
S/o Shri P.V. Subbarayan
Aged about 48 years,
R/o 12-11-1271/1
Near Park,
Bouddhanagar, Warasiguda
Secunderabad,
PIN-500061.
7. Shri G. Shivakumar
S/o Shri M. Gopalkrishnan
Aged about 52 years,
R/o 8/158
Manimagalai Street, Fairlands, Salem
Tamilnadu-636016.
8. Shri Niraj Lekhi,
S/o Shri K.L. Lekhi
Aged about 48 years,
R/o House No.112
Sector 45 A,
Chandigarh, PIN-160047.
9. Shri BVS Murthy,
S/o Shri B. Gopala Krishnamurthy
Aged about 46 years,
R/o Plot No.0, Shiva Enclave
Old Bowenpally,
Secunderabad-500011.

...Applicants

(By Advocates: Shri C Mohan Rao with Shri Lokesh Kumar Sharma and Shri Yogesh Sharma)

Versus

1. Union of India through the Secretary
Ministry of Communications
Department of Telecommunications
20, Ashoka Road, Sanchar Bhawan
New Delhi.
2. Bharat Sanchar Nigam Limited

Through its C.M.D.
Statesman House Building
Barakhamba Road,
Bharat Sanchar Bhawan
Cannaught Palace, New Delhi.

3. Shri Pradeep Mittal
Working as EE(C) BSNL Civil Dn Srinagar
Near Tehsil Building, Podi Road
Srinagar, Uttrakhand.
4. Shri Ramesh M Chatwani
Working as EE (C), BSNL Civil Division
IIInd Floor Vasudeva Complex, Karangalpady
Mangalore (Karnataka)-575003.
5. Shri D.R. Saxena,
Working as SDE (C)
BSNL Civil Sub Division, P&T Colony
Dev Nagar, New Delhi.
6. Shri Megh Singh, Working as SDE(P&D)
Office of SE(C), BSNL Civil Circle
3 Tyagi Road,
Dehradun(Uttarakhand)
7. Shri G Rajanna, Working as SDE(P&D)
Office of C.E.(C), BSNL Punjab Civil Zone
TE Building, Sector 17, Chandigarh
8. Shri D Sunder, Working as SDE(P&D)
Office of EE(Civil), BSNL Civil DN
747, SKC Road, Amara Complex
Erode, Tamil Nadu.
9. Shri Suresh Ankush Pradhan
Working as SDE(P&D)
Office of SE(C), BSNL Civil Circle
Yerwada T.E. Building,
Opp. Golof Club, Yerwada,
Pune (Maharastra).
10. Shri Abhay Chander Verma
Working as SDE(P&D) office of SE(C)
BSNL Civil Circle, CTO Building
Bahadurpura,

Aurangabad (Maharastra)

11. Shri Rama Kanta Majhee
Working as SDE(P&D) Office of CE(C)
BSNL Orissa Civil Zone, Door-Sanchar
Bhawan Unit, 9 Saheed Nagar
Bhubaneshwar.
12. Shri Sanjay Aggarwal
Working as SDE(C), office of CE(Civil)
BSNL Delhi Civil Zone
Jhandewalan, New Delhi.
13. Shri Pawan Kumar Sharma
Working as SDE(C), BSNL Civil Sub Division
TE Building Campus,
Guna (M.P.).
...Respondents

(By Advocates:-Shri S.M. Arif and Shri Deepak Thukral)

OA No.1586/2011

1. Shri Nageshwar Prasad Singh
S/o late Sharda Nandan Singh
Sub Division Engineer (Civil)
Bharat Sanchar Nigam Limited
Dhanbad (Jharkhand),
Resident of East Abhiyanta Nagar,
Near Ram Nagari More
P.O.-Ashiyana Nagar,
P.S. Rajeev Nagar
District-Patna (Bihar).
2. Anup Kumar Ghosh
S/o Late Anil Kumar Ghosh,
C/o B. Roy Choudhary
New Babu Para, Dumka.
3. Kaushal Kishore
S/o Sri Brij Nandan Lal,
Resident of Flat No.301
Pawan Villa Apartment
Ved Nagar, Rukunpura,
Patna-800014.

4. M.K. Chordia, S/o Late U.C. Chordia
R/o Type-IV-10, Telecomm Colony
Manwa Kheda, Hiran, Magari Section-V-6
Udaipur.
5. V. Anandan, S/o A. Venkatachalam
R/o Qtr. No.169/1, 4th Cross, Anbu Nagar
Extension, Crawford, Trichirappalli
Tamil Nadu-620012.
6. G. Parthasharathy, S/o T. Ganapathy
Qtr. No.11/8A, Bangaru Amman Thottam
Ellappa Nagar, 1st Street
Kancheepuram, Tamil Nadu-631501.

...Applicants

(By Advocates: Shri C Mohan Rao with Shri Lokesh Kumar Sharma and Shri Yogesh Sharma)

Versus

1. Union of India through the Secretary
Ministry of Communication
Department of Telecommunications
Sanchar Bhawan, New Delhi.
2. The Chairman-cum-Managing Director
Bharat Sanchar Nigam Limited
Statesman House Building
Barakhamba Road, Bharat Sanchar Bhawan
Cannaught Palace, New Delhi.
3. The Principal General Manager (BW)
Bharat Sanchar Nigam Limited
10th Floor, Chandrer Lok Building
36, Janpath, New Delhi-110001.
4. The Senior D.D.G. (BW)
Department of Telecommunications
Sanchar Bhawan, 20, Ashoka Road
New Delhi-110001.
5. Satish Kumar Jain, Executive Engineer (Civil)
(Ad hoc), B.S.N.L. Gujarat.
6. Ramesh M. Chatwani, Executive Engineer (Civil)

(Ad hoc), B.S.N.L. Karnataka.

7. R.D. Verma, Executive Engineer (Civil)
(Ad hoc), B.S.N.L. Orrissa.
8. P.R. Gundale, Executive Engineer (Civil)
(Ad hoc), B.S.N.L. Maharashtra.
9. Valageredeva Chandru, Executive Engineer (Civil)
(Ad hoc), B.S.N.L. Karnataka.
10. T.K. Sobhana (Mrs.), Executive Engineer (Civil)
(Ad hoc), B.S.N.L. Kerala.
11. K. Rajagopalan, Executive Engineer (Civil)
B.S.N.L. Kerala.
12. P. Ponnuswami, Executive Engineer (Civil)
(Ad hoc), B.S.N.L. Tamil Nadu.
13. P. Mohan, Executive Engineer (Civil)
(Ad hoc), B.S.N.L. Tamil Nadu.
14. K. Neelamegam, Executive Engineer (Civil)
(Ad hoc), B.S.N.L. Tamil Nadu.
15. B. Logashnmugam, Executive Engineer (Civil)
(Ad hoc), B.S.N.L. Tamil Nadu.
16. Satish Kumar, Sub Divisional Engineer (Civil)
B.S.N.L. Himachal Pradesh.
17. Lala Ram, Executive Engineer (Civil)
(Ad hoc), B.S.N.L. Haryana.
18. Sohan Lal, Executive Engineer (Civil)
(Ad hoc), B.S.N.L. Punjab.
19. Anil Kumar Gupta, Executive Engineer (Civil)
(Ad hoc), B.S.N.L. Haryana.
20. Rajinder Kumar Verma, Executive Engineer (Civil)
(Ad hoc), B.S.N.L. Haryana.
21. Bhag Chand, Executive Engineer (Civil)

(Ad hoc), B.S.N.L. Himachal Pradesh.

22. Vijay Pal Singh, Executive Engineer (Civil)
(Ad hoc), B.S.N.L. U.P.(W).
23. S. Perumal, Executive Engineer (Civil)
(Ad hoc), B.S.N.L. Maharashtra.
24. Munga Lal Ram, Executive Engineer (Civil)
(Ad hoc), B.S.N.L. Bihar.
25. B. Hariharan, Executive Engineer (Civil)
(Ad hoc), B.S.N.L. Karnataka.
26. Bibekananda Talukdar, Executive Engineer (Civil)
(Ad hoc), B.S.N.L. West Bengal.
27. Ishak Lal, Executive Engineer (Civil)
(Ad hoc), B.S.N.L., U.P.(W).
28. Mool Chand Ram, Executive Engineer (Civil)
(Ad hoc), B.S.N.L., West Bengal.
29. D.R. Patel, Executive Engineer (Civil)
(Ad hoc), B.S.N.L., Gujarat.
30. J.L. Shukla, Executive Engineer (Civil)
(Ad hoc), B.S.N.L., Madhya Pradesh.
31. Taranjeet Singh, Executive Engineer (Civil)
(Ad hoc), B.S.N.L., Punjab.
32. Ashwani Kumar Suri, Executive Engineer (Civil)
(Ad hoc), B.S.N.L., A.L.T.T.C.
33. Chittra Ranjan Baruah, Executive Engineer (Civil)
(Ad hoc), B.S.N.L., Assam.
34. K.M. Parik, Executive Engineer (Civil)
(Ad hoc), B.S.N.L., Madhya Pradesh.
35. Mukul Dutta, Executive Engineer(Civil)
(Ad hoc), B.S.N.L. N.E.-I.
36. Atul Saikia, Executive Engineer(Civil)

(Ad hoc), B.S.N.L. N.E.-I.

37. Mani Ram Gupta, Executive Engineer(Civil)
(Ad hoc), B.S.N.L., U.P.(W).
38. Bal Krishan Verma, Sub Divisional Engineer (Civil)
(Ad hoc), B.S.N.L., Gujarat.
39. P K Badjatia, Executive Engineer(Civil)
(Ad hoc), B.S.N.L., Madhya Pradesh.
40. Jatin Borthakur, Executive Engineer(Civil)
(Ad hoc), B.S.N.L., N.E.-II.
41. Arvind Kumar Bhatnagar, Executive Engineer(Civil)
(Ad hoc), B.S.N.L., Madhya Pradesh.
42. Ashok Kumar Chaudhary, Executive Engineer(Civil)
(Ad hoc), B.S.N.L., Madhya Pradesh.
43. Bipin Baruah, Executive Engineer(Civil)
(Ad hoc), B.S.N.L., Assam.
44. R C Joshi, Executive Engineer(Civil)
(Ad hoc), B.S.N.L., Maharastra.
45. M S Mittal, Executive Engineer(Civil)
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46. Krishna Prasad Rajkhowa, Executive Engineer(Civil)
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47. G Vijayan, Executive Engineer(Civil)
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50. K Natarajan, Executive Engineer(Civil)
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51. D. Pitchumani, Executive Engineer(Civil)

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52. D.K. Saxena, Executive Engineer(Civil)
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53. Arun Kumar, Executive Engineer(Civil)
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54. R.L. Gadani, Sub Divisional Engineer(Civil)
B.S.N.L., Gujarat.
55. M.H. Patel, Executive Engineer(Civil)
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B.S.N.L., Karnataka.
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59. D.S.R. Moorthy, Sub Divisional Engineer(Civil)
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60. H.N. Krishnamurthy, Sub Divisional Engineer(Civil)
B.S.N.L., Karnataka.
61. B.V. Uday Kumar, Sub Divisional Engineer(Civil)
B.S.N.L., Maharashtra.
62. B.N. Pranesh, Sub Divisional Engineer(Civil)
B.S.N.L., Karnataka.
63. C. Sivalingam, Sub Divisional Engineer(Civil)
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65. R.N. Perumal, Sub Divisional Engineer(Civil)
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69. V.M. Velayudhan, Sub Divisional Engineer(Civil)
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70. Yugveer Singh, Sub Divisional Engineer(Civil)
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71. Raj Kumar Goyel, Sub Divisional Engineer(Civil)
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72. Surendra Kumar Sharma, Sub Divisional Engineer(Civil)
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73. R. Duraisamy, Sub Divisional Engineer(Civil)
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74. P. Devarajan, Sub Divisional Engineer(Civil)
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75. Arvind Kumar, Sub Divisional Engineer(Civil)
B.S.N.L., Bihar.
76. A.K. Tripathi, Sub Divisional Engineer(Civil)
B.S.N.L., U.P.(E).
77. Megh Singh, Sub Divisional Engineer(Civil)
B.S.N.L., Uttaranchal.
78. J. Vimalan Rodriguez, Sub Divisional Engineer(Civil)
B.S.N.L., Kerala.
79. S. Sundarajan, Sub Divisional Engineer(Civil)
B.S.N.L., Maharastra.
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82. A.V. Gulhane, Sub Divisional Engineer(Civil)
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90. D. Sundar, Sub Divisional Engineer(Civil)
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B.S.N.L., Tamil Nadu.
92. M. Kannan, Sub Divisional Engineer(Civil)
B.S.N.L., Tamil Nadu.
93. Deepak Raj Saxena, Sub Divisional Engineer(Civil)
B.S.N.L., Delhi.
94. Kalu Singh, Sub Divisional Engineer(Civil)
B.S.N.L., Uttarakhand.
95. N. Praveen, Sub Divisional Engineer(Civil)
B.S.N.L., Tamil Nadu.
96. D.S. Gautam, Sub Divisional Engineer(Civil)
B.S.N.L., Rajasthan.

97. Om Prakash, Sub Divisional Engineer(Civil)
B.S.N.L., Rajasthan.
98. Shiv Kumar, Sub Divisional Engineer(Civil)
B.S.N.L., Haryana.
99. Roop Chand, Sub Divisional Engineer(Civil)
B.S.N.L., Delhi.
100. Om Prakash, Sub Divisional Engineer(Civil)
B.S.N.L., Haryana.
101. R.G. Develkar, Sub Divisional Engineer(Civil)
B.S.N.L., Maharastra.
102. Ram Khilari, Sub Divisional Engineer(Civil)
B.S.N.L., U.P.(E).
103. Jagdish Kumar Dawar, Sub Divisional Engineer(Civil)
B.S.N.L., Punjab.
104. V.K. Sahajpal, Sub Divisional Engineer(Civil)
B.S.N.L., CO.
105. Harcharan Lal Bagi, Sub Divisional Engineer(Civil)
B.S.N.L., Madhya Pradesh.
106. Gurmeet Singh, Sub Divisional Engineer(Civil)
B.S.N.L., Punjab.
107. Manmohan Singh, Sub Divisional Engineer(Civil),
B.S.N.L., Punjab.
108. Suresh Ankush Pradhan, Sub Divisional Engineer(Civil),
B.S.N.L., Maharastra.
109. R.C. Chennaiappan, Sub Divisional Engineer(Civil), B.S.N.L.,
Tamil Nadu.
110. B.S. Ramkrishna, Sub Divisional Engineer(Civil),
B.S.N.L., Karnataka.
111. N.V. Janki Prasad, Sub Divisional Engineer(Civil),
B.S.N.L., Karnataka.

112. A.C. Verma, Sub Divisional Engineer(Civil), B.S.N.L.,
Maharashtra.
113. A. Thangavel, Sub Divisional Engineer(Civil), B.S.N.L.,
Maharashtra.
114. V.D. Raghunandan, Sub Divisional Engineer(Civil), B.S.N.L.,
Kerala.
115. Chandra Mohan Sharma, Sub Divisional Engineer(Civil),
B.S.N.L., Uttarakhand.
116. R.N. Shankaralingham, Sub Divisional Engineer(Civil),
B.S.N.L., Maharashtra.
117. Jhon Paramanathan, Sub Divisional Engineer(Civil),
B.S.N.L., Tamil Nadu.
118. K.C. Jagdish Kumar, Sub Divisional Engineer(Civil),
B.S.N.L., Karnataka.
119. K.K. Mohan Kumar, Sub Divisional Engineer(Civil), B.S.N.L.,
Maharashtra.
120. Manju Nath, Sub Divisional Engineer(Civil), B.S.N.L.,
Karnataka.
121. C.R. Shanmhugam, Sub Divisional Engineer(Civil), B.S.N.L.,
Maharashtra.
122. Swapan Kumar DAS, Sub Divisional Engineer(Civil),
B.S.N.L., West Bengal.
123. Arun Kumar Ekka, Sub Divisional Engineer(Civil), B.S.N.L.,
Jharkhand.
124. N. Chandrashekharan, Sub Divisional Engineer(Civil) (Ad-hoc),
B.S.N.L., Maharashtra.
125. Abrar Ahmad, Sub Divisional Engineer(Civil), B.S.N.L., U.P.
(E).
126. R.M. Sekaran, Sub Divisional Engineer(Civil), B.S.N.L.,
Tamil Nadu.

127. Makara Marindi, Executive Engineer(Civil)(Ad-hoc), B.S.N.L., Orrissa.
128. Dilip Hiraman Chouhan, Executive Engineer(Civil)(Ad-hoc), B.S.N.L., Gujarat.
129. K.L. Meena, Executive Engineer(Civil)(Ad-hoc), B.S.N.L., Rajasthan.
130. R.K. Khurana, Sub Divisional Engineer(Civil), B.S.N.L.
131. M.T. Chandramauli, Sub Divisional Engineer(Civil), B.S.N.L.
132. Lakshman Prasad, Sub Divisional Engineer(Civil), B.S.N.L.
133. J.S.P. Sinha, Sub Divisional Engineer(Civil), B.S.N.L.
134. S.N. Singh, Sub Divisional Engineer(Civil), B.S.N.L., Jharkhand.
135. Tapan Kumar Karak, Sub Divisional Engineer(Civil), B.S.N.L.
136. Subhash Pal, Sub Divisional Engineer(Civil), B.S.N.L.
137. Subir Kumar Maiti, Sub Divisional Engineer(Civil), B.S.N.L.
138. J.S. Vashista, Sub Divisional Engineer(Civil), B.S.N.L.
139. Sandeep Mandal, Sub Divisional Engineer(Civil), B.S.N.L.
140. Anil Kumar Marhwah, Sub Divisional Engineer(Civil), B.S.N.L.
141. Jitendra Kumar Jain, Sub Divisional Engineer(Civil), B.S.N.L.
142. Prem Chand Saharan, Sub Divisional Engineer(Civil), B.S.N.L.
143. Jagdish Chander, Sub Divisional Engineer(Civil), B.S.N.L.
144. M.S. Mevada, Sub Divisional Engineer(Civil), B.S.N.L.
145. Prakash Gagannvar, Sub Divisional Engineer(Civil), B.S.N.L.

146. B.B. Maharajannavar, Sub Divisional Engineer(Civil), B.S.N.L.
147. Muthu Kumar, Sub Divisional Engineer(Civil), B.S.N.L.
148. T. Jagdish, Sub Divisional Engineer(Civil), B.S.N.L.
149. Deshabhusha Jagashetty, Sub Divisional Engineer(Civil), B.S.N.L.
150. B. Nand Kumar, Sub Divisional Engineer(Civil), B.S.N.L.
151. R. Chandrashekhar, Sub Divisional Engineer(Civil), B.S.N.L.
152. Adil Akhtar, Sub Divisional Engineer(Civil), B.S.N.L.
153. J.B. Patel, Sub Divisional Engineer(Civil), B.S.N.L.
154. Narendra Kumar Julka, Sub Divisional Engineer (Civil), B.S.N.L.
155. Tilak Kumar Sengupta, Sub Divisional Engineer (Civil), B.S.N.L.
156. Gopal C. Shaha, Sub Divisional Engineer (Civil), B.S.N.L.
157. Somnath Bhattacharya, Sub Divisional Engineer (Civil), B.S.N.L.
158. P.N. Dutta, Sub Divisional Engineer (Civil), B.S.N.L.
159. Anup Kumar Ghosh, Sub Divisional Engineer (Civil), B.S.N.L.
160. Asim Kumar Sur, Sub Divisional Engineer (Civil), B.S.N.L.
161. Ardhedendu Mondal, Sub Divisional Engineer (Civil), B.S.N.L.
162. Ranjit Kuamr Ghosh, Sub Divisional Engineer (Civil), B.S.N.L.
163. Debapriya Chakravorty, Sub Divisional Engineer (Civil), B.S.N.L.
164. Krishna C. Dey, Sub Divisional Engineer (Civil), B.S.N.L.

165. Tapash Dutta, Sub Divisional Engineer (Civil), B.S.N.L.
166. Rama Kanta Manjhi, Sub Divisional Engineer (Civil), B.S.N.L.
167. M. Muthuraj, Sub Divisional Engineer (Civil), B.S.N.L.
168. Raj Kumar, Sub Divisional Engineer (Civil), B.S.N.L.
169. Ved Prakash, Sub Divisional Engineer (Civil), B.S.N.L.
170. S. Rengaraj, Sub Divisional Engineer (Civil), B.S.N.L.
171. Tej Singh, Sub Divisional Engineer (Civil), B.S.N.L.
172. H.D. Anuragi, Sub Divisional Engineer (Civil), B.S.N.L.
173. R. Mohan Dass, Sub Divisional Engineer (Civil), B.S.N.L.
174. P. Varadarajan, Sub Divisional Engineer (Civil), B.S.N.L.
175. Dhirendra Nath Mondal, Sub Divisional Engineer (Civil), B.S.N.L.
176. Balkrishna B. Mandrai, Sub Divisional Engineer (Civil), B.S.N.L.
177. Sanjay Agarwal, Sub Divisional Engineer (Civil), B.S.N.L., Delhi.
178. G. Kannan, Sub Divisional Engineer (Civil), B.S.N.L., Tamil Nadu.
179. Dinesh Chandra Sharma, Sub Divisional Engineer (Civil), B.S.N.L., Rajasthan.
180. Sandeep Sood, Sub Divisional Engineer (Civil), B.S.N.L., Delhi.
181. E.S. Jaykumar, Sub Divisional Engineer (Civil), B.S.N.L., Kerala.
182. Sanjay Kumar, Sub Divisional Engineer (Civil), B.S.N.L., UP(W).

183. Devendra Pal Singh, Sub Divisional Engineer (Civil), B.S.N.L., UP(W).
184. Pawan Kumar Garg, Sub Divisional Engineer (Civil), B.S.N.L., Delhi.
185. Shekhar Nath, Sub Divisional Engineer (Civil), B.S.N.L.
186. Narayan Dandapat, Sub Divisional Engineer (Civil), B.S.N.L., Orrissa.
187. Mohendra Singh, Sub Divisional Engineer (Civil), B.S.N.L., Delhi.
188. M.J. Borad, Sub Divisional Engineer (Civil), B.S.N.L., Gujarat.
189. S. Shanguman, Sub Divisional Engineer (Civil), B.S.N.L., Tamil Nadu.
190. P.K. Sharma, Sub Divisional Engineer (Civil), B.S.N.L., Rajasthan.
191. Salim Abdul Mainuddin Pathan, Sub Divisional Engineer (Civil), B.S.N.L.
192. A. Jaya Paul, Sub Divisional Engineer (Civil), B.S.N.L., Tamil Nadu.
193. Devendra Gupta, Sub Divisional Engineer (Civil), B.S.N.L., Haryana.
194. Gopal Patel, Sub Divisional Engineer (Civil), B.S.N.L., Madhya Pradesh.
195. P.K. Mishra, Sub Divisional Engineer (Civil), B.S.N.L., Madhya Pradesh.
196. D. Diwakar, Sub Divisional Engineer (Civil), B.S.N.L., Tamil Nadu.

Respondents Nos.5 to 196 are represented through Deputy General Manager (B.W.-1), B.S.N.L., Corporate Office, 10th Floor, Chandra Lok Building, 36 Janpath, New Delhi-110001.
...respondents

(By Advocates:-Shri S.M. Arif and Shri Deepak Thukral)

ORDER**Hon'ble Mr. V.N. Gaur, Member (A) :-**

With this order, we are disposing of OA No.3300/2010 and OA No.1586/2011. The first OA has been filed by nine applicants before Principal Bench of this Tribunal and the second OA by six applicants originally as OA No.502/2010 before Patna Bench, but later transferred to Principal Bench and re-numbered as OA No.1586/2011. In both the OAs, the prayer is to quash the seniority lists dated 08.09.2005 and 16.06.2006 issued by DoT and BSNL respectively and the orders dated 29.04.2010 and 28.05.2010. Since the impugned orders and the issues involved in the two OAs are the same, with the consent of the parties, these were heard together. We will be advertizing to the facts of OA No.3300/2010 while discussing the issues involved. In the OA 1586/2011 there is an additional prayer of refixing the seniority of the applicants by segregating the vacancies for 1992, 1993 and 1994 and prepare year-wise merit lists of appointees of LDCE 1995 taking into account year-wise eligibility of the candidates.

2. The reliefs sought by the applicants in OA No.3300/2010 are reproduced below:-

- “a. QUASH the orders dt.29.04.2010 & 28.05.2010, issued by the D.O.T. & B.S.N.L. respectively, and
- b. QUASH the seniority lists dt. 16.06.2006 and 08.09.2005, issued by the B.S.N.L. & D.O.T., respectively, and
- c. DIRECT the Respondents to prepare the correct and proper seniority list in the Cadre of Assistant Engineer (Civil) after segregating the vacancies for LDCE 1995 for the year 1992, 1993, 1994 and 1995 and rearrange the successful candidates of LDCE 1995 for the purpose of seniority as per their year-wise eligibility and thereafter, place them with the Seniority-cum-Fitness candidates in Seniority list Dated 08.09.2005 and 16.06.2006 in the ratio of 1:1 as per their respective quota of the year 1992, 1993, 1994 and 1995, AND

d. DIRECT the Respondents to grant all consequential benefits in favour of the Applicants including the Promotion to the post of Executive Engineer (Civil) before the Promotion of Private Respondents.

e. PASS any other or further order(s) in favour of the applicants, which this Hon'ble Tribunal may deem fit, just & proper in the above mentioned facts & circumstances."

3. The applicants originally joined as Junior Engineer (Civil) [JE(C)] during the years 1982-1988 through All India Open Competitive Examination conducted by the Department of Telecommunications (respondent No.1). The Post and Telegraphs (Civil Gazetted Officers) Recruitment Rules, 1976 (in short RRs, 1976) provided that the next higher post i.e. Assistant Engineer (Civil) [AE(C)] would be filled up 50% by promotion and 50% by direct recruitment (DR). On 26.12.1992, the respondents notified amendment to the RRs, 1976 replacing the provision for DR by 50% recruitment by LDCE from the feeder category of JE (C) having four years of service. The vacancies under promotion quota would continue to be filled up by JE (C) having eight years of service on the basis of seniority-cum-merit. The respondents thereafter on 06.04.1993 notified the LDCE to be conducted on 17-18 September, 1993 but it was postponed after representation from All India Junior Engineers Association (P&T Civil Wing) Central Board, dated 08.04.1993. On 17.11.1993, the respondents regularised 200 JEs (C), who were officiating as AE (C) Group 'B' Gazetted on ad hoc basis, though it is not clear whether their ad-hoc promotion was against DR quota or promotion quota. From the submissions of the learned counsel for the respondents as quoted in the order dated 14.06.1994 of Calcutta Bench in OA 245/1994 (reproduced later in this order) it can be concluded that earlier ad-hoc promotions were given against the promotion quota only. The official respondents in the present case have however stated that these appointments were made against pre-1992 vacancies and the applicants have no right over the unfilled Direct Recruitment (DR) vacancies of earlier RRs, thereby suggesting that the appointments were made against DR vacancies. The list also shows that 9 JEs were regularised

with effect from dates between 28.12.1992 and 16.08.1993, i.e. after the amended RRs came into force. The respondents notified fresh date for LDCE vide letter dated 04.01.1994 to be held on 29.04.1994. This time representations were received from Electrical Engineers Association requesting postponement of the LDCE, which was at first rejected, but later, vide letter dated 08.02.1994, it was agreed to. This action of the respondents was challenged before the Calcutta Bench in OA 245/1994, which was disposed of vide order dated 14.06.1994. The relevant portion of the order is reproduced below:-

“6. We also find that the local authority decided to postpone the limited departmental competitive examination only for one year, for which they asked for the concurrence of the Department of P&T and the concurrence of the U.P.S.C. is also necessary. But it has not yet been received and no relaxation has been granted so far by an appropriate Governmental order in terms of Rule 8 of the new recruitment rules.

7. Mrs. Banerjee, however, submits that as several Junior Engineers, working in the said post for more than 15 years, have been rotting without getting promotion, *the respondents wanted to fill up the vacancies on the basis of the promotion of the Junior Engineers on the promotional quota*. But after the new recruitment rules have been promulgated, the promotion quota can be filled up only to the extent of 50% and not more than that. Moreover, on perusing the notings in the file, we are unable to find that there is any proposal by the department to relax the percentage of the promotion. Therefore, we can only hold that the promotional quota can be filled up only by 50% vacancies arising since the promulgation of the new recruitment rules.

8. So far as the decision to postpone the limited departmental competitive examination for one year is concerned, we are of the view that the present applicants may have a grievance to that respect as the promotional

process has already been initiated. However, when there are decisions of the Supreme Court that for valid reasons the process of promotion, even if initiated, may be postponed, we do not wish to interfere with the order passed by the respondents dated 8.2.1994 when the decision is to postpone the examination only for a year.

9. In that view of the matter, when only for the year the postponement of the above examination is sought for, for filling up in the meantime, the vacancies by the senior Junior Engineer who have been rotting without promotion, on the promotion quota then we are not interfering with the order of the respondents, postponing the L.D.C.E. for the time being. We make it clear that the number of vacancies available for the departmental candidate for promotion is only 50% and the other 50% vacancies shall be kept unfilled to be filled up by limited departmental competitive examination, when such examination is to be held. We only do not interfere with the administrative decision of the postponement of the above examination for one year and there shall be no further postponement of the exemption after the period of one year, and thereafter the respondents have to complete the process of the limited departmental competitive examination also immediately after the expiry of one year.”

4. In the preceding order the Tribunal agreed to the postponement of LDCE subject to the condition that only 50% of the vacancies after the promulgation of amended RRs will be filled up by promotion and remaining 50% will be filled up by LDCE which shall be completed immediately after the expiry of one year.

The Tribunal 'only' did not interfere with the administrative decision of postponement of the LDCE for one year.

5. The official respondents thereafter issued a number of promotion orders on 17.11.1993, 15.06.1994, 07.07.1994 and 31.08.1994. Finally, the LDCE in terms of the RRs, 1992 was conducted in 1995 and 83 JE(C)s were promoted to the post AE(C) vide order dated 04.03.1996. The respondents issued a draft seniority list of the AE(C)s on 27.02.2001. In this seniority list, the promotee officers were bunched together and placed at higher position, and the LDCE officers to the extent of availability were rotated with the remaining promotees. The applicants demanded that their seniority should be fixed by first splitting the selection against the LDCE vacancies for the years 1992 to 1995 year-wise and then rotating the same with the promotees of corresponding years. Official respondents issued another draft seniority list/provisional seniority list on 21.09.2001 without agreeing to the aforesaid demand. The Final Combined Seniority List for BSNL and MTNL was issued by DOT (respondent no.1) on 08.09.2005 in which 342 promotees against the seniority quota during the years 1993-1995 were placed en-bloc senior from Sl. No.314 to 655 without any rotation with LDCE appointees. All the 83 candidates promoted through LDCE route were placed en-bloc junior from Sl. No.656 to 738, the applicants being placed at Sl. No.665, 666, 697, 702, 703, 707, 710, 716 and 721. The respondent No.2 BSNL issued the same seniority list for the AE (C) of BSNL vide order dated 16.06.2006. The applicants made several representations but their grievances remained unresolved. The applicants filed WP(C) No.18797-803/2006 before the Hon'ble Delhi High Court, challenging the seniority lists dated 08.09.2005 and 16.06.2006. This was later transferred to this Tribunal and re-numbered as TA No.1104/2009, which was disposed of vide order dated 15.02.2010, directing the official respondents to reconsider the claim of the applicants as per the RRs, 1992. The official respondents, however, rejected the representations of the applicants vide orders dated 29.04.2010 and 28.05.2010. In the present OA, the applicants have challenged the seniority lists issued in 2005 and 2006 and the

orders passed by the official respondents rejecting their representations.

6. The learned counsel for applicants in his submission questioned the act of the respondents in postponing the LDCE, which was scheduled to be held in 1993. The official respondents had not followed even the RRs, 1976 for conducting the direct recruitment (DR) to the post of AE (C) to the extent of 50% of the vacancies. After 1982 the respondents had not conducted any direct recruitment for the post of AE (C). Through the amendment dated 26.12.1992, 50% DR quota was replaced by LDCE and the remaining 50% was to be filled up through promotion. The official respondents, however, had never stopped promotion through seniority-cum-merit route. By the year 1992 seniority based promotions were far in excess of the quota prescribed in the RR, 1976 as well as the amended RRs of 1992. As on 26.12.1992 out of the cadre strength of 604, 380 post were filled through DPC route and only 33 through DR. Even on vacancy basis, 293 vacancies had been filled up through promotion and only 65 through direct recruitment. To maintain the 1:1 ratio, 288 vacancies had to be filled up by direct recruitment. According to the learned counsel, in an RTI information, the official respondents have confirmed that 215 vacancies remained unfilled in DR quota. Notwithstanding these facts, the official respondents had also vide letter dated 31.12.1992 (Annexure A/25) created new posts leading to 80 vacancies in the grade of AE (C). At the time of amendment of RRs in 1992, therefore, it could not be said that LDCE vacancies did not exist. The official respondents could not have filled up all vacancies only through promotion under the amended RRs between 1993 and 1995.

7. The Calcutta Bench order of 14.04.1994 clearly stated that the promotion quota could be filled up only by 50% vacancies arising since the promulgation of new RRs, and had allowed the respondents to postpone the LDCE only for one year for administrative reasons. The order never permitted the official respondents to fill up existing vacancies through promotion totally bypassing the LDCE. The official respondents, however, held the LDCE in 1995 violating the order of the Tribunal and, and used the time available for promoting/regularising the JEs who were working on ad hoc basis on the post of AE(C). The

official respondents never resorted to any relaxation of the rules in consultation with the UPSC, which was the requirement of the statutory RRs, to change the promotion quota. He further contended that the right course of action for the official respondents was to split the list of AE (C) promoted on the basis of LDCE 1995 against the vacancies for the years 1992 to 1995 and thereafter rotate their seniority in the ratio of 1:1 against the promotees of the respective years. He referred to the judgment in **D.P. Jindal Vs. Union of India & Ors.** & batch [WP(C) No.8154/2013 decided on 27.08.2014], wherein Hon'ble Delhi High Court had directed the respondents- CPWD to balance the relative merits of the candidates who cleared LDCE as well as the dictate of the rules *vis-a-vis* eligibility. This clearly implied that the seniority of LDCE appointees has to be prepared separately considering the vacancies of each year for which LDCE had been held. The learned counsel also pointed out that in respect of the LDCE held in 1999 for the combined vacancies of 1998 and 1999, the official respondents had themselves prepared separate seniority for the years 1998 and 1999 as per eligibility. Referring to the reliance of the official respondents on DOP&T OM dated 07.02.1986 that provided the seniority list to be finalised on the basis of the date of 'availability' of the candidates, learned counsel submitted that the LDCE candidates became available in 1996 because the official respondents did not conduct the examination in 1993, 1994 and 1995 and resorted to illegal promotions in the interregnum. Using the clarification of DOPT vide OM dated 03.03.2008 the official respondents treated the LDCE candidates being available only in 1996 and put them en-bloc below the promotee candidates. The official respondents, while adopting the course mentioned above, have relied on the clarification issued by the DOP&T OM of 03.03.2008. By the judgment of Honble Supreme Court in **Union of India & Ors. Vs. N.R. Parmar & Ors.** (Civil Appeal Nos.7514-7515 of 2005), the OM dated 03.03.2008 had been declared *non-est* and in derogation of earlier OMs dated 07.02.1986 and 03.07.1986. Therefore, the official respondents have to strictly follow the principle of rotation of quotas as per OM dated 07.02.1986 by interspacing the LDCE appointees and promotees separately for each year. The learned counsel also referred to Andhra High Court order in WP(C) No.15053 of 2009 **P.V. Shoba & Ors. Vs. UOI & Ors.**, the order

of C.A.T. dated 09.03.2015 in OA No.4308/2014 ***Nafisur Rehman Vs. UOI*** and Hon'ble Supreme Court judgment in ***State of Uttarakhand Vs. Dinesh Kumar Sharma*** 2008(2) SCC (L&S) 197.

8. The learned counsel for official respondents raised the preliminary objection that the applicants have not impleaded all the persons likely to be affected by the prayer made by them in this OA. It was submitted that due to administrative reasons LDCE could not be held in 1993 and 1994 and the postponement of LDCE had been upheld by the Calcutta Bench. The Tribunal had stated that only 50% of the vacancies arising after 1992 could be filled up by promotion by the official respondents. This order also did not put any embargo on vacancies that arose prior to 1992. After 1982 no direct recruitment was made and the vacancies were filled only through promotion by seniority. The applicants also have no legal claim to the vacancies that remained unfilled in the direct recruitment quota under the RRs, 1976. The respondents had filled up only the vacancies that arose prior to RRs 1992. With regard to the fixation of seniority, the learned counsel submitted that the DOP&T OM of 03.07.1986 along with the clarification issued on 03.03.2008 provided that for the purpose of seniority, the actual date of appointment of the candidates was to be considered. The applicants were appointed in the year 1996 and, therefore, the promotees were bunched together in the seniority list till AEs promoted through LDCE became available. Even if the OM of 2008 had been declared as *non-est*, the action of the respondents was covered by the OM of 03.07.1986. According to another OM of DOP&T dated 04.03.2014, the cases of seniority already settled with reference to applicable interpretation of the term 'availability' as contained in OM dated 07.02.1986 and 03.07.1986 may not be reopened. He also referred to Hon'ble Supreme Court judgment in CA No.7352/2002 read with judgment dated 31.03.2008 in SLP No.8058/2001 in support of his contention that promotion takes effect from the date of being granted and not occurrence of the vacancies or creation of posts. The seniority list dated 20.06.1994, the basis for claim of the applicants that promotions were much beyond the quota, only indicated the total number of posts (604) and the persons in position. The proportion of

vacancies filled from different modes could not be determined on the basis of these numbers.

9. We have heard the learned counsel for the parties and perused the record.

10. With regard to the plea of non-joinder of all the necessary parties taken by the official respondents, we observe that the applicants have impleaded some of the candidates who are likely to be affected, as private respondents in representative capacity. We agree with the learned counsel for the applicants that the reliefs claimed by the applicants are by way of interpretation of the rules governing the inter se seniority of officers promoted through seniority-cum-merit route and through LDCE. This being a legal question, it would neither be possible for the applicants to pin point as to how many persons would be ultimately affected in case they succeed nor is it a requirement under law. It would be sufficient in such a situation to implead some of the affected parties in representative capacity as was held by the Hon'ble Supreme Court in **State of Uttaranchal vs. Madan Mohan Joshi**, (2008) 6 SCC 797. The relevant extracts from that judgement read as follows:

“20. For the reasons aforementioned, we are of the opinion that the interest of justice would be subserved if the impugned judgment is set aside and the matter is remitted to the High Court for consideration of the matter afresh. In the writ petition, the first respondent may file an appropriate application for impleading Savita (Mohan) Dhondyal and others as parties and/or some teachers in their representative capacity.”

We therefore reject the contention of non-joinder of necessary parties.

11. After going through the pleadings and considering the arguments of the learned counsels, the questions that emerge for adjudication are:

- (i) What are the rules governing the seniority between the seniority based promotees and LDCE appointees?
- (ii) How are the promotions or regularizations after the amendment of RRs in 1992, against unfilled vacancies under RRs 1976 are to be treated with reference to fixation of inter se seniority with LDCE appointees?
- (iii) How are the seniority based promotions against the vacancies arising after 1992 but before the declaration of results of LDCE 1995 to be treated for fixation of seniority in the wake of the judgment of Calcutta Bench of this Tribunal permitting the postponement of LDCE notified in 1993 ?;
- (iv) Whether the applicants have a right to get the seniority with reference to the year of LDCE vacancies against which they were appointed. and,
- (v) How is the seniority of LDCE appointees to be decided within the category when the selection is held collectively for the vacancies of more than one year?

12. With regard to the first question, the macro view of the learned counsel for the applicant was that the applicants are promotees and their seniority is to be determined in terms of the DOP&T OM of 22.12.1959. The respondents on the other hand, have said that the seniority of the applicants will be regulated by the same principles as applicable to direct recruits in terms of the OM of 03.07.1986 read with clarification given in the OM of 03.03.2008. It may be noted here that the OM dated 03.07.1986 is a consolidated orders on seniority which is based on the OMs of 22.12.1959 and 07.02.1986. For the ease of reference the aforementioned DOP&T OMs of 22.12.1959 (extracts) and 07.02.1986 (hereinafter referred to as OMs of 1959 & 1986 respectively), are reproduced below:

“No.9/11/55- RPS
Government of India
Ministry of Home Affairs

New Delhi, dated the 22nd December, 1959

OFFICE MEMORANDUM

Subject: General Principles for determining seniority
of various categories of persons employed in
Central Services.

xxx xxx xxx
xxx

ANNEXURES

xxx xxx xxx
xxx

6. Relative seniority of Direct Recruits and Promotees.

The relative seniority of direct recruits and of Promotees shall be determined according to the rotation of vacancies between direct recruits and Promotees which shall be based on the quotas of vacancies reserved for direct recruitment and promotion respectively in the Recruitment Rules.”

xxx xxx xxx xxx

General Principle 6: A roster should be maintained based on the reservation for direct recruitment and promotion in the Recruitment Rules. Where the reservation for each method is 50% the roster will run as follows:-

(1) Promotion, (2) Direct recruitment, (3) Promotion, (4) Direct Recruitment and so on. Appointment should be made in accordance with this roster and seniority determined accordingly.

Illustration : Where 75% of the vacancies are reserved for promotion and 25% for direct recruitment, each direct recruit shall be ranked in seniority below 3 promotees. Where the quotas are 50% each, every direct recruit shall be ranked below a

promotees. If for any reason, a Direct recruit or a promotee ceases to hold the appointment in the grade, the seniority list shall not re-arranged merely for the purpose of ensuring the promotion referred to above.”

“No. 35014/2/80-Estt.D
Government of India
Ministry of Personnel, Public Grievances and
Pension
(Karmik, Lok Shikayat Tatha Pensions
Mantralaya)
(Department of Personnel & Training

North Block, New Delhi-1
the 7 February, 1986.

Office Memorandum

Sub: General Principles for determining the seniority of various categories of persons employed in Central Services.

As the Ministry of Finance etc. are aware, the General principles for determination of seniority in the Central Services are contained in the Annexure to Ministry of Home Affairs O.M. No. 9/11/55-RPS dated 22nd December 1959. According to Paragraph-6 of the said Annexure, the relative seniority of direct recruits and promotees shall be determined according to rotation of vacancies between the direct recruits and the promotees, which will be based on the quota of vacancies reserved for direct recruitment and promotion respectively in the Recruitment Rules. In the Explanatory Memorandum to these Principles, it has been stated that a roster is required to be maintained based on the reservation of vacancies for direct recruitment and promotion in the

Recruitment Rules. Thus where appointment to a grade is to be made 50% by direct recruitment and 50% by promotion from a lower grade, the inter-se-seniority of direct recruits and promotees is determined on 1:1 basis.

2. While the above mentioned principle was working satisfactorily in cases where direct recruitment and promotion kept pace with each other and recruitment could also be made to the full extent of the quotas as prescribed, in cases where there was delay in direct recruitment or promotion, or where enough number of direct recruits or promotees did not become available, there was difficulty in determining seniority. In such cases, the practice followed at present is that the slots meant for direct recruits or promotees, which could not be filled up, were left vacant, and when direct recruits or promotees became available through later examinations or selections, such persons occupied the vacant slots, thereby became senior to persons who were already working in the grade on regular basis. In some cases, where there was short-fall in direct recruitment in two or more consecutive years, this resulted in direct recruits of later years taking seniority over some of the promotees with fairly long years of regular service already to their credit. This matter had also come up for consideration in various Court Cases both before the High Courts and the Supreme Court and in several cases the relevant judgement had brought out the inappropriateness of direct recruits of later years becoming senior to promotees with long years of service.

3. This matter, which was also discussed in the National Council has been engaging the attention of the Government for quite some time and it has been decided that in future, while the principle of rotation of quotas will still be followed for determining

the inter-se seniority of direct recruits and promotees, the present practice of keeping vacant slots for being filled up by direct recruits of later years, thereby giving them unintended seniority over promotees who are already in position, would be dispensed with. Thus, if adequate number of direct recruits do not become available in any particular year, rotation of quotas for purpose of determining seniority would take place only to the extent of the available direct recruits and the promotees. In other words, to the extent direct recruits are not available, the promotees will be benched together at the bottom of the seniority list, below the last position upto which it is possible to determine seniority on the basis of rotation of quotas with reference to the actual number of direct recruits who become available. The unfilled direct recruitment quota vacancies would, however, be carried forward and added to the corresponding direct recruitment vacancies of the next year (and to subsequent years where necessary) for taking action for direct recruitment for the total number according to the usual practice. Thereafter, in that year while seniority will be determined between direct recruits and promotees, to the extent of the number of vacancies for direct recruits and promotees as determined according to the quota for that year, the additional direct recruits selected against the carried forward vacancies of the previous year would be placed en-bloc below the last promotee (or direct recruit as the case may be) in the seniority list based on the rotation of vacancies for that year. The same principle holds good in determining seniority in the event of carry forward, if any, of direct recruitment or promotion quota vacancies (as the case may be) in the subsequent years.

Illustration:

Where the Recruitment Rules provide 50% of the vacancies in a grade to be filled by promotion and the remaining 50% by direct recruitment, and assuming there are 10 vacancies in the grade arising in each of the years 1986 and 1987 and that 2 vacancies intended for direct recruitment remained unfilled during 1986 and they could be filled during 1987, the seniority position of the promotees and direct recruits of these two years will be as under:

1986	1987
1. P1	9. P1
2. D1	10. D1
3. P2	11. P2
4. D2	12. D2
5. P3	13. P3
6. D3	14. D3
7. P4	15. P4
8. P5	16. D4
	17. P5
	18. D5
	19. D6
	20. D7

4. In order to help the appointing authorities in determining the number of vacancies to be filled during a year under each of the methods of recruitment prescribed, a Vacancy Register giving a running account of the vacancies arising and being filled from year to year may be maintained in the proforma enclosed.

5. With a view to curbing any tendency of under-reporting/suppressing the vacancies to be notified to the concerned authorities for direct recruitment, it is clarified that promotees will be treated as regular only to the extent to which direct recruitment vacancies are reported to the recruiting authorities on the basis of the quotas prescribed in the relevant recruitment rules. Excess promotees, if any, exceeding

the share falling to the promotion quota based on the corresponding figure, notified for direct recruitment would be treated only as ad-hoc promotees.

6. The General Principles of seniority issued on 22nd December, 1959 referred to above, may be deemed to have been modified to that extent.

7. These orders shall take effect from 1st March 1986. Seniority already determined in accordance with the existing principles on the date of issue of these orders will not be reopened. In respect of vacancies for which recruitment action has already been taken, on the date of issue of these orders either by way of direct recruitment or promotion, seniority will continue to be determined in accordance with the principle in force prior to the issue of this O.M.

8. Ministry of Finance etc. are requested to bring these instructions to the notice of all the Attached/Subordinate Offices under them to whom the General Principles of Seniority contained in O.M. dated 22.12.1959 are applicable within 2 week as these orders will be effective from the next month.”

13. The OM of 1959 provided for rotation of vacancies between the DRs and promotees in the ratio of the quotas reserved for them. It also provided for maintenance of roster which meant that the slots allotted to a prescribed source of recruitment which remained vacant would be filled up only from the source for which the vacancies were reserved, irrespective of the fact that a candidate from the source in question became available in the next process of examination or selection, or even thereafter. This procedure started creating anomalies where the selection for filling one quota was delayed or sufficient number of candidates was not available to fill up the quota. This resulted in undue advantage being extended to those candidates who got

appointment at a later date but, being against the quota reserved for that source of recruitment, got seniority from the year when those vacancies arose. The matter was considered in OM dated 07.02.1986, which modified the principle laid down in the DOP&T OM of 1959 to the extent that the provision for retrospective seniority to the candidates appointed through the subsequent recruitment process from the year of vacancies was done away while retaining the principle of rotation in respect of the appointments made through the first recruitment process for that year. The OM dated 07.02.1986 provided that rotation of quotas would be adhered only to the extent of available direct recruits and promotees i.e. promotion and direct recruitment vacancies would be filled up only by the persons promoted/selected through the respective process conducted for the recruitment year in which the vacancies had arisen.

14. The illustration given below para 3 of the OM refers to a case where vacancies are to be filled in 1:1 ratio by DR and promotion. Against 10 vacancies in 1986, 5 promotion and 3 DR vacancies could be filled up. Two DR vacancies of 1986 could be filled along with 5 promotion and 5 DR vacancies that arose in 1987. In such a situation the seniority position for the year 1986 would be determined by rotating three promotees with three DRs and the remaining two promotees would be placed at position No.7&8 (supra). The two unfilled DR vacancies if get filled up during the next year, there would be 5 promotees and 7 DRs. The seniority will be fixed by rotating the position between 5 promotees and 5 DRs and the remaining two DRs will be placed below the position of the 5th DR. It may be seen that for the year 1986 the illustration does not envisage promotees to be “bunched together in the seniority list till” DRs become available, the principle the official respondents have followed in the seniority list dated 16.06.2006. It also does not envisage two of the DRs of 1987, who were appointed against the unfilled two vacancies of 1986 to be given the seniority of 1986 or through rotation with the appointees of that year, as is the claim of applicants.

15. The above two OMs determine the basic principle of seniority between the candidates appointed through two sources. The OM of 1986 has partially modified the principle laid down in the OM

of 1959 and, therefore, the plea advanced by the learned counsel for applicant that the applicants would be governed by the 1959 OM and not by 1986 OM is not tenable. The argument that the OM of 1986 is applicable for determining the inter se seniority between DR and promotees only, is also without basis as the applicants have admitted the principle of rotation in terms of the OM of 1959. It would be an absurd proposition that subsequent changes to that principle would not apply to them. After 07.02.1986, the OM of 1959 exists only in the form as modified by the OM of 1986. In **Nafisur Rehman** (supra) also a coordinate Bench of this Tribunal has taken a view that the inter se seniority between LDCE appointees and the promotees will be governed by the DOPT OM dated 07.02.1986. The learned counsel for the applicant has sought application of the law laid down in N R Parmar's case that the process of recruitment would deemed to have been initiated for one source of recruitment when such process for the other source of recruitment was initiated, which is based on the interpretation of the DOPT OM of 1986. The applicants can not in the same breath argue that the DOPT OM of 07.02.1986 or 03.07.1986 would be applicable to them in parts.

16. Further, in **D.P. Jindal** (supra), the Hon'ble Delhi High Court had considered this issue in the context of promotion of JEs in CPWD to the cadre of AEs and recorded its findings that-
(a) the LDCE is a competitive examination and not promotion and; (b) that the object of LDCE procedure is to ensure that only those who are eligible to compete against the specified vacancies for a given year would be entitled to lay claim to be appointed to said post. It can be concluded that being a competitive examination, the LDCE appointees will be treated as DR for the application of the OM of 1986. That answers the first question.

17. The Hon'ble High Court had further directed the respondents that while framing the appropriate norms or guidelines and proceeding to finalise seniority list, care must be taken to balance both aspects i.e. "relative merits of the candidates who clear such collective examination as well the conduct of the rules vis-à-vis eligibility". The relevant para is reproduced below :-

"4. Having heard learned counsel for the parties, this Court is of the opinion that the findings of the CAT in this regard are clearly erroneous. The LDCE is in fact a competitive examination. Ordinarily, such of the vacancies which fall within the 50% LDCE quota are notified and a large number of eligible candidates are permitted to compete. However, only those who are best merited - in strict order of merit - are deemed to be selected and are eventually appointed. This beats the CAT's finding that the LDCE is not a competitive examination but a qualifying examination. The findings to the contrary by the CAT are accordingly set-aside.

5. Some of the petitioners articulated the grievance that the CPWD in this case has resorted to a collective examination, i.e. by bunching- up of vacancies in the quota of LDCE for a number of years and holding a common examination. It was submitted that this has resulted W.P.(C) 8154/2013, W.P.(C) 331/2014 & W.P.(C) 2284/2014 Page 3 in certain anomalies whereby candidates might secure relatively higher merit, while, at the same time, may not have been eligible to be appointed at the particular point of time when the vacancy arose for a particular year; this fact has been ignored. Learned counsel for the other group contended that the notification clearly mentioned that selections would be made on the merit.

6. This Court, after having considered the submissions, is of the opinion that the object of the LDCE procedure is to ensure that only

those who are eligible to compete against specified vacancies for a given year, would be entitled to lay claim to be appointed to such posts. Whilst the CPWD's action in bunching the vacancies and holding a collective examination may not be *per se* irregular, it has obviously resulted in complications where the candidates with greater merit would, if appropriate clarifications are not made by the department, be capping more senior positions than others who were eligible at that point of time. *This Court is, therefore, of the opinion that whilst framing appropriate norms or guidelines and proceeding to finalize the seniority list, care must be taken to balance both the aspects, i.e. relative merits of the candidates who clear such collective examination as well as the dictate of the rules vis-a-vis eligibility.*" (Emphasis supplied)

18. It is apparent that the Hon'ble High Court expressed its view in the context of relative seniority of candidates who appeared in such a collective LDCE. There was no direction to interpolate the inter-se-seniority of LDCE appointees with the seniority based promotees of corresponding year by resorting to rota quota.

19. In WP (C) No.1188-90/2005 ***Union of India Vs. Vijender Singh and Ors***, the Hon'ble High Court noted the order passed by this Tribunal in OA No.2239/1998 and OA No.2526/1998 dated 15.02.1999 wherein this Tribunal while rejecting the OA had observed as follows :-

"In the light of the detailed discussions aforesaid and in the interest of justice and fair play, we do not think it appropriate to apply broken on the wheels of the proposed selection process. For this reason, the OAs deserves to be dismissed and we do so accordingly. However, to take care of some of the reasonable apprehensions to the applicants, it would be appropriate that while conducting the present selection and finalizing the process thereof, respondents shall take precautions in terms of the following :

(i) Segregate both vacancies and eligibility year-wise. This is to ensure that an employee after having qualified in the examination does not get the benefit of seniority against the year when he was not even eligible for the same :

(ii) Existing rules for filling up the posts meant for reserved category candidates shall be adhered to as prescribed by the DoPT in its OM dated 2.7.97, while communicating vacancies of 391 JEs, respondents have only indicated that the percentage of reservation for SC/ST will be indicated only later on. Since reservation in promotion in such cases are to be ensured as per law laid down, respondents shall strictly follow instructions for maintaining the roster and running account register to look after the interests of backward classes.

(iii) Vacancies of 391 shall be recalculated to ensure that 1:1 ratio between the two groups for the years from 1993 to 1999 have not been titled to unduly favour one of the two contending groups.

(iv) We are also inclined to agree with the respondents' submission that "present practice or keeping vacant slots for being filled up by direct recruitment of later years thereby giving them unintended seniority over promotes who are already in position could be dispensed with. The above precautions shall be taken before finalizing the present selection process or hand."

20. The above direction of the Tribunal was implemented by the respondents in that case, however, the applicants were not satisfied with the seniority alone to be determined in the ratio of 1:1 with the promotees, but they also wanted pay scale of Assistant Engineer with retrospective date and their qualified service as an Assistant Engineer to be reckoned retrospectively for purposes of their eligibility for promotion to the next higher post. This relief was denied by the Hon'ble High Court, after relying on the decision of the Hon'ble Apex Court in ***Union of India & Ors. Vs. K.K. Vadera & Ors.*** 1989 Suppl (2) SCC 655. This judgment therefore is not of any help to the applicants.

21. With regard to the second issue, the manner in which the vacancies existing at the time of notification of RRs of 1992 are to be treated, it is an admitted fact that after 1982, the respondents had not filled up the DR vacancies. Such un-filled vacancies as on 26.12.1992 would automatically be covered by the amended RRs as to fill these under old RRs would mean direct recruitment when the same has been done away with in the new RR. That will create an anomalous situation. However, it has been argued by the official respondents that applicants can have no claim over such vacancies. While we agree with this proposition, we also hold that those vacancies could not be filled up by promotion either in the year 1993 in view of the express provision inserted in the RRs, 1976 through the amendment dated 01.04.1980 (Annexure A-30), which reads as follows:

“The common seniority list of the directly recruited Assistant Engineers (Civil) and the promoted Assistant Engineer (Civil) shall be drawn according to the rotation of vacancies reserved for them. In case the required number of suitable eligible officers is not available from a particular category for filling in the vacancies allocated to be filled by promotion or appointment from that category, the appointing authority

may fill in all or any of the vacancies by suitable eligible officers from the other category subject to the condition that the overall proportion of vacancies to be filled from among the officers of either category will eventually be maintained in accordance with quotas prescribed.”

22. The RRs authorise the appointing authority to fill up shortfall in one category by appointing suitable candidates from other category but subject to the condition that overall proportion will be maintained between the two categories. It is implicit in the words used i.e. to fill up shortfall, that the process to fill the vacancies of both the categories had been gone through still the vacancies could not be filled up in desired numbers leading to a shortfall. It does not visualise the vacancies for which the process was not even initiated, to be treated as a shortfall. Admittedly no recruitment was held to fill DR vacancies after 1982 till the time of amendment of RRs in 1992. The question of any shortfall from the DR category which was made up by promotion in 1993, as the official respondents would like us believe, would not arise. The official respondents were legally bound to ‘eventually’ maintain the overall proportion “in accordance with quotas prescribed.” Thus utilisation of DR vacancies for regularising ad-hoc promotions by order dated 17.11.1993 further aggravating the proportion between DR and promotion quotas is not permitted under any of the two RRs irrespective of the fact whether the applicants have any claim over it or not.

23. In **Suraj Parkash Gupta And Others vs State Of J & K And Others** Case No. Appeal (civil) 3034 of 2000 the Hon'ble Supreme Court was dealing with the issue of regularisation of ad hoc Assistant Engineers and Assistant Executive Engineers. The High Court had held that ad hoc/stop-gap service of promotees could not be regularised. A contention was also raised by the direct recruits that stop gap or ad hoc service of promotees could never be regularised and only service rendered in a post where a person if appointed "according to rules" can be regularised and that there was rota coupled with quota. Two of the issues considered by the Apex Court in that judgment, relevant to the present OA, were:

“(3)....Whether Government could have regularised the ad hoc service by executive order dated 2.1.98? Whether, the point raised in para DC of written submissions by the direct recruits that retrospective regularisation cannot be made in respect of the ad hoc stop gap service and could be made only if the initial appointment as Assistant Engineers or Assistant Executive Engineers was "in accordance with rules", is correct?

(4) Whether the direct recruits could claim a retrospective date of recruitment from the date on which the post in direct recruitment was available, even though the direct recruit was not appointed by that date and was appointed long thereafter?”

24. After considering the pleadings and extensive list of case laws the Hon'ble Supreme Court summarized its finding as follows:

“Summary :

Summarising the position, we therefore hold that the ad hoc/slop gap service of the promotees cannot be treated as non-est merely because P.S.C. was not consulted in respect of continuance of the ad hoc/stop gap service beyond six months. Such service is capable of being regularised under Rule 23 of the J&K (CCA) Rules, 1956 and rectified with retrospective effect from the date of occurrence of a clear vacancy in the promotion quota, subject to eligibility, fitness and other relevant factors. There is no 'rota' rule applicable. The 'quota' rule has not broken down. Excess promotees occupying direct recruitment posts have to be pushed down and adjusted in later vacancies within their quota, after due regularisation. *Such service outside promotee quota cannot count for seniority.* Service of promotees which is regularised with retrospective effect from date of vacancies within quota counts for seniority. *However, any part of such ad hoc/stop gap or even regular service rendered*

while occupying the direct recruitment quota cannot be counted. Seniority of promotees or transferees is to be fixed as per quota and from date of commencement of probation/regular appointment as stated above. Seniority of direct recruit is from the date of substantive appointment. Seniority has to be worked out between direct recruits or promotees for each year. We decide point 3 accordingly.

Point 4 : direct recruits cannot claim appointment from date of vacancy in quota before their selection :

We have next to refer to one other contention raised by the respondents- direct recruits. They claimed that the direct recruitment appointment can be antedated from the date of occurrence of a vacancy in the direct recruitment quota, even if on that date the said person was not directly recruited. It was submitted that if the promotees occupied the quota belonging to direct recruits they had to be pushed down, whenever direct recruitment was made. Once they were so pushed down, even if the direct recruit came later, he should be put in the direct recruit slot from the date on which such a slot was available under direct recruitment quota. This contention, in our view, cannot be accepted. The reason as to why this argument is wrong is that *in Service Jurisprudence, a direct recruit can claim seniority only from the date of his regular appointment. He cannot claim seniority from a date when he was not born in the service.* This principle is well settled. In N.K. Chauhan v. State of Gujarat, [1977] 1 SCC 308 (at p.321) Krishna Iyer, J. stated :

"later direct recruit cannot claim deemed dates of appointment for seniority with effect from the time when direct recruitment vacancy arose. Seniority will depend upon length of service."

Again, in A. Janardhana v. Union of India, [1983] 2 SCR 936, it was held that a later direct recruit cannot claim seniority from a date before his birth in the service or when he was in school or college. Similarly it was pointed out in A.N.

Pathak v. Secretary to the Government, [1987] Suppl. SCC 763 (at p.767) that slots cannot be kept reserved for the direct recruits for retrospective appointments.

What we have stated in points 1 to 4 in respect of ad hoc Assistant Engineers applies to ad hoc Assistant Executive Engineers, to the extent of the principles laid down, are applicable. We say this in view of point 2 that was framed by the High Court covering both the cadres. We hold on Points 1 to 4 as stated above.” (emphasis supplied)

25. The official respondents have not referred to any rule or provision in the RRs or relaxation by the competent authority under which the ad hoc promotees of pre-1992 period could have been regularised or fresh promotions could have been given beyond their quota. The official respondents’ exercise of power therefore was de hors the rules. Therefore any part of such ad hoc or even regular service rendered while occupying the direct recruitment quota cannot be counted for seniority.

26. We do not find any merit in the argument of the learned counsel for the official respondents that the Calcutta Bench, in its order dated 14.06.1994 while upholding the decision of the respondents to postpone the LDCE, did not ask to bring down the seniority of promoted officers. In that case the respondents had submitted that they had moved for a relaxation to carry out promotions beyond the prescribed quota which had not been received. The Tribunal noted the submission of the respondents and while deciding not to interfere with the decision of the respondents to postpone the LDCE for one year, directed that no further postponement would be done and that “the promotional quota can be filled up only by 50% vacancies arising since the promulgation of the new recruitment rules.” The official respondents cannot claim any sanction of the Tribunal for filling up the unfilled DR vacancies of pre-1992 period by promotion and bunch them above LDCE appointees in the seniority list.

27. The next question is how the seniority based promotions against the vacancies arisen after 1992 are to be treated. The

documents placed on record confirm that vacancies did arise after 1992 (actual numbers are not relevant) and such vacancies were required to be filled up 50% by promotion and 50% by LDCE. The respondents notified LDCE in 1993 but postponed the same with the explicit motive of giving promotions to the officers of feeder grade in order to relieve stagnation in the cadre. It has not been brought out in clear terms as to why it was necessary to postpone LDCE if the promotion was confined to the 50% quota. Ostensibly it was to give benefit of seniority to such promotees by delaying the LDCE. It is precisely this tendency that was sought to be checked by para 5 of the DOPT OM dated 07.02.1986. It envisaged that “promotees will be treated as regular only to the extent to which direct recruitment vacancies are reported to the recruiting authorities on the basis of the quotas prescribed in the relevant recruitment rules.” In this case the authorities did not allocate vacancies to LDCE at all in 1992, 1993 and 1994 but granted promotions on seniority basis. Since no LDCE vacancy was notified all promotees in these years would be treated only as ad-hoc. Therefore seniority based promotion post-1992 till 1994-95 also cannot be treated as ‘regular’ in view of the instruction contained in para 5 of the DOPT OM dated 07.02.1986.

28. The next question to be dealt with is whether the applicants are entitled to seniority from the year of the vacancy.

29. Referring to the Hon’ble Supreme Court judgment in **State of Uttarakhand Vs. Dinesh Kumar Sharma** (supra) and DOP&T OM dated 03.03.2008, the respondents have taken a stand that the applicants cannot be rotated with the seniority based promotees of 1993, or subsequent years prior to 1996, as the year of their availability was 1996. The learned counsel for the applicants on the other hand has argued that the DOP&T OM of 03.03.2008 was declared *non-est* by the Hon’ble Supreme Court in **N.R. Parmar** (supra) and, therefore, the action of the respondents in pursuance of the aforesaid OM would also become *non-est*. In other words, the applicants should be treated to have become available in the year of LDCE vacancy i.e. 1992 to 1995.

30. While discussing the issue of ‘year of availability’, it is noted that in **N.R. Parmar** (supra), the Hon’ble Supreme Court

interpreted the instructions contained in the DOP&T OM of 1986 and annulled the interpretation contained in the DOP&T OM dated 03.03.2008 on the year of availability. In that case, the Hon'ble Supreme Court was dealing with the appointment to the cadre of Inspector of Income Tax Department which was made by way of promotion as also by direct recruitment in the ratio of 2:1 respectively. The vacancies for the year 1993 and 1994, which were identified to be filled up by way of promotion, were referred to the DPC and those identified for direct recruitment were referred to Staff Selection Commission (SSC) on the basis of recommendations of DPC. Promotions took place from 30.08.1993 to 08.09.1995 for the vacancies identified for the year 1993-1994. The SSC declared the result of the examination on 28.01.1995 and the persons appointed as Income Tax Inspectors joined between March and May 1995. In the interregnum, some promotee Income Tax Inspectors were appointed to the next higher post of Income Tax Officer. In the litigation that followed in the Tribunal and culminated in the judgment of Hon'ble Supreme Court, the controversy was with regard to the manner in which the seniority of direct recruits would be determined vis-a-vis the promotees. The Hon'ble Supreme Court after a detailed analysis of the rules and instructions notified by the Government came to a conclusion that direct recruits will have to be interspersed with the promotees of the same recruitment year.

31. The purpose of giving an overview of the factual background of **Parmar's** case here is to illustrate that the controversy in that case related to the fixation of inter-se-seniority between direct recruits and promotees of the 'same recruitment year', though direct recruits were appointed over a prolonged segment of time. The application of Parmar judgment would mean that the seniority of the appointees of LDCE 1995 would be counted from 1995-96 when LDCE vacancies were notified, and would have to be rotated with the promotees of the years 1992-93 to 1994-95 (who would be deemed regular, as discussed earlier, only from 1995-96 for inter se seniority purpose) and 1995-96.

32. The learned counsel for the applicants has argued that once the process of promotion was initiated for filling up the seniority based promotion vacancies in any of the years from 1993 to 1995,

following the judgment in ***Parmar***, the process of LDCE would deem to have been initiated in the respective year, and the applicants, who are identified against the vacancies of that year after splitting the panel of LDCE-1995 year-wise, will be interspersed with the promotees of that year. The respondents have countered by again relying on the DOP&T OM of 1986, stating that since officers through LDCE 1995 were appointed in 1996, "LDCE quota officers were available for rotation with promotee officers (only in 1996), which has been done in the seniority list as per their quota." In the instant case, since there was bunching of LDCE vacancies for the years 1992 to 1995 for the LDCE-1995 the principle laid down in ***Parmar's*** case cannot be applied beyond the recruitment year 1995. In other words, the LDCE process cannot be deemed initiated in the years of filling up promotion quota vacancies say, in 1993 or 1994. Further, the Final Seniority list dated 16.06.2006 shows that the LDCE appointees were placed from sl. No. 506 to 570 below the seniority based promotees upto 31.08.1994. There is no rotation of LDCE appointees with any promotees.

33. The judgement in ***Suraj Prakash Gupta*** (supra) makes it abundantly clear that the direct recruits (in our case LDCE appointees) cannot claim seniority from a date even before his birth in the service. This principle is squarely applicable to the situation in this case and the applicants cannot get seniority from the years of LDCE vacancy against which their appointments were made. The splitting of vacancies to prepare year-wise merit lists, taking into account eligibility, has relevance only to the extent of determining their *inter se* seniority within the category. This also answers the last question as to how is the seniority of LDCE appointees to be decided within the category when the selection is held collectively for the vacancies of more than one year which is the additional issue raised in the OA 1586/2011.

34. From the foregoing analysis, it can be concluded that the seniority based promotions or regularisations of officers from the feeder cadre after the promulgation of RRs of 1992 and before the LDCE 1995 were contrary to the recruitment rules, the DOP&T

OM of 1986 and the order of the Calcutta Bench 14.06.1994, and therefore cannot be counted for seniority. Their seniority will count only from 1995-96 when RRs were fully complied with the initiation of the process of LDCE as well. The availability of the applicants for the purpose of seniority will also be counted from 1995-96 when the process was initiated in terms of the judgment in **Parmar**. The seniority of LDCE appointees will be determined by preparing vacancy year-wise merit list taking into account the eligibility of the candidates. The inter se seniority between LDCE officers and promotee officers will be determined by applying rota quota principle between the merit list of LDCE 1995 prepared in the aforesaid manner and the seniority list of those promoted after the promulgation of the new RRs till 1995-96 to the extent 'rotation' is feasible taking into account the availability of officers in both categories, and the remaining officers will be placed below the last rotated officer in the seniority list.

35. In the light of aforementioned discussion and for the reasons stated above the impugned orders are quashed and the respondents are directed to prepare a fresh seniority list in the manner indicated in the previous paragraph and notify the draft list within a period of three months. After giving time for filing objections and settling the same the final seniority list may be notified within three months thereafter.

36. The OA 1586/2011 is also disposed of in terms of the above order.

37. The applicants will be entitled to the consequential benefits except back-wages.

No costs.

(V.N.Gaur)
Member (A)
27th February, 2017
'rk'

(Justice Permod Kohli)
Chairman