

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/00998/2015

Thursday, this the 13th day of December, 2018

CORAM:

Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member
Hon'ble Mr. Ashish Kalia, Judicial Member

1. A. Venkitachalam, retired Assistant General Manager (PR), Office of the Chief General Manager, Telecom, Bharat Sanchar Nigam Ltd., Thiruvananthapuram – 695 033, Residing at TC 28/2655, Chettikulangara, Thiruvananthapuram – 695 035.
2. S. Vikraman Nair, Retired Assistant General Manager (NS), Office of the CGMT, Thiruvananthapuram – 695 004, Residing at House No. 35 A, Sreenagar, Paruthippara, Thiruvananthapuram – 695 025.
3. T.N. Peethambaran, Retired Divisional Engineer, Kottayam, BSNL, Residing at Arunapuram House, N.E. Ward, Vaikom, Kottayam- 686 141.
4. Mariamma John, Retired Assistant General Manager, Office of Principal GM, Telecom, BSNL, Kottayam, Residing at Koodarathil, Muttambalam, Kottayam – 686 004.
5. Sunny Philips, Retired Divisional Engineer Vigilance, BSNL, Kottayam, Residing at Bliss, Mutgtambalam, Kottayam-686 004.
6. T.M. Santhamma, Retired Divisional Engineer D, TAX Telephone Exchange, Thirunakkara, Kottayam, Residing at Telecom Quarters, Thazhathangady, Kottayam – 686 005. **Applicants**

(By Advocate : Mr. Vishnu S. Chemapazhanthiyil)

V e r s u s

1. The Chairman-cum-Managing Director, Bharat Sanchar Nigam Ltd., Sanchar Bhavan, New Delhi – 110 001.
2. The Chief General Manager, Telecom, BSNL, Kerala Circle, Thiruvananthapuram – 695 033.
3. Union of India, represented by the Secretary, Department of Telecommunications/Chairman, Telecom Commission, Ministry of

Communications, Sanchar Bhavan, New Delhi-
110 001. **Respondents**

**[By Advocates : Mr. George Kuruvilla (R1&2) &
Mr. P.G. Jayan, ACGSC (R3)]**

This application having been heard on 07.12.2018 the Tribunal on 13.12.2018 delivered the following:

ORDER

Hon'ble Mr. Ashish Kalia, Judicial Member –

The relief claimed by the applicant are as under:

- “1. Direct the respondents to extent to the applicants, all consequential benefits on account of restoration of seniority at Annexure A11 and consequential benefits of promotion as Divisional Engineer (Ad hoc)/Senior Time Scale based upon Annexure A12 and revise the pensionary benefits of the applicants accordingly.
- 2. Direct the respondents to promote the applicants as Divisional Engineer (Adhoc)/Senior Time Scale w.e.f. the date on which Annexure A13 was issued wherein employees at Sl. No. 5503 and 5504 were promoted as Divisional Engineer (Adhoc)/Senior Time Scale and regulate further promotions as DGM on that basis with consequential fixation of pay and revision of pensionary benefits.
- 3. Any other further relief or order as this Hon'ble Tribunal may deem fit and proper to meet the ends of justice.
- 4. Award the cost of these proceedings.”

2. The brief facts of the case are that the applicants had earlier approached this Tribunal in OA No. K-112/1988, K-603/1988, K-605/1988 and K-311/1990 claiming that their promotion as AE should be regulated on the basis of passing the date of examination and the same should not be regulated on the basis of seniority in the basic cadre. The OAs were allowed by the Tribunal placing reliance on the judgment of the Allahabad High Court in WP(C) No. 2739 & 3652 of 1981. Accordingly, the respondents passed orders granting the benefit of seniority. On the basis of the said

judgment there were large number of litigations in various parts of the Country and also conflicting decisions by the Hon'ble Supreme Court of India. While so, on the basis of the decision of the Hon'ble Supreme Court, the respondents sought to withdraw the benefits granted to the applicants as per directions in the aforesaid OAs. In such circumstances the applicants filed OA No. 1344 of 1995 challenging the withdrawal of benefits already granted. This Tribunal dismissed the OA. It was challenged in OP No. 13598 of 1998. During the pendency of the said OP, the Hon'ble Supreme Court reconsidered the entire issue in respect of the above conflicting decisions and vide its decision in ***Union of India v. Madras Telephone SC/ST Social Welfare Association*** – 2000 (9) SCC 71 held that conclusion of the Allahabad High Court is incorrect. However, it was observed that it would not affect those persons who were already granted the benefit on the basis of earlier rulings. Accordingly, in view of the said judgment of the apex court the OP was disposed of directing the Department to reconsider the matter afresh. But without regard to the observations of the Hon'ble Supreme Court the respondents took a decision to withdraw the benefits granted to the applicants. Challenging the same the applicants filed OA No. 298 of 2003. The OA was dismissed. While so the Hon'ble Supreme Court in a clarification petition has emphatically stated that such of the applicants who had claimed seniority and consequent promotion on the basis of principles laid down in Allahabad High Court which had been upheld or recognized by Court or Tribunal by judgment and those which had attained finality should not be reopened. Accordingly, the Writ Petition challenging the order in OA No. 293/2003 were allowed. The respondents partly

implemented the judgment by restoring seniority and revising promotion as SDE & Sr. SDE w.e.f. 1981 and 1993 respectively. However, the consequential promotion as DE (adhoc)/STS and further as DGM was denied. Aggrieved the applicants have approached this Tribunal with the present OA praying for the reliefs as above.

3. Notices were issued to the respondents. They entered appearance through Shri George Kuruvilla for respondents 1 & 2 and Mr. P.G. Jayan, ACGSC for respondent No. 3. Respondents 1 & 2 filed a reply statement and submitted that applicants who were Junior Engineers passed the departmental qualifying examination and became eligible for promotion to the TES Group-B. Contending that their promotion should be on the basis of their passing the qualifying examination as laid down in Rule 206 of the P&T Manual Volume-IV and not on the basis of their seniority in the cadre and that they are eligible to be promoted before any others who had passed the departmental examination in subsequent years, they approached this tribunal in a batch of OAs. This Tribunal following the decisions of the High Court of Allahabad allowed the OAs. The SLP was dismissed on merits. Accordingly while implementing the judgment the date of promotion of the applicants were fixed as 7.5.1981, 29.8.1983 and 12.5.1977. Later in view of the judgment of the apex court in ***Junior Telecom Officer's Forum & Ors. v. UOI & Ors.*** the seniority of the applicants got disturbed. The applicants challenged the same and when the respondents filed SLP(C) CC No. 10360/2010 before the apex court it was later converted in to CA No. 1453/2015 wherein the Hon'ble apex court directed to appoint an expert

committee to look into the issues with certain observations. The expert committee had already submitted its report to the apex court on 28.10.2015 for passing appropriate order. The applicants have not right to claim for the promotion at par with those who stand promoted to the grade of STS/DE in 1997. Respondents pray for dismissing the OA.

4. Heard Shri Vishnu S. Chempazhanthiyil learned counsel appearing for the applicants, Mr. George Kuruvilla, learned counsel appearing for the respondents 1 & 2 and Mr. P.G. Jayan, ACGSC learned counsel appearing for respondent No. 3. Perused the records.

5. During the pendency of this OA the Hon'ble apex court had decided CA No. 1453 of 2015 on 14.12.2017 with the following order:

“1. These appeals were dealt with by this Court vide judgment dated 21.01.2015 Union of India & Ors. Vs. Sohan Lal Sayal & Ors., (2015) 12 SCC 360. The matters were, however, kept pending with a view to consider the recommendations of an Expert Committee which was constituted in terms of the said judgment.

2. The issue pertains to the seniority of Junior Telecommunication Officers (JTO)/Junior Engineers on promotion to the next higher post of Sub-Divisional Engineer/Assistant Engineers in the BSNL/MTNL.

3. Vide judgment of this Court dated 08.04.1986 in SLP(C) No.2284 of 1986 Union of India Vs. Parmanand Lal, criteria for determining of seniority was laid down. However, since the said criteria was with reference to the Rules which were later on revised, the legal position was subsequently clarified in Union of India Vs. Madras Telephones Scheduled Castes & Scheduled Tribes Social Welfare Association, (1997) 10 SCC 226 but with a further direction that those persons who had already been given further promotions based on seniority principle applicable before the said judgment may not be disturbed.

4. Accordingly, the issue which arose again was settled by the High Court in the impugned judgment, which has given rise to these appeals. While dealing with the appeals on 21.01.2015, this Court upheld the view taken in the impugned judgment with further observation that those who have been given further promotions may not be disturbed. This Court observed thus:-

“14. We heard the learned Senior Counsel, Mr. R.D. Agarwala, for BSNL, Mr. V. Giri, learned Senior Counsel for the Promotee Telecom Engineers Forum, Mr. Nidhesh Gupta, learned Senior Counsel for the private respondents and after having perused the impugned judgment, we are also 3 convinced that the ultimate conclusion drawn by the Tribunal as confirmed by the Division Bench does not call for interference. We are convinced that after specific directions contained in paras 17 and 19 of Union of India v. Madras Telephone SC & ST Social Welfare Assn - (2000) 9 SCC 71, when the rights of the private respondents herein got crystallised based on the specific stand of the appellant taken in its undertaking dated 27-2-1992 and the subsequent 17 Seniority Lists drawn by it, the appellant was wholly unjustified in having taken a U-turn in the year 2000 and reverse the seniority of all those who were covered by those 17 Lists. When in the judgment dated 26—4-2000 of this Court in Union of India v. Madras Telephone SC & ST Social Welfare Assn., (2000) 9 SCC 71 made a categorical and clear pronouncement as to how the latter principle laid down in Union of India v. Madras Telephones Scheduled Castes & Scheduled Tribes Social Welfare Assn (1997) 10 SCC 226 should prevail without affecting the rights of those whose cases were already determined and reached a finality based on the orders of the Courts, the appellant ought not to have meddled with their seniority and subsequent promotions and the benefits granted on that basis in respect of those officers covered by the 17 lists drawn in the year 1993. In the light of our above conclusion, there is no scope to interfere with the judgment impugned in these appeals.

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21. We, therefore, constitute an Expert Committee consisting of the Hon’ble Shri Justice K. Ramamoorthy, Retired Judge of the High Court of Madras, residing at “Prashant” D-17, Greater Kailash Enclave-I, New Delhi - 110 048 who will be the Chairman and Mr. D.P. Sharma, Former Secretary in the Ministry of Law and Justice and Former Vice Chairman, Central Administrative Tribunal, Principal Bench at New Delhi shall be the Member. The appellant-Department is directed to provide all necessary details as regards the officers/employees whose names were found in the 17 lists drawn in the year 1993 whose rights have been upheld by the Tribunal and affirmed by the impugned orders of the various High Courts, as well as, the list of those officers who came to be subsequently dealt with and whose seniority was fixed after 2000 i.e. after reversing the 17 Seniority Lists of 1993 along with all the 4 relevant Rules, Regulations and other materials which the Expert Committee wish to call for, for their consideration. We only direct the Expert Committee to ensure that the rights which have been crystallised in favour of the applicants in IA NO. 16 in CA No. 4339 of 1992 reported in the judgment of Union of India v. Madras Telephone SC & ST Social Welfare Assn., (2006) 8 SCC 662 as well as by the judgment in the Contempt Petition No.248 of 2007 reported in Promotee Telecom Engineers Forum v. Department of Tele Communications - (2008) 11 SCC 579, shall not in any way infringed while suggesting the way out for balancing the rights of the two groups of employees referred to above based on the principles laid down in this judgment.”

5. The Committee so constituted has given its report dated 28.10.2015 concluding as follows:-

“214. In fine, in the backdrop of the above facts and circumstances, we recommend that:

1. The seniority lists submitted by BSNL in compliance with the judgment of the Hon'ble Court dated 21.01.2015 is in accordance therewith.

2. The benefits claimed by 155 BSNL officers as mentioned in Annexure A & B may be accepted and this Hon'ble Court be pleased to direct BSNL to grant all benefit including promotion with effect from the date when the junior was promoted with all monetary benefits and service status as mentioned in the Annexure D herein to the 155 BSNL officers and all officers similarly situated.

3. This Hon'ble Court may grant the benefits to the 349 MTNL officers as mentioned in Annexure C herein and this Hon'ble Court be pleased to direct MTNL to grant all benefit including promotion with effect from the date when the junior was promoted with all monetary benefits and service status as mentioned in the Annexure E herein to the 349 MTNL officers and all officers similarly situated.

4. The rights of the 147 LDCE officers would require consideration by this Hon'ble Court in the concerned SLPs and the objections of BSNL, the 45 DQE officers, the 270 officers and the 512 officers may kindly be considered while considering the concerned SLPs.

5. The case of 45 officers whose seniority has now been fixed has to be satisfied with the benefit they get on that basis.

6. The case of 270 officers maybe considered by the department in accordance with the seniority lists and BSNL maybe directed to grant all the monetary and service status benefits consequent on their seniority being fixed.

7. The case of 12 officers who were benefited by 2001 seniority lists is to be governed by the present seniority list and they are not entitled to any benefits.

8. In the case of 60 officers who had passed DQE examination in 2003, they are not entitled to any benefits.

9. This Hon'ble Court may consider the position that on the basis of the seniority lists now submitted by the BSNL and also the officers working in MTNL who were originally under the control of DoT and all officers similarly situated may be granted the consequential monetary and service benefits.

10. DoT/BSNL/MTNL may be directed to consider the case of all officers similarly situated like the 155 officers for

BSNL and 349 MTNL officers irrespective of the fact whether they had made any representation before the Committee or not and grant them all the benefits mentioned in sub-paragraph 1 and 2 of paragraph no.214.

11. BSNL may be directed to consider the case of all the officers who have made representations before us including Mr. Ashok Kumar Kaushik and K.S. Sengodan who not only made representations but also made submissions before us.”

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

7. We do not consider it necessary to pass any further order on above recommendations except that 14 persons who are said to have been given promotions – 3 persons in the BSNL and 11 persons in the MTNL contrary to the law laid down by this Court in (1997) 10 SCC 226 (Supra) may not be now disturbed. Their promotions and seniority may be considered personal to them without their being treated as class or a precedent for future. The judgment of this Court in (2015) 12 SCC 360 (Supra) will be treated as final between the parties on the principle of seniority.

8. We, however, make it clear that no arrears will be payable in terms of the impugned judgment. Consequential benefits of pay fixation including the pensionary benefits, if any, will be payable in terms of the impugned judgment only w.e.f. from 01.01.2018 and not for the past.

9. No further orders are necessary on the applications for impleadment and intervention and the same stand disposed of.

10. The appeals are disposed of in above terms.

Pending applications, if any, shall also stand disposed of.”

6. Therefore, in view of the judgment passed by the apex court in CA No. 1453 of 2015 and connected cases, we direct the respondents to pass appropriate orders taking into consideration the above quoted order passed in CA No. 1453 of 2015 and connected cases within a period of sixty days from the date of receipt of a copy of this order.

7. The Original Application is disposed of as above. No order as to costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K. BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

“SA”

Original Application No. 180/00998/2015**APPLICANTS' ANNEXURES**

Annexure A1 - True copy of order dated 30.3.1990 in OAK-603/88 and O.A.K-605/88 of this Hon'ble Tribunal.

Annexure A2 - True copy of order dated 27.2.1990 in O.A.K-112/88 of this Hon'ble Tribunal.

Annexure A3 - True copy of the order No. 232-32/87 STG II dated 17.5.1991 issued by the 1st respondent in favour of the applicants 1, 2 & 4 to 6.

Annexure A3(a) - True copy of order No. 232-32/87 STG II dated 17.5.1991 issued by the 1st respondent in favour of the 3rd applicant.

Annexure A4 - True extract of the decision of the Hon'ble Supreme Court dated 28.9.2006 in IA No. 16 in Civil Appeal No. 4339/1995 as reported in 2006 (8) SCC 662.

Annexure A5 - True copy of the judgment in Contempt Petition (Civil) No. 248/2007 as reported in 2008 (11) SCC 579.

Annexure A6 - True copy of judgment dated 7.11.2008 in WP(C) No. 30788/2006 of the Hon'ble Court of Kerala.

Annexure A6(a) - True copy of judgment dated 7.11.2008 in WP(C) No. 3807/2005 of the Hon'ble High Court of Kerala.

Annexure A6(b) - True copy of the judgment dated 11.1.2010 in WP(C) No. 30551/2009 of the Hon'ble High Court of Kerala.

Annexure A7 - True copy of the communication No. 15-28/2003-STG.II dated 19.5.2008.

Annexure A8 - True copy of communication No. 2-13/2008-Pers.(DPC) dated 11.2.2009.

Annexure A9 - True copy of communication dated 19.2.2009.

Annexure A10 - True copy of the judgment dated 14.7.2009 in Con. Case © No. 671/2009 of the Hon'ble High Court of Kerala.

Annexure A11 - True copy of communication No. ST-III/3-25(R/2009) dated 26.9.2009 issued by the O/o. CGMT, BSNL.

Annexure A12 - True copy of order No. ST-III/3-25(R)/2009 dated 26.9.2009 issued by the O/o. CGMT, BSNL.

Annexure A13 - True copy of DOT letter No. 12-36/97-STG-1 dated 28.8.1997.

Annexure A14 - True copy of judgment decided on 21.1.2015 of the Hon'ble Supreme Court in Civil Appeal No. 4389/2010 and connected cases.

Annexure A15 - True copy of the judgment in Contempt Case No. 671 & 623 of 2009 of the Hon'ble High Court of Kerala.

RESPONDENTS' ANNEXURES

Annexure R1(a) - True copy of the judgment of the Hon'ble Supreme Court dt. 21.1.2015.

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