

A TELECOMMUNICATION ENGG. SERVICE ASSOCIATION
(INDIA) AND ORS.

U.O.I.

MAY 13, 1994

B [KULDIP SINGH AND YOGESHWAR DAYAL, JJ.]

C *Service Law—Promotion—Held, promotion to Telegraph Engineering Service Group B would be on the basis of passing the qualifying departmental examination under para 206 of P & T Manual and not on basis of seniority—However, back wages payable only from date of actual working on higher post and not from date of notional promotion.*

D The two questions which arose in these Special Leave Petitions and appeals by Special Leave from the Central Administrative Tribunal were
E (1) Whether the applicants and persons similarly situated were entitled to promotion from the grade of Junior Engineers to the next higher grade in the Telegraph Engineering Service Group B (Assistant Engineers and equivalent posts) on the basis of the year of passing the qualifying Department Examination envisaged in para 206 of the P & T Manual, and not on the basis of their seniority. (2) Whether in the facts and circumstances they are entitled to refixation of *inter se* seniority on the said basis and promotions with retrospective effect together with back wages. Disposing of the appeals and Special Leave Petitions; this Court

F HELD : 1. In view of the decision of the Court in the case of *Junior Telecom. Officers Forum v. Union of India*, [1993] Supp. 4 SCC 693, the Junior Engineers are entitled to promotion on the basis of the year of passing the qualifying departmental examination under para 206 of the P & T Manual and not on the basis of seniority. [86-A]

G 2. The Petitioners will get refixation of their seniority and notional promotion with retrospective effect and would be entitled to fixation of their present pay which should not be less than that of those who are immediately below them. On the question whether they would be entitled to back wages from the date of notional promotion, the Tribunal was justified in view of the peculiar circumstances of the case and the enormity
H of the problem dealing with 10,000 persons, in declining to grant back

wages except with effect from the date they actually worked on the higher post. [89-D-E-F] A

Junior Telecom Officers Forum v. Union of India, [1993] Supp. 4 SCC 693 and *Paluru Ramakrishnaiah v. Union of India*, [1989] 2 SCC 541, relied on. B

Union of India v. K.V. Janakiraman, [1991] 4 SCC 109, distinguished.

CIVIL APPELLATE JURISDICTION.: Special Leave Petition (C) No. 16698 of 1992.

From the Judgment and order dated 29.6.92 of the Central Administrative Tribunal, New Delhi in Review Application No. 195/92 in O.A. No. 2667 of 1991. C

WITH

C.A. Nos. 1814, 1813-13A, 1816-36, 1855-74, 2900/93, SLP (C) No. 14575-84, 15984-85 of 1992. D

Altaf Ahmad, Additional Solicitor General, V.C. Mahajan, Ms. K. Amreshwari P.P. Rao, Govnda Mukhoty C.S. Vaidyanathan Ms. Anil Katiyar, K.Swamy, T.V. Ratnam, Ms. C.K. Sucharita, Naresh Kaushik, Ms. Lalitha kaushik K.V. Mohan, G. Pral, Ms. Binu Tamta, Ms. Anil Katiyar, A.K. Sikri, Ms. Madhu Sikri and Ms. Meenakshi Arora for the appearing parties. E

The Judgment of the Court was delivered by F

YOGESHWAR DAYAL, J. This Order will dispose of above said 58 matters. However, we are taking the facts from Special Leave Petition No. 16698 of 1992. This petition is directed against the judgment dated 29th June, 1992 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in Review application No. 195 of 1992 in OA No. 2667 of 1991. This decision was rendered by the Principal Bench over a conflict of decision on two basic issues which arose for consideration, namely - (1) whether the applicants and persons similar to them are entitled to promotion from the grade of Jr. Engineers to the next higher grade in the Telegraph Engineering Service Group B (Assistant Engineers and H

- A equivalent post) on the basis of the year of passing the qualifying Departmental Examination envisaged in para 206 of the P & T Manual and not on the basis of their respective seniority as had been adopted and followed by the respondents; and (2) whether in the facts and circumstances, they are entitled to refixation of *inter se* seniority on the said basis and promotions with retrospective effect together with back wages. After considering the judgment of the High Court of Allahabad date 20th February, 1985 in W.P. Nos. 2739 and 3652 of 1991 (*Parmanand Lal and Brij Mohan v. Union of India and Ors.*) and decisions of various Benches of the Tribunal which followed the above said judgment of the Allahabad High Court, the Tribunal noticed that the Allahabad High Court and the various Benches of the Tribunal have concluded that the applicants are entitled to promotion, refixation of *inter se* seniority and consequential benefits as claimed by them and have decided the above said two issues in their favour. The Tribunal further noticed that SLP Nos. 3384-86 of 1986 filed by the Union of India against the judgment of the Allahabad High Court were dismissed by this Court on merits on 8th April, 1986. Again SLP Nos. 19716-22 of 1991 filed by them against the judgment of the Principal Bench of the Tribunal dated 7th June, 1991 were dismissed with some observations on 6th January, 1992 along with Intervention Application No. 1 and SLP(C) /91 filed by the Junior Telecom Officers' Association (India) seeking permission to file SLP

- A Review Petition filed by the Union of India against the judgment of the Principal Bench of the Tribunal dated 7th June, 1991 was dismissed by the Tribunal on 1st October, 1991. Thereafter, another Bench of the Tribunal presided over by its Chairman gave certain directions to the respondents on 28th February, 1992 in a batch of contempt petitions filed by the petitioners alleging non-compliance of the judgment of the Principal Bench of the Tribunal dated 7th June, 1991.

- In the aforesaid order dated 28th February, 1992, the Bench noted the intention of the respondents to revise the seniority of the entire cadre of Telegraph Engineering Service Group B Officers as per para 206 of the P&T Mannual Volume IV. The respondents before the Tribunal had submitted that since the cadre exceeds 10,000 persons, the implementation would take time and that the rules and instructions relating to reservation in favour of SC/ST persons (MP 957, 958, 965 and 966 of 1992 in MP

195/92); (ii) the Telecom Engineering Services Association (India) which also supports the stand of the applicants (MP 129/92 in OA 2407/88); and (iii) Junior Telecom Officers forum for Redressal of Grievances said to represent 6000 affected persons and Junior Telecom Officers Association (India) both of which contend that the judgment of the Allahabad High Court and the decisions of this tribunal following the said decision do not constitute good precedents, that they are judgments per incuriam, that the matter should be considered on the merits afresh and that the applicants before us should not be granted the reliefs sought by them (MP Nos. 3493, 3494, 3396 and 3397/91).

The Tribunal thereafter considered the submissions of the petitioners before it and the interventionists and took the view that since the Special Leave Petitions against the judgment of the Allahabad High Court dated 20.2.1985 was dismissed on merits, it achieved finality.

On the second question whether petitioners were entitled to the payment of arrears of pay and allowances from the respective dates of their promotion, the Tribunal took the view that the High Court and various Benches of the Tribunal do not appear to have considered the magnitude of the problem arising out of the large scale revision of seniority and promotions consequent thereto retrospectively. It took the view that the normal rule of giving back wages to the persons concerned will not apply to such cases or in such situations. While relying upon *Paluru Ramakrishniah and others v. Union of India and another*, [1989] 2 SCC 541 = [1989] Scale 830 it noted the observations of this Court that it is a well settled rule that there has to be no pay for no work although after due consideration a person is given a proper place in the gradation list having deemed to be promoted to the higher post with effect from the date his junior was promoted. At the most he would be entitled to refixation of his present pay on the basis of notional seniority granted to him so that his present salary would not be less than those who are immediately below him. The Tribunal further noticed that as large scale revision of seniority and consequent promotions with retrospective effect might be anticipated in the instant case, the aforesaid ruling of the Supreme Court would apply and the relief should be moulded accordingly. In the light of these observations, the Tribunal gave the following orders and directions :

A (1) Subject to what is stated in (2) below, we hold that the decision of the Allahabad Bench dated 20.02.1985 in the cases of Parmanand Lal and Brij Mohan and the judgments of the Tribunal following the said decision lay down good law and constitute good precedents to be allowed in similar cases. We reject the contentions of the interveners to the contrary and further hold that having urged before the Supreme Court their various contentions and their SLP having been dismissed by the Supreme Court, they cannot reagitate the matter before us. We, therefore, dismiss MP Nos. 3396, 3397, 3493 and 3494 of 1991 in OA 2407 of 1988 as being devoid of any merit.

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D (2) We hold that the applicants are entitled to the benefit of the judgment of the Allahabad High Court dated 20.02.1985 except that in the event of refixation of seniority and notional promotion with retrospective effect, they would be entitled only to refixation of their present pay which should not be less than that of those who were immediately below and that they would not be entitled to back wages. We order and direct accordingly.

E (3) We hold that in case the redrawing of the seniority list results in reversion of officers who had been duly promoted already, their interest should be safeguarded at least to the extent of protecting the pay actually being drawn by them, in case creation of the requisite number of supernumerary posts to accommodate them in their present posts is not found to be feasible. We order and direct accordingly.

F (4) While effecting promotions, the respondents shall have due regard to the provisions for reservation in favour of Scheduled Castes/Scheduled Tribes."

G This view was again upheld by the impugned judgment passed by the Tribunal on review application.

H So far as the first point is concerned, it appears that the interventionists filed parallel proceedings through *Junior Telecom Officers Forum and other v. Union of India*, (T.P. Civil) No. 417 of (1992) in W.P. (Civil)

No. 460 of 1992) and this Court (J.S. Verma and Anand, JJ.) in an elaborate judgment (pages 90 to 116 of the paper book of Civil Appeal Nos. 1813-13A of 1993) dated 18th September, 1992 took the same view as that of the Allahabad High Court noticed by the Principal Bench of the Tribunal in the aforesaid case of *Parmanand Lal and Brij Mohan* which has become final and has been upheld by this Court on merits. It is thus not necessary to dwell on the first question decided by the Principal Bench any further.

The only question which survives relates to declining the order for payment of back wages from the due date of promotion to the petitioners before the Tribunal and some of the appellant/petitioners before us.

It would be noticed that the judgment of the Allahabad High Court was delivered in writ petitions which were filed by two individuals as far back as 1981 and the judgment was delivered in 1985 which was affirmed by this Court on 8th April, 1986. Most of the petitioners before the Tribunal filed their applications claiming promotion from earlier date on the basis of the Allahabad High Court judgment only in 1988. They will get refixation of their seniority and notional promotion with retrospective effect and would be entitled to fixation of their present pay which should not be less than to those who are immediately below them and the question is only whether they would be entitled to back wages from the date of notional promotion. We are of the view that the Tribunal was justified, in view of the peculiar circumstances of the case and enormity of the problem dealing with 10,000 persons, in declining to grant back wages except with effect from the date they actually worked on the higher post. The same view was taken by this Court in the aforesaid judgment of *Paluru Ramakrishniah and others*, where this Court declined similar reliefs.

Learned counsel for the petitioners relied upon the decision of this Court in *Union of India and others v. K.V. Jankiraman and others*, [1991] 4 SCC 109.

It will be noticed that *Jankiraman's* matter relied to a case where the point involved was as to what benefits an employee, who is completely or partly exonerated in disciplinary/criminal proceedings, is entitled to and from which date in case involving sealed cover procedure. The Bench in

- A *Jankiraman's* case was not dealing with the case of due date of promotion on revision of seniority as a result of any decision of the Court effecting thousands of employees and revised seniority list being prepared in pursuance thereof and notional promotion being granted with retrospect effect. The Special Leave Petition No. 16698 of 1992 is accordingly dismissed.
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All the connected Civil Appeals and Special Leave Petitions are disposed of in the light of the aforesaid judgment. There is, however, no order as to costs.

R.R.

Appeals and Petitions are disposed of.