

For kind attention to  
AGM (Pers-Legal) CO.ND

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OA No.1164/2011

**CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH**  
**JABALPUR**

Original Application No.1164 of 2011

Jabalpur, this Tuesday, the 11<sup>th</sup> day of December, 2012

**HON'BLE SHRI JUSTICE DHIRENDRA MISHRA, JUDICIAL MEMBER**  
**HON'BLE SHRI G.P.SINGHAL, ADMINISTRATIVE MEMBER**

**- Applicants**

1. Gaya Prasad Patel, S/o Shri B.L. Patel  
Aged about 44 years, R/o B-291 A, Minal  
Residency, J.K. Road, Bhopal 462001
2. Sajay Gandhi, S/o Shri M.C. Gandhi,  
Aged about 41 years, R/o Telephone Exchange  
Campus, Ghoda Choupati, Dhar (MP) 454001
3. Mukesh Kulshreshtha, S/o Shri Rajendra  
Prakash, aged about 40 years, R/o 204,  
Vaishnavi Enclave, Vigyan Nagar, Indore (MP)  
452001
4. Nand Lal Singh, S/o Shri B.N. Singh,  
Aged about 41 years, R/o Plot No.1464,  
Vijay Nagar, Jabalpur (MP) 482002
5. Jitendra Kumar Verma, S/o Late B.P. Verma  
Aged about 41 years, R/o 670, Sanjeevani Nagar,  
Behind Jain Mandir, Garha, Jabalpur-482003 (MP)
6. Ms. Shikha Pandey, D/o Shri H.P.S. Chaudhury  
Aged about 45 years, R/o 270 Anand Nagar, Adhartal,  
Jabalpur 482004 (MP)
7. D.K. Patel, S/o Shri R.L. Patel, aged about 40 years,  
R/o Y-7, Fortune Glory, E-8 Extension, Bhopal-462039 (MP)
8. Mukesh Sharma, S/o Shri R.S. Sharma,  
Aged about 43 years, 25, Comfortpalm, E-8 Extension,  
Near Orion School, Bawadiakala, Gulmohar,  
Bhopal 462039 (M.P.)
9. Man Mohan Vyas, S/o Shri R.C. Vyas,  
Aged about 42 years, R/o P-36, Rishipuram,  
Phase I, BHEL, Bhopal - 462021 (MP)
10. Qutubuddin Tikiwala, S/o Shri Saifuddin  
Tikiwala, aged about 42 years, R/o 52, Saifee Mohalla,  
K.D. Gate, Ujjain - 456 006 (MP)

(By Advocate: Shri Vijay Tripathi)

**Versus**





1. Union of India, Through its Secretary  
Department of Telecommunication,  
Government of India, Sanchar Bhawan,  
20-Ashoka Road, New Delhi - 110001

- Respondents

2. Chief Managing Director, Bharat  
Sanchar Nigam Ltd., Bharat Sanchar  
Bhawan, Harish Chandra Mathur Lane,  
Janpath, New Delhi 110001

3. Chief General Manager, 4<sup>th</sup> Floor,  
BSNL Bhawan, Hoshangabad Road  
Bhopal - 462015

4. Chief General Manager, BRBRAITT,  
Ridge Road, Jabalpur 482001 (MP)

5. Shri Kajal Kanti Das, aged about 59  
years, DE (Transmission), BSNL,  
BRBRAITT, Ridge Road, Jabalpur  
482001 (MP)

6. Shri Diwakar Kotwal, aged about 58 years,  
SDE (WTR), BSNL, Arera Telephonic Exchange,  
Bhopal (MP) 462001

7. Shri Dori Lal Sharma, aged about 49 years,  
AGM (Regulation) CGMT, 3<sup>rd</sup> Floor BSNL Bhawan  
Hoshangabad Road, Bhopal - 462015 (MP)

(By Advocate - Shri S.P. Singh)



### ORDER

**BY DHIRENDRA MISHRA, JM.-**

1. Through this O.A., the applicants, who have been promoted to the post of Sub Divisional Engineers (SDE), Group-B post against 25% Limited Departmental Competitive Examination Quota (for short 'LDCE'), have prayed for the following reliefs:-

- > "Summon the entire relevant record from the respondents for its kind perusal;
- > Set aside the seniority list Annexure-A/4 and direct the respondents to re-cast the seniority list and place the applicants over and above to the private respondents and other 1369.



- Upon holding that non-inclusion of names of the applicants in the list of preparatory work is bad in law, set aside the list of preparatory work Annexure A/3 prepared for promotion of STS cadre.
- Direct the respondents to redraw the list of preparatory work and include the names of the applicants in the aforesaid list and consider the applicants for promotion in the cadre of STS.
- Any other order/direction may also be passed.
- Award cost of the litigation to the applicant."

2. Briefly stated facts of the case, as projected in the O.A., are that the applicants were initially appointed as Junior Telecom Officers (JTOs) in the Telecom Department. After formation of the Bharat Sanchar Nigam Limited (for short 'BSNL'), they became employees of the BSNL. Their service condition was initially governed by the Telegraph Engineering Service (Group-B Post) Recruitment Rules, 1981 (for short 'the Rules, 1981') under which the posts of SDEs are to be filled up to 66-2/3% by the DPC on the basis of seniority cum fitness and remaining 33-1/3% posts are to be filled through LDCE amongst the officers who have passed qualifying examination. The Rules, 1981 were superseded by the Telecommunication Engineering (Group-B Post), Recruitment Rules, 1996 (for brevity 'the Rules, 1996'). Under the Rule 1996, 75% posts of SDEs are to be filled up by the DPC on the basis of seniority cum fitness and 25% through LDCE with modification of 3 years regular service.



3. The Rules 1996 provides that the date for determining eligibility shall be 1<sup>st</sup> July of the year in which the vacancies arise. The respondents issued a notification on 30<sup>th</sup> April, 2001 for filling up the vacancies of SDEs against 25% quota for the year 1996-97, 1997-98, 1998-99, 1999-00 and 2000-01 and the date of examination was fixed on 30<sup>th</sup> April, 2001 and



9<sup>th</sup> May 2001. However, the examination was conducted only on 1<sup>st</sup> December, 2002 and the result was declared on 15<sup>th</sup> January, 2003. The promotion/post orders of the applicants and others who are selected as SDEs against 25% quota was issued in the month of June/July, 2004 vide Annexure-A/7. Whereas promotion order of 3629 JTOs for the promotional post of SDE cadre against seniority cum fitness quota was issued on 15.10.1998, though only 1663 vacancies of SDEs for promotion was available up to 22.7.1996 under 75% quota.

4. Keeping in view the above fact, the candidates promoted in excess of the vacancies against the aforesaid quota were reverted vide order dated 11.11.2004. However, aggrieved SDEs challenged their order of reversion before Hon'ble High Court of Kerala at Ernakulam and the order of reversion was quashed with certain observations (Annexure-A/8). In pursuance of the above order and the directions of Hon'ble High Court of Delhi, the order of reversion of 1966 TES Gr. B Officers dated 11.11.2004 was cancelled on 9<sup>th</sup> March, 2009 (Annexure-A/9) and their seniority was restored. With a view to give effect to the above decision, 1369 supernumerary posts of TES Gr.-B equivalent to SDE(T) for the period from 21.10.1998 to 25.4.2000 was created against 75% quota as detailed in Annexure-A/9.



Learned counsel for the applicants would submit that supernumerary posts have no regular status and the seniority of the persons occupying supernumerary posts can be counted from the date of their regularization and the candidates, who have qualified in the examination against 25% quota for the vacancies of 1996-97, 1997-98 and 1998-99, were correctly placed in the seniority list issued on 12.1.2005 (Annexure-A/10). However, the respondents have unilaterally changed their position in the seniority list viz. a viz. the private respondents and they have been

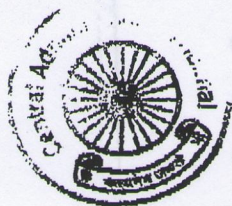


allotted seniority prior to 22.7.1996 and the applicants have been placed below the candidates, who were promoted against supernumerary posts as per seniority list of Annexure-A/4 supplied to the applicants under Right to Information Act on 9.11.2011 and thus the position of the applicants in the seniority list has been unilaterally changed without affording any opportunity of hearing to them. Reliance is placed on judgments of Hon'ble Supreme Court in the matters of **O.P. Garg Vs. State of U.P.**<sup>1</sup> and **Ashok Pal Singh Vs. Uttar Pradesh Judicial Services Association**<sup>2</sup>.

Further referring to the Office Memorandum dated 7<sup>th</sup> February, 1986 and 3<sup>rd</sup> July, 1986, it was argued that the private respondents could be treated as regular only to the extent of availability of 75% direct recruit vacancies under the promotion quota and all the excess promotions were required to be treated as adhoc and they could enter in the final select list only after their regularization.

Relying upon various judgments of Hon'ble Supreme Court, it was vehemently argued that the rule of quota being a statutory is to be strictly implemented and it is impermissible for the authorities concerned to deviate from the rule due to administrative exigencies or expediency.

It was further argued that the respondent Department has issued an order dated 12<sup>th</sup> October, 2011 (Annexure-A/1) to all concerned for preparing date of Executives TES Group-B for promotion to STS cadre with a reminder on the subject on 25.11.2011 (Annexure-A/2). In pursuance of the aforesaid direction, a list of eligible candidate (Annexure-A/3) has been prepared and in the said list, the names of the persons who are promoted against 1966 supernumerary posts of TES Gr.-



<sup>1</sup> 1991 Supp (2) SCC 51

<sup>2</sup> (2010) 12 SCC 635



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B Officers have been included and the list does not contain the names of the applicants.

The applicants preferred representations (Annexure-A/11) against the above act on 2.11.2011 with a further reminder on 24.11.2011 (Annexure-A/12), however, the same have not been considered. The applicants were supplied the information under Right to Information Act on 14.3.2012 (Annexure-RJ/3) and it has been informed that 1966 officers were promoted to the grade of SDE(T) on 21.10.1998 against the vacancy years 1996-97 (part) to 1999-2000. The details of vacancy year against those officers have not been disclosed on the ground that information is not available in compiled format. However, without finalizing the seniority list of the SDEs, the respondents have called the names of eligible persons for promotion in the STS cadre, which is illegal and improper. Madras Bench of the Tribunal in the case of **S. Thirunavukkarasu & others Vs. The Chairman & Managing Director, BSNL** (O.A. No.1216/2010) has already set aside the revised seniority list dated 22.10.2009. In view of the above fact, the respondents be restrained from conducting selection for STS cadre until finalization of the seniority list of SDEs.

6. Shri S.P. Singh, learned counsel appearing on behalf of respondents No.2 & 3 would submit that seniority of Group-B officers was revised, as while implementing the judgment dated 20<sup>th</sup> February, 1985 of Hon'ble High Court of Allahabad in **Parmanand Lal Vs. Union of India and others** (W.P. No.2739 of 1981), it was noticed that about 550 TES Group-B officers, who were senior on the basis of recruitment year but junior on basis qualifying year were already promoted and working in regular cadre they could be reverted. In order to avoid reversion of these 550 regular Group-B officers, 2636 posts were created vide order dated 15<sup>th</sup> October,





1993. Later on, in the year 1998, the entire matter was reconsidered by the Telecom Commission and it was decided to create balance 1966 SDE posts in TES Group-B and these posts were deemed to have been created along with 2636 posts in the year 1993 and 3629 Junior Telecom Officers were promoted to TES Gr.-B vide order dated 21<sup>st</sup> October, 1998 in accordance with Recruitment Rules, 1981 against the vacancies existing prior to 22.7.1996.

The creation of 1966 posts with retrospective effect was challenged by way of O.A. No.946/1998 and the Bangalore Bench of the Tribunal vide its order dated 31<sup>st</sup> August, 1999 in the matter of **S.B. Srinivasan & another Vs. The Union of India & others** quashed the order dated 15.10.1998 creating 1966 posts with effect from 1993 and the order of the Tribunal was further affirmed by Hon'ble High Court of Karnataka. In compliance of the order of the Tribunal, the respondents issued the order dated 11.11.2004 withdrawing promotions of 1966 officers, who were promoted vide order dated 21.10.1998 and their names were deleted from seniority list No. 1 to 5 and they were given promotion on the post of SDE (T) with effect from 26.4.2000 as per Recruitment Rules, 1996 and their names were shifted from seniority list No. 3 to 5 to seniority list 6.

The order dated 11.11.2004 was challenged by the aggrieved persons in Hon'ble High Court of Kerala as well as Hon'ble High Court of Delhi and the order of reversion was quashed vide Annexure-A/8 by Hon'ble High Court of Kerala. Similar writ petition was also disposed of in terms of the decision of Hon'ble High Court of Kerala on 11.8.1008 vide Annexure-R/1. Accordingly, the promotions dated 21.10.1998 became final and seniority of 1966 officers was restored to their earlier position vide BSNL order dated 9.3.2009.





The applicants have challenged the order dated 9.3.2009 by reference to seniority list issued vide letter dated 12.1.2005, which was based on facts that the names of private respondents were shown below the names of the applicants and the aforesaid seniority list was circulated at the time when 1966 officers were reverted as per the order dated 11.11.2004 and 20.12.2004. However, after quashing of the orders dated 11.11.2004 and 20.12.2004 by Hon'ble High Courts of Kerala and Delhi, respectively, the seniority of 1966 officers including the private respondents was restored to seniority list No. 3 to 5 vide order dated 9<sup>th</sup> March, 2009. The applicants seek to challenge the aforesaid order in the year 2011, which is time barred. The applicants have been promoted against 25% competitive quota vacancies as provided under Recruitment Rules, 1996 for the vacancies indicated in their promotion order on their passing the competitive departmental examination held on 1<sup>st</sup> December, 2002 and then were placed in the seniority list No. 6 & 7 dated 12.1.2005 and they cannot claim seniority over and above 1966 officers, who were promoted in the year 1998 as per Recruitment Rules, 1981 against the vacancies existed prior to 22.7.1996.

Reliance of the applicants on a decision of Bangalore Bench of the Tribunal delivered on 25.1.2012 in O.A. No.227/2009 is of no avail, as the aforesaid judgment has been stayed by Hon'ble High Court of Karnataka at Bangalore in W.P. No.10590/2012.

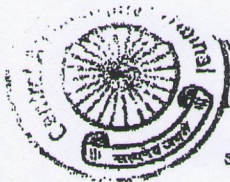
7. In the written submissions filed on behalf of respondent No.6 and interveners, similar argument has been advanced, as has been advanced by the official respondents and it has been further submitted that 4200 vacancies were in existence even without exercise of correction of retrospective vacancies as informed vide order dated 15<sup>th</sup> October, 1998. This fact was brought to the notice of Hon'ble High Court of Kerala in a





Writ Petition, which was decided on 1.2.2008 (Annexure-A/8). It would also be evident from the reply of the Department of Telecommunication in a R.T.I. query enclosed as Annexure-WS/2 with the written submissions that for excess of 4200 vacancies of TES Gr.-B was available. The answering respondents were placed in list No.3 to 5 after their promotion in the year 1998 whereas at the relevant time the applicants and other similarly situated were not even part of this list, as they were promoted in the year 2003 and their names figured in the list No.6. It was only after the respondents were reverted, their names were brought down in the list No.6 in the year 2005, however, after the judgment of Hon'ble Kerala and Delhi High Courts, reversion orders were withdrawn and their names were restored viz. a viz. their seniority position in the list No.3 to 5. Litigations were going on with regard to seniority position of the LDCE candidates akin to the applicants and other similarly situated, who were part of list No.6, who challenged seniority of their colleagues similarly situated as answering respondents and the interveners and the Chandigarh Bench of the Tribunal vide order dated 25.8.2009 (Annexure-WS/4) in a bunch of cases dealing with inter se seniority has held that seniority of incumbents is to be determined on the basis of dates of their equal joining and not on notional basis by allotment of slots. Similar orders have been passed by Hon'ble High Court of Bombay in W.P. No.3725/2011 (Annexure-WS/5) and Hon'ble High Court of Kerala (Annexure-WS/6/A-8).

The Ernakulam Bench of the Tribunal in O.A. No.700/00 with identical facts and situation sought to be espoused by the applicants in the instant O.A. held that with or without creation of 1369 supernumerary posts of TES Group-B vide order dated 9.3.2009, promotion made in the year 1998 on the basis of seniority cum fitness





(2/3<sup>rd</sup> quota) under the 1981 Rules is sustainable (Annexure-WS/7). The decision of Ernakulam Bench (Annexure-WS/7) has attained finality and the issue is no longer *res integra*.

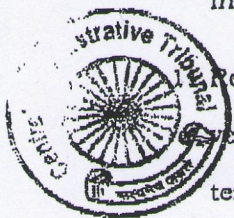
8. Heard learned counsel for the parties, perused the pleadings of the respective parties and the documents annexed therewith.

9. The applicants have been promoted to the post of SDE Group-B posts against 25% quota as they were declared successful in the LDCE examination conducted on 1<sup>st</sup> December, 2002 and they were selected/promoted against the vacancies for the years indicated in the promotion orders issued in the month of June/July, 2004 (Annexure-A/7) against their names. Consequent upon implementation of judgment of Hon'ble Allahabad High Court in Parmanand Lal's case (*supra*) about 550 TES Group-B officers, who were already promoted and working as TES Group-B officers were facing reversion, to avoid their reversion the Department created 2636 posts in the year 1993 and later created 1966 posts deemed to have been created along with 2636 posts in the year 1993 and accordingly, 3629 Junior Telecom Officers were promoted on 21.10.98 in accordance with the Rules, 1981 against the vacancies existed prior to 22.7.1996. However, Bangalore Bench of the Tribunal quashed creation of 1966 posts with retrospective effect and the said order was affirmed by Hon'ble High Court of Karnataka. In view of the above orders, the respondents issued order dated 11.11.2004 withdrawing promotions of 1966 officers and their names were deleted from seniority list No.3 to 5. However, they were given promotions with effect from 26.4.2000 as per the Rules, 1996 and their seniority was shifted from seniority list No.3 to 5 to seniority list No.6 vide order dated 20.12.2004. The above action of the respondents was challenged by the affected persons before Hon'ble High Court of Kerala and the order of



reversion dated 11.11.2004 was quashed and the consequent order dated 20.12.2004 whereby their names were shifted from seniority list No.3 to 5 to seniority list No.6 did not survive. The other batch of writ petitions filed by similarly placed officers was also disposed of in terms of decision of Hon'ble Kerala High Court. Accordingly, the promotion order dated 21.10.98 of 1966 officers became final and their position in the seniority list was restored vide order dated 9.3.2009 by creating 1369 supernumerary posts for the period from 21.10.98 to 25.4.2000 viz. a viz. 1966 abolished posts created vide order dated 15.10.1998.

10. The applicants, who were successful under the departmental competitive examination held on 1.12.2002 against the quota of 25% to the post of SDE under the Rules, 1996 and were promoted on the post of SDE vide order dated 26<sup>th</sup> May, 2004 for the vacancies occurring in the year 1996-97, 1997-98, 1998-99, 1999-00 and 2000-01 indicated against them in their order of promotion, have impugned the seniority list of Annexure-A/4 and prayed for recasting of the seniority list over and above the private respondents and 1369 others, who have been placed in the impugned seniority list above the applicants. The applicants have also prayed for setting aside the list of Annexure-A/3 of ST officers required for preparation work for the post of STS cadre and direct the respondents to re-draw the list of preparatory work and include the names of the applicants in the aforesaid list and consider the applicants for promotion in the cadre of STS.



Relying upon various judgments of Hon'ble Supreme Court, it has been vehemently argued that existence of vacancies either permanent or temporary is *sine qua non* for claiming the benefit of continuous length of service towards seniority. The supernumerary posts have no regular status and, therefore, regulating promotion of the private respondents



and 1369 others against supernumerary posts created on 9<sup>th</sup> March, 2009 for the period from 21.10.98 to 25.4.00 viz. a viz. 1966 abolished posts created on 15.10.98 with effect from 1998 is illegal.

12. The applicants have also challenged the impugned seniority list on the ground that before altering seniority position of the applicants and the private respondents in the seniority list of Annexure-A/4, no opportunity of any nature has been given to them. The creation of 1966 posts with retrospective effect from 1993 was successfully challenged by some of the respondents before the Tribunal. The Bangalore Bench of the Tribunal quashed the order of creation of 1966 posts and the same was affirmed by Hon'ble Karnataka High Court. In compliance thereof, promotion given to 1966 officers vide order dated 28.10.98 was withdrawn and their names were deleted from the seniority list No.3 to 5 and they were shifted to seniority list No.6 vide order dated 11.11.2004. The aforesaid order was challenged by the aggrieved persons before Hon'ble High Court of Kerala and their reversion was quashed vide Annexure-A/8. Similar writ petition was also disposed of by Hon'ble High Court of Delhi in terms of decision of Hon'ble High Court of Kerala. Thus promotion dated 21.10.1998 of the private respondents and other became final and it is not open to the applicants to challenge their promotion orders on any ground.

13. Initially after promotion of the private respondents in the year 1998 they were placed in the seniority list No.3 to 5 whereas the applicants herein were not part of the seniority list of SDEs at that juncture and their names figured in seniority list No.6 after their promotion in the year 2004. However, when 1966 officers were reverted in compliance of the order of Hon'ble Allahabad High Court the private respondents and the

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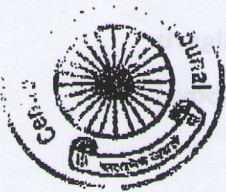




interveners' name were brought down in the seniority list No.6 in the year 2005 below the applicants and once reversion orders were withdrawn, the private respondents, interveners and other similarly placed officers were restored back to their seniority position in the seniority list No.3 to 5.

14. The Chandigarh Bench of the Tribunal in the matter of **Dewan Chand & others Vs. Union of India & others** (T.A. No.84-HR-2009, decided on 25.8.2009), while dealing with identical issue and considering that the applicants therein were promoted under 75% quota in the year 2000 whereas the persons under 25% quota were promoted after 4 years after qualifying LDCE held that the private respondents cannot claim seniority viz. a viz. 75% quota promotees. It has been clarified that the position would have been different had the promotion under 75% and 25% LDCE been made in one slot in the same year, in that condition seniority could be given according to the ratio, if any, fixed under the relevant rules or instructions as applicable. Allowing the applications, it has been held thus:-

"Thus, the seniority of the incumbents have to be determined on the dates of their actual joining and not on notional basis by allotment of slots. If the recruitment is conducted in a single process and promotions are ordered on the same date or occasion, one can understand case of the respondents. But in this case where the LDCE could not take place, for whatsoever reasons, for a number of years and once it has taken place subsequently, the pass out candidate cannot be given seniority on notional basis of year of vacancy, which concept is applicable on in the case of All India Service officers. In any case one thing is more than clear that this a case where the rota rule has been broken down due to delay in making recruitment from both the sources and as such it has to be taken that one would get his seniority only from the date he becomes member of the service. The official respondents have admitted that





competitive examination could not be held because the process of absorption of Group B officers including SDE (T) in BSNL was finalized in the year 2004-05 and syllabus for the examination had to be revised/finalized. The vacancies of SDE (T) had to be recalculated retrospectively, as a result of cancellation/abolition of 1966 posts of TES Group B retrospectively and transfer of posts to MTNL. The quota for each category i.e. 75% and 25% is being maintained from 2001-02 onwards."

15. In the matter of **Bharat Sanchar Nigam Limited Vs. S. Sadasivan** (Writ Petition No.3725/2011, decided on 21<sup>st</sup> June, 2011), Hon'ble High Court of Bombay affirmed the decision of Bombay Bench of the Tribunal whereby the applicant was promoted against 75% quota on the basis of seniority cum fitness and he joined on 7<sup>th</sup> December, 2001 on the promoted post whereas the candidates against 25% quota for LDCE were promoted on 26<sup>th</sup> May, 2004. Approving the view taken by Chandigarh Bench of the Tribunal (referred above), it has been held that the date of joining is the only governing factor for determining seniority of the promotee candidates inter se, in absence of any statutory rules providing to the contrary.

16. The Hon'ble High Court of Kerala at Ernakulam, while dealing with identical issue in the matter of **Bharat Sanchar Nigam Limited & others Vs. Thomas Zacharia and other connected matters**, (OP (CAT) No.335/2010 (S), decided on 12<sup>th</sup> April, 2012), referring to catena of decisions on the subject and also referring to decision of Chandigarh Bench as well as Hon'ble Bombay High Court decision (referred above) with approval, held thus:-

"To sum up, we declare that there is no rule entitling an employee of the respondents to claim service benefits from the date of arising vacancy. Service benefits can be claimed only from the date of joining duty. When appointments are





made from different streams one after another, those who are subsequently appointed are not entitled to seniority over those who are appointed earlier so long as no such condition is stated in the earlier appointment order. Resultantly, we further find that the applicant before the tribunal is entitled to have his seniority settled in pursuance of Annexure-A1 promotion order. The review applicants who were later appointed towards 25% quota under departmental competitive examination are not entitled to have their seniority fixed with retrospective effect against the applicant. The review applicants are not entitled to claim service benefits from the date of arising of vacancy. They are entitled to count their seniority reckoned from the date of joining duty in the promoted post."

17. The issue in question has also been considered and decided by Ernakulam Bench of the Tribunal in O.A. No.702/2009, decided on 9.7.2010 (P. Ravindran & another Vs. Union of India & others). Negating similar arguments, as advanced by the applicants in the instant O.A., that the respondents having been accommodated against supernumerary posts have no right to be assigned seniority from 28.10.98 when they were promoted, it has been held thus:-

"12. The applicants rely on the judgment of Hon'ble High Court of Kerala reported in ILR 2009 (3) Kerala 155 to contend that the party respondents, for having been accommodated against the supernumerary posts, have no right to be assigned seniority from 28.10.1998 when they were promoted. In the said judgment, the Hon'ble High Court of Kerala held in respect of direct recruits that "Their appointments being contrary to law, they can claim only seniority from the date their turn arose under the direct recruitment quota." The party respondents herein were not appointed for the first time on 28.10.1998, but were promoted. Their promotion on 28.10.1998 was in accordance with Recruitment Rules, 1981; it was not contrary to any law. The Annexure A-8 order dated





11.11.2004 cancelling the promotion was quashed by the Annexure A-10 order of the Hon'ble High Court of Kerala dated 01.02.2008. Facts of the present case being entirely different from those in the case reported in ILR 2009 (supra), the reliance on the finding in that judgment is misplaced and that judgement is not applicable to the party respondents. The creation of the supernumerary posts whether necessary or not, whether improper or not does not affect, just as the promotion of the respondents in 1981, the rights of the applicants. The focus of the present O.A., it appears, is not so much on securing the rights of the applicants as on denying the rights of the respondents somehow."

18. On the basis of aforesaid discussion and following the decisions of the Tribunals and Hon'ble High Courts of Bombay and Kerala, we are of the opinion that the applicants' claim for seniority over and above the private respondents and similarly situated persons is without any substance and they cannot claim service benefits from the date of arising vacancy and the service benefits can be claimed only from the date of joining duty. The applicants, who were subsequently appointed towards 25% quota under the departmental competitive examination, are not entitled to have their seniority fixed with retrospective effect against the respondents who were already promoted and had joined their duties on the promoted posts even before the promotion orders of the applicants were issued.

19. The O.A. is accordingly dismissed. No order as to costs.



Barve

(G.P. Singh)  
Adminis

Sol/-

(Dhirendra Mishra)  
Judicial Member

- (1) पत्रिका आदेशन की तम संख्या 956  
(2) आदेशन का र. नं. 11/12/12  
(3) आदेशन का दिनांक 6-11-12  
(4) पत्रिका की संख्या 16  
(5) पत्रिका की संख्या 16  
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(7) पत्रिका की संख्या 16

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Section Officer  
Central Administrative Tribunal  
Labour Bench, Jabalpur

11/12/12