

result of the Writ Petition. The said Writ Petition is still pending consideration before the Hon'ble High Court of Cuttuck at Orissa. A true and correct copy of the Order dated 21.8.2007 passed by the Orissa High Court is annexed hereto and marked as ANNEXURE A-10.

- 4.22. That in the meantime, some of the Respondents filed a Contempt Petition No.713/2007 in the Hon'ble High Court of Kerala and the Hon'ble High Court of Kerala vide its order dated 9.10.2007 rejected the application for contempt and the Hon'ble High Court of Kerala expressed its view in para 11 which are as follows:-

"In our opinion, if for any reason, the complainant was aggrieved by the ranking assigned to him in the final seniority list that was prepared and published on 13th February, 2007 by the respondents, a separate cause of action would arise for him and he can definitely question the ranking assigned to him in the final seniority list prepared as directed by this court before an appropriate forum."

A true and correct copy of the order dated 9.10.2007 passed by the Kerala High Court is annexed with this petition and marked as ANNEXURE A-11.

- 4.23. That the said private respondents again represented to the Department of Telecommunication for re-fixing of their seniority and official respondents no. 01, the DOT again issued a provisional seniority vide DOT letter No.2-32/2001-STG.II dated 27.3.2008 and circulated vide BSNL Corporate office letter No. 15-8/2006-Per.II dated 7.4.2008 again allotting seniority retrospectively from the

year 1989 to 1996. The first private respondent who qualified LDCE in 2000 allotted seniority no. 5759.1 against the vacancy of 1989, While he passed Limited Departmental Competitive Examination held in 2003, in 2004.

- 4.24. That on the provisional seniority list dated 27.3.2008 again objections were called and several objections were sent to DOT by SDEs. The Applicant Association also submitted a detailed objections relying upon repeated judgments passed by the Hon'ble Apex Court in which Apex Court had clearly prohibited for assigning seniority retrospectively from the date of occurrence of the vacancies. The Applicants also relied upon the judgment and order dated 02.04.2008 passed by the High Court of Madras in Writ Petition No.21961/2001 in which similar kind of dispute arose and the Hon'ble High Court of Madras held that seniority can be assigned from the date of appointment/promotion to the post and not prior to the date of appointment/promotion. True and correct copies of the objections submitted by the Applicant Association as well as various others are annexed with this petition and marked as **ANNEXURE A-12 (COLLY.)**.
- 4.25 That the Official Respondents no.1 and 2 completely ignored the law laid down by the Hon'ble High Court of Madras in similar kind of dispute and further the objections raised by the Petitioners, without application of mind illegally declared provisional seniority list as final seniority list vide DOT letter no. 2-32/2001-STG.II dated 28.7.2008 alongwith BSNL letter dt. 11.8.08 in most arbitrary and illegal manner. A true and correct copy of the seniority list (impugned seniority list) is annexed with this petition and marked as **ANNEXURE A-13.**

4.26. That, on seeing the impugned Seniority list dated 28.07.08 of SDEs, it is clear that majority of SDEs relate to Recruitment year 1989 to 1994. They joined their services as JTO in 1992, 1993, 1994 and 1995 and promoted on the post of SDE on regular basis in December 2001. Details of few are given below and a chart showing the position of respondent no. 4 to 142 in the feeder cadre and promotion is already annexed with this application and marked as Annexure A-9.

Sl. No. of seniority dated 28.07.08	Name of Officer S/Shri	Staff no. (Original revised)	Seniority No. (original Revised Revised)	Rectt. Year	Date of Joining as JTO	Year of Competitive Exam Passed.	Date of Joining as regular SDE
37	Atul Kr. Jain	<u>108281</u> 37957	<u>31068...</u> <u>16294.1</u> 10983.1	1989	Dec-92	2003 Suppl. to 2000	28.12.2001
39	Chetan Kr. Jain	<u>108858</u> 37968	<u>31661....</u> <u>16332.1</u> 10987.1	1989	Dec-92	-Do-	28.12.2001
40	Anup Kr. Verma	<u>107162</u> 37977	<u>29891</u> <u>16358.2</u> 10989.1	1989	1994	-Do-	28.12.2001
41	Bhupendra Kaushik	<u>107538</u> 37979	<u>30317....</u> <u>16364.1</u> 10991.1	1989	Dec-92	-Do-	28.12.2001

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4.27. That some of them as detailed below, were not eligible to appear in the Competitive Examination as per notification dated 06-11-98 and amendments issued in this regard, because Examination was conducted for the vacancies: 1994-95, 1995-96 (upto 22-07-96) . As per DOT letter no. 2- 32/2001 /STG-II Dated 01-02-2007 seniority is allotted as under:

Sl No. of merit list	Sr no.	Staff no.	Name	JTO Batch (year)	TES Group B Qly. Exam (year)	Promoted against 2/3 quota (year)	Remarks
28	16260.1	33331	Raj Kishore Pradhan	1979	1987	1994	Not eligible to appear in Competitive exam against the vacancies 1994-95 to 22.07.96
25	16253.1	31955	Ramesh CH.Khuntia	1980	1988	1994	Do

As per DOT letter no. 2- 32/2001 /STG-II Dated 28-07-2008 seniority is allotted as under

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Sl. No. of seniority list	Sr no.	Staff no.	Name	JTO Batch (year)	TES Group B Qly. Exam (year)	Promoted against 2/3 quota (year)	Remarks
1	5759.1	33331	Raj Kishore Pradhan	1979	1987	1994	Not eligible to appear in Competitive exam against the vacancies 1994-95 to 22.07.96
2	5761.1	31955	Ramesh CH.Khuntia	1980	1988	1994	Do

4.28 That the seniority list issued by the DOT was completely contrary to the directions and judgment passed by the Central Administrative Tribunal, Madras Bench in the case of SDEs. In fact 270 SDEs who had passed LDCE and whose seniority was fixed vide DOT Order dated 1.2.2001 in similar manner with retrospective effect was challenged before the Central Administrative Tribunal, Madras and Central Administrative Order vide its order dated 29.09.2001 in O.A.No.305 of 2001 titled as T.Nagrajan and others Vs. Govt. of India and others quashed the seniority with the following observations:-

"For the foregoing reasons, we set aside the seniority assigned to the candidates covered by the impugned

order dated 1.2.2001 but excluding the applicant in the O.A.961/99 before the Bangalore bench and the officials respondents are directed to recast the seniority list dated 20.3.2001 within a period of six weeks from the date of receipt of copy of the order by assigning to these candidates seniority with reference to their actual date of promotion in LDCE quota. We however, make it clear that if the seniority position which they enjoyed with reference to their promotion under the 66-2/3% quota is more favorable to them than the assignment of seniority under the LDCE quota effective from 1.2.2001, then, it is open to them to retain their seniority with reference to their promotion under the 66-2/3% quota."

4.29 That against the said judgment and order of the Central Administrative Tribunal, Madras, Govt. of India had filed Writ Petition No.21961/2001 in the Hon'ble High Court of Madras and the Hon'ble High Court of Madras vide judgment and order dated 2.4.2008 dismissed the Writ Petition of the Govt. of India and upheld the judgment of the Central Administrative Tribunal, Madras and it was clearly mentioned that promotion cannot be ante dated to the date of the holding of such competitive examination. A true and correct copy of the judgment and order dated 2.4.2008 passed by the Hon'ble High Court of Madras has already been annexed with this petition and marked as

ANNEXURE A-14

4.30 That under the teeth of the orders of the Hon'ble High Court of Madras, official the Respondents have still committed the same mistake and had assigned seniority retrospectively not from the

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date of the promotion but from the date of the occurrence of the vacancies.

- 4.31. That issuance of seniority list dated 28.7.2008 is illegal and arbitrary and is not only contrary to the judgment of the Madras High Court but the law laid down by the Hon'ble Supreme Court in catena of decisions specially in the case of Suraj Prakash Gupta Vs State of J&K and others reported in 2000 (3) SCC Page 637.
- 4.32. That, on the final seniority list dated 28.07.2008 again objections were sent to DOT as well as to BSNL on 19.08.08 by Applicant Association by relying upon repeated judgments passed by the Hon'ble High Court/Apex Court in which Hon'ble Courts had clearly prohibited for assigning seniority retrospectively from the date of occurrence of the vacancies. A true and correct copy of the objections dated 19.08.08 submitted by the Applicant Association is annexed with this petition and marked as **ANNEXURE A-15.**
- 4.33. That, the official Respondents further passed orders for promotion of 52 SDEs, the private respondents, of impugned seniority list dated 28.07.08 in STS grade of ITS group 'A' vide order dated 29.9.2008. A true and correct copy of the order dated 29.9.2008 is annexed with this petition and marked as **ANNEXURE A-16.**
- 4.34. That, on order dated 29.9.2008, objections were sent to DOT as well as to BSNL on 30.09.08 by Applicant Association by relying upon repeated judgments passed by the Hon'ble High Court/Apex Court in which Hon'ble Courts had clearly prohibited for assigning seniority retrospectively from the date of occurrence of the vacancies. A true and correct copy of the objections dated 30.09.08 submitted by the Applicant Association is annexed with this petition and marked as **ANNEXURE A-17.**

- 4.35. That the said seniority list dated 28.7.2008 as well as the promotion order passed in favour of 52 SDEs, the private respondents, are illegal, unustified, contrary to law and are in violation of fundamental rights guaranteed to the Petitioners under Articles 14 and 16 of the Constitution of India in as much as the Applicants are much senior to these respondents who were not eligible to be appointed and/or promoted on the basis of even feeder cadre and they have been assigned seniority above the Petitioners when the private Respondents were not eligible for promotion on the post of SDE as per TES Group 'B' RR 1981.
- 4.36. That being aggrieved and dissatisfied with the seniority list dated 28.7.2008 as well as order dated 29.09.2008 by which promotions are given to 52 private respondents, the Applicants are left with no option except to approach this Hon'ble Court by way of the present petition.
- 4.37. That the said orders are wrong, illegal and contrary to the law laid down by the Hon'ble Apex Court and various High Courts, thus deserve to be quashed on the following amongst other grounds:

GROUNDS

- A. Because the fixation of seniority to the private Respondents from the date ante to the appointment or promotion is illegal, unjustified and contrary to the law laid down by the Hon'ble Supreme Court in catena of decisions in the High Court and also various orders passed in the Central Administrative Tribunal.
- B. Because against the same service of SDE, principles have been laid down by the Central Administrative Tribunal at Madras

clearly directing that the seniority cannot be fixed retrospectively. The said order of the Central Administrative Tribunal, Madras has been confirmed by the Hon'ble High Court of Madras and the said judgments are very much applicable with the Private Respondents mentioned at sl.no. 4 to 142 under the teeth of the law laid down by the High Court of Madras in the same cadre for previous year which was binding upon the Official Respondents but the official Respondents without application of mind or illegally with malafide intention or with a view to give benefit to their own persons assigned seniority retrospectively from the date of the occurrence of the vacancies when it is very clearly held that slaught cannot be kept reserved for direct recruit for retrospective appointment especially from the date before his birth in the service.

- C. Because in the present case Rota and Quota Rules have clearly been broken in view of the decision taken by the Department not to hold LDCE Examination and suspend the same for six years. Once the decision was there and the persons from other quota were accommodated who had been appointed/officiating or promoted in the said cadre even in direct quota slaught and they are pushed down but since the direct quota recruitment have come later, they can be put in the direct recruitment slaught from the date on which they were appointed and they cannot be given seniority anti-dated from the date of their promotion/appointment.
- D. Because the authorities have failed to appreciate the fact that it is settled in law that seniority can be assigned to a person only from the date of his substantive appointment. Thus, the same

cannot be reckoned from the date of occurrence of vacancies, therefore, even if the candidate is eligible for promotion when promotional post fall vacant at an earlier date his seniority should be reckoned only from the date of his substantive appointment to the said vacant post under the rules and not retrospectively from the date of occurrence of vacancies. The Hon'ble Apex court in the matter of 'State of Uttaranchal and another Vs. Dinesh Kumar Sharma' [kindly see 2007 (1) SCC page 683] has held as under:

" It was further submitted that the decision to promote the respondent was taken by the appellants in accordance with the Service Regulations present in U.P. and that no interference could be made to such orders. Also that, the High Court was not justified in overlooking the Statute Law as well as the case laws where it is stated in clear terms that, seniority is determinable with reference to the date of substantive appointment. This was the view taken by this Court in K.V. Subba Rao & Ors. vs. Government of Andhra Pradesh & Ors. (supra) Smt. M. Nirmala & Ors Vs. State of Andhra Pradesh & Ors. 1986 (3) SCC 647 and Sanjay K. Sinha-II & Ors vs. State of Bihar & Ors 2004 (10) SCC 734. In all these cases this Court has categorically held that seniority must be reckoned from the date of substantive appointment under the relevant rules and also that the right to frame rules for the determination of inter-se seniority is the prerogative of the State."

Similar view has been taken in the judgement of the Hon'ble Apex Court in the matter of 'Uttaranchal Forest Rangers

Association (Direct Recruit) vs. State of UP' [kindly see 2006(10) SCC page 346] and held as under:

"In a recent judgment of this court in Uttranchal Forest Rangers Association (Direct Recruit) & Ors vs. State of U.P. & Ors 2006 (9) Scale 577, (Dr. AR. Lakshmanan and Tarun Chatterjee) this Court was of the view that seniority has to be decided on the basis of Rules in force on the date of appointment, no retrospective promotion or seniority can be granted from a date when an employee has not even been borne in the cadre. Similar view was taken by this Court in the case of K.C. Joshi vs. Union of India 1992 Suppt (1) SCC 272."

In the matter of State of Bihar Vs. Sri Akhouri Sachindra Nath [Kindly See 1991 Suppl 1 SCC 334], the Hon'ble Apex court has held as under:

"..... no person can be promoted with retrospective effect from a date when he was not borne in the cadre so as to adversely affect others. It is well settled by several decisions of this Court that amongst members of the same grade seniority is reckoned from the date of their initial entry into the service."

A bare perusal of the verdict aforementioned goes to show that no person can be promoted with retrospective effect not seniority can be granted to an employee from a date when an employee has not even been borne in the cadre. In the present matter, granting of seniority to the private respondents over and above the petitioners will tantamount to giving the seniority and promotion to the employees who have not even been borne in the

cadre. Such an impugned action is violative of Articles 14 & 16 of the Constitution of India.

E. Because the authorities have failed to see the fact that the delay in making selection against 1/3 quota is solely attributable to the department. In other words, such a delay cannot be saddled over the shoulder of the petitioners to their detriment. It is settled in law that an incumbent can claim seniority only from the date of his regular/substantive appointment and not from any earlier date on which the post concerned has become available. The Hon'ble Apex court in the matter of Suraj Parkash Gupta Vs. State of Jammu and Kashmir [kind y see 2000(7) SCC page 561] while considering the issue of assignment seniority to the direct recruits from the date on which the post of direct recruit was available held as under:

"The direct recruits' contention in respect of Point 4 cannot be accepted. The reason as to why this argument is wrong is that in service jurisprudence, a direct recruit can claim seniority only from the date of his regular appointment. He cannot claim seniority from a date when he was not borne in the service."

A bare perusal of the judgments specifically state that an employee cannot be given seniority from the date when he was not even borne in the service. In this view of the matter, the impugned seniority list is bad in law and deserves to be set aside by this Hon'ble Court.

F. Because it has been clearly laid down by the Hon'ble Supreme Court that in service jurisprudence a direct recruit can claim seniority only from the date of his regular appointment and he

cannot claim seniority from the date when he was not borne in the cadre or borne in the service.

G Because Rule 4 of Appendix III categorically provided that candidates have the option to take both the examinations namely Departmental Qualifying Examination as well as Limited Departmental Competitive Examination simultaneously but for appearing in the Limited Departmental Competitive Examination, it is obligatory to qualify DQE and if a candidate fails in qualifying part even if he qualifies the other competitive examination but he cannot be considered for competitive examination till he qualifies the qualifying examination. In the present case most of the Private Respondents had not even passed DQE examination in the year for which they have been assigned seniority and even were not promoted as SDE on seniority cum fitness basis.

H Because the vacancies arose prior to 23.07.1996 were to be filled as per TES Group 'B' Recruitment Rules 1981 i.e. as per 2/3rd and 1/3rd quota. It was only the provision in the Rules but seniority cannot be fixed prior to the appointment on the post i.e. prior to the date they became eligible after passing DQE and LDCE and promoted.

I. Because in the present case, the examination was held in the years 2000 and 2003 therefore they cannot march over those who had already been promoted/appointed on the basis of DQE and their seniority should be fixed as per of para 2.4.2 of DOP&T OM No. 22011/7/86/Estt (D) dated 03.07.1986.

J. Because the Official Respondents no. 1 to 3 have passed the final seniority list without taking into account the objections raised by the Applicants as well as their Association clearly stating that

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- the Madras High Court in similar circumstances had directed not to assign seniority retrospectively.
- K. Because the action of the Official Respondent no 1 to 3 in issuance of the final seniority list on 28.7.2008 is in violation of the interim order passed by the Orissa High Court in which the Orissa High Court had directed for maintenance of status quo and the Writ Petition is still pending for adjudication.
 - L. Because the case of the Applicants is fully covered by the Judgment of the Hon'ble Supreme Court in the matter of Suraj Prakash and others Vs. State of J&K reported in 2000(3) SCC at page 637.
 - M. Because even if the Private Respondents mentioned at sl no. 4 to 142 were to be assigned seniority for the vacancies prior to 22.7.1996 they could be assigned seniority for the carried forward vacancies when they became eligible after passing LDCE.
 - N. Because firstly the Official Respondents had wrongly assigned the seniority to the Private respondents and even after assigning wrong seniority promoted 52 SDEs, the private respondents, in to STS cadre of that seniority list ignoring the seniors waiting for their promotion.
 - O. Because the orders of the Official Respondents in assigning seniority list is contrary to law and various orders of Courts, and order passed by the High Court of Madras in which the Official Respondent no. 1, was restrained from assigning seniority retrospectively. Even under the teeth of these orders, the Respondents had deliberately committed the same mistake with a view to harass the present Applicants and assigned the seniority to the private respondents retrospectively which has completely been barred by the various orders of High Court and Apex Court.

- P. That, as per Indian constitution reserved vacancies for SC/ST/OBC category in any cadre can be filled by those category candidates only and from time to time backlog vacancies in various department of Govt. of India are of filled up but the candidates appointed against backlog vacancies are given seniority from the date of their appointment & not from the date vacancies arise.
- Q. Because recently this Hon'ble Tribunal passed judgement in OA No. 911 of 2007 on 5.3.2009 in A.K. Dahiya & Ors. Vs. The Secretary UPSE & Ors in which in Para 19 it was held as under:-
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- "19. The above judgments of Hon'ble Supreme Court have set the following principles of law in the subject of inter-se seniority between direct recruits and promotees:-
- i. Seniority is to be reckoned not from the day when the vacancy arose but from the date of which the appointment is made to the post.
 - ii. Continues length of service must be given due importance in dealing with seniority.
 - iii. Delay in making appointments by direct recruitment should not visit the promotees with adverse consequences, denying them the benefits of their services.
 - iv. A direct recruit can claim seniority only from the date of his regular appointment and cannot claim deemed date of seniority from the date of vacancy a date when he was not borne in the service.
 - V. Seniority cannot be given on retrospective basis from a date when an employee was not borne in the cadre particularly when this would adversely affect the direct recruits who have been appointed validly in the meantime."

R. Because even otherwise the seniority list as well as the promotion orders issued to 52 SDEs, the private respondents is illegal, unjustified, unconstitutional and contrary to law laid down by the