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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA NO. 1306/2003

This the 30th day of April, 2004

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HON'BLE SH. V.K. MAJOTRA, VICE CHAIRMAN (A)
HON'BLE SH. SHANKER RAJU, MEMBER (J)

1. All India SC & ST Telecom Employees Welfare Association through its General Secretary, D-3, Atul Grove Road, New Delhi-110001.
2. K. Senigodan, R/o 5-B, SCT Residence Laxmi Theater Road, Chithode Post, Erode Distt. Tamil Nadu.

(By Advocate: Sh. V.S.Chauhan)

Versus

1. Union of India through its Secretary, Department of Telecommunications, Ministry of Communications, Sanchar Bhawan, Ashoka Road, New Delhi-110001.
2. Bharat Sanchar Nigam Limited through its Chairman-cum-Managing Director, Statesman Building, Barakhamba Road, Connaught Place, New Delhi-110001.
3. Director (HRD)
Bharat Sanchar Nigam Limited, Statesman Building, Barakhamba Road, Connaught Place, New Delhi-110001.

(By Advocate: Sh. R.N.Singh)

O.R.D.E.R. (ORAL)

By Sh. Shanker Raju, Member (J)

All India SC/ST Telecom Welfare Employees Association and another impugn respondents order dated 18.12.2002, 4.3.2003 as well as instructions issued on 13.11.2002 and have so quashing of the reversion orders with a direction to the respondent to promote them.

2. Applicant No.1 is an association representing applicant No.2 and other similarly circumstance who have been promoted

as Divisional Engineers in the wake of 85th Constitutional Amendment 2001.

3. Provisions of Article 16 (4)(A) of the Constitution of India inserted w.e.f. 17.6.95 allowed not only accelerated promotion but accelerated seniority as well. Respondents have issued seniority list vide letter dated 29.7.2002 whereby seniority of the reserved category employees had been revised giving them benefit of 85th Constitutional Amendment.

4. DOPT issued memorandum dated 11.7.2002 whereby SC/ST candidates appointed on promotion on their own merit not owing on reservation have been observed not to be adjusted against the reserved points.

5. Respondents issued seniority list dated 29.7.2002 according benefits of consequential seniority as well as seniority list dated 4.9.2002.

6. 85th Constitutional Amendment was challenged before the Apex Court In WP No.61/2002 and by an order dated 8.4.2002 the following observations have been made:

"A question of constitutional law arises. It is, therefore, appropriate that these petitions should be heard by a Constitution Bench.

Insofar as interim relief is concerned, the respondents shall not revert the petitioners nor affect their grading in the seniority list and promotion, pay etc. At the same time it shall be open to the respondents to promote those who are benefited by the impugned amendment but so that it does not affect the petitioners in any manner and subject to the result of the writ petitions.

The T.As. are disposed of accordingly."

7. Subsequently in WP No.255/2002 by an order dated 11.11.2002 the Apex Court observed as under;

"Heard learned counsel for the parties. These writ petitions involve the constitutionality of Article 165 (4A). The Court, by an interim order, has directed not to revert any of the petitioners from their existing placement nor affect their standing in the seniority list, but at the same time the provisions of Article 16 (4A) can be implemented and by virtue of that provision of some of the reserve category candidates are entitled to promotion, they shall be promoted. The obvious idea being the Court should not stay the operation of a constitutional provision. The State finds difficulty in implementing the order on the ground that there does not exist sufficient vacancy of posts in a particular cadre to give effect to the provisions contained in Article 16 (4A). This being an interim arrangement, we direct that they should apply to the number of vacancies available in a cadre to give effect to the promotional policy and undoubtedly, such a promotion can be granted only when the State makes a provision for reservation in terms of Article 16(4A). In view of the fact that the implementation of interim order may cause a lot of chaos in the service, it is mete and proper that the matter should be finally heard and disposed of as we, therefore, direct that this batch of writ petitions be listed before a Constitution Bench in the month of February, 2003."

8. Respondents by an order dated 13.11.2002 on the basis of an interim order passed by the Apex Court on 4.9.2002 withdrawing the seniority list dated 29.7.2002 and 4.9.2002. Applicants who had been promoted as reserved category candidates to higher position in the wake of aforesaid interim order promotions have been withdrawn and applicants have been reverted.

9. Learned counsel of applicants contends that withdrawal of seniority list by the respondents vide memorandum dated 13.11.2002 and as a consequent reversion of applicants is without taking note of the orders passed by the Apex Court on 11.11.2002 where the Constitutional Amendment in Article 16(4)(A) of the Constitution of India should apply to the

number of vacancies available in the cadre to give effect to the promotional policy. The matter before the Apex Court is ordered to be listed for disposal to prevent chaos. In this view of the matter it is stated that in the light of the aforesaid order passed by the apex court the Constitutional Amendment which has already been given effect to by the respondents should be restored back to them.

10. On the other hand respondents' counsel Sh. R.N.Singh opposed the contentions and stated that interim order passed by the Apex Court does not envisage any change in the seniority.

11. We have carefully considered the rival contentions of the parties and peruse the material on record. It is not in dispute that the Constitutional Amendment has been given effect to in retrospect. The respondents have accordingly revised the seniority of reserved category candidates and as a consequence thereof promoted them as well. Though the orders passed by the Apex Court on 8.4.2002 are without regard to the reversion of the general candidates, but liberty has been given to the parties to promote the reserved category candidates benefited by the impugned amendment. Subsequent to this orders passed by the Apex Court on 11.11.2002 the Constitutional Amendment has to be given effect to for promotion. This cannot be done unless the seniority of the reserved category candidates is accelerated. The order of the Apex Court allows operation of Article 16(4)(A) which not only provides accelerated promotion but accelerated seniority as well.

12. In this view of the matter, we are of the considered view that withdrawal of seniority list and reversion of applicants has been done by the respondents without taking into consideration the decision of the Apex Court which, by necessary implication, envisages accelerated seniority as well.

13. In the result, OA is allowed. Impugned orders are quashed and set aside. Respondents are directed to restore to applicants seniority and their promotion with all consequential benefits. However, this seniority and promotion shall remain subject to the final outcome of the petition subjudice before the Apex Court challenging the constitutionality of 85th Amendment. The above directions shall be complied with by the respondents within a period of 3 months from the date of receipt of a copy of this order. No costs. ..

S. Raju

(SHANKER RAJU)
Member (J)

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V.K. Majotra -

(V.K. MAJOTRA)
Vice Chairman (A)

30.4.04