

declaration of results after selection. Though so far as the other category pertaining to 66-2/3 percent is concerned, the departmental examination was held in time, as scheduled and the results were declared and final results after assessment of ACRs. Came to have been published somewhere in May, 1985 and actual promotions were effected in June, 1985. It is to resolve any heart burn among this class of promotees in the matter of computing the required minimum period of service for further promotion as Senior Assistant Engineer, the Tribunal Bench at Madras has chosen to adopt a device of giving due leavage for completing the process of examination which was held in March, 1982 and processing of the ACRs, of six months time and fixed their notional date of promotion as 12.09.1982. The Tribunal in our view, has rightly taken care to ensure that by virtue of such notional date of promotion, the Department was also not put to any monetary loss and the promotees concerned will not be entitled to any arrears of salary from the date, though for other purposes, including seniority, it was ordered to be counted. The solution adopted appears to be just, reasonable and necessary to ensure that the said class of persons are not made to suffer for no fault of theirs...."

10. Making the aforesaid observations as the main plank of his submission, the learned Addl. Solicitor General has submitted that in the present case also the Union of India has done the very same thing as in the present case the Departmental examinations were held in 1987 and 1988, but results were only declared in 2001 and therefore the Department has refixed the seniority of the persons concerned by antedating the seniority of the promotees coming within 1/3rd quota to be filled up on the basis of the LDCE.

11. Even though such a submission on the face of it may appear to be fairly simple, innocuous and attractive, a careful reading of the decision of

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the Supreme Court in the earlier round of litigation relating to the very same Department, very same promotion and recruitment rules, indicates that the Supreme Court had approved the ultimate order of the Central Administrative Tribunal, Madras because by such order "... 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 Departmental Competitive Examination under Rule 2(iii) of the relevant rules and declaration of results after selection."

12. A careful reading of the background materials available from the order of the Tribunal indicates that even though such promotees within 1/3rd quota were claiming that their seniority should be counted from the date on which 2/3rd promotees through Departmental Qualifying Examination had been promoted, there was no claim made that such promotees coming within 1/3rd quota should be made seniors to the promotees coming within 2/3rd quota. In other words, the dispute was practically a dispute between the promotees coming within 1/3rd quota and the Central Government and keeping in view the peculiar facts and circumstances, the Madras Bench had adopted a method as could be seen from the following passage found in the order of the Tribunal:-

"... to resolve any heart burn among this class of promotees in the matter of computing the required minimum period of service for further promotion as Senior Assistant Engineer, the Tribunal Bench at Madras has chosen to adopt a device of giving due leavage for completing the process of examination which was hold in March, 1982 and processing of the ACRs, of six months time and fixed their notional date of promotion as 12.09.1982. The Tribunal, in our view, has rightly taken care to ensure that by virtue of such notional date of promotion, the Department was also

not put to any monetary loss and the promotees concerned will not be entitled to any arrears of salary from the date, though for other purposes, including seniority, it was ordered to be counted. The solution adopted appears to be just, reasonable and necessary to ensure that the said class of persons are not made to suffer for no fault of theirs."

13. In the present case, however, the factual matrix appears to be different. In the present case, LDCE had been held during the year 1987 and 1988 and some persons had been promoted on that basis. The writ petitioners (Respondent Nos.6,7,9 & 11 in the O.A.), even though they had appeared at such examination, had not been promoted and subsequently they got their promotion in 1994 onwards by the normal method coming within 2/3rd quota. On the other hand, the applicants, who are the contesting respondents in both the writ petitions, had also been promoted earlier on the basis of the Departmental Qualifying Examination within the very same 2/3rd quota. It is not that the results of the examination held during 1987 and 1988 had been stayed or not published. On the basis of such examination, some persons had been promoted and others had not been promoted. It may be that this was on the basis of the wrong calculation made by the Department, but the glaring fact remains that even though the writ petitioners (Respondent Nos.6,7,9 & 11 in the O.A.) had appeared at the examination, they were not accorded promotion and, on the other hand, they had accepted the promotion offered to them through the normal method within the quota of 2/3rd. The process adopted by the Central Government in 2001, by antedating the seniority of such persons on the ground that they had appeared in the competitive examination in 1987 and had qualified, has the effect of unsettling the seniority of employees which had already been settled. The effect of the decision decided by the Supreme Court was to

give notional date of promotion from an earlier date which in fact affected none, not even the Central Government, whereas the action now taken by the Department has the effect of affecting all other promotees who were already holding the promotional post on the basis of regular promotion.

14. Learned counsel appearing for the writ petitioners (Respondent Nos.6,7,9 & 11 in the O.A.) submitted that as per the Rules the seniority has to be counted by applying the principle of rotation and, therefore, he has submitted that the date of holding such competitive examination should be considered as the crucial date.

15. Clause 2(iii) of Appendix I relates to inter-se seniority. It only means that upon being promoted seniority 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. Reading of such clause as a whole only means that seniority has to be fixed between the promotees in the above ratio of 2:1 i.e., two promotees coming within 2/3rd quota would be followed by one promotee coming within the merit quota. It only relates to seniority among the promotees promoted on the basis of the same qualifying examination. However, it does not contemplate that if the actual promotion takes place later on, such promotion can be antedated to the date of the holding of such competitive examination. If the facts of the present case are examined, it appears that the writ petitioners (Respondent Nos.6,7,9 & 11 in the O.A.) were actually promoted only from 1993-94 or 1994-95 onwards, whereas the applicants before the Tribunal had been promoted much earlier. If the persons who were not promoted immediately, even though they had qualified in the LDCE, they could have ventilated their grievance. Not only they had kept quiet at that time, but they had accepted the promotion subsequently without any demur.

16. In a very recent decision reported in (2006) 11 SCC 709 (COI.B.J. AKKARA (RETD) v. GOVERNMENT OF INDIA & OTHERS), the Supreme Court has observed that mere implementation of some stray decision of a Tribunal by the Central Government would not mean that the principle in such decision becomes binding for all purposes, even though such decision might have become final for the parties concerned. In the present case, the Tribunal has rightly distinguished the orders passed by the other Benches of the Central Administrative Tribunal.

17. Keeping in view the peculiar facts and circumstances of this case, which have been noticed earlier, we do not find there is any scope to interfere with the decision of the Central Administrative Tribunal. The writ petitions are therefore dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

(P.K.M.,J) (K.C.,J)

02-04-2008

Index : Yes / No

Internet: Yes / No

dpk

To

1. The Registrar,
Central Administrative Tribunal,
Madras Bench,
High Court Buildings,
Chennai 104.

2. Government of India,
Rep. by Secretary,
Department of Telecommunications,
Ministry of Communication,
Sanchar Bhavan,
20, Ashoka Road, New Delhi 1.

3. The Member (Services)
Telecom Commission,
Sanchar Bhavan,
No.20, Ashoka Road,
New Delhi 110 001.

P.K. MISRA, J
and
K. CHANDRU, J

COMMON JUDGMENT IN
WP.NOs.21961 & 22087/2001

02-04-2008

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ANNEXURE A-15



**ALL INDIA
BHARAT SANCHAR NIGAM LIMITED
EXECUTIVES' ASSOCIATION
CENTRAL HEADQUARTERS
NEW DELHI**

President
K SATYANARAYANA
Ph. 09859557233 (M)

Financial Secretary
G R SHARMA
Ph. 09868040001 (M)

General Secretary
PRAHLAD RAI
Ph. 09860278222 (M)

AIBSNLEA/CHQ/Secy DoT/2008

Dated 19-08-2008

To
Shri Siddartha Behura,
Chairman Telecom Commission & Secretary (Telecom)
Department of Telecommunications,
Govt. of India, New Delhi-110001

Sub: Serious objections against the recently circulated revised Seniority List of TES Group 'B' Officers vide letter No 2-32/2001-STG-II dated 28-07-2008 and BSNL letter no. 15-8/2006-Pers-II dated 11-08-2008-request for immediate withdrawal-Regarding

Ref:- Our letter no. AIBSNLEA/CHQ/Secy DoT/2008 Dated 28-04-2008

Respected Sir,

It is in continuation to our above cited reference and subject matter wherein we strongly opposed the circulation of provisional TES group B officers seniority list of ineligible competitive quota TES group B officers and demanded it's immediate withdrawal but ignoring the protest the STG-II section of DoT has recently circulated final seniority list of TES Group 'B' Officers of competitive quota wherein most of the TES Group 'B' officers, who

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were junior and promoted through Limited Departmental Competitive Examination (LDCE) held in November, 2000 and July, 2003 has suddenly become senior to those TES Group 'B' Officers promoted up to the year 1994 DPCs. It has caused serious frustration and demoralization to thousands of TES Group 'B' officers

It is understood that the seniority of the Officers who appeared in the Limited Departmental Competitive Examination (LDCE) held in November, 2000 & July, 2003 has been re-fixed in accordance with the observations contained in the para-11 of the judgment of the Kerala High Court date 09.10.2007. As such, Kerala High Court in the said Judgment has not directed the Department to revise the seniority list immediately with retrospective effect. Moreover, any observation should not be considered as a direction of any Court and also should not be implemented abruptly. DoT simply implemented the Hon'ble Kerala high court judgment and its observations without considering the fact that it was against the DoT notifications of LDCE quota 2000 & 2003 examinations and the said judgment was not challenged in the Hon'ble Supreme court, as thousands of TES Group 'B' Officers are affected by this act of the Department. It is a clear violation of notification issued for competitive examination Nov 2000 and special supplementary LDCE July 2003.

The first notification for holding of the Combined Qualifying-Cum-Competitive Examination was published vide DOT No. 5-7/98-DE dated 06-11-1998. As per the notification "All Qualified JTOs including TES Gr. 'B' Officers promoted against the vacancies for the years 1994-95, 1995-96. & 1996-97 (up to 22.07.96) shall also be eligible for appearing in the Competitive part of the Combined Limited Departmental Examination and will be entitled for the seniority which is beneficial to them".

This condition was retained in all the subsequent clarifications and related letters pertaining to the above said Examination held in November

2000 & Special Supplementary Examination held in July, 2003.

Hence, the TES Group 'B' Officers promoted up to the year 1994 DPC were excluded from appearing at the above LDCE. In this manner, it is clear that the TES Group 'B' Officers who were promoted against the vacancies prior to years 1994-95 were not required to appear in the said examination and also it was automatically implied that the seniority of these officers were not going to be affected.

In spite of this clear instruction, some of the ineligible Officers appeared and the present seniority list in question contains the names of all such Officers. As per the list most of the ineligible Officers are becoming very senior to all such officers who were promoted through 1994 DPC and earlier, which is great injustice to the senior TES group B officers.

Under no circumstances they should be made senior to the Officers promoted against the vacancies of 1993-94 and prior to that it is in violation to the conditions contained in the notification for holding of LDCE.

This association has already protested the seniority list published vide DoT no.2-32/2001-STG-II dated 27.03.2008 with the above referred letter but the same is ignored by the concern officers of DoT for which the reasons are best known to them.

Under the above background it is kindly requested to consider all the facts and detail as given below:-.

1. The TES Group B officers of competitive quota final revised Seniority List Annexed to letter No, 2-32/2001-STG-II dated 28.07.2008 should immediately be withdrawn.
2. As per the direction of different CATs and High Courts the unfilled vacancies of a particular category Quota (Qualifying or Competitive) of a particular year should be carried over to the next year and added to the existing vacancies of that year. The unfilled vacancies of a particular year

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can not be considered for more than one Competitive Examinations.

3. The latest Judgment of Madras High Court in case No. 21961 & 22087 of 2001 date 02.04.2008 may be implemented in true spirit and be taken as the guide lines for settling all Seniority disputes . But the judgment was challenged in the Hon'ble Supreme court and the decision is awaited. Hence this revised seniority list should not be implemented till the outcome of the Hon'ble supreme court's decision.

We would, therefore, request you to kindly intervene in the matter so that immediate steps are taken to withdraw the above said revised seniority list of TES Group 'B' Officers issued on 28-07-2008, and affected TES Group 'B' Officers are not forced to take the shelter of the Court of Law.

With kind regards,

Yours Sincerely



(Prahlad Rai)

General Secretary

Copy to: (1) Shri G.S. Grover Member (Services), Telecom Commission,
New Delhi-110001

(2) Shri Kuldeep Goyal, CMD, BSNL New Delhi-110001

True Copy

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ANNEXURE A-17

ALL INDIA
BHARAT SANCHAR NIGAM LIMITED
EXECUTIVES' ASSOCIATION
CENTRAL HEADQUARTERS NEW DELHI

President

K. Satyanarayana

Ph • 23734221 (O)

23343970 (R)

Prahlad Rai

Ph. :9868278222(M)

23037272 (O)

23315315(R)

No.AIBSNLEAj CHQ j CMD j 2008-09

To:

Shri Kuldeep Goyal,

CMD, BSNL,

New Delhi.

Dated 30.09.2008

Sub: Illegal posting on promotion of the executives TES group 'B' [Telecom]
to the Executives [STS] ,on purely temporary and adhoc basis -
regarding

Ref: Letter No. 412-25/2008-Pers-I Dated 29.09.2008

Sir,

We regret to inform you that BSNLCO Personnel Branch vide above cited
reference has issued promotion order of 52 Executives' (TES Gr B) despite
the judgment delivered by Hon'ble Madras High Court in W.P NOs 21961 &

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22087 of 2001 and WPMP. NOs 32460 & 32616 of 2001 on dated 02.04.2008 in a similar case filed against the Competitive Quota TES Group'B' officers. Against which neither DoT nor BSNL has filed any SLP in the Hon'ble Supreme Court of India. No further relief has been granted by the Supreme Court to the private respondents who filed the SLP number 11339/2008 in Hon'ble Supreme Court till date.

In addition to the above, the final Seniority list of 147 competitive quota TES Gr B officers who passed the competitive examination held in the year 2000/2003 was

issued by BSNL letter No. I5-8/2006-Pers-II Dated 11.08.2008 subject to final outcome of Writ Petition NO.21578/2007, Writ Petition NO.9256/2007, Writ Petition NO 17448/2008 & Writ Petition NO 17449/2007 and other Writ Petitions in the matter pending in different High Courts.

BSNLCO Pers. Branch has issued these illegal promotion & posting orders without any specific orders/directions of any Hon'ble Courts for revising the seniority and promoting the above said Executives.

All communications to. Shri P. Rai, General Secretary, AIBSNLEA, A-4/6, M.S. Flats, Peshwa Road, New Delhi-110001. The revised seniority list of competitive quota officers circulated vide DoT letter NO. 2-32/2001-STG.II dated 28.07.2008 along with final seniority list of 147 competitive quota officers who have passed the competitive examination held in the year 2000/2003 against the vacancies for the years 1994-95,1995-96.and 1996-97 (up to 22.07.1996) was strongly objected by this Association Letter NO. AIBSNLEA/CHQ/Secy DoT/2008 Dated 19.08.2008.(Copy enclosed.)Meanwhile, decision was taken by DoT to transfer all the issues related to service matters/seniority lists of TER Gr B officers to BSNL for future actions. Recently, in middle of September, all the pending Court cases related to TES Gr B officers seniority lists have been received in BSNLCO Pers Branch. The BSNL Pers. Branch without examining the status of the pending COUI1cases and the recently revised seniority list of competitive

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quota TES Gr B officers subject to final outcome of the various court cases has arbitrarily issued the promotion orders to DE(adhoc) in illegal manner.

It is more surprising that out of 52 TES Gr B officers, most of the officers on promotion to DE (adhoc) have been posted in the same circles whereas in the recent promotion order of 1099 TES Gr B to DE(adhoc) more than 350 TES Gr. B officers were transferred and posted to distant circles even for the Executives' who have completed 58 years age. For which the reasons are best known to the BSNLCO Pers Branch.

We would therefore, request you to kindly intervene in the matter so that the said illegal promotion order of 52 TES Gr B to DE(adhoc) are kept in abeyance till the final outcome of the pending Court cases to avoid further litigations and

serious heartburn to the seniors.

With kind regards

Yours sincerely

(PRAHLAD RAI)

GENERAL SECRETARY

- Copy to:
1. Shri Siddhartha Behura ,Chairman TC & Secretary (Telecom)
 2. Shri Gopal Das, Director(HRD) BSNL
 3. Shri R.K.Mishra GM(Pers.) BSNLCO

True Copy

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

P.T. NO. OF 2009

IN

ORIGINAL APPLICATION NO. OF 2009

IN THE MATTER OF –

All India Bharat Sanchar Nigam Limited & Ors. Applicants
(Mrs. Rani Chhabra) Advocate

VERSUS

Department of telecommunication & Ors. Respondents

AN APPLICATION UNDER SECTION 4(5)(a) OF CAT ACT

To

THE HON'BLE CHAIRMAN AND HIS OTHER COMPANION
MEMBERS OF THE HON'BLE CENTRAL ADMINISTRATIVE
TRIBUNAL, NEW DELHI

THE HUMBLE APPLICATION OF THE
APPLICANTS ABOVENAMED

MOST RESPECTFULLY SHOWETH:

1. That the applicants are jointly filing accompanying original application under Section 19 of the Central Administrative Tribunal Act. All the relevant facts and circumstances have been set out in detail in the main petition and in order to avoid repetition and for the sake of brevity the applicants crave leave to refer and rely upon the same as part and parcel of this application.

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2. That the applicants are challenging the reply of the Department for pending the regularisation after conferring temporary status of the applicants, therefore the common question are involved and in order to avoid multiplicity and to maintain uniformity it is submitted that all the applicants be allowed to join together in one petition.

PRAYER

It is, therefore, most respectfully prayed that the applicants may be permitted to join together and to file a single petition in view of the same cause of action and in same relief as they have common interest in the case.

APPLICANT

THROUGH

**(MRS. RANI CHHABRA)
ADVOCATE FOR THE APPLICANTS**

Verification: I, Prahlad Rai S/o. Sh. Keshar Lal, aged about 51 years, General Secretary, All India Bharat Sanchar Nigam Limited, Executive Association, Registered Office at A-4/6, M.S. Flats, Peshwa Road Apartments, New Delhi-01, applicant to verify that the contents of the above application are true and correct to my knowledge no part of it is false and nothing material has been kept concealed therefrom. Last para is prayer to this Hon'ble Court.

Verified at New Delhi on this the day of July, 2009

APPLICANT

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

P.T. NO. OF 2009

IN

ORIGINAL APPLICATION NO. OF 2009

IN THE MATTER OF –

All India Bharat Sanchar Nigam Limited & Ors. Applicants
(Mrs. Rani Chhabra) Advocate

VERSUS

Department of telecommunication & Ors. Respondents

**AN APPLICATION UNDER SECTION 25 OF
CENTRAL ADMINISTRATIVE TRIBUNAL
ACT.**

TO

THE HON'BLE CHAIRMAN AND HIS OTHER
COMPANION MEMBERS OF THE HON'BLE
CENTRAL ADMINISTRATIVE TRIBUNAL, NEW DELHI

THE HUMBLE APPLICATION OF THE
APPLICANTS ABOVENAMED

MOST RESPECTFULLY SHOWETH:

1. That the applicants are filing accompanying Petition under Section 19 of the Central Administrative Tribunal Act, 1985. All the relevant facts and circumstances have been set out in detail in the main petition and in order to avoid repetition and for the sake of brevity the applicants crave leave to refer and rely upon the same as part and parcel of this application.

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2. That some of the applicants have been working in Delhi and others have been working nearby offices of BSNL which though fall in State of UP but all the applicants joined together to avoid multiplicity of litigation.
3. That it is very hard for the applicants working in U.P. to approach to Central Administrative Tribunal, Allahabad therefore in the interest of justice it is submitted that the application for transfer be allowed and matter be allowed to be retained before this Hon'ble Tribunal and be heard on merits.

PRAYER

In the light of the above, it is most respectfully prayed that this Hon'ble Court may be pleased to :

- (a) allow the transfer of the matter and retain before this Hon'ble Tribunal to be heard on merits; and
- (b) pass such other and/or further orders as this Hon'ble Court may deem fit and proper under the circumstances of the present case.

APPLICANT

THROUGH

**(MRS. RANI CHHABRA)
ADVOCATE FOR THE APPLICANTS**

Verification: I, I, Prahlad Rai S/o. Sh. Keshar Lal, aged about 51 years,
General Secretary, All India Bharat Sanchar Nigam Limited,

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Executive Association, Registered Office at A-4/6, M.S. Flats, Peshwa Road Apartments, New Delhi-01, applicant to verify that the contents of the above application are true and correct to my knowledge no part of it is false and nothing material has been kept concealed therefrom. Last para is prayer to this Hon'ble Court.

Verified at New Delhi on this the day of July, 2009

APPLICANT

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

P.T. NO. OF 2009

IN

ORIGINAL APPLICATION NO. OF 2009

IN THE MATTER OF -

All India Bharat Sanchar Nigam Limited & Ors. Applicants

(Mrs. Rani Chhabra) Advocate

VERSUS

Department of telecommunication & Ors. Respondents

**AN APPLICATION UNDER RULE 6 OF CAT
PROCEDURE RULES**

To

The Registrar,
Central Administrative Tribunal,
Principal Bench, New Delhi.

Sir,

The applicants have filed abovenoted O.A. and application under Section 25 for entertaining the case in the Principal Bench.

I request that for the reasons given in the application under Section 25 of A.T. Act the leave of Hon'ble Chairman may be obtained for retaining the case before Principal Bench.

FILED BY

**(MRS. RANI CHHABRA)
ADVOCATE FOR THE APPLICANT**

FILED ON : .07.2009