

Central Administrative Tribunal
Principal Bench: New Delhi

OA No.4294/2012
MA No.3590/2012

Reserved on: 16.02.2017
Pronounced on: 23.02.2017

Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Mr. P.K. Basu, Member (A)

1. Laxmi Prasad,
S/o Shri Nathi Lal Shastri,
Hindi Translator,
Office of the Executive Director, MTNL,
Khurshid Lal Bhawan,
Janpath, New Delhi.
 2. Sujata Sandhu, Hindi Translator,
Office of GM (East)/MTNL,
Door Sanchar Bhawan,
J.L. Nehru Marg (Minto Road,
New Delhi-110 002.
 3. Uma Pandey, Hindi Translator,
Office of GM(BCP)/MTNL,
8, Bhikaji Cama Place,
New Delhi-110 066.
 4. Gopal, Hindi Translator,
Office of GM(West)/MTNL,
Rajourie Garden,
Mayapuri, New Delhi.
 5. Subhash Chander Singh, Hindi Translator,
Office of GM (Central)/MTNL,
Mahanagar Door Sanchar Sadan,
Lodhi Road, CGO Complex,
New Delhi.
 6. Kamal, Hindi Translator,
Office of Executive Director,
K.L. Bhawan, Janpath,
New Delhi.
- ...Applicants

(By Advocate : Shri M.S. Ramalingam)

Versus

1. The Chairman-cum-Managing Director,
M.T.N.L., Doordarshan Sadan,
9, CGO Complex,
New Delhi – 110 003.
2. The Executive Director,
M.T.N.L., Khurshid Lal Bhawan,
Janpath, New Delhi.
3. Smt. Lalita Sharma,
Hindi Officer, O/o GM (SS),
MTNL, Kidwai Bhawan, Janpath,
New Delhi.
4. Smt. Neelam Mahajan,
Hindi Officer,
O/o General Manager (BB),
MTNL 4th Floor, Kidwai Bhawan,
New Delhi.
5. Smt. Janak Rani,
Hindi Officer,
Office of General Manager (Planning),
MTNL Eastern Court, New Delhi.
6. Smt. Vijaya Lata,
Hindi Officer,
O/o C.M.D., MTNL,
Door Sanchar Bhawan,
9, CGO Complex,
New Delhi – 110 003. ...Respondents

(By Advocates: Sh. Vaibhav Kalra with Ms. Neha Bhatnagar
for R-1 & R-2.
Sh. Ramesh Rawat for R-6, R-8 and R-9).

O R D E R

By Hon'ble Mr. P.K. Basu, Member (A):

The applicants are Hindi Translators in Mahanagar Telephone Nigam Limited [hereinafter referred to as MTNL], who were appointed on direct recruitment on the following dates:-

Sl.No.	Name of applicant	Date of appointment
1	Laxmi Prasad	17.11.1995
2	Sujata Sandhu	17.09.1996
3	Uma Pandey	07.10.1996
4	Gopal	07.10.1996
5	Subhash Chander Singh	31.12.1997
6	Kamal	17.09.1996

2. MTNL was created on 01.04.1986. Those who were working in DoT as on that date were put on deputation to MTNL. Since the MTNL did not have any rules, it adopted the recruitment rules of 11.01.1983 according to which Hindi Translators Grade-II were to be recruited 50% by direct recruitment and 50% by promotion failing which by transfer on deputation and failing both by direct recruitment. For transfer on deputation, the provision was as follows:-

“From amongst persons holding analogous posts or posts in the pay scale of Rs.330-560 or equivalent with 5 yrs. regular service in the grade in the circle or field offices of P&T Deptt. Candidates for appointment on deputation should possess the qualifications as prescribed for direct recruits.”

This was revised later by notification issued in October, 1996 in which the following was provided as method of recruitment for Hindi Translators Grade-II with conditions for transfer on deputation:-

“Method of recruitment:

50% by direct recruitment and 50% by promotion failing which by transfer on deputation and failing both by direct recruitment.

Condition for transfer on deputation:

“From amongst persons holding analogous posts on regular basis or posts in the pay scale of Rs.1200-2040 or equivalent with 5 yrs. regular service in the grade in the circle or field offices of the Department of Telecommunications. Candidates for appointment on deputation should possess the qualifications as prescribed for direct recruits.

Note: The period of deputation should not ordinarily exceed three years.”

3. The private respondents (R-3, R-5 and R-7) have been deleted, therefore, their case is not being considered. The other private respondents, namely, Lalitha Sharma, R-4 [appointed on 10.11.1993]; Smt. Neelam Mahajan, R-6 [appointed on 26.11.1993]; Smt. Janak Rani, R-8 [appointed on 18.11.1993] and Smt. Vijay Lata, R-9 [appointed on 09.08.1995] were on deputation as Hindi Translators Grade-II well before the applicants had joined.

4. On 10.12.1995, the DoT issued a letter to all officers stating therein that Recruitment Rules [hereinafter referred to as RRs] of Hindi Translators of different grades are under amendment and it will take some time for them to be issued. However, since it would not be in the interest of execution of the Official Language Policy to leave such posts vacant and these posts may be filled up from persons who have the relevant educational qualification relaxing age and other eligibility criteria. It was instructed that Circle Chairman, while making such appointments, will keep in mind that the experience, long service period, seniority in

the grade etc. which will be given priority and these ad hoc arrangements would continue till RRs are finalized.

5. In the year 1998, MTNL made an offer to those on deputation to give their options in case they wish to get absorbed in MTNL in Grade-C posts. Private respondents gave their options and they were regularized w.e.f. 01.11.1998 in relaxation of recruitment rules with notional seniority from the date of joining as Hindi Translators Grade-II. The relevant order of MTNL is dated 26.07.2000/ 01.08.2000 wherein the names of R-4, R-6, R-8 and R-9 have been mentioned along with date of joining which has already been mentioned.

6. The respondents also issued Hindi Translators Gradation List dated 20.03.2000 in which the private respondents have been shown as senior to the applicants. The applicants have challenged this Gradation List dated 20.03.2000 apart from the order dated 26.07.2000/ 01.08.2000 by which the private respondents have been regularized as Hindi Translators Grade-II with notional seniority from the date of their joining as Hindi Translators Grade-II which results in private respondents being senior to the applicants.

7. The applicants had earlier filed TA No.259/2009 before this Tribunal, which came to be disposed of vide

order dated 21.12.2011 with a direction to the respondents to pass a reasoned and speaking order. The respondents passed order dated 17.01.2012 rejecting the case of the applicants by holding as follows:-

“There are two types of Hindi Translators in the department. The first one were outsiders who were appointed through Direct Examination in the year 1995 and the others were the departmental officials appointed after qualifying the departmental exam. The departmental officials were taken on deputation as Hindi Translators Grade-II as per orders of DoT vide letter No.F.11012/1/94-OL (Part)/STN dated 10.02.1995 in which it was ordered that all the vacant posts of Hindi Translators may be filled from departmental candidates. Though the departmental officials were appointed on tenure basis but later their appointment were converted from deputation to ad hoc basis as per DoT orders to ensure that no pots in Hindi Translator Cadre should remain vacant. These officials were regularized w.e.f. 01.11.1998 with notional seniority from the date of their joining as Hindi Translator Grade-II with the approval of the then CMD.”

8. The grounds for challenging the action of the respondents by the applicants are as follows:-

- (i) The order dated 17.01.2012 passed by the respondents does not address any of the issues raised by the applicants in their representation and even does not mention their submissions;
- (ii) The order dated 10.02.1995 quoted by the respondents in the speaking order has no relevance to the issue in hand and has nothing to do with retrospective regularization of services of the private respondents;

- (iii) The appointment of private respondents as Hindi Translators Grade-II was de hors the rules and, therefore, does not count for seniority. It is stated that the RRs of 1983 which were applicable at the time of appointment of private respondents states “50% by promotion failing which by transfer on deputation” but the respondents without exhausting the promotion channel has straightaway gone for ‘transfer on deputation’. Secondly, order dated 26.07.2000/01.08.2000 mentions regularization of ad hoc appointment of the private respondents. It is argued that there was no provision for ad hoc appointment in the RRs and, therefore, it is *ab initio* illegal. Thirdly, it is argued that the order quoted above, though it states ‘regularized’ is actually an order of ‘absorption’ and there is no provision in the RRs for appointment through absorption.
- (iv) The ad hoc appointments of the private respondents made during 1993 are glaringly in violation of DoP&T OM dated 27.08.1996 which stipulates that in no case ad hoc appointments should continue beyond period of one year with the approval of the Department of Personnel & Training.

- (v) Even if the induction of the private respondents be deemed as transfer on deputation basis, it has to be in terms of DOP&T OM dated 05.01.1994 wherein it is clearly and unambiguously laid down that the deputation shall be subject to maximum of three years unless longer term is prescribed in the RRs.
- (vi) The DOP&T OM dated 30.03.1988 lays down that Ministry/Departments may not make any appointment on ad hoc basis including by way of appointment by direct recruitment, promotion, transfer on deputation etc. and, therefore, the ad hoc appointment of the private respondents is totally violative of the same.
- (vii) The DOP&T OM dated 07.03.1984 requires that those to be brought on deputation have to be holding analogous posts whereas the private respondents did not hold the analogous post.
- (viii) The Hon'ble Apex Court has laid down in catena of decisions that such ad hoc appointees, inducted from back door, acquire no right to regularization nor they have any right to seniority over the regular appointees, who are appointed in terms of the RRs.

9. The applicants, in support of their claim, have relied on the decision of Hon'ble Supreme Court in *Union of India*

vs. Dharam Pal & Ors. [2009 (4) SCC 170], relevant para whereof reads as under:-

“24. It is now a well settled principle of law and in respect whereof there is absolutely no quarrel that in view of the decision of this Court in Direct Recruit Class-II Engineering Officers' Association & ors. vs. State of Maharashtra & ors. [(1990) 2 SCC 715] an employee appointed to a post according to rule would be entitled to get his seniority reckoned from the date of his appointment and not from the date of his confirmation.”

The applicants also relied on the decision of Apex Court in *Bhupendra Nath Hazarika & Anr. Vs. State of Assam & Ors.* [2013 (2) SCC 516] wherein it has been held as under:-

“34. We have referred to the facts in detail and what this Court had ultimately held only for the purpose that where recruitment of service is regulated by the statutory rules, the recruitment must be made in accordance with those rules and if any appointment is made in breach of the rules, the same would be illegal and the persons so appointed have to be put in a different class and they cannot claim seniority.”

In another decision relied on by the applicants i.e. *Central Council for Research in Homeopathy vs. Bipin Chandra Lakhera & Ors.* [Civil Appeal No. 3286 of 2007 decided by Hon'ble Supreme Court on 20th April, 2011], their Lordships held as under:-

“The short question in this Appeal is whether ad hoc service of respondent no.1 from 1984 before his regularization with effect from 05.01.1996 can be added for the purpose of seniority. We are of the opinion that it cannot.”

10. Learned counsel for the applicants also relied on Service Regulations for Staff of the Central Electricity Regulatory Commission wherein it has been provided that *“the staff appointed on deputation on foreign service terms*

and willing to get permanently absorbed in the Commission, may on completion of two years of deputation on foreign service terms exercise their option for permanent absorption in the Commission and the appointing authority may in its discretion, take such decision, as it considers appropriate”.

11. Learned counsel for the respondents contends that at the time of creation of MTNL on 01.04.1986, employees like the private respondents were sent on deputation. However, later on, opportunity was given to those on deputation to give an option to be absorbed in MTNL. The private respondents opted to be absorbed in MTNL and, therefore, they were absorbed w.e.f. 01.11.1998, though the MTNL was created on 01.04.1986.

12. The MTNL issued order dated 05.10.1993 (Annexure R-4) which states the following:-

“Sub: Recruitment of Hindi Translator Gr.II-1992 (Deptt.) based on merit in written Test and CRs:

The following candidates have been selected provisionally for appointment to the cadre of Hindi Translators Gd.II. The appointment however will be made after completion of all requisite formalities like verification of all original certificates and other administrative checks. This post is totally on tenure basis and its duration will be 3 (three) years. If anybody is found unsuitable or unable to produce any of the required documents/certificates, his/her name will be removed from the select list:-

Sl. No.	Name of the official and staff No.	Unit where working
1	Smt. Lalita Kumari Sharma, TO-5740	GM (Comp) & Trg., Ch.Lok, ND
2	Smt. Madhu Vashistha, TO-4934 (R-3)	Hindi Officer, SS, J/Path Hotel, ND
3	Smt. Usha Bhatnagar, TO-702	AE(A) ALTTC, GBD

4	Smt. Madhu Behl, TO-5896	Hindi Officer, 177, Hindi Spl. Service, KBN, ND
5	Smt. Neelam Mahajan, TO-6009 (R-4)	AE(A) Spl. Service, KBN, ND
6	Smt. Rajni Tandon, CL-3397	PRO (Coml), K.L. Bhawan, ND
7	Miss Janak Rani, CL-3545 (R-5)	AO (Circuit) K.L. Bhawan, ND

13. On the basis of this, it is stated that those who had been selected were selected on merit in written test and CRs and not randomly. Thereafter, in 1998, an opportunity was given to deputationists and accordingly the private respondents exercised their option for absorption. The Recruitment Rules, 1983 clearly provides in para 6 that “Where the Central Government is of the opinion that it is necessary or expedient so to do, it may, by order, for reasons to be recorded in writing, relax any of the provisions of these rules with respect to any class or category or persons” and order dated 26.07.2000/01.08.2000 has been issued in relaxation of the RRs. Therefore, clearly in view of the special circumstances of creation of MTNL, staff were first posted on deputation, and to ensure that posts are not lying vacant, option was given to the deputationists to get absorbed in MTNL in relaxation of RRs which the respondents had power to do so as per paragraph quoted above. Admittedly, the private respondents came into service prior to the applicants had joined. For a moment, if we presume that MTNL had not been created then there is

no difficulty in understanding that the private respondents would have been senior to the applicants. Nothing changes by creation of MTNL as the private respondents came into service much before the applicants, who came on direct recruitment in 1995 onwards.

14. Learned counsel for the respondents has relied on the decision in *Direct Recruit Class II Engineering Officers' Association vs. State of Maharashtra & Ors.* [1990 (2) SCC 715], relevant paras whereof read thus:-

"13.... We, therefore, confirm the principle of counting towards seniority the period of continuous officiation following an appointment made in accordance with the rules prescribed for regular substantive appointments in the service.

xxx

xxx

xxx

47. To sum up, we hold that:

xxx

xxx

xxx

(B) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted."

15. The respondents further raised the question of limitation and relied on the decision of Hon'ble High Court of Delhi in *Prakash Singh vs. Union of India & Ors.* [WP(C) No.9580/2015 decided on 03.06.2016] holding as under:-

"23. When we look at the factual matrix of the present case, the promote officers were given seniority way back in the year 2004. The petitioner did not object and protest at that time. The promotes got their first promotion in 2007 and have been working on the promotional post, without any demur and protest. After about 8-9 years, the petitioner has raised objections in 2013 as to his placement in the seniority list of 2004

and also sought promotion from 2007, when others were promoted, whom he now claims were his juniors. He wants antedated and notional or retrospective promotion. It is obvious that the promote officers, who were further promoted in the year 2007 have worked at the promotional or higher grade for almost 6-7 years. If this stale and dead claim is allowed to be raised, it would upset the settled position which had remained unchallenged for a decade. This would cause chaos and resentment. We therefore do not intend to remand the case for a fresh decision permitting the petitioner to file an application seeking condonation of delay. It would be futile exercise.

24. The submission that the Tribunal in its earlier order dated 17th February, 2014 had directed the respondents to dispose of the petitioners representation in consonance with the order of the Supreme Court in N.R. Parmar's case through a reasoned and speaking order, should be read as accepting that the prayer made was within the limitation period, has to be rejected. The submission is contrary to the law. We have already referred to the majority judgment of the Supreme Court in Mafatlal and judgments in Tarsem Singh, Arvind Kumar Shrivastava (supra) and more pertinently M.K. Sarkar (supra) which deals with representations. The petitioners case cannot be on a better footing. Decision of a representation relating to time-barred of seniority, promotion etc., would not constitute a fresh and new cause of action or revive a time barred and stale claim. The order dated 29th April, 2014 rejects the representation on the ground of limitation and delay."

16. We have heard the learned counsels, perused the pleadings as well as the judgments cited by both sides.

17. The case of the applicants in short is that the respondents have appointed the private respondents *de hors* the rules and compounded the irregularity by absorbing them in MTNL and finally granting them notional seniority from the date of their joining as Hindi Translators Grade-II *de hors* the rules again. The respondents have, however, clarified that the facts and circumstances of this case are different as when the MTNL was created on

01.04.1986, the posts had been filled up by taking DoT officials on deputation and in 1998 an option was granted to deputationists to get absorbed in MTNL. The private respondents, who were all appointed much before the applicants, exercised their option and were accordingly absorbed w.e.f. 01.11.1998 which was fixed as the date for absorption of all such employees. Secondly, they could not have been given the seniority w.e.f. 01.11.1998 as that would mean that the applicants, who were appointed by way of direct recruitment by MTNL much after the private respondents had joined would become senior, which would be a travesty of justice. None of the judgments cited by the applicants would apply in the present case as the facts and circumstances are completely different, as in this case a new organization i.e. MTNL was created and Government filled up the posts in relaxation of the RRs for which the respondents had the power under RRs. In fact, the learned counsel for the respondents have also made it clear that the private respondents had to undertake a written test and evaluation of CRs, and only thereafter they were appointed on deputation and worked uninterruptedly till they get absorbed in MTNL. Therefore, the decision of the respondents is squarely covered by the decision in *Direct Recruit Class II Engineering Officers' Association vs. State of Maharashtra & Ors.* (supra). However, decision in *Prakash*

Singh vs. Union of India & Ors. (supra), relied upon by the respondents, does not help them on the issue for delay as finally the respondents disposed of the representation of the applicants through a speaking order dated 20.07.2012 and this OA was filed on 18.12.2012 i.e. within the time prescribed.

18. In a nutshell, as stated earlier, keeping in view the law laid down by the Hon'ble Supreme Court in *Direct Recruit Class II Engineering Officers' Association vs. State of Maharashtra & Ors.* (supra) and the steps taken by the respondents, we do not find any irregularity or illegality in the impugned order. Accordingly, the instant OA stands dismissed leaving the parties to bear their own costs.

(P.K. Basu)
Member (A)

(V. Ajay Kumar)
Member (J)

/AhujA/