

3. The Member (Services)
Telecom Commission,
Sanchar Bhavan,
No.20, Ashoka Road,
New Delhi 110 001.
4. T. Nagarajan
5. A. Sugumaran
6. V. Venkataraman
7. M. Shanmugam
8. R. Gothandaraman
9. K.V. Venkateswaran
10. A. Shamsudeen
11. M. Subramanian
12. K.S. Ramasamy
13. M. Jothimani
14. M.N. Krishnamurthy
15. P. Govindan
16. S. Narayanan
17. S. Vijaya Kumar
18. K. Sukumaran
19. S. Kumar
20. S. Palanichamy
21. G. Mahesha

.. Respondents

W.P.Nos.21961 & 22087 of 2001 have been filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorari to call for the records in the order of the Central Administrative Tribunal, Madras Bench, the 1st respondent herein, dated 28.9.201 in O.A.No.305 of 2001 and quash the same.

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For Petitioners Mr.V.T. Gopalan
in WP.21961/2001 & : Addl. Solicitor General
for Respondents 2&3 Assisted by
in WP.22087/2001 Ms.Vijayadharani, CGSC

For Respondents 2to11 M/s.R. Vaigai &
in WP.21961/2001 : Anna Mathew

For Petitioners Mr. Balan Haridoss for
in WP.22087/2001 : M/s.B. Babu Manohar
& Respondents 4to13 S. Punniyakotti

COMMON JUDGMENT

P.K. MISRA, J

The present two writ petitions are directed against the order passed by the Central Administrative Tribunal, Chennai Bench in O.A.No.305 of 2001. W.P.NO.21961 of 2001 is filed by the Government of India and W.P.No.22087 of 2001 is filed by some of the employees who are affected by the order passed by the Tribunal. Such Original Application was filed by the present Respondents 2 to 11 in W.P.No.21961 of 2001 challenging the Order No.15-78/99-STG-II dated 1.2.2001 issued by the Government of India.

2. For convenience, the present Respondents 2 to 11 in W.P.No.21961 of 2001, who had filed the O.A.No.305 of 2001 are referred to as "the applicants" and the present writ petitioners are referred to as they were arrayed in such O.A.

3. To appreciate the contentions raised, it is necessary to notice in detail the various facts and circumstances.

The applicants as well as Respondents 3 to 14 were employed under Respondent Nos.1 and 2 in Telecom Engineering Service under the Posts & Telegraphs Department. Recruitment to such Telecom Engineering Service is governed by Statutory Rules, namely, the Telegraph Engineering Service (Group 'B') Recruitment Rules, 1981 (hereinafter referred to as "the Rules"). Under the said Rules, the post of Assistant Engineers (subsequently redesignated as Sub Divisional Engineers) is to be filled up by promotion from Junior Engineers (subsequently redesignated as Junior Telecom Officers). Rule 3 prescribes the method of recruitment, which shall be as specified in columns 5 to 14 of the Schedule and Appendix I to III to the Rules. As per the Schedule, for the post of Assistant Engineers, the method of recruitment is by promotion, out of which 66-2/3 per cent of the promotion quota is by selection on the basis of Departmental Qualifying Examination conducted and 33-1/3 per cent of the promotion quota is by selection on the basis of Limited Departmental Competitive Examination (referred to as "LDCE" in short).

3.1 Clause 2 of Appendix I prescribes that for 66-2/3 per cent, selection is to be done by the duly constituted Departmental Promotion Committee from the officials who have qualified in the Departmental Qualifying Examination and for 33-1/3 per cent selection is through Limited Departmental Competitive Examination on the basis of relative merit.

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Clause 2(iii) is relating to seniority and is extracted hereunder :-

"2(iii) The inter-se seniority of the officials who have qualified in the Departmental Qualifying Examination and those who have qualified in the Limited Departmental Competitive Examination shall be in the ratio of 2:1 starting with the officers selected by the method of selection by the Departmental Promotion Committee on the basis of Departmental Qualifying Examination."

Clause 4 of the Appendix II being relevant is extracted hereunder:-

"4. Appointment to the remaining 33-1/3 per cent quota shall be made in order of merit as indicated in the Selection List issued in respect of successful candidates from the Limited Departmental Competitive Examination."

3.2 As per the case of the applicants, they passed the qualifying examination on various dates between November, 1976 and August, 1980 and promoted as Assistant Engineers between 1986 and 1990. It is the specific assertion in the Original Application, which apparently was not disputed, that Respondent Nos.3 to 14 were promoted in the year 1994 on the basis of the qualifying examination quota.

3.3 Certain Assistant Engineers, who had been promoted on the basis of LDCE, aggrieved by the combined seniority list of the year 1990, had approached the Central Administrative Tribunal, Ernakulam Bench by filing O.A.No.1982 of 1995. In the said O.A., two Sub-Divisional Engineers, who had been promoted through qualifying examination within 2/3rd quota, had been impleaded as Respondents 4 and 5. Such Original Application was allowed by the Tribunal by order 3.2.1998 by giving the following directions :-

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"31. In the light of the detailed discussions made above, we allow the O.A. quashing A4, A5, A6 and A10, and issue the following directions :-

i) The first respondent shall specifically work out the vacancies representing the 1/3rd quota in the TES Group-B meant for the Junior Engineers coming out successful at the Competitive Examination after the commencement of the Recruitment Rules for the TES Group-B category in 1981 upto 1986. This shall be done year-wise from 1981 till the year 1986, in which year the applicants became qualified as competitive officers eligible for being promoted to the TES Group-B against the 1/3rd quota.

ii) The first respondent is directed then to calculate year-wise how many of those vacancies belonging to the 1/3rd quota were filled up with the Junior Engineers who had qualified at the Departmental Qualifying Examination, but not at the Departmental Limited Competitive Examination. They shall also indicate whether at the relevant point of time when the qualifying officers were promoted against the 1/3rd quota of vacancies set apart for the competitive officers, a competitive Examination had already been held and the results thereof had already been declared. They shall further ascertain the number of such competitive officers who came out successful in that competitive Examination.

iii) The first respondent is directed thereafter to permit the carryover of the 1/3rd quota of vacancies meant for competitive officers from year to year till the next competitive examination held and competitive officers based on such an examination became available. The slots meant for the competitive officers shall then be filled up only with the competitive officers, though they cannot be given the benefits of pay, etc., till the time they are actually promoted against that quota of vacancies and occupy

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those posts on promotion. But, they shall be given seniority over the qualifying officers who have so far occupied those slots meant for the competitive officers. The slots meant for the competitive officers which may have been filled with the qualifying officers shall be vacated by the concerned qualifying officers. They will be accommodated against the slots available against the 2/3rds of the vacancies in the TFS Group-B cadre meant for the qualifying officers depending on their seniority in the subsequent years.

iv) This exercise shall be completed as expeditiously as possible and in any case in four months from today under intimation to the applicants."

3.4 Subsequently, similar Original Application was filed before the Hyderabad Bench of the Central Administrative Tribunal as O.A.No.507 of 1994 which was disposed of on 22.4.1998 wherein, after extracting the above directions of the Ernakulam Bench, the Hyderabad Bench gave the following direction:-

"In view of the above, the following direction is given:-

The seniority of the applicants in this OA should also be re-cast on the basis of the directions given by the Ernakulam Bench of this Tribunal extracted above."

3.5 Similarly, O.A.No.961 of 1999 was filed by one person, who had been promoted only on the basis of qualifying examination, before the Bangalore Bench of the Central Administrative Tribunal. His case was that even though he was qualified in the LDCE conducted in the year 1988, the Government had failed to give him the benefit of promotion against the quota meant for such officers by not carrying forward the unfilled slots meant for them. The Bangalore Bench by referring to the

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decision of the Ernakulam Bench directed that such person may be given seniority on the basis of such Limited Departmental Competitive Examination.

3.6 A similar Original Application was filed as O.A.No.433/HR/99 before the Chandigarh Bench of the Central Administrative Tribunal wherein, following the decision of the Ernakulam Bench, a direction was given to consider the case of the applicants therein as per the directions contained in the judgment of the Ernakulam Bench and the Bangalore Bench.

3.7 At that stage, the impugned order dated 1.2.2001 was passed by the Central Government, which is to the following effect :-

"Consequent upon the approval of the competent authority the following TES Gr.'B' officers as per list enclosed at annexure 'A' and 'B' are declared successful in TES Gr.'B' Limited Departmental Competitive Examination held on 25 & 26 May 1987 and 24 & 25 November 1988 against the 1/3rd competitive quota respectively and accordingly they are promoted to TES Gr. 'B' against competitive quota. Their seniority will be fixed as per Hon'ble Supreme Court judgment dated 26.4.2000 in CA No.4339/95 and as per provisions of Recruitment Rules. Since these officers already promoted to TES Gr. 'B' against seniority quota, their staff number may be intimated by Circle office.

This is in compliance with Hon'ble CAT, Bangalore judgment dated 30.6.2000 in OA No.961/99 in the matter of Sh.K.S. Hegde Vs. Union of India and others and Hon'ble CAT, Chandigarh judgment dated 31.7.2000 in O.A.No.473/HR/99 in the matter of J.R. Nain and others Vs Union of India and others."

3.8 This latter order gave rise to filing of O.A.No.305 of 2001 before the Madras Bench of the Central Administrative Tribunal. In the O.A., it was asserted that 270 officers, who were declared successful in the competitive examination, had earlier been promoted to Telecom Engineering Service Group-B through qualifying examination on the basis of their seniority and many of them were in fact juniors to the applicants and they had not challenged their non-promotion in the year 1987 or 1988 through LDCE. It was also stated that instead of challenging the non-promotion, they chose to await their promotion under 2/3rd quota through qualifying examination. The applicants also specifically asserted that one such person, namely Kumar, did not appear at the examination at all and the other person, namely Sudhir Chadha, whose Serial Number 14 in the Order dated 1.2.2001, did not secure minimum marks in the LDCE. In fact, the application before the Department to get the marks of the competitive examination in November 1988 was turned down on the ground that marks had to be obtained within six months from the date of result of the examination. It is also asserted that some of the officers who were declared successful for the vacancies in 1987 were not even eligible then as they did not possess the required five years of service.

3.9 The Union Government filed their counter in the Original Application and some of the respondents; namely, Respondent Nos.4, 6,7,9,10,11,12 and 14 had also filed separate counters. The stand of the Union Government is that they had given effect to the decision of the Supreme Court as well as different Benches of the Central Administrative Tribunal.

3.10 In the counter affidavit filed by the private respondents, it was indicated that in 1982, LDCE was held for filling up 600 vacancies of Sub-Divisional Engineers and results were declared in 1985 only and 254

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candidates were promoted. Due to protest by the senior members of the Junior Telecom Officers cadre against holding LDCE and on account of filing of litigations and interim orders, no LDCE was held during 1983, 1984 and 1985 during which 150, 220 and 102 vacancies had arisen respectively. In 1986, LDCE was held for 472 vacancies and 450 candidates were selected. In 1987, LDCE was held for 94 vacancies and, even though 158 candidates had passed, only 94 candidates were promoted. Similarly, in 1988, LDCE was held wherein 113 candidates were promoted though more than 320 candidates had passed. It was further indicated that the surplus vacancies were filled up by qualifying examination candidates, who were placed en-bloc above the LDCE candidates, which was contrary to para 2 (iii) of Appendix I of the Rules. Seniority list of the Sub-Divisional Engineer cadre published in 1993 was challenged in Ernakulam Bench of the Central Administrative Tribunal, which was allowed and subsequently many similar orders were passed by different Benches of Central Administrative Tribunal. In 1987 and 1988, lesser number of candidates were promoted on the basis of LDCE. Thereafter, it was found that there were more than 70 vacancies in the LDCE category, which were unfill'd in the previous Recruitment years and according to them that should have been carried forward to 1987 and 1988, but that was not done and such mistake was rectified by order dated 1.2.2001. It was also asserted that judgments of different Benches of the Central Administrative Tribunal were judgment in rem and were binding on all concerned.

3.11 Subsequently by an additional affidavit, Respondent Nos.1 & 2 furnished particulars relating to Limited Departmental Competitive Examination.

4. The Tribunal held that the Original Application was not hit by the principles of res judicata as the declaration of additional 270 candidates as successful and preparation of fresh seniority list of 2001 were not the subject matter of the OAs before the other Benches. The Tribunal negated the contention of the applicants that some of the candidates who had appeared at the LDCE were not eligible and similarly the contention that they had not secured the requisite minimum marks was repelled. It was further found that results of the LDCE held in May, 1987 were declared in May 1988 and the candidates were selected and appointed in May 1988 and September 1988. Similarly the candidates who had appeared at the subsequent LDCE had been promoted. It was further found that declaration of 270 candidates as successful and their seniority has to be recalculated with retrospective effect was invalid as the candidates appointed on the basis of LDCE cannot have retrospective appointment. For the aforesaid purpose, the Tribunal relied upon the decision of the Supreme Court reported in 2000 SCC (L&S) 977 (SURAJ PARKASH GUPTA & OTHERS v. STATE OF JAMMU & KASHMIR AND OTHERS, Paragraphs 80 and 81). The Tribunal further referred to an earlier order of the Hyderabad Bench wherein, while deciding O.A.Nos.1070/1993, 772/89 and 611/90, the Hyderabad Bench held that the candidates on the basis of LDCE quota appointed in June 1985 could not have been given the benefit of retrospective promotion. It was also found that many candidates who had passed the qualifying examination held in 1987 and 1988 were given promotion effecting from earlier dates, even though they were not eligible. On the basis of the aforesaid conclusions, the Tribunal allowed the Original Application.

4.1 However, in view of the specific direction of the Bangalore Bench in O.A.No.961 of 1999, the Tribunal protected the seniority of the

said applicant and set aside the seniority assigned to other candidates included in the order dated 1.2.2001 and directed to recast the seniority of those persons with reference to their actual date of promotion in LDCE quota. The Tribunal, however, made it clear that if the seniority position, which such candidates enjoyed with reference to 66-2/3% quota, is more favourable, it would be open to them to retain their seniority with reference to 66-2/3% quota. This order of the Tribunal is being challenged by the Central Government as well as the aggrieved private respondents of the Original Application in these writ petitions.

5. The main contention raised by Mr.V.T. Gopalan, the learned Addl. Solicitor General for the Central Government, is to the effect that even though LDCE had been held in the year 1987 and 1988, results had not been declared due to wrong calculation regarding the posts available on the basis of LDCE and subsequently when the orders were passed by different Benches of the Central Administrative Tribunal, in order to comply with those directions, mistakes had been rectified and the persons who had passed the LDCE during the examination held in 1987 and 1988 were given their seniority by antedating their deemed date of appointment on the basis of the availability of the vacancies for LDCE quota.

5.1 Mr. Balan Haridoss, learned counsel for the writ petitioners in W.P.No.22087 of 2001, has also contended likewise. It has been submitted by him that even though such writ petitioners were not at fault and they had appeared at the examination in the year 1987 and 1988 and they should have been promoted on the basis of the available quota, they were not so appointed and therefore on the basis of declaration of such results, their seniority has been rightly antedated.

6. Ms.R. Vaigai, learned counsel appearing for the original applicants, who are the Respondents 2 to 11 in W.P.No.21961 of 2001, on the other hand,

submitted that even assuming that the required number of candidates had not been promoted on the basis of LDCE held during the year 1987 and 1988, such candidates have subsequently accepted their promotion on regular basis during the year 1993-1994 without any demur and antedating the seniority after such a long lapse of time should not have been done by the Central Government. Learned counsels for all the parties have relied upon several decisions of the Supreme Court as well as this Court.

7. The basis for the claim of the present writ petitioners is the decision of the Ernakulam Bench. That matter related to the question of seniority of those who had appeared in LDCE in 1982, but results were postponed due to supervening circumstances not within the control of those persons. In such peculiar circumstances, the Tribunal had directed that their seniority should be fixed on the basis of notional promotion from the date on which the vacancy was available for such category. The Tribunal, in the present case, has held that the said decision would not operate as res judicata as the cause of action in the present litigation was the subsequent publication dated 1.2.2001, whereas the cause of action for the round of litigation before Ernakulam Bench had arisen much earlier in respect of the examination held in the year 1982. The Tribunal has further indicated that in fact a contrary view had been expressed by the Hyderabad Bench in respect of some of the similar candidates. Even though the Tribunal has given a direction to implement the order passed by the Bangalore Bench, it had rightly observed that in such Original Application the persons likely to be affected were neither impleaded in a representative capacity nor in their individual capacity. Similarly the decision of Chandigarh Bench of the Central Administrative Tribunal, wherein a direction had been given to implement the decision of the Central Administrative Tribunal,

Ernakulam, was distinguished by the Tribunal by observing that no party likely to be affected had been impleaded and the matter was between the applicants and the Central Government.

8. Learned Addl. Solicitor General appearing for the Central Government has relied very much upon the decision of the Supreme Court in Civil Appeal No.1655 of 1997 (UNION OF INDIA & ANOTHER v. J. SANTHANAKRISHNAN & OTHERS) and other connected matters. It is submitted by him that the said decision relates to the very same question of seniority in the very same Department under the very same rules and therefore the ratio of the said decision should be made applicable and refixation of seniority as has been done by the Central Government being in accordance with the ratio of the said decision, should be upheld.

9. In the Santanakrishnan's case, the applicants before the Tribunal were working as Junior Engineers and the next promotional post was that of the Assistant Engineers. As per the existing Recruitment Rules of 1966, the post of Assistant Engineer was filled up entirely on the basis of promotion through a Departmental Qualifying Examination and selection by the Departmental Promotion Committee. However, such Rules were superceded by the Telegraph Engineering Service (Group'B') Recruitment Rules, 1981 (In the present case, we are concerned with such later Rules). Such Rules came into effect from 7.5.1981. According to which 2/3rd of the post should be filled up by the officers who qualify in the Departmental Qualifying Examination and the remaining 1/3rd has to be filled up on the basis of LDCE. Even though there was promotion on the basis of Departmental Qualifying Examination through Departmental Promotion Committee in respect of 2/3rd post, LDCE could not be held in time nor results could be published due to various legal wranglings in different courts. Ultimately, when the dispute reached the Supreme Court,

while upholding the validity of the Rules and the Note under the Rules, the Supreme Court by judgment dated 23.4.1985 directed to give promotion to the successful candidates of 1982 competition examination as Assistant Engineers and accordingly all those applicants were promoted by order dated 17.6.1985.

9.1 The applicants were interpolated between the officers who were promoted under 2/3rd quota. However, in the last column of the seniority list, under the caption "date of DPC or Promotion", no dates were mentioned as against such promotees, who were promoted on the basis of the LDCE. The applicants made a representation dated 4.10.1991 to give them promotion with effect from 1981. In the seniority list of 6.1.1993, similarly no dates were mentioned relating to the date of promotion.

9.2 In the meantime, the Department, on 25.9.1990, had introduced an automatic time-bound promotion as Senior Assistant Engineers on completion of 12 years of service as Assistant Engineers. In the above background, the applicants had filed an Original Application before the Central Administrative Tribunal, Madras, for a direction to the Government to treat such applicants as having been promoted with effect from 11.5.1981 and to consequently revise the seniority and also to grant them the consequent time-bound promotion as Senior Assistant Engineers together with appropriate pay and arrears.

9.3 The Madras Bench of the Tribunal, by judgment dated 22.1.1996, allowed the Original Application by giving the following directions :-

"16. In the result, the Original Application is allowed in the following terms:

1. The applicant will be deemed to have been promoted as Assistant Engineers against 33 1/3% quota of the vacancy for 1981 with effect from 12.9.1982.

2. The respondents are directed to show the above date in the seniority list No.16-9/92 STG II dated 6.1.93 for officers in Telegraph Engineering Service Group 'B'.

3. The respondents shall take 12.9.1982 as the date of regular service of the applicants as Assistant Engineers for further promotions including the time-bound-promotion as Senior Assistant Engineers.

4. The respondents shall notionally fix the pay of the applicants with effect from 12.9.1982 as Assistant Engineers. The applicants will not be entitled to any arrears of pay."

9.4 It seems that in a similar matter, the Chandigarh Bench of the Central Administrative Tribunal had given a direction that such persons promoted on the basis of the LDCE should be deemed to have been promoted on 11.5.1981 on par with the date of promotion effected in respect of promotees coming within 2/3rd quota.

9.5 All such matters were taken to the Supreme Court by the Union of India and by the applicants. The Supreme Court, while disposing of the matter, observed as follows :-

"After hearing the learned counsel appearing on either side, we are of the view that de hors the niceties of the legal issues involved as also the interpretation of the relevant rules, substantial justice seems to have been rendered by attempting to solve an unprecedented and one time problem which seems to have cropped up on account of delay in holding the examination relating to 33-1/3 percent quota known as Limited Competitive Examination under Rule 2(iii) of the relevant rules and