

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A./100/357/2018
M.A./100/841/2019
M.A./100/360/2018
M.A./100/361/2018
M.A./100/1599/2018
M.A./100/2905/2018

New Delhi, this the 21st day of May, 2019

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Ms. Aradhana Johri, Member (A)

1. Rupendra Pathak
Aged about – 46
S/o Late Shri Devendra Pathak
Working as a DGM Bihar,
Group – A
R/o House No.7,
Justice Mandal Path, Rajvanshi Nagar,
Patna-800023
2. Indra Shekhar Sudhanshu Mishra
Aged about – 47
S/o Late Shri Kameshwar Mishra,
Working as a DE
Group – A
R/o A-03, National Apartments,
Plot No.4, Sector-3, Dwarka
New Delhi-110075
3. Amresh Kumar
Aged about – 49
S/o Shri Mahendra Prasad Singh,
Working as a DE
Group – A
R/o 69A, Street No.3,
Krishna Nagar, Safdarjung Enclave
New Delhi
4. Umesh Kumar, SDE
Aged about – 47
S/o Shri Jagdish Prasad
Working as a DE
Group – A
R/o 585 Shri Nagar Rani Bagh,
New Delhi

5. Ram Bilas Verma,
Aged about – 45
S/o Shri S.N. Verma
Working as a DE
Group – A

R/o 21/4C, BSNL Type 4 Quarter,
Kali Bari Marg,
New Delhi-110001

....Applicants

(Through Shri Manish Kumar, Shri Piyush Kaushik and Shri A.
Rajan, Advocates)

Versus

1. Department of Telecommunication
20, Sanchar Bhawan,
Ashok Road,
New Delhi-110001

2. Bharat Sanchar Nigam Limited
Represented by its Chairman
& Managing Director
Bharat Sanchar Bhawan,
Janpath, New Delhi-1

3. Mahanagar Telephone Nigam Limited,
Represented by its Chairman
& Managing Director
Mahanagar Door Sanchar Sadan,
9, 5th Floor, CGO Complex, Lodhi Road,
New Delhi-110003

... Respondents

(Through Shri Subhash Gosai with Shri Tushar Malik, for
respondent 1, Shri R.V. Sinha with Shri Amit Sinha,
for respondent 2 and Shri Chandan Kumar, for
respondent 3)

ORDER (Oral)

Justice L. Narasimha Reddy, Chairman

The applicants are working in various capacities in
Bharat Sanchar Nigam Limited (BSNL). The common feature
for them is that they all have been promoted through the
channel of Limited Departmental Competitive Examination

(LDCE) to the post of Sub Divisional Engineer (SDE), to the extent of $33\frac{1}{3}$ %. As regards the fixation of seniority, the Recruitment Rules (RRs) as amended in the year 1996, particularly the one dealing with the qualifying service of five years in the feeder category, became relevant. That was the subject matter of various proceedings, before the courts of law.

2. Some direct recruits in the feeder category i.e. Junior Telecom Officers (JTOs) filed OA 86/2009 before the Ernakulam Bench of the Tribunal. According to them, the minimum service of 5 years in the feeder category, in the context of promotion must be 'regular' in nature. That was allowed on 05.02.2010. Aggrieved by that, the promotee officers i.e. the applicants herein as well as the department filed Writ Petitions. On dismissal of Writ Petitions, they filed SLPs. The SLPs were dismissed on 12.12.2017.

3. As a measure of implementation of the judgments referred to above, the department has drawn a seniority list. Challenging the process of drawing the seniority list as per adjudication indicated above, this OA is filed by raising certain objections. The applicants pray that they be assigned seniority as per the order dated 13.07.2006 passed by the Kerala High Court in O.P. No.12656/2001. They contend that the respondents are under obligation to follow the judgment rendered by the Kerala High Court.

4. Respondents 1 and 2 have filed separate counter affidavits. According to them, the issue attained finality with the dismissal of the SLPs and there was absolutely no basis for the applicants to file this OA.

5. We heard Shri Manish Kumar and Shri Piyush Kaushik, for the applicants, Shri Subhash Gosai with Shri Tushar Malik, for respondent 1, Shri R.V. Sinha with Shri Amit Sinha, for respondent 2 and Shri Chandan Kumar, for respondent 3.

6. The OA has undergone several stages and, in fact, quite large number of MAs were also filed. On certain occasions, the parties have approached the Hon'ble Delhi High Court in relation to interim orders.

7. On a detailed hearing of the learned counsel for the parties and perusal of the voluminous record, it emerges that the issue pertaining to seniority for the post of SDE in the BSNL has attained finality with the dismissal of Civil Appeal No.396/2017. It is necessary to mention that the applicants were party to that. Thereafter, the applicants filed review petition before the Hon'ble Supreme Court and that is said to have been rejected, recently.

8. Once the applicants were parties to the Civil Appeal and the highest Court of the country has taken a view on the

issue, it is not at all permissible for the applicants to open another front of litigation. It is also necessary to mention here that recently in OA No.2598/2017, this Tribunal passed order on 13.07.2018, dealing with this very issue. After referring to various proceedings before the Ernakulam Bench of the Tribunal, Kerala High Court and the Hon'ble Supreme Court, we observed as under:

“10. One of the points urged by learned counsel for the applicants is that in a Civil Appeal occurring in the same batch, Hon'ble Supreme Court appointed Expert Committee, and that, in turn, suggested that the service be taken as 'ordinary' and not "regular" one. Though the committee was appointed, and it made certain suggestions, the Hon'ble Supreme Court dismissed the Civil Appeal. Reference has been made to the suggestion of the Committee, but none of the suggestions made by it were either accepted or were directed to be implemented.”

The RRs before and after the amendment were taken note of.

9. Once the Tribunal has expressed its view in O.A. 2598/2017 and O.A. 2430/2018, on similar issues, we do not find any merit in this O.A. Added to that, the prayer in the O.A. reads as under:

“(a) Direct the Respondents to assign due seniority to the Applicant in terms of the order dated 13.07.2006 and the benefits attached thereto.”

10. The date mentioned in the prayer is referable to the judgment of the Kerala High Court, which was the subject matter of SLP. If the steps taken by the respondents are contrary to judgment of the Kerala High Court or for that matter the Supreme Court, the only course open is to

institute proceedings before the respective Courts. There was no basis for the applicants to file this OA.

11. In the context of interim orders, the applicants relied upon orders passed by the Guwahati Bench of this Tribunal in OA 204/2018 and batch. The learned counsel for the respondents has placed before us a copy of the order dated 18.12.2018 through which the Guwahati Bench of the Tribunal has dismissed O.A. 204/2018 and batch.

12. Viewed from any angle, we do not find any basis to grant the relief prayed. The OA is, therefore, dismissed. Interim measures operating in the O.A. shall stand discontinued. MAs pending also stand disposed of. There shall be no order as to costs.

(Aradhana Johri)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

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