

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/00153/2015
Original Application No. 180/00915/2015

Tuesday, this the 5th day of November, 2019

CORAM:

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

1. Original Application No. 180/00153/2015 -

George Paul, S/o. Late K.P. Paulose, aged 56 yrs., residing at Kotholil (H),
 Mudavoor PO, Muvattupuzha, and employed as SDE, Acceptance/Testing,
 Inspection Circle, BSNL, Ermakulam. **Applicant**

(By Advocate : Mr. C.A. Joy)

V e r s u s

1. The Union of India, Ministry of Communications, rep. by the Secretary, Department of Telecommunication, Sanchar Bhavan, 20, Ashoka Road, New Delhi – 110 001.
2. The Bharat Sanchar Nigam Ltd., rep. By its Chairman & Managing Director, Sanchar Bhavan, 20, Janapath, New Delhi – 110 001.
3. The Mahanagar Telecom Nigam Ltd., rep. by its Chairman & Managing Director, Mahanagar, Door Sanchar Sadan, 9, CGO Complex, Lodhi Road, New Delhi – 110 003.
4. The Chief General Manager, Inspection Circle, Sanchar Vikas Bhavan, Residency Road, Jabalpur, MP – 482 001.
5. The Deputy General Manager, Inspection Circle, Raj Bhavan, Telephone Exchange Building, Guindy, Chennai – 32.
6. Sri T.T. Thomas, DE/AT, Inspection Circle, Quarter No. E5, BSNL Quarters, Telephone Exchange complex, Manacaud, Thiruvananthapuram – 695 009.
7. Sri K.V. Salim, DE/BSS (Base Station Sub system), 1st Floor, Telephone Exchange, Desabhimani Road, Kaloor – 682 017.
8. Ravindra Shukla, AGM-CFA (Consumer Fixed Access), Circle Office, Inspection Circle, Sanchar Vikas Bhavan,

Residency Road, Jabalpur – 482 001.

9. Golak Bihari Nayak, DE, Coaxial (Maintenance), Eastern Telecom Region, 3rd Floor, Telephone Bhavan, Bajrakabati Road, Cuttack, Orissa – 1. **Respondents**

**[By Advocates : Mr. T.C. Krishna (R2-5) &
Mr. Antony Mukkath (R7)]**

2. Original Application No. 180/00915/2015 -

George Paul, S/o. Late K.P. Paulose, aged 56 yrs., residing at Kotholil (H), Mudavoor PO, Muvattupuzha, and employed as SDE, Acceptance/Testing, Inspection Circle, BSNL, Ernakulam. **Applicant**

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V e r s u s

1. The Bharat Sanchar Nigam Ltd., rep. By its Chairman & Managing Director, Sanchar Bhavan, 20, Janapath, New Delhi – 110 001.
2. The Chief General Manager, Inspection Circle, BSNL, Sanchar Vikas Bhavan, Residency Road, Jabalpur, MP – 482 001.
3. The Deputy General Manager, Inspection Circle, BSNL, Raj Bhavan, Telephone Exchange Building, Guindy, Chennai – 32.
4. Mathew K. Kuriakose, Divisional Engineer (Telecom), BSNL, Muvattupuzha, Pin – 686 661. **Respondents**

[By Advocate : Mr. T.C. Krishna (R1-3)]

These applications having been heard on 26.09.2019, the Tribunal on 05.11.2019 delivered the following:

O R D E R

Hon'ble Mr. Ashish Kalia, Judicial Member –

OAs Nos. 180-153 and 915 of 2015 have been filed by the same applicant. Since both the cases are interconnected and contains common points of fact and law, they are being disposed of through this common order. For the sake of convenience, the pleadings, documents and record in

OA No. 180/153/2015 are referred to in this common order.

2. The reliefs claimed by the applicant in OA No. 180-153-2015 are as under:

“1. To call for the records leading to Annexure A8, A9, A10, A11, A12, A13, A16 & A17 orders and direct the respondents to re-consider and re-cast the seniority and promotion of the applicant in accordance with the law laid down by the Hon'ble Supreme court vide Annexure A2 judgment and Annexure A5 order of the Central Administrative Tribunal, Bangalore bench as well as Annexure A7 judgment of the Hon'ble High Court of Kerala.

2. Declare that the procedures adopted by the respondents 1 to 5 for restoration of seniority of 1369 officers vide Annexure A8 order and permitting ineligible officers to participate in the competitive examination are illegal and unsustainable.

3. Direct the respondents to give regular promotion to the applicant to the post of DE/AGM notionally from the date of promotion of the juniors in the category of 1369 posts and 147 posts.

4. Any other appropriate order or direction as this Hon'ble Tribunal may deem fit in the interest of justice.”

3. The reliefs claimed by the applicant in OA No. 180-915-2015 are as under:

“1. To call for the records leading to Annexure A3 & A4 seniority list and Annexure A6 order and set aside the same to the extent it revising the seniority position of the applicant.

2. Declare that the revision of seniority position of the applicant in Annexure A3 & A4 without considering the merit of the applicant in the competitive examination held on 1.12.2002 for filling up of the 25% quota vacancies as illegal and unsustainable.

3. Direct the respondents to re-consider Annexure A6 order based on Annexure A7 representation filed by the applicant.

4. Direct the respondents to consider and pass appropriate orders on Annexure A7 representation within a time limit fixed by this Hon'ble Tribunal.

5. Any other appropriate order or direction as this Hon'ble Tribunal may deem fit in the interest of justice.”

4. The brief facts of the case in OA No. 180-153-2015 are that the applicant is aggrieved by the illegality in drawing up of the seniority list by the respondents in the Telegraph Engineering Service (Group B posts) in the BSNL and the promotions effected based upon the alleged seniority list.

5. The applicant was promoted as JTO in the year 1987. He became SDE (Group-B post) as per promotion order dated 26.4.2000 in the 75% quota earmarked for qualifying examination. This promotion is based on 1996 Recruitment Rules purely on seniority. The other 25% quota is known as Limited Departmental Competitive Examination (LDCE) quota. The applicant participated in the examination held on 1.12.2002 for the 25% LDCE quota vacancies and passed the said examination. From 1991 till 22.7.1996 no examination was held for both quota vacancies and this Tribunal in a common judgment dated 1.5.1998 in OA No. 1497 of 1996 and connected cases directed Department of Telecommunication (DOT) to conduct a combined departmental examination comprising both the qualifying and competitive examination for the years from 1991 onwards up to 1996 for the vacancies arising up to 22.7.1996. This examination was held in November, 2000. Thereafter as per the direction in OA No. 91 of 1999 of this Tribunal, confirmed by the High Court of Kerala as per judgment in OP No. 21656 of 2001 directed the Department to conduct a special supplementary examination and permit the applicant to participate in the said examination. The special supplementary examination was held on 23.9.2003 to 26.9.2003. The seniority in the post of SDE is the criteria for promotion to the post of Divisional Engineer (DE)/AGM. The applicant is

aggrieved by the seniority list No. 5 and seniority list No. 6 in the Group-B post. Applicant submitted that before TES Class II Recruitment Rules, 1966 came into force, promotion from the post of erstwhile Engineering Supervisors (re-designated as JE) to the post of Assistant Engineer was being made in accordance with the instructions contained in paragraph 206 of the P&T Manual, Volume-IV. The above rules were superseded by 1981 Rules namely Telegraph Engineering Service (Group B) Recruitment Rules, 1981. Under this Recruitment Rule the qualifying and competitive quota posts were introduced and the inter-se seniority is directed to be fixed based upon the year of recruitment in the feeder category of JTO. As per the decision of the Hon'ble High Court of Allahabad in **P.N. Lal's** case it was held as under:

“The persons who pass the qualifying examination in an earlier year shall rank en bloc senior to those who pass the qualifying examination in the subsequent years i.e. the year of passing of the examination is relevant for determination of inter-se seniority.”

This position was upheld by the apex court by dismissing the SLP filed against the judgment of the Hon'ble High Court of Allahabad. The 1981 rule was amended in the year 1987. Accordingly, based on the above judgment the entire promotions were reconsidered and fresh eligibility list of JTOs were prepared and after holding review DPC revised seniority lists in TES Group-B was issued. However, as per the decision of the apex court in **Union of India v. Madras Telephone SC/ST Social Welfare Association –** CA No. 4339 of 1995, dated 13.2.1997, the provisions contained in 1987 Recruitment Rules and paragraph 206 of P&T Manual do not have any application for determining the inter-se seniority of Group-B officers and

inter-se seniority has to be fixed based on the year of recruitment as per the eligibility list prepared every year by the DPC. Considering the contradictory view of the apex court the question was examined by the apex court as per the decision reported in (2000) 9 SCC 71 – CA No. 4339/1995 dated 26.4.2000, wherein it has been held that the dictum laid down in the case of **P.N. Lal** is wrong and without considering the statutory validity of the 1987 Recruitment Rules and hence the inter-se seniority has to be fixed based on the year of recruitment subject to the eligibility list prepared by the DPC every year. The 1987 Recruitment Rules were further amended and TES Group B Recruitment Rules, 1996 was notified on 23.7.1996. From 1991 onwards till 22.7.1996 no examination has been conducted either for filling up of the qualifying quota or competitive quota. In order to get over the reversion of promoted JTOs based on the impact of **P.N. Lal**'s case, as per the recommendation of the Telecom Commission, Department of Telecommunication had upgraded 2636 TES Group-B posts in the year 1993 and promotions were effected in all the circles. Thereafter due to further dearth of vacancies Department of Telecommunication as per order dated 15.10.1998 created 1966 posts of TES Group-B by way of upgradation with retrospective effect from 1993 and DPC has been held for effecting promotion to 3629 posts and issued orders of promotion on 21.10.1998 treating as vacancies up to 22.7.1996. Further a litigation was filed before the Bangalore Bench of the Tribunal in OA No. 946/1999, wherein as per order dated 31.8.1999 the Tribunal held that 1966 posts created as per order dated 15.10.1996 cannot be considered as vacancies prior to 22.7.1996 and the promotions effected to the said vacancies as per the old Recruitment

Rule is illegal and such promotees are liable to be reverted. The Hon'ble Karnataka High Court upheld the order passed by the Bangalore Bench of the Tribunal in OA No. 946 of 1999 and connected cases. Accordingly, the Department of Telecommunication issued order dated 6.10.2000 cancelling the promotions of the 1966 officials to the Group-B posts. In the meantime the DPC was held for promotion to TES Group-B as per the 1996 rules to fill up the 75% qualifying quota vacancies from 23.7.1996 to 31.3.2000 and issued promotion order dated 26.4.2000. The said promotion was effected based upon the seniority-cum-fitness.

6. The applicant was promoted as SDE in the cadre of TES Group-B. Consequent upon the cancellation of 1966 posts as per order dated 6.10.2000 and reversion order dated 11.11.2004, 1966 officials in the seniority list dated 28.3.2001 has been deleted from the said list and placed in the seniority list No. 6 as per order dated 20.12.2004 because their appointment can be considered only under the 1996 Rules. Aggrieved by the cancellation order, the JTOs approached the Hon'ble High Court of Kerala wherein the Hon'ble High Court held that the cancellation of 1966 posts is unjustified and directed to review the promotions granted to the vacancies which were available on 22.7.1996.

7. In compliance, the BSNL created 1369 supernumerary posts of TES Group-B for the period for which 1966 abolished posts were created by the Department and promotions were effected vide order dated 21.10.1998. Accordingly, the respondents restored the seniority of 1369 officers.

Respondents Nos. 6 & 7 are recruited in the feeder category of JTO in the year 1982. Even though they have qualified in qualifying test prior to 1992, considering their year of recruitment and availability of vacancy, they can be considered only to the vacancies after 23.7.1996 as per the 1996 Recruitment Rules based on seniority-cum-fitness and can be included only in seniority list No. 6 as junior to the applicant.

8. As regards respondents Nos. 8 & 9 are concerned, their joining years are 1991 and 1994 respectively. Accordingly, as per 1981 Rules they are eligible to appear for competitive examination for the vacancies up to 22.7.1996 only after completion of 5 years of service on 1.1.1996. However, without satisfying the eligibility condition they were permitted to participate in the exam held on 23.9.2003 to 26.9.2003. The applicant submits that there exist serious illegality with respect to the implementation of the judgment of the Kerala High Court in WP(C) No. 8245 of 2006 dated 1.2.2008. The applicant submitted representations pointing out all illegalities to the respondents. However, the respondents have not taken any action on the same. Aggrieved the applicant has filed the present OAs.

9. In OA No. 180/915/2015 the applicant is aggrieved by Annexures A3, A4 And A6 orders revising the seniority position of the applicant in the cadre of SDE (T) without taking into account the merit of the applicant in the examination held on 1.12.2002 to the 25% competitive quota vacancies.

10. Notices were issued to the respondents. They entered appearance through Shri T.C. Krishna learned counsel appearing for the official respondents in both cases who filed a detailed reply statement in OA No. 180/153/2015 contending that applicant though recruited in the feeder cadre as JE/JTO in the year 1977, became eligible to appear in the departmental qualifying examination in the year 1983. He has never attempted/passed the qualifying examination till the last examination held in 1991. As per the then prevailing Recruitment Rules of 1981, for promotion to the cadre of TES Group B equivalent to SDE (T) one has to pass the qualifying examination which was conducted annually. The JEs/JTOs who pass the examination were placed in the eligibility list for considering them for promotion.

11. The applicant who did not pass the examination, was not placed in the eligibility list for considering him for promotion. However, respondents 6 to 9 were promoted at different point of time as per Recruitment Rules of 1981 in either 2/3rd quota or 1/3rd quota by virtue of their passing the qualifying examination or competitive examination. After promulgation of Recruitment Rules 1996, applicant and similarly situated non-officials were promoted in the year 2000, in the 75% quota vacancies which arose after 23.7.1996, the day new Recruitment Rules came in force, whereas private respondents 6, 7, 8 & 9 all DQE/LDCE officials were promoted as per Recruitment Rules 1981 towards the vacancies existed prior to 23.7.1996.

12. Such a segregation of vacancies i.e. vacancies existed prior to 23.7.1996 and those arisen after 23.7.1996 was the result of an affidavit filed by the department before Hon'ble Supreme Court in SLP (C) No. 26071/1996 in which Department of Telecommunication submitted that all the vacancies existed prior to 23.7.1996 would be filled up by the old Recruitment Rules of 1981 and all those arising after 23.7.1996 would be filled up with the new Recruitment Rules of 1996. The Hon'ble Supreme Court recorded this statement of the Department of Telecommunication in its order dated 25.10.1996. The respondents in their reply statement submitted as under:

“9. Accordingly promotions were effected for the pre-1996 and post-1996 vacancies (exactly pre and post-23.7.1996) in the year 1998, 2000, 2001, 2002, 2004 and 2005 as follows:

- i. In 1998 – pre 1996 vacancies in 2/3rd quota as per RRs 1981.
- ii. In 2000 and 2001 – post 1996 vacancies in 75% quota, as per RRs 1996.
- iii. In 2002 – pre 1996 in 2/3rd quota for SC/ST officials only as per RRs 1981.
- iv. In 2004 – post 1996 vacancies in LDCE quota s per RRs 1996.
- v. In 2005-pre 1996 vacancies in LDCE quota s per RRs 1981.

Sl. No. iii was effected as a result of order of this Hon'ble court dated 1.5.1998 in OA No. 1497/96 and connected matters and Sl. No. v was effected in compliance with order dated 11.2.2005 of Hon'ble High Court of Kerala in OP (CAT) 37134/2001, in which applicant himself was incidentally one of the respondents.

10. After making promotions, the AEs promoted against pre-1996 vacancies were placed in seniority lists Nos. 3 to 5 and those promoted against the post 1996 vacancies were placed in seniority lists 6 and 7. Accordingly, private respondents found place in list Nos. 3 to 5 whereas applicant was placed in list No. 6. It is pertinent to mention that all the seniority lists mentioned herein were prepared as per Recruitment year of the incumbents in compliance with Hon'ble Supreme court order dated 26.4.2000.

11. Applicant's contention in the first part of the OA is that private respondents 6 & 7 and similarly placed officials should have been promoted

as per their recruitment year and not as per their qualifying year, as directed by Hon'ble Supreme Court judgment in CA No. 4339/1995. The circumstances which led to judgment dated 26.4.2000 in CA No. 4339/1995 was that as per 1966 and 1981 RRs, eligibility list of JEs passing DQE in different years used to be prepared as per recruitment year in the feeder cadre. That means whenever one passes DQE, he/she will be placed in the eligibility list according to their recruitment year in JE cadre. For example, say 10 officials having Recruitment Year 1970, 1971, 1972, 1973 passed DQE in 1985, they will be arrayed as firstly 1970, then 1971, 1972 and 1973 in the eligibility list. If an official from say 1971 Recruitment year passes DQE in 1986, he will be placed below all other 1971 recruited officials passed DQE in 1985. In the list, but above those who passed DQE in 1985. which means his seat in 1971 berth was ensured irrespective of the year in which he passes DQE.

12. The practice of preparation of eligibility list as per recruitment year was challenged before Allahabad High Court by one Shri P.N. Lal & Shri Brij Mohan praying to arrange the officials as per their DQE year. Those who pass DQE in an earlier year sought to be placed above those who pass DQE in later years. [In the above illustration, if we apply this rule, the 1971 recruitee passed DQE in 1996 would be placed below all others passed DQE in 1985 i.e. 1970 (1985), 1971 (1985), 1972 (1985), 1973 (1985) and 1971 (1986)]. Allahabad High Court allowed the prayer and SLP filed by the DoT was dismissed. Several others filed court cases on the same footing and got orders in Allahabad High Court ratio. Ultimately, DoT decided to generalize this DQE principle to the entire cadre in 1992 and revised the JE eligibility list on DQE basis in 1992. In short, after Allahabad High Court's judgment in *P.N. Lal's* case giving directions to determine the seniority of applicants therein based on their qualifying year instead of the then prevailing criteria of their recruitment year, Department of Telecommunications decided to generalize the qualifying year principle for determination of inter se seniority of 66 and 2/3rd quota officials and prepared a common eligibility list in the year 1992, placing all the qualified JE/JTOs in the order of passing qualifying examination, up to 1991 (last exam). From this eligibility lists, promotions were effected in the year 1994 and 1998. Accordingly, private respondents were promoted in the year 1998 DPC.

13. At that time, DoT observed that about 550 AEs are pushed down in the EL as their DQE years were lower as compared to about 8000 JEs above in the list. In order to avoid reversion of the 550 AEs, DoT decided to promote all the JEs above them and adjusted vacancies from all sources and additionally created 2636 vacancies in 1993 by the method of upgradation of posts. All the JEs were promoted by 1994. Later in 1998, when the department was going to promote rest of the JEs from 1992 eligibility list, it was observed that in 1993 in order to avoid the reversion of 550 AEs the department should have created $1966 + 2636$ posts = 4602 posts but created only 2636 posts which happened due to some calculation error. In order to make up this deficiency DoT created 1966 posts in 1998, deemed to have been created from 1993 vide order dated 15.10.1998 and promotion order for 3629 DQE officials issued on 21.10.1998.

14. Creation of the 1966 posts was challenged before Hon'ble CAT Bangalore Bench and after several rounds of litigation, in compliance with court orders DoT cancelled the 1966 posts and reverted these officials in the year 2004 and their names were deleted from seniority lists 3 to 5 vide an order dated 11.11.2004. Private respondents herein belong to this group of

reverted officials. However, having found the reverted officials eligible to be promoted at par with their juniors promoted in the year 2000 (Sl. No. ii, in para 9 above) as per 1996 RRs (like applicant herein) these reverted officials were also treated as promoted w.e.f. 26.4.2000. In fact they were working as regular SDEs since 1998 to 2004 but their date of promotion was shifted to 26.4.2000 from 21.10.1998. Thereafter, their names were included in seniority list No. 6 as per their recruitment year. At this time names of respondents 6 & 7 were found below the name of the applicant in list No. 6 & 7.

17. Thus, the private respondents all qualified officials, promoted to AE cadre in 66&2/3rd quota of vacancies as per 1981 RRs who faced reversion for a period from November, 2004 to March, 2009 regained their original position in seniority list Nos. 3, 4 and 5, whereas applicant and similar officials (non-qualified) continued in seniority list No. 6 since beginning i.e. since their promotion in year 2000. In other words, applicant's position was stable in list No. 6 but private respondents' relative positions got shifted, firstly down then up, in compliance with various judicial pronouncements as submitted hereinabove. More significantly, private respondents and applicants were promoted to AE cadre at two different point of time, governed by two different statutory Recruitment Rules prescribing different methods of promotion, different eligibility conditions, against vacancies pertaining to two exclusive compartments, that is pre-23.7.1996 and post-23.7.1996 vacancies have no similarities at all for being compared and hence there is no merit in applicant's case. Once Hon'ble Kerala High Court quashed order dated 11.11.2004 vide which private respondents were reverted, later followed by Hon'ble Delhi High Court too, they cannot be kept in list No. 6 below applicant's position, as per their recruitment year, ignoring their original promotion order dated 21.10.1998, as a qualified official. Further, interestingly, sanctity of order dated 9.3.2009, vide which the 1966 reverted officials seniority was restored to list No. 3 to 5, was the subject matter of OA No. 702/2009 before this Hon'ble Tribunal which OA filed by similar non-qualified officials was dismissed the OA on 9.7.2010. A true copy of the above order of this Honourable Tribunal is produced herewith and marked as Annexure R5B.

18. Against Annexure R4B, the applicants therein filed Writ Petitions before Hon'ble High Court of Kerala which are pending. Further in another bunch of similar Writ Petitions filed by BSNL, the same issue is pending before Hon'ble High Court of Karnataka in which the Tribunal's order stands stayed.

19. It is respectfully submitted that seniority lists 1 to 5 were drawn in the year 2001, amended in 2004 and the lists 6 & 7 were drawn in 2004 and 2005. In these lists, incumbents are arrayed in the descending order of seniority. That is seniority lists 1 contains officials with higher seniority than officials of list 2, and so on and so forth. Thus seniority of officials in list No. 3 to 5 (where respondents 6&7 name has been figured) is obviously higher than that of officials in list No. 6 (where applicants name has been figured) i.e. seniority of respondents 6 & 7 herein in list No. 3 to 5 are higher than the seniority of applicant herein in list No. 6 and accordingly, they were promoted to DE/AGM cadre on an earlier date. DE/AGM promotions as stated in the OA were made from seniority list No. 3 to 5 for OC and SC category officials and only SC/ST category officials were considered from seniority list No. 6 & 7. Applicant being an OC category official was hence not considered for promotion so far. It is also to

be mentioned here in response to the averment in ground 'J' of the Original Application that the applicant did not pass either qualifying examination or the competitive examination, and hence cannot be treated as declared as passed the examinations hypothetically. The claim is against the spirit of the statutory Recruitment Rules, 1981.

20. Similarly respondents 8 & 9 were promoted in the LDCE (Limited Departmental Competitive Examination) quota (33&1/3rd %) vacancies which existed prior to 22.7.1996. Successful candidates (147 in total) were hence placed in seniority list No. 3 to 5 as per their merit and eligibility to appearing in examination in compliance with the judgment dated 13.7.2006 of the Hon'ble High Court of Kerala in OP (CAET) 37134/2001. It is also submitted that the said LDCE examination was held as per order dated 1.5.1998 and 27.4.2001 of this Hon'ble Tribunal in OA No. 1497/96 and OA No. 91/1999 respectively. The latter OA was incidentally filed by applicant herein, which was taken up in appeal before the Hon'ble High Court of Kerala in OP (CAT) No. 37134/2001. The same was disposed of by the High Court vide judgment dated 13.7.2006 giving direction to assign seniority to the successful candidates of LDCE (147) with further directions to place them over and above those officials who were promoted against the vacancies arisen after 23.7.1996. A true copy of the said judgment is produced herewith and marked as Annexure R-5C."

Therefore, respondents pray for dismissing the OAs.

13. Heard Mr. C.A. Joy, learned counsel appearing for the applicant and Mr. T.C. Krishna, learned counsel appearing for respondents Nos. 2-5 in OA No. 180/153/2015 and respondents Nos. 1-3 in OA No. 180/915/2015 and Mr. Antony Mukkath, learned counsel appearing for respondent No. 7 in OA No. 180/153/2015. Perused the records and also the argument notes filed by the applicant in OA No. 180/153/2015.

14. The TES Group-B equivalent to SDE (T) Recruitment Rule, 1966 was replaced firstly in 1981 and lastly in 1987 which were relevant for promotion from the feeder cadre of JE/JTO, SDE (T). The basic requirement is one has to pass the departmental qualifying examination held annually. The short issue in the present OAs is with regard to the seniority position of qualified official who passed the examination and those who have never

passed the qualifying examination.

15. The applicant herein was appointed as JE/JTO in the year 1977 who became eligible to appear in the qualifying examination in the year 1983 but not attempted/passed the said examination till the last exam held on 1991 under the existing Recruitment Rules, 1981 as amended in the years 1986 and 1987 for promotion of TES Group-B. The respondents Nos. 6 & 7 were promoted on different point of time after passing the qualifying examination under Recruitment Rules, 1981 as amended under the 2/3rd quota for departmental qualifying examination and respondents Nos. 8 & 9 were promoted 1/3rd quota of LDCE. The applicant was promoted against 75% quota of vacancies which arose after 22.7.1986 under the new Recruitment Rules in which departmental qualifying examination was not required to be qualified and applicant was promoted purely on seniority-cum-fitness in the year 2000. The features of 1996 Recruitment Rules are as under:

- i) 75% of the vacancies are to be filled up from JTOs in seniority cum fitness basis and 25% of the vacancies are to be filled up from JTOs who pass a Limited Departmental Competitive Examination (LDCE in short).
- ii) Eligibility for considering in both quota of promotions was 3 years regular service in JTO cadre.
- iii) No specific provision for determination of inter se seniority of 75% and 25% quota officials in this RRs, unlike RRs 1981.

Therefore, after promulgation of Recruitment Rules of 1996, applicant and similarly situated non-officials were promoted in the year 2000 in the 75% quota vacancies which arose after 23.7.1996 i.e. the day new Recruitment Rules came in force. However, the private respondents No. 6 to 9 all

DQE/LDCE officials were promoted as per Recruitment Rules of 1981 towards the vacancies existed prior to 23.7.1996. The respondents in the reply statement submitted that such segregation of vacancies i.e. vacancies existed prior to 23.7.1996 and those arisen after 23.7.1996 was the result of an affidavit filed by the department before Hon'ble Supreme Court in SLP (C) No. 26071/1996 in which Department of Telecommunication submitted that all the vacancies existed prior to 23.7.1996 would be filled up by the old Recruitment Rules of 1981 and all those arising after 23.7.1996 would be filled up with the new Recruitment Rules of 1996.

16. The Hon'ble Kerala High Court in OP (CAT) No. 37134 of 2001 in which applicant was party has held that promotion effected for pre-1996 and post 1996 in the year 1998, 2000, 2001, 2002, 2004 and 2005 in LDCE quota is as per the Recruitment Rules of 1981. Thus, the issue has been settled by the Hon'ble Kerala High Court which has not been altered by the apex court till date.

17. The Hon'ble apex court in Civil Appeal No. 4339 of 1995 held as under:

“The Allahabad High Court considered the grievances of the applicant before him viz. Parmanand Lal and Brij Mohan on the basis of instructions contained in paragraph 206 of the P & T Manual and the provisions of the Recruitment Rules did not come up for consideration. The Court ultimately had directed that the two petitioners before it viz. Parmanand Lal and Brij Mohan should be promoted with effect from the date prior to a date of promotion of any person, who passed the departmental examination, subsequent to them and adjust their seniority accordingly. When this Court dismissed the Special Leave Petition filed by the Union of India, though it was stated that the special leave petition is dismissed on merits, but in the very next sentence the Court had indicated that in the facts and circumstances of the case, the Court was not inclined to interfere with the judgment of the High Court except to a limited extent. It is, therefore,

obvious that while dismissing the special leave petition, the Court had not examined the provisions of the recruitment rules and the instructions issued thereunder, providing the procedure for promotion to the service in Class II and, therefore, there was no reason for the Union of India to think that what has been stated in Civil Appeal No. 4339 of 1995, runs contrary to the judgment of the Allahabad High Court, which stood affirmed by dismissal of the special leave petition Nos. 3384-86 of 1986 on 8.4.1986. The Principal Bench of the Central Administrative Tribunal, New Delhi, disposed of O.A.No. 2667 of 1991 and the Review Application filed before it as Review Application No. 195 of 1992 was disposed of by the Tribunal on 29th of June, 1992, following the views of the Allahabad High Court in interpreting paragraph 206 of the Post & Telegraphs Manual and against the said judgment, the Telecommunication Engineering Service Association had preferred Special Leave Petition No. 16698 of 1992 and batch, which stood disposed of by judgment dated 13th of May, 1994. This Court came to hold that the Tribunal was right in following the Judgment of the Allahabad High Court in Parmanands case which has become final by disposal of the Union Governments SLP against the same, which deals with the interpretation of paragraph 206 of the P & T Manual. This Court also took notice of another judgment of the Court dated 18th of September, 1992 passed in T.P.(Civil) No. 417 of 1992 in Writ Petition (Civil) No. 460 of 1992 along with SLP. (Civil) Nos. 9063-64 of 1992. In the judgment of this Court dated 18th of September, 1992 in T.P.(Civil) No. 417 of 1992 in Writ Petition(Civil) No. 460 of 1992 in the case of Junior Telecom Officers Forum & Ors. Vs. Union of India & Ors., this Court was of the view that the controversy relates to the mode of promotion to the Telecom Engineering Service Group B as well as fixation of seniority of the Junior Telecom Officers/Assistant Engineers in that category and the preparation of eligibility or the approved list for the said purpose by the department in accordance with the recruitment rules and paragraph 206 of the P & T Manual Volume IV. The Court no doubt has noticed the arguments advanced by placing reliance on the provisions of the recruitment rules of 1966 but it ultimately came to the conclusion that the views of the Allahabad High Court has reached a finality because of the dismissal of the SLP against the same and as such the eligibility list is required to be prepared in accordance with paragraph 206 of the P & T Manual. The aforesaid conclusion is undoubtedly incorrect, as the Judgment of the Allahabad High Court proceeded by interpreting paragraph 206 of the P & T Manual, which was an administrative instruction which governed the field until promulgation of the recruitment rules framed under proviso to Article 309 of the Constitution. Once the statutory recruitment rules have come into force and procedure has also been prescribed under the said rules for preparation of the eligibility list of officers for promotion to the Engineering service Class II by notification dated 28th of June, 1966, it is that procedure which has to be adopted and the earlier administrative instruction contained in paragraph 206 of the P & T Manual cannot be adhered to. Under the recruitment rules read with Schedule appended thereto and Appendix I to the rules, the recruitment to the service in Class II has to be made entirely by promotion on the basis of selection through a qualifying departmental examination. The Departmental Promotion Committee is duty bound to prepare an approved list by selection from amongst the officials who qualify in the departmental examination. In view of the amendment to the rules made on 4th of February, 1987, the criteria for selection is seniority-cum-fitness. In accordance with the prescribed procedure for preparation of eligibility list, notified by the Government on the 28th of June, 1966, the Departmental Promotion Committee has to prepare separate lists for each year of recruitment in the feeder category. In other words, if in 1958, the Departmental Promotion committee is

recommending people for promotion to Class II, then all the eligible candidates who had passed the departmental examination and who had been recruited in 1950, are to be listed separately from those officers who also have qualified departmental examination and were recruited in the year 1951 and so on and so forth. Once, separate lists are prepared by the Departmental Promotion Committee of the officers recruited in different recruitment years in the feeder category and the criteria for promotion being seniority-cum-fitness, then it would create no problem in promoting the officers concerned. As to the inter se position of the officials belonging to the same year of recruitment in the feeder category, the procedure to be adopted has been indicated in paragraph (iii) of the Memorandum dated 28th of June, 1966. In this view of the matter, we are of the considered opinion that the Judgment of this Court in Civil Appeal No. 4339 of 1995 has rightly been decided in interpreting the relevant provisions of the recruitment rules read with the procedure prescribed under the Memorandum dated 28th of June, 1966. We however, make it clear that the persons who have already got the benefit like Parmanand Lal and Brij Mohan by virtue of the judgments in their favour, they will not suffer and their promotion already made will not be affected by this judgment of ours.”

18. In this view of the matter, we are of the considered opinion that the Judgment of the apex court in Civil Appeal No. 4339 of 1995 has been decided interpreting the relevant provisions of the Recruitment Rules read with the procedure prescribed under the Recruitment Rules.

19. The Hon'ble Supreme Court held in CA No. 4339/1995 that as per Recruitment Rules of 1966 and 1981 the eligibility list of JEs passing DQE in different years used to be prepared as per recruitment year in the feeder cadre meaning thereby that qualified candidate in DQE will be placed in the eligibility list according to the recruitment year in JE/JTO cadre.

20. The applicant who has questioned now the seniority list on the ground of creation 1369 posts in qualifying quota and 147 posts in competitive quota. These private respondents who have qualified the examination in terms of Recruitment Rules, 1981 (as amended) and LDCE examination for

1/3rd quota were in accordance with the Recruitment Rules which were in existence at that relevant point of time. The applicant who has been promoted in the year 2000 by the subsequent Recruitment Rule of 1996 in 75% quota in which Rules it was modified to seniority-cum-fitness, cannot now be allowed to be claim seniority over the private respondents who had qualified either in DQE or LDCE. The Department has rightly fixed the seniority of the applicant below the private respondents. Thus, the contention of the applicant for recasting the seniority is not tenable in the eyes of law and the matter has been in litigation in various forum. In none of the proceeding it has been ruled that seniority cannot be fixed as per the Recruitment Rules applicable at the relevant point of time. The applicant has never attempted the departmental qualifying examination which were conducted time to time till 1996. He cannot equate himself to the candidates who had qualified in the qualifying or LDCE.

21. In view of the above facts and circumstances of the case and legal position appreciated by this Tribunal, we find that the present OAs lack merit and hence are liable to be dismissed. We order accordingly. MA No. 180/1221/2015 in OA No. 180/153/2015 is also dismissed. No order as to costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K. BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

“SA”

Original Application No. 180/00153/2015

APPLICANT'S ANNEXURES

Annexure A1 – True copy of the 1981 Recruitment Rule as amended till 1987.

Annexure A2 – True copy of the judgment of the Hon'ble Supreme Court in Union of India v/s. Madras Telephone SC/ST Social Welfare Association, CA. 4339/95 dt. 26.4.2000.

Annexure A3 – True copy of the 1996 Recruitment Rule.

Annexure A4 – True copy of the order dated 15.10.98 creating 1966 posts of TES Group-B.

Annexure A5 – True copy of the order dated 31.8.99 of Central Administrative Tribunal, Bangalore Bench in OA 946/99 and connected case.

Annexure A6 – True copy of the order dated 20.12.2004.

Annexure A7 – True copy of the common judgment of Kerala High Court in WP(C) No. 8245/2006 dated 1.2.2008.

Annexure A8 – True copy of the order creating 1369 supernumerary posts with allocation among the circles dated 9.3.2009 issued by BSNL.

Annexure A9 – Order No. 412-16/2014-Pers.I dated 20th August, 2014.

Annexure A10 – Order No. 412-16/2014-Pers.I dated 2nd September, 2014.

Annexure A11 – Order No. 412-16/2014-Pers.I dated 5th September, 2014.

Annexure A12 – Order No. 412-16/2014-Pers.I dated 22nd September, 2014.

Annexure A13 – Order No. 412-16/2014-Pers.I dated 26th September, 2014.

Annexure A14 – True copy of the merit list dated 13.11.2004.

Annexure A15 – The seniority assigned to the above said 147 officers as per order dated 28.7.2008.

Annexure A16 – Order No. 412-24/2010-Pers.I dated 16th August, 2010.

Annexure A17 – Order No. 412-16/2013-Pers.I dated 9th September, 2014.

Annexure A18 – True copy of the representation dated 11.11.2011 pointing out the illegality in creating the 1366 supernumerary posts submitted by the applicant.

Annexure A19 – True copy of the representation dated 24.10.2006 pointing out the illegality in the merit list of 147 persons, submitted by the applicant.

Annexure A20 – True copy of the representation dated 14.1.2015.

Annexure A21 – True copy of relaxation order dated 10.3.2003 with respect to the competitive examination of JTOs.

RESPONDENTS' ANNEXURES

Annexure R5A – True copy of judgment of Supreme Court of India in SLP (Civil) No. 26071/96.

Annexure R5B – True copy of judgment of Central Administrative Tribunal in OA No. 702/2009.

Annexure R5C – True copy of judgment of High Court of Kerala in OP No. 37134/2001.

Annexure R5D – True copy of judgment of High Court of Kerala in OP (CAT) No. 3019/2001 & connected cases.

Annexure R5E – True copy of order of Supreme Court of India in SLP Nos. 30790-30795/16.

Annexure R5F – True copy of order of Supreme Court of India in SLP Nos. 24303/2013.

Original Application No. 180/00915/2015

APPLICANT'S ANNEXURES

Annexure A1 – True copy of the relevant extract of the seniority list No. 6 dated 12.1.2005.

Annexure A2 – True copy of the 1996 Recruitment Rules.

Annexure A3 – True copy of the communication with provisional consolidated revised seniority list No. 6 dated 1.4.2015.

Annexure A4 – True copy of the order dated 17.4.2015 giving time till 9.5.2015 for submitting objections if any against the provisional consolidated revised seniority list No. 6.

Annexure A5 – True copy of the representation dated 20.5.2015.

Annexure A6 – True copy of the order No. 56-05/2015-Pvrs (DPC)/22 dated 8.6.2015.

Annexure A7 – True copy of the representation dated 22.6.2015.

Annexure A8 – True copy of the order No. 1-14-2008-Pers-II dated 20.7.2015.

RESPONDENTS' ANNEXURES

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