

(2018) 04 CAT CK 0063

In the Central Administrative Tribunal

Case No : Original Application No. 2990, 4364 Of 2012, Miscellaneous
Application No. 2499 Of 2012, 3440, 3621, 4041 Of 2014

Renuka Dass And Ors

APPELLANT

Vs

Union Of India AND Ors

RESPONDENT

Date of Decision : 05-04-2018

Acts Referred:

Constitution Of India, 1950 — Article 309

Citation : (2018) 04 CAT CK 0063

Hon'ble Judges : Permod Kohli, J;K.N. Shrivastava, Member (A)

Bench : Division Bench

Advocate : Rani Chhabra, Priyanka Soni, Neha Bhatnagar, Pranav Sharma

Final Decision : Disposed Of

Judgement

K. N. Shrivastava, Member (A)

1. Since common issues of facts and laws are involved, it was decided to dispose of these two O.As. by this common order.

2. M.A. No.2499/2012 in O.A. No.2990/2012 seeking joining together in a single petition is allowed.

3. These O.As. have a chequered history. The controversy involved has traversed to various levels starting from different Benches of the Tribunal to various Hon"ble High Courts and finally to Hon"ble Supreme Court.

Myriad judgments have been passed. Succinctly, the factual matrix of O.A. No.2990/2012 is as under:-

3.1 The applicants were originally appointed as Junior Engineer (JE)/ Engineer Supervisor more than three decades ago. The said post was later re-designated as Junior Telecom Officer (JTO); which is a Group "B" non-gazetted post. The next promotion from the post of JTO is to the cadre of Telecom Engineering Service (TES) (Group "B"), a gazetted post.

3.2 As per rules, for promotion from the cadre of JTO to the cadre of TES (Group "B"), the candidate concerned has to qualify a departmental qualifying examination after having rendered a minimum of 5 years of regular service in the Engineering Branch.

3.3 In terms of paragraph 206 of the P & T Manual - Volume (IV), the inter-se-seniority of TES (Group "B") was to be reckoned on the basis of the date of passing the qualifying examination. In other words, the candidates, who passed the said examination earlier to their seniors in the cadre of JTO, could march past their seniors in the cadre of TES (Group "B") in the matter of inter-se-seniority.

3.4 The Post & Telegraphs Department on 15.06.1966, exercising the Government of India's power under Article 309 of the Constitution, framed the Recruitment Rules, 1966, which, inter alia, stipulated that promotion to the post of TES (Group "B") is to be made entirely on the basis of selection of official through a qualifying departmental examination. It also stipulated that all officials of a particular year of recruitment / appointment, who have qualified in the earlier examination, would rank enblock senior to those officials of the same year of recruitment/appointment, who qualified in the subsequent examination. Thus, the emphasis under the new rules for fixation of seniority shifted from the year of examination to the year of recruitment/appointment of the candidate concerned.

3.5 The Recruitment Rules, 1966 were replaced by the new Recruitment Rules, 1981, which came into effect from 07.05.1981. It, inter alia, provided that promotion to the grade of TES (Group "B") shall be 2/3 by selection on the basis of qualifying departmental examination by duly constituted Departmental Promotion Committee (DPC) and 1/3 by selection on the basis of Limited Departmental Competitive Examination (LDCE).

3.6 After the promulgation of Recruitment Rules, 1981, controversy arose with regard to fixation of seniority. This controversy was first adjudicated by Hon"ble High Court of Allahabad in W.P. (C) Nos.2739 and 3652 of 1981 decided on 20.02.1985. The ruling was that those, who qualified in the departmental examination earlier, were entitled to be promoted prior to those who qualified later irrespective of their year of initial recruitment and that the stipulation in paragraph 206 of P & T Manual - Volume IV was not in conflict with the Recruitment Rules, 1966 or 1981. The S.L.P. No.3384-86 filed against the said ruling of Hon"ble High Court of Allahabad was dismissed by the Hon"ble Supreme Court by an order dated 08.04.1986.

3.7 The controversy did not get settled for good and in some form or the other kept on cropping up intermittently in different judicial fora. These are:-

? O.A. No.2672/1991 before the Principal Bench of this Tribunal disposed of vide order dated 10.07.1992.

? O.A. No.1260/JK/91 and O.A. No.1264/JK/91 before the Chandigarh Bench of the Tribunal, disposed of vide order dated 20.11.1992.

? The Ernakulam Bench of the Tribunal.

? Hyderabad Bench of this Tribunal in the year 1992.

? Bangalore Bench of this Tribunal.

? Madras Bench of this Tribunal.

? Hon"ble Supreme Court in C.A. No.4339/1995 disposed of vide judgment dated 13.02.1997.

? Hon"ble Supreme Court in I.A. No.16/2006, disposed of vide judgment dated 28.09.2006 - reported as (2006) (8) SCC 662.

? Hon"ble High Court of Himachal Pradesh in W.P. (C) No.13/2007 disposed of vide judgment dated 09.01.2007.

? Hon"ble Supreme Court in C.P. No.248/2007 in I.A. No.16/2016 in C.A. No.4339/1995, disposed of vide judgment dated 25.03.2008.

? Hon"ble High Court of Kerala in W.P. (C) No.3807/2005 & W.P. (C) No.30788/2006, disposed of vide judgment dated 07.11.2008.

? Hon"ble High Court of Kerala in W.P. (C) No.30551/2009, disposed of vide judgment dated 11.01.2010.

? Ernakulam Bench of this Tribunal in T.A. No.79/2008, disposed of vide order dated 30.03.2011.

? Jabalpur Bench of this Tribunal in T.A. no.104/2009, disposed of vide order dated 30.07.2009.

? Hon"ble High Court of Delhi in W.P. No.7558/2008

? Principal Bench of this Tribunal in O.A. No.362/2009, disposed of vide order dated 04.10.2009.

? Review Application No.34/2010 in O.A. No.362/2009, disposed of vide order dated 04.12.2009.

? Hon"ble High Court of Delhi in W.P. (C) No.5542/2011, disposed of vide order dated 04.08.2011.

? Hon"ble Supreme Court (CC) No.21248/2011, disposed of vide judgment dated 27.02.2012

? Hon"ble Punjab & Haryana High Court judgment dated 25.11.2011 upholding the order of the Chandigarh Bench of this Tribunal in T.A. No.47/2009

? Hon"ble High Court of Delhi in W.P. (C) No.2056/2012.

3.8 The Telecom Wing of P&T Department was corporatized and two Companies, namely, Mahanagar Telephone Nigam Limited (MTNL) and Bharat Sanchar Nigam Limited (BSNL) were formed in the years 1986 and 2000 respectively. Almost all the JTOs and TES (Group "B") officials became employees of these two companies.

Being aggrieved by the action of the respondents to fix seniority as per the date of appointment and not by the date of passing the qualifying examination, the applicants, through this O.A., have prayed for the following reliefs:-

"a) direct the respondents to re-fix the seniority of the applicants in accordance with the orders of the Hon"ble Supreme Court passed on 28.9.2006 in I.A. No.16 of 2006 in C.A. No.4339 of 1995 on the basis of qualifying examination.

b) grant all consequential benefits to the applicants from the date their juniors are promoted."

4. The applicants in O.A. No.4364/2012 state as under:-

4.1 They were initially appointed in the Department of Telecommunication (DOT) against Class "A" & "B" posts and were governed under the Rules framed by the DOT. Applicant No.1 is a registered Association of Telecom Executive under the Trade Unions Act and remaining applicants are the members of said Association, belonging to TES (Group "B"). The applicants are presently posted in MTNL.

4.2 As the applicants were appointed as JTO in DOT, for their promotion to TES (Group "B"), they are governed by TES (Group "B") Recruitment Rules, 1996, which came into being on 23.07.1996. In terms of the said Rules, 75% posts of SDE/DM/E-3 were to be filled from amongst the JTOs/AM/E-2 on seniority cum fitness basis and the remaining 25% posts were to be filled up on the basis of LDCE.

4.3 Hon"ble Supreme Court, vide its judgment dated 25.10.1996 passed in S.L.P. (C) No.26071/1995, has held that the vacancies existed prior to the new Recruitment Rules (RRs), are to be filled up according to the RR at the time of occurrence of vacancies.

4.4 Ministry of Telecommunication, DOT, vide letter dated 08.05.2000, decided to fill up all the posts of Groups "A" & "B" and certain Group "C" posts, having all India transfer liability in MTNL on permanent absorption basis, for which options were to be called from all the officers who were transferred and posted in MTNL. The aforesaid letter also contains the Annexures laying down terms and conditions with regard to pay scales, allowances, residential quarters, pensionary benefits, etc.

4.5 The applicants and other officers exercised their options and were thereafter absorbed in MTNL with their experience and length of service in DOT. In the said process, every official was required to give an undertaking that the option is being given with full knowledge of terms and conditions. It was for the purpose

of comparison between the MTNL and DOT. After the options were exercised, they were absorbed permanently in MTNL.

4.6 The Board of Directors of MTNL, in its 228th meeting, approved the time bound/post based Executive Promotion Policy for Group B level Executives/officers of MTNL vide O.M. dated 11.09.2017.

4.7 Those JTOs (E-2), who had completed 4 years of service in IDA scale, were given financial upgradation in the next grade of E-3 in accordance with upgradation policy, and those officials posted in E-3, and who had completed requisite number of years, were given further upgradation from E-3 to E-4. However, thereafter, the respondents did not conduct any competitive examination from 2001 to 2011.

4.8 That the respondent - MTNL, in its 271st meeting held on 12.05.2011, approved MTNL Recruitment Rules for promotion of Assistant Manager (Telecom) E-2 to Deputy Manager (Manager) E-3, 2011 whereby quota was increased through Limited Internal Competitive Examination (LICE) from 25% to 33%.

4.9 In accordance with the aforesaid Rules, a notification dated 15.09.2011 was issued for holding LICE but no examination was conducted for filling up the available 25% LICE quota vacancies from 2001 to 2011, which has denied the applicants and similarly situated their legitimate rights.

4.10 The applicants preferred representations through applicant No.1 - Association on 16.01.2012, 18.01.2012 and 13.12.2012, which have not been responded to by the respondents. It is stated that the action of the respondents in filling up the vacancies from the years 2001 to 2011 under the new Rules is arbitrary, unjustified and contrary to the assurance given by the Department at the time of exercising the option.

4.11 That the applicants are absorbees in MTNL and deserve to be promoted against the vacancies that accrued prior to 2011, according to the terms and conditions of their absorption in MTNL.

Aggrieved by the action of the respondents in not adhering to the absorption terms and conditions, the applicants have filed this O.A. praying for the following reliefs:-

"a) the respondents be restrained to fill up the vacancies existing prior to promulgation of MTNL Recruitment Rules for promotion of Assistant Manager (Telecom) (E-2) to Deputy Manager (Telecom) (E-3), 2011 issued vide letter No. MTNL/CO/HR/R&E/1(110)/2008 dated 23.6.2011 under these New Rules 2011;

b) to direct the respondents to treat the vacancies from 2001 to 2011 under promote quota and fill up the same by permanent absorbees of MTNL transferred from DOT promotee;

c) quash the order No.MTNL/CO/HR/R&E/1/110/2008/KW dated 03.11.2014 by which result for promotion to the post of Deputy Manager in E-3 pay scale is

declared for the vacancies existed from 2001 to 2011."

5. Pursuant to the notices issued, the respondents entered appearance and file their replies in respective O.As.

6. On completion of pleadings, the case was taken up for hearing the arguments of learned counsel for the parties on 02.02.2018. Arguments of Mrs. Rani Chhabra with Ms. Priyanka Soni, learned counsel for applicants and Ms. Neha Bhatnagar with Mr. Pranav Sharma, learned counsel for respondents were heard.

7. At the very outset, Mrs. Rani Chhabra, learned counsel for applicants placed on record a latest judgment of Hon"ble Supreme Court in Union of India & others v. Sohan Lal Sayal & other (Civil Appeal No.4389/2010) decided on 14.12.2017. She submitted that the controversy involved has been finally settled by the Hon"ble Apex Court in the said judgment and that the present O.As. can be disposed of in terms of the ibid judgment.

8. We have perused the judgment of Hon"ble Supreme Court in the aforementioned case and we find that while considering the Civil Appeal No.4389/2010, the Apex Court had decided to constitute an Expert Committee comprising of Mr. Justice K. Ramamoorthy, retired Judge of High Court of Madras and Mr. D P Sharma, former Secretary in the Ministry of Law & Justice, to go into the issues involved in great details and to submit its report for consideration of Hon"ble Apex Court. The Expert Committee submitted its report on 28.10.2015. The recommendations of the Expert Committee have been noted by the Hon"ble Apex Court in paragraph 5 of its judgment and the same are reproduced hereinbelow:-

"214. In fine, in the backdrop of the above facts and circumstances, we recommend that:

"1. The seniority lists submitted by BSNL in compliance with the judgment of the Hon'ble Court dated 21.01.2015 is in accordance therewith.

2. The benefits claimed by 155 BSNL officers as mentioned in Annexure A & B may be accepted and this Hon'ble Court be pleased to direct BSNL to grant all benefit including promotion with effect from the date when the junior was promoted with all monetary benefits and service status as mentioned in the Annexure D herein to the 155 BSNL officers and all officers similarly situated.

3. This Hon'ble Court may grant the benefits to the 349 MTNL officers as mentioned in Annexure C herein and this Hon'ble Court be pleased to direct MTNL to grant all benefit including promotion with effect from the date when the junior was promoted with all monetary benefits and service status as mentioned in the Annexure E herein to the 349 MTNL officers and all officers similarly situated.

4. The rights of the 147 LDCE officers would require consideration by this Hon'ble Court in the concerned SLPs and the objections of BSNL, the 45 DQE officers, the

270 officers and the 512 officers may kindly be considered while considering the concerned SLPs.

5. The case of 45 officers whose seniority has now been fixed has to be satisfied with the benefit they get on that basis.

6. The case of 270 officers maybe considered by the department in accordance with the seniority lists and BSNL maybe directed to grant all the monetary and service status benefits consequent on their seniority being fixed.

7. The case of 12 officers who were benefited by 2001 seniority lists is to be governed by the present seniority list and they are not entitled to any benefits.

8. In the case of 60 officers who had passed DQE examination in 2003, they are not entitled to any benefits.

9. This Hon'ble Court may consider the position that on the basis of the seniority lists now submitted by the BSNL and also the officers working in MTNL who were originally under the control of DoT and all officers similarly situated may be granted the consequential monetary and service benefits.

10. DoT/BSNL/MTNL may be directed to consider the case of all officers similarly situated like the 155 officers for BSNL and 349 MTNL officers irrespective of the fact whether they had made any representation before the Committee or not and grant them all the benefits mentioned in sub-paragraph 1 and 2 of paragraph no.214.

11. BSNL may be directed to consider the case of all the officers who have made representations before us including Mr. Ashok Kumar Kaushik and K.S. Sengodan who not only made representations but also made submissions before us."

9. The aforesaid recommendations of the Committee have been accepted by the Hon'ble Apex Court. However, in paragraph 7 of its judgment, the Hon'ble Apex Court has carved out some exceptions in case of 3 officials of BSNL and 11 officials of MTNL in regard to their promotions. Paragraph 7 of the judgment is extracted hereinbelow:-

"7. We do not consider it necessary to pass any further order on above recommendations except that 14 persons who are said to have been given promotions - 3 persons in the BSNL and 11 persons in the MTNL contrary to the law laid down by this Court in (1997) 10 SCC 226 (Supra) may not be now disturbed. Their promotions and seniority may be considered personal to them without their being treated as class or a precedent for future. The judgment of this Court in (2015) 12 SCC 360 (Supra) will be treated as final between the parties on the principle of seniority."

10. The Hon'ble Apex Court, in paragraph 8 of its ibid judgment, has ruled out payment of any arrears, but has stated that consequential benefits of pay fixation, including pensionary benefits, if any, will be payable in terms of the judgment impugned therein w.e.f. 01.01.2018 and not for the past.

11. Mrs. Chhabra fairly submitted that the applicants would be satisfied if the instant O.As. are disposed of in terms of the aforementioned judgment of Hon"ble Apex Court dated 14.12.2017.

12. Ms. Neha Bhatnagar, learned counsel for respondents submitted that she has no objection to the suggestions made by Mrs. Chhabra, learned counsel for applicants.

13. In the conspectus, both these O.As. are disposed of in terms of the ibid judgment of Hon"ble Apex Court in Sohan Lal Sayal. No order as to costs.

14. In view of this order, all ancillary Applications stand disposed of. Let a copy of this order be kept in the respective files.