

PETITIONER:
UNION OF INDIA

Vs.

RESPONDENT:
MADRAS TELE.S.C. & S.T. SOCIAL WELFARE ASSOCIATION.

DATE OF JUDGMENT: 26/04/2000

BENCH:
G.B.Pattanaik, R.P.Sethi, Shivaraj V. Patil

JUDGMENT:

PATTANAIAK, J.

I.A.2/99.

This is an application by Union of India, seeking clarifications, being of the opinion that the Judgment of this Court in the case of Union of India vs. P.N.Lal and Ors., in S.L.P. Nos. 3384-86/86 runs contrary to the Judgment of this Court dated 13.2.97 in the case of Union of India vs. Madras Telephone SC/ST Social Welfare Association in C.A. No. 4339 of 1995. By this application, the department also seeks further directions as to the manner in which judgment of the Central Administrative Tribunal, Hyderabad dated 5.1.96 as well as the judgment of the High Court of Andhra Pradesh dated 28.10.97, passed in Writ Petition No. 23522/97 would be implemented, since according to the department, the directions contained therein run contrary to the principle enunciated in the judgment of this Court in P.N. Lals case. The Union of India has filed an application for condonation of delay in filing application for directions, which has been numbered as I.A. No. 3/99.

After the disposal of C.A.No. 4339/95 by order dated 13.2.97, as the directions given therein had not been implemented, the Madras Telephone SC/ST Social Welfare Association filed a contempt Petition, which was registered as Contempt Petition(Civil) No. 121/1999. When that application had been listed before a Bench of two learned Judges of this Court on 16.11.99, an application for intervention had been filed by a group of officers and it was contended by the interveners that the judgment of this Court in C.A. No. 4339/95 has been rendered without noticing four earlier judgments, each one rendered by two Judge Bench. The said interveners had also filed an application for recalling the order dated 13.2.97 passed in C.A. No. 4339/95, on the ground that they were not party to the said appeal. In view of the conflict in different judgments of this Court, rendered by two Honble Judges in each of the matters, the Bench hearing the matter on 16.11.99, passed an order that the matters be placed before a Bench of three Hon'ble Judges and that is how this group of matters have been placed before us.

I.A. No.10/2000. In I.A. No.2/99, filed by the Union of India for clarifications and directions, as already

stated, an application for intervention had been filed by four persons, claiming themselves to be vitally affected, if the judgment of this Court in C.A.No. 4339/95 is not implemented and the said Intervention Application has been numbered as I.A. No.10 of 2000.

I.A. No.9/99. One Shri Parmanand Lal, who has been permitted to intervene in Contempt Petition No. 121/99, has filed an application, seeking permission to file additional documents and said application has been numbered as I.A. No.9/1999.

I.A. No.11/2000. An application has been filed by the Union of India for impleading P.N.Lal, Brij Mohan, who were the respondents in SLP Nos. 9063-64/92, 19716-22/91, 16698/92 and 5398/96 as well as several other persons to be impleaded as parties, which has been registered as I.A.No. 11/2000. This application has been filed because of the observations made by this Court, while hearing this matter on 20th of January, 2000, wherein the Court had observed that the consequence of divergent views has put the Union of India in quandary and it is, therefore necessary to consider and decide which of the two divergent views is the correct one. The Court also further observed that all parties whose interest would be affected, are before the Court, but we direct the Union of India specifically, to implead Parmanand Lal in its interim application(I.A. 2/99.)

I.A. No 12/2000 Parmanand Lal, himself also had filed an application for intervention and directions, who is the beneficiary of the order of this Court dated 8.4.86, when the Special Leave Petition Nos. 3384-86 of 1986 filed by the Union of India was dismissed, necessarily, thereby upholding the order of Allahabad High Court passed in Writ Petition No. 2739 of 1981, filed by said Parmanand Lal. The said I.A. has been registered as I.A. No12/2000. C.A. Nos. 6485-86 of 1998 is by Parmanand Lal, directed against the order of Central Administrative Tribunal, Principal Bench, New Delhi, passed in R.A.No. 170/97 on 18.9.97, as well as the Order of the said Tribunal in O.A. No. 2646 of 1993 dated 11.4.97. In the aforesaid Civil Appeal Nos.6485-86 of 1998, said Parmanand Lal, filed an application for interim relief, which has been registered as I.A. Nos. 4 and 5 of 1999.

I.A.No. 3/99, filed by the Union of India for condoning the delay stands allowed. I.A. No. 10/2000, filed for intervention by four persons in I.A. No.2/99 stands allowed. I.A. No. 9/99, filed by Parmanand Lal to intervene in the Contempt Petition No.121/99 stands allowed. I.A. No. 11/2000, filed by the Union of India for impleadment of Parmanand Lal and Brij Mohan stands allowed. I.A. No..12/2000, filed by Parmanand himself for intervention also stands allowed.

I.A. No. 2/99, filed by the Union of India for clarification, Contempt Petition(C) No. 121/99, filed by the Madras Telephone SC/ST Social Welfare Association, C.A. Nos. 6485-86 of 1998 filed against the order of the Central Administrative Tribunal, Principal Bench, New Delhi and I.A. Nos. 4 & 5 of 1999, filed in C.A. Nos. 6485-86/98 for interim relief would stand disposed of by this common judgment.

The controversy between the parties centers round a

question, as to how the selection list has to be drawn up for the purpose of promotion to the post of Assistant Engineer from the post of Junior Engineer in Tele-communication circles. It may be stated that prior to 1966, the Junior Engineers were being designated as Engineering Supervisors Telecom/Wireless Supervisors Telecom. Before the Telegraph Engineering Service Class II Recruitment Rules, 1966 framed in exercise of powers conferred by the proviso to Article 309 of the Constitution of India (hereinafter referred to as the recruitment rules), came into force the promotion from the post of erstwhile Engineering Supervisor Telecom (re-designated as Junior Engineer) to the post of Assistant Engineer was being made in accordance with the instructions contained in paragraph 206 of the Post and Telegraph Manual Volume IV. The said instructions were obviously the executive instructions, which governed the field in the absence of statutory rules. The aforesaid instructions contained in para 206 of the P & T Manual are extracted herein below in extenso for better appreciation of the point of controversy:

206. All Junior Engineers recruited after the 1st January, 1929, under the new system after serving for 5 years in Engineering Branch may be permitted to appear at the Departmental Qualifying Examination, which will be held from time to time in the subjects enumerated below, provided they have a good record. This qualifying examination is intended to test the general ability of Engineering Supervisors and their knowledge in the latest developments in Telegraphy and Telephony. A pass in this examination is an essential condition for promotion in Telegraph Engineering and Wireless service, Class II. 2. Promotion to the T.E. & W.S. Class II, will be made according to the principle of seniority-cum-fitness but the Engineering Supervisors who pass the qualifying examination earlier will rank senior as a group to those who pass the examination on subsequent occasions i.e. officials who passed the examination held in 1956 will rank as en bloc senior to those who passed in 1957. Their seniority inter se will, however, be according to their seniority in the cadre of Engineering Supervisors. 3. This examination will be conducted in the following three subjects:- (i)Telegraph and Telephony (Without books) 100 marks

(ii)Line Construction and Transmission(Without books) 100 marks (iii)Code Rules(With books) 100 marks

One question paper will be set in each subject. In order to qualify in the examination the officials must obtain 10% of marks in each subject. 4. The detailed syllabus for the examination is indicated in Appendix No. 15A.

Under the aforesaid instructions all Junior Engineers, on completion of five years of service in Engineering Branch, were being permitted to appear at the departmental qualifying examination, provided they maintain a good service record. The qualifying examination was intended to test the general ability of the Engineering Supervisors and pass in the said examination was essential pre-condition for promotion to the service in Class II. The promotion to service in Class II was being made on the principle of seniority- cum-fitness. It also further stipulates that those of the supervisors who pass the qualifying examination earlier, would rank en bloc senior to those who pass the

examination later but inter se seniority of supervisors, who pass the examination in one group was being determined according to their seniority in the cadre of Engineering Supervisor. The recruitment rules came into force w.e.f. 15th of June, 1966, on being notified. Rule 5 of the Recruitment Rules provides the method of recruitment to the service, the period of probation and the lower grades from which the promotion would be made, as indicated in columns 5 to 13 of the Schedule and Appendix I and Appendix II to the rules. The service has been defined in Rule 2(e) to mean the Telegraph Engineering Service (Class II). Under Appendix I, recruitment to the service is required to be made entirely by promotion on the basis of selection of officials, indicated in paragraph (ii) of the said Appendix, through a qualifying departmental examination. It further stipulates that an approved list has to be prepared by a duly constituted Departmental Promotion Committee by selection from amongst the officials, who qualify in the departmental examination. Para (ii) of Appendix I enumerates the category of officials who are eligible for promotion to the service in Class II. Under Paragraph (iii) of Appendix I, the departmental qualifying examination for promotion to the Service in Class II is normally held at least once in a calendar year in the manner prescribed in Appendix III. The Engineering Supervisors must complete five years of service, so as to be eligible for appearing at the departmental qualifying examination. Under Paragraph (v) of said Appendix I, the eligibility list of candidates for consideration of Departmental Promotion Committee is to be prepared in accordance with the instructions as may be used by the Government from time to time. In accordance with the provisions contained in paragraph (v) of Appendix I, the Government of India, Department of Communication, issued instructions dated 28th of June, 1966, indicating the procedure for preparation of eligibility list of the officers for being placed before the Departmental Promotion Committee. Under the said instructions, separate list is required to be prepared for each year of recruitment. Paragraph (v) of the aforesaid instructions is rather important for our purpose, which is extracted herein below in extenso:

(v) All officials of a particular year of recruitment/appointment, who have qualified in an earlier examination, would rank en bloc senior to those officials of the same year of recruitment/appointment who qualify in subsequent examination.

The aforesaid instructions unequivocally indicates that from amongst the Engineering Supervisors, recruited in a particular year of recruitment, those who pass the departmental examination for promotion earlier would rank en bloc senior to those, who pass the said qualifying examination at a later point of time. It may be stated that under paragraph (i) of the aforesaid instructions, it was incumbent for the authorities to prepare separate list for each year of recruitment of the persons from the feeder category. The recruitment rules were amended in the year 1987 and under the amended provisions, the criteria for selection is on the basis of seniority-cum-fitness. Thus, seniority plays an important role in the matter of promotion to the post of Class II Engineering Service. The Madras Telephone SC/ST Social Welfare Association had filed a writ petition in the High Court of Madras with the prayer that the eligibility list be prepared by determining the

seniority on the basis of confirmation as Junior Engineer and that list should form the basis for promotion to Class II service. The aforesaid writ petition stood transferred to the Central Administrative Tribunal under Section 29 of the Administrative Tribunal Act, 1985 and was finally disposed of by the Tribunal by Judgment dated 31.12.1986. The Tribunal came to the conclusion that the year of recruitment for the purpose of seniority is extraneous and irrelevant and it accordingly directed that the eligibility list be arranged according to the year of passing the qualifying examination and amongst those, who pass the examination in the same year, the list should be according to their merit, as seen from the marks obtained in the examination. The Judgment of the Tribunal was assailed by the Union of India in the Supreme Court and upon leave being granted, the same was registered as Civil Appeal No. 4339 of 1995. This Court came to the conclusion that the directions given by the Tribunal really amounts to re-writing the rules, which could not have been done by it. On consideration of the relevant provisions of the Recruitment Rules and the instructions, issued thereunder, the Court came to the conclusion that the eligibility list has to be prepared according to the year of recruitment. This Court did not accept the stand of the Association that the list should be prepared with reference to the year of confirmation. When the Court disposed of the aforesaid Civil Appeal, the Judgment of the Allahabad High Court in the writ petition, filed by P.N.Lal and Brij Mohan (Writ Petition Nos. 2739/81 and 3652/81) had not been brought to the notice of the Court and against the said Judgment of Allahabad High Court, the Union of India had come to the Supreme Court in Special Leave Petition No. 3384-86 of 1986 and that Special Leave Petition was dismissed on 8.4.86. While dismissing the Special Leave Petition, the Court passed the following order:

.....In the facts and circumstances of the present case, we are not inclined to interfere with the judgment of the High Court except to a limited extent.....

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.

Since Departmental Authorities had not implemented the decisions of this Court in Civil Appeal No. 4339 of 1995 for which a Contempt Petition had been filed, having regard to the circumstances under which the Departmental Authorities entertained bona fide difficulties, it would not be proper to proceed against the authorities under the contempt and the contempt proceedings accordingly are dropped. We would, however direct the Departmental Authorities to proceed in accordance with law and in accordance with the observations made by us in this Judgment and promotions may be made within a period of six months from the date of this judgment.

CIVIL APPEAL Nos. 6485-86 of 1998: These appeals by Parmanand Lal is directed against the order of the Central Administrative Tribunal dated 11th of April, 1997. Said Parmanand Lal had approached the Tribunal, challenging the order of reversion dated 4.2.93 and the basis of said reversion was re-fixation of the seniority in the rank of Engineering Supervisor, because of some judgments of different Tribunals and because of some Judgments of this Court. We have considered this question in great detail and we have held that the question of seniority in the feeder cadre of Junior Engineers, when persons belonging to the same recruitment year are recommended, has to be decided in accordance with paragraph (iii) of the Memorandum dated 28th of June, 1966 and in accordance with the statutory recruitment rules read with Appendix attached thereto for promotion to the posts in Group B service, separate list has to be made in respect of each recruitment year. We have also held that after promulgation of the recruitment rules, the administrative instructions contained in paragraph 206 of the P & T Manual, will have no force. We have also indicated that the promotions already effected pursuant to the Judgment of the Allahabad High Court, which was upheld by this Court by dismissing the special leave petition filed by the Union of India will not be altered in any manner. This being the position and the Judgment of the Allahabad High Court in favour of Parmanand Lal having attained finality, he having received the benefit of the said

Judgment and having been promoted, could not have been reverted because of some latter Judgments and directions given either by the Tribunals or by this Court. On the admitted position that the applicant Parmanand was reverted by order dated 4.2.93 because of certain directions given by some other Tribunals, deciding the principle of re-fixation of seniority and it is on that basis an order of reversion was passed, we have no hesitation to come to the conclusion that the order of reversion is untenable and unjustified on the grounds on which the said reversion has been passed, and as such cannot be sustained in law. We make it clear that the seniority of Parmanand in the cadre of Junior Engineer, fixed on the basis of the directions of Allahabad High Court, after dismissal of the SLP against the same by this Court is not liable to be altered by virtue of a different interpretation being given for fixation of seniority by different Benches of the Central Administrative Tribunal. The impugned order passed by the Central Administrative Tribunal is erroneous and we quash the same and allow the civil appeals filed by the said Parmanand Lal. After closure of the arguments, an application has been filed on 18th of April, 2000 by Promotee Telecom Engineers Forum, New Delhi through its President, seeking intervention in the matter, has prayed for an opportunity of being heard. It is not possible to re-hear the matter again. The prayer accordingly stands rejected. All these appeals and applications are disposed of accordingly. There will be no order as to costs.