

**Central Administrative Tribunal
Principal Bench
New Delhi**

OA No.3150/2018

This the 6th day of September, 2018

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Pradeep Kumar, Member (A)

1. Brahmananda Pati S/o Dhananjay Pati,
R/o BL-4, VSS Nagar,
P.O. Shaheed Nagar, Bhubaneswar,
District Khorada, Odisha, PIN-751007.
Sub Divisional Engineer (Group B).
2. Debendra Chandra Pradhan S/o Golakha Pradhan,
R/o Flat No.003, Arpan Apartment,
N-1, IRC Village, Nayapalli, Bhubaneswar,
Odisha, PIN-751015.
Sub Divisional Engineer (Group B).
3. Abhay Kumar Swain S/o Fagu Charan Swain,
R/o Plot No.5/3322, at Chakeisihani
(Near Mangala Mandir), P.O. Rasulgarh,
Thana Mancheswar, District Khorada,
Bhubaneswar, Odisha, PIN-751010.
Sub Divisional Engineer (Group B).
4. Uday Narayan Das S/o Bidyadhar Das,
R/o Plot No.4695/4996, Adimata Colony,
Bhubaneswar, Odisha, PIN-751017.
Sub Divisional Engineer (Group B).
5. Manasendhu Das S/o Prafulla Kumar Das,
R/o Shri Braja Samal, VIM-42,
Saileshree Vihar, CSPUR,
Bhubaneswar-751021, Odisha.
Sub Divisional Engineer (Group B).
6. Mrs. Jayanti Panda W/o Amulya Kumar Panda,
R/o E/403, Esha Apartment,
Nayapalli Beherasahi,
Bhubaneswar, Odisha-751012.

Sub Divisional Engineer (Group B).

7. V. Ramesh S/o R. Vaidyanathan,
R/o G 1, Akshata Apartments,
13, Hindi Prachar Sabha, St. T. Nagar,
Chennai-600017.
Sub Divisional Engineer (Group B).
8. Kuyate B.P. S/o Kuyate P.G.,
R/o D-1, BSNL Staff Quarters,
Khadki Telephone Exchange Campus,
Khadki, Pune-411003.
Sub Divisional Engineer (Group B).
9. Sharad Kumar Shrivastava S/o B.P. Shrivastava,
R/o Flat No.404, Block B-3,
Pacific Blue Apartment, Near D Mart,
Hoshangabad Road, Bhopal, MP.
Sub Divisional Engineer (Group B).
10. S. S. Rajpoot S/o Phool Singh,
R/o Quarter No. Block D 1/5
BSNL Officers Colony, Near Shivaranjani,
Satellite Road, Ahmedabad (Gujarat)-380015.
Sub Divisional Engineer (Group B).
11. S. Thangavel S/o Sembannan,
R/o Port Blair, A.N. Islanda,
PIN-744101.
Sub Divisional Engineer (Group B).
12. C. K. Bhaskaran S/o C. M. Krishnaswamy,
R/o MIG-372, 3rd Cross St., Mogappair ERI Scheme,
Mogappair, East, Chennai-600037.
Sub Divisional Engineer (Group B).
13. Seshadeb Mishra S/o Pranabandhu Mishra,
R/o Khuntia Lane, Saant Sahi, Buxi Bazar,
Cuttack, Odisha,
Sub Divisional Engineer (Group B).
14. G. V. Bhaskar Rao S/o Anjaneyulu,
R/o Flat No.305, SVS Sunrise Apartments,
Friends Layout, Seegehalli,
Bangaluru-560049.

Sub Divisional Engineer (Group B).

15. L. N. Suryamurthy S/o Late N. Narasimhan,
R/o Plot No.43-B, Bhuvaneswari Street,
Madipakkam, Chennai-600091.
Sub Divisional Engineer (Group B).
16. Miss Geeta Rani Swain D/o late Chakradhan Swain,
R/o Debendrapur, P.O. Takatpur,
City-Baripada, Dist: Mayurbhanj,
Odisha-757003.
Sub Divisional Engineer (Group B).
17. Arun Kumar Pandey S/o S. P. Pandey,
R/o Opp. R-270, Diversion Road,
Civil Lines, Satna (Madhya Pradesh)-485001
Sub Divisional Engineer (Group B).
18. Manoj Kumar Tripathy S/o Late Babaji Prasad Tripathi,
R/o Bolangir Malpara, Near Ramji Mandir,
Bolangir, Odisha, PIN-767001.
Sub Divisional Engineer (Group B).
19. Aftab Ahmed Khan S/o Abdul Latif Khan,
R/o A 2/5, MS Flats, Peshwa Road,
New Delhi-110001.
Sub Divisional Engineer (Group B).
20. Sanjib Kumar Rautray S/o Late Nitya Nand Rautray,
R/o Typr V/1, BSNL Colony,
Dakhinakali Road,
Dhenkanal, Orissa-759001.
Sub Divisional Engineer (Group B).
21. Rajendra Kumar Behera S/o Giridhari Behera,
R/o VI, M 413, Shailashree Vihar,
Bhuvaneshwar, Orissa,
Sub Divisional Engineer (Group B). ... Applicants

(By Mr. Harish Pandey, Advocate)

Versus

1. Union of India through Secretary,
Department of Telecommunications,

Sanchar Bhavan, 20, Ashoka Road,
New Delhi-110001.

2. Bharat Sanchar Nigam Limited
(A Government of India Enterprise)
through its Chairman and Managing Director,
Bharat Sanchar Nigam Limited,
Registered Office: Bharat Sanchar Bhawan,
H.C. Mathur Lane, Janpath, New Delhi-110001.
3. Assistant General Manager (Personnel I),
Bharat Sanchar Nigam Limited,
Corporate Office, Personnel-I
Section, 4th Floor, Bharat Sanchar Bhawan,
H.C. Mathur Lane, Janpath,
New Delhi-110001.
4. Assistant General Manager (DPC),
Bharat Sanchar Nigam Limited,
Corporate Office, Personnel-I
Section, 4th Floor, Bharat Sanchar Bhawan,
H.C. Mathur Lane, Janpath,
New Delhi-110001. ... Respondents

(By Mr. R. V. Sihna, Mr. Subhash Gosain, Advocates)

ORDER

Justice L. Narasimha Reddy, Chairman :

The applicants were appointed as Junior Telecom Officers. Promotion from that is to the post of Sub Divisional Engineer (SDE) in the Telegraph Engineering Service. It is in two methods. Two-third of the vacancies are to be filled by promotion on the basis of seniority of those candidates who cleared the Departmental Qualifying Examination (DQE), and the remaining one-third, by those who qualify in the DQE as

well as in the Limited Departmental Competitive Examination (LDCE). The vacancies occurring in a particular year are taken as a unit for this purpose. If a candidate clears the DQE, it would hold good for appointment to the subsequent years also, if for any reason, he is not appointed in the year for which the examination is held. In contrast, the qualifications or performance of a candidate in the LDCE would enure to the benefit of that particular year only, and if he is not appointed against the one-third vacancies in that particular year, he shall have to repeat the examination for subsequent years.

2. The promotions for the year 1994-95, 1995-96 and 1996-97 were not held for quite some time. It was only about ten years thereafter, that the examinations were held. Serious problems have arisen in the context of assigning the seniority for those who were to be considered against the two streams, for the vacancies of the three years referred to above. Spate of litigation ensued, particularly before the Ernakulam Bench of the Central Administrative Tribunal. Order dated 05.02.2010 passed in OA No.86/2009 was challenged in WP(C) No.5406/2010 before the Kerala High Court. Through its order dated 01.07.2013 The Hon'ble High Court directed certain measures in the context of the preparation of seniority list. That

was challenged in SLP before the Hon'ble Supreme Court, and the Civil Appeals were also dismissed.

3. After the litigation has come to the semblance or rest, the respondents issued the office order dated 06.06.2018, preparing the revised seniority list of 42 eligible Executives promoted against the one-third vacancies of the years 1994-95, 1995-96 and 1996-97. In the said proceedings, it was mentioned that all of them shall take their seniority below one Shri M. Jothappa, Staff No.37267. He is the one who passed the examination held in the year 1991. This OA is filed challenging the order dated 06.06.2018. Direction is also sought to the respondents to follow the measures, that were recommended by the expert committee appointed by the Hon'ble Supreme Court through order dated 14.12.2017.

4. The applicants contend that in its judgment, the Kerala High Court mentioned that the eligibility of the candidates must be determined by taking into account five years' "regular service", though the rules stipulate five years' "service", and a serious irregularity has crept into the impugned order. Other contentions are also urged.

5. Heard Shri Harish Pandey, learned counsel for the applicant, and Shri R. V. Sinha and Shri Subhash Gosain, learned counsel for the respondents.

6. The issue pertaining to the fixation of seniority of the SDEs against the one-third vacancies for the three years, 1994-95, 1995-96 and 1996-97, has been subject matter of a spate of litigation. The perseverance of the applicants is so acute that they did not feel even a semblance of finality, despite the adjudication having taken place up to the stage of the Hon'ble Supreme Court. The Kerala High Court dealt with the matter in detail, and gave specific directions as to the manner in which the seniority must be fixed. It was mentioned that the promotions against the two-third vacancies of a particular year can be only from the year in which the candidates get qualified. Relevant portion reads as under:

“...The promotion to the DQE quota can only be from the year in which a candidate qualified. The promotion on the basis of LDCE can also be only to those 1/3rd available vacancies in the year of the LDCE. The distinction is in so far as the DQE is considered to the 2/3rd quota from the year in which he qualifies vis-à-vis the seniority among the DQE candidates; and on the basis of his qualification is considered in all the subsequent years. While the LDCE is considered only to the vacancies available in that year and the rank obtained by a candidate not entitling him to be considered in any subsequent years...”

In the context of determining the eligibility, it was specifically directed that it would be only on completion of five years of regular service in the feeder category on the 1st January of the year.

7. The judgment of the Kerala High Court was upheld by the Hon'ble Supreme Court in more than one Civil Appeals. Though in CA No.1453/2015, a committee was appointed, which in turn, made certain recommendations, the appeal was ultimately dismissed, and none of the recommendations were accepted. This very issue came up for consideration before us in OA Nos.2598/2017 and 2430/2018. Those OAs were dismissed through order dated 13.07.2018.

8. It is not in dispute that the last LDCE, before the applicants qualified, was held in 1991, more than a decade earlier. Whatever be the claim of the applicants, they cannot become seniors to those who were promoted in 1991. There is absolutely no merit in the objection for being placed below Shri Jothappa, who qualified in 1991.

9. Learned counsel for the applicants is not able to point out as to how the impugned order runs contrary to the judgment of the Kerala High Court. The relief as regards determination of seniority in terms of the recommendations of

the committee cannot be granted, since neither the recommendations were accepted by the Hon'ble Supreme Court, nor any authenticity was added thereto.

10. The OA is accordingly dismissed. There shall be no order as to costs.

(Pradeep Kumar)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

/as/