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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

O.A. NO. 221/2003

NEW DELHI THIS... 15<sup>th</sup> DAY OF JULY 2004

HON'BLE SHRI KULDIP SINGH, MEMBER (J)  
HON'BLE SHRI S.A. SINGH, MEMBER (A)

1. Shri Anil Sagar,  
S/o Shri Ramji Lal  
R/o 705/1A  
Flat No.A-4, Ganga apartment,  
Ward No.3 Mehrauli, New Delhi
2. Shri Vikram Singh Arya  
S/o Shri N S Arya,  
R/o M-17, Laxmi Nagar,  
Delhi-110092
3. Shri Sunil Duggal,  
S/o Shri Shanker Lal, R/o BD-971 Sarojini Nagar,  
New Delhi-110023
4. Shri Ram Meena S/o Sh. Kedar Pd Meena  
C/o 705/1A Flat No.A-4, Ganga Apartment  
Ward No.3 Mehrauli, New Delhi-110030
5. Shri Sandeep Kumar S/o Sh. Bakshi Ram  
R/o 636, Krishi Kunj,  
IARI, Pusa, New Delhi
6. Shri Balwant Rai, S/o Sh. Babu Ram,  
R/o H-19/72, Sector-7,  
Rohini New Delhi
7. Shri Subhash Chand,  
S/o Shri Lal Singh  
C/o M-17, Laxmi Nagar,  
Delhi -110092
8. Shri Sunil Badolia, S/o Shri Tirath Ram,  
R/o CA/11, WEA, Karol Bagh,  
New Delhi
9. Shri Bhagwati Prasad, S/o Sh. Suraj Singh  
C/o CA/11, WEA Karol Bagh,  
New Delhi.

.....Applicant

(By Shri L K Singh, Advocate)

VERSUS

1. Govt of India ,  
Ministry of Communications  
Department of Telecommunication,  
Through its Secretary,  
Sanchar Bhawan, 20, Ashok Road,  
New Delhi

(Signature)

2. Department of Telecommunication,  
through the Chief General Manager Telephones,  
Northern Telecom Region,  
Kidwai Bhawan, New Delhi

3. Mahanagar Telephone Nigam Limited,  
Through the Chief General Manager Telephones,  
K L Bhawan, New Delhi -110050

..... Respondents.

(By Sh. V K Rao, Advocate)

O R D E R

BY HON'BLE SHRI S.A. SINGH, MEMBER (A)

The applicants are employed as Junior Telecom Officers (JTO) and posted with various units of the respondent No. 3 in New Delhi. The applicants have challenged the impugned Revised Provisions Gradation List of JTOs upto Recruitment year 1994 circulated by the respondents on 18.4.2002.

2. They have prayed that the Tribunal may declare the fixation of the seniority of the applicants along with direct recruited JTOs selected and appointed later and assigned the recruitment year 1993 as illegal , de hors , the Recruitment Rules and quash and set aside the impugned Revised Provisions gradation List of JTOs upto recruitment year 1994 by fixing the seniority of the applicants separately from the subsequently appointed JTOs of the recruitment year 1993. The Tribunal should also direct the respondents to conduct a separate written examination for the applicants for promotion to the higher grade of TES of Grade "b" and in the event of any of the applicant qualifying they be granted notional benefits with effect from the same day at par with those JTOs who have qualified



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written examination for promotion of higher grade TES Group "B". The applicants had earlier filed OA No.1557/2000 impugning the respondent's letter dated 307.99 seeking corrections of the recruitment year.

3. The facts of the case can be conveniently delineated from this OA:

"2. The facts of this case briefly stated are that the respondents issued an advertisement in March 1995 for holding examination for recruiting 292 JTOS supposedly for the recruitment year 1993. They next issued another advertisement in November 1995 for recruiting 254 JTOS again supposedly for the recruitment year 1994. They issued a third advertisement sometime in December 1995 for recruiting 72 JTOS supposedly for the recruitment year 1995. The last advertisement was in respect of SC ST candidates exclusively and had been issued in pursuance of Government of India's decision to fill up backlog vacancies pertaining to the SC & ST categories. The applicants who are SC & ST candidates applied for the first two examinations as also for the third examination. For some administrative reasons, the respondents could not hold the first two examination as expeditiously as they should have, and the same were ultimately held together on 13-14/7/1996. The examination in respect of the third advertisement being last in point of time, was held earlier than the aforesaid examination and was in fact held on 27-28/1/1996 as scheduled. The results of the said last examination were announced on 1.3.1996 and the selected candidates were appointed on 13.1.1996 and 31.3.1997. On the other hand, the results in respect of the previous advertisements were declared in March 1997 after the examination had been held on 13-14/7/1996. The candidates selected against the said examination of July 1996 were appointed on 10.1.1998.

3. The applicants who were appointed first in point of time in January and March 1997 compared to others who were appointed on 19.1.1998 should in

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ordinary course have been considered senior and in fact they were so treated right upto July 1999. However, from the respondent's letter dated 30.7.1999, it would seem that the applicants who were earlier shown to belong to 1993 recruitment year were placed in the recruitment year 1995. The applicants are aggrieved by their placement in the recruitment year 1995."

4. The applicants who were aggrieved by the replacement of recruitment year 1993 with <sup>1995</sup> filed the OA referred to above and obtained directions of the Tribunal to continue them to be shown as belonging to the recruitment year 1993. The operative part of the judgement is as under:

"8. In the circumstances outlined in the preceding paragraph, we find it just and proper to quash and set aside the respondent's letter dated 30.7.1999 at Annexure A-13 and direct the respondents to issue the same again with this change that in respect of applicants the recruitment year shall remain unaltered and will continue to be shown as 1993 as was the case prior to the issuance of the said letter. Accordingly the JTOs Gradation list of 1993 (page 24 onwards of the paper book) will also undergo changes. The same shall, therefore, be recast keeping in mind the observations made in this order. It is clarified that following recasting of the gradation list in the manner indicated, the applicants will also be entitled to all the consequential benefits. The respondents shall comply with these directions in a maximum of 3 months from the date of receipt of a copy of this order."

5. In compliance with these directions the respondents have issued the order dated 29.8.2001 where the recruitment year of the applicants was revised from 1995 to 1993. The impugned Revised Provisions gradation list for the year 1994 has been prepared after the placement of the applicants as belonging to the recruitment year 1993.

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6. The grievance of the applicants is that the Revised Provisions Gradation list is violative of the recruitment rules as the applicants qualified in the written examination conducted on 27/28.1.1996 have been equated and placed at par with those JTOs appointed as direct recruits qualified in the subsequent examinations conducted on 13/14.7.1996. As the applicants had been recruited against earlier examination they belong to a separate class and their seniority should be determined within their class based on the marks obtained by them in the training. The respondents have erred in equating the applicants with those JTOs selected from later examination just because they both have been assigned the same year i.e. 1993. By doing so a anomaly has arisen where JTOs recruited in the later examination have been placed senior to those in the earlier examination because they secured higher marks in the training programme.

7. The respondents have contested the averments of the applicants. First the preliminary objection that the OA should be rejected on the ground of misjoinder and non-joinder of necessary parties, inasmuch as the applicants have challenged the Provisional Gradation List of JTOs and failed to make those persons as party against whom they are praying for the relief. The applicants have pleaded in the rejoinder that they have challenged the very basis of the preparation of the seniority list of the JTOs which is *prima facie* de hors the recruitment rules and not against any particular individual, as such there is no question of misjoinder or non joinder of parties.

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8. We are in agreement with the contention of the applicants that the OA is against the principle adopted for preparing the seniority list and not against any particular individual.

9. The respondents have placed on record the recruitment rules for the post of JTOs and have mentioned "that the seniority of the selected JTOs on the completion of training would be prepared on the basis of marks obtained by the selected candidates during the training programme".

10. JTOs selected in a particular year have to be arranged into the ratio 1:1 amongst the departmental candidates and the direct recruits on the basis of marks obtained in training programme. As such the date of appointment is not the criteria for the seniority in the cadre of JTOs. As the applicants also belong to the recruitment year 1993 after the judgement of the Tribunal in OA 1557/2000 (supra), they have been correctly assigned their seniority on the basis of marks obtained in the training programme along with all the others who were recruited in the year 1993 even though they might have appeared in different examinations. They all belong to the 1993 general recruitment year and hence are to be considered as a single group for purposes of assigning seniority.

11. As far as the question of allowing the applicants to appear in qualifying examination held in 1999 for the post of TES Grade "B" candidatures of the applicants was not considered as at that time the eligibility of the applicants to be considered for the year 1993 had not been established. The judgement of the Tribunal was given at later date.

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12. The applicant in their rejoinder vehemently contested the averments of the respondents that the seniority of all JTOs belonging to the general year 1993 has to be considered together as a single group and that their inter se seniority is to be determined on the basis of marks obtained in the training programme. According to the applicants the concept of recruitment year is illogical as recruitment had not been conducted yearwise and the posts were allowed to remain vacant year after year and thereby clubbing the JTOs selected against these posts from different examinations into a single group for determining the seniority on the basis of marks obtained in the training programme is illogical and is against the cannons of service jurisprudence. Because of the method adopted by the respondents anomalies have arisen wherein some persons who had qualified in the earlier competitive examination of January 1996 had been placed junior to those who had qualified in the subsequent and later examination of July 1996 merely because of the marks obtained in the training programme. As an example they cited the case of Ajit Sagar JTs gradation list at Sl. No. 0588 and name of Inderjit Singh who is at Sr No. 0658. The seniority is thus de-hors the rules and needs to be quashed.

13. We have heard the counsel for the parties and gone through the documents brought on record. The respondents placed on record the rule for determining the seniority which reproduced once again:

"v) The seniority of the selected JTOs on the completion of training would be prepared on the basis of marks obtained by the selected candidates during the training programme".

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14. It is the averments of the respondents that as per these rules the date of appointment is not the criteria for determining the seniority in the cadre but the marks obtained in the training programme. This rule has to be applied for all those who belong to a particular general year, in this case the year 1993.

15. The applicants have contested this claim on the ground that the concept of general recruitment year can be considered valid and proper only in the event when selections and recruitment takes place every year according to vacancies arising in the year. However, in the present case recruitment have not been made for number of years thus the criteria of recruitment years becomes illogical and invalid. Those who qualified in the first competitive examination will remain senior to those who qualified in the subsequent examinations. Therefore the applicants who qualified in the examination conducted on 27/28.1.96 enblock be considered senior to those who were appointed in the subsequent and later examination conducted on 13/14.7.96. Within each block the inter se seniority will then be determined by the marks obtained in the training programme.

16. From the above it is clear that the rule for determining inter se seniority based on marks obtained in the training programme is not in dispute. What is disputed is confining the applicability of the rule to those selected <sup>from</sup> <sub>L</sub> a common examination.

17. Neither the applicants nor the respondents have been able to show or place on record any rules supporting their averments. The applicants have based their argument

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on the principle that those who are recruited against an earlier examination stand senior to those recruited from a later examination. The respondents have averred that as per the rule seniority is to be determined for a recruitment year, on the marks obtained in the training programme and not from the date of appointment or examination.

18. The facts of the case are that the JTOs appointed in the later examination held on 13/14/7.96 had applied against the advertisement issued in March 1995 and November 95. Whereas the persons appointed against the examination held on 27/28.1.96 have been recruited in the special recruitment drive for filling up back log vacancies of SC/ST candidates in a later date on 1.3.96. Hence the applicants who have joined earlier to those who have joined later have done so because the recruitment against the earlier advertisement were delayed due to some administrative reasons. Further the applicants have been recruited against the special recruitment for filling up the backlog of SC/ST vacancies. These vacancies, therefore, pertain to number of years as do the advertisement issued in March and November 1995. All these recruitment have been considered as part of the recruitment year 1993 after the judgement of the Tribunal in OA 1557/2000. It would thus be logical to consider persons selected against the examination held on 13/14.7.96 and 27/28.1.86 as belonging to a single class i.e. class of those who were recruited for the year 1993. The question then arises whether for this single class the inter-se-seniority is to be determined on the basis of marks obtained in the training programme or those of the earlier examination are to be considered enblock senior to those who were recruited in the subsequent examination. Normally the

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principle for determining the seniority holds that those who have been recruited in an earlier examination stand senior to those who were recruited in a subsequent examination. In the present case the situation is peculiar. The applicants who applied against a later advertisement have been recruited earlier than those who applied in advertisements earlier than the applicants. Therefore, the ratio of this rule is based on the thinking that those who had been selected earlier must stand senior to those who have been selected later because it is implicit that the earlier selection pertained to earlier vacancies and the later selection to later vacancies. In the present case no such distinction can be drawn as the vacancies pertain to a number of years. In the case of applicants the vacancies are confined to SC/STs vacancies over a number of years.

19. In view of these facts it is apparent that the earlier selection of the applicants is fortuitous and has no relation to the year of the occurrence of the vacancies. Hence the applicant cannot claim that they are distinguishable from other persons belonging to the 1993 recruitment year. The Tribunal had already held in OA 1557/2000 that the applicants belonging to the recruitment year 1993. Equity would thus demand that all who belong to the recruitment year 1993 stand on equal footing and their inter-se-seniority is determined as per the rules applied to the recruitment year 1993 as a single class.

20. In these peculiar circumstances the principle of determining of seniority on the basis of date of appointment/examination must give way to the rule for determining inter-se-seniority on the basis of marks

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obtained in training programme for the recruitment year 1993.

21. We therefore, find no infirmity in the application of the rule for determining inter se seniority by the respondents and as such the OA must fail and is accordingly dismissed.

(S.A. Singh)  
Member (A)

(Kuldip Singh)  
Member (J)

Patwal/