

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RA No. 21 of 2016 in
CWP No. 5148-CAT of 2010
Date of decision : 24.2.2016
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Vinod Verma and others
.....Applicants

vs.

Union of India and others
.....Respondents

**Coram: Hon'ble Mr. Justice Surya Kant
Hon'ble Mr. Justice P.B. Bajanthri**

Present: Mr. Ashok Aggarwal, Senior Advocate with
Mr.Vivek Sharma, Advocate for the applicants.
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| 1. Whether Reporters of local papers may be allowed to see the judgment? |] |] Yes |
| 2. To be referred to the Reporters or not? |] | |
| 3. Whether the judgment should be reported in the Digest? |] | |

P.B. Bajanthri, J.

The applicant - petitioners have filed this review application to recall the order dated 3.12.2014 passed in CWP No. 5148-CAT of 2010 (O&M). The petitioners are non-applicants before the Central Administrative Tribunal (hereinafter to be referred to as 'CAT') in TA No. 84 HR of 2009 and so also in TAno.85 HR of 2009.

The private respondents and the petitioners were in the cadre of Junior Telecom Officers. Promotional Cadre to the post of Junior Telecom Officer (JTO) is Telecommunication Engineering Service (TES) Grade B – Sub Divisional Engineers (SDEs). The post of TES

Group B and SDEs is governed by Rules called Telecommunication Engineering Service (TES) Rules, 1996, which was notified on 22.7.1996. The relevant Schedule (Column No. 11 and 12) to Rule 5 is reproduced herein:-

Schedule :

11. Method of Recruitment:

Promotion

- (i) 75% on the basis of seniority-cum-fitness.
- (ii) 25% on the basis of a departmental competitive examination.

12. **Promotion**

- (i) Under 75% quota Junior Telecom Officer with 3 years regular service in the grade.
- (ii) Under 25% quota on the basis of departmental competitive examination for Officers with 3 years regular service which Junior Telecom Service in the grade shall be eligible:

- 1. Departmental Promotion Junior Committee for promotion of Telecom Officers shall be held on the basis of an All India eligibility list at Head Quarter only.
- 2. The crucial date for determining the eligibility shall be first of July of year to which the vacancies pertains.
- 3. The Syllabus and Rules for conducting departmental

competitive examination shall be such as the Telecom Commission may prescribe from time to time.

4. Where junior who have completed their qualifying eligibility service are being considered for promotion, their seniors would also be considered provided they are not short of requisite qualifying eligibility service by more than one year and have successfully completed their probation period, if prescribed.”

The private respondents herein who were Applicants before CAT were promoted to the post of TES Group B – SDEs in the month of April 2000 under 75% promotional quota. Whereas the review-applicants - writ petitioners (non-applicants before the CAT) were appointed under 25% quota on 25.5.2004.

The department notified seniority list of TES (Group B) – SDEs on 12.1.2005, wherein applicant-petitioners herein were placed over and above the private respondents on the score that the review-applicant - petitioners are entitled to seniority from the date of occurrence of vacancy namely, from 1996 till 2001 or the date on which process of recruitment under 25% quota was initiated.

The private respondents, feeling aggrieved by the ranking assigned to them in the seniority list of TES (Group-B) - SDEs dated 12.1.2005, approached this Court in CWP No. 4165 of 2006 and so also one Pawan Kumar Jindal and 11 others in CWP No. 13955 of

2007. Both the CWPs were transferred for want of jurisdiction to CAT. The above mentioned writ petitions were re-numbered in CAT as TA No. 84-HR of 2009 (CWP No. 4165 of 2006) and TA No. 85-HR of 2009 (CWP No. 13955 of 2007).

On 25.8.2009, the CAT while allowing TA No. 84-HR of 2009 and TA No. 85-HR of 2009, set aside the seniority list dated 12.1.2005 and directed the respondents to re-draw the seniority of officers of TES Group-B with reference to the dates of joining of incumbents within a period of six months and it was also observed that before undertaking aforesaid exercise, official respondents may invite objections from the persons likely to be adversely effected before re-drawing seniority.

The applicant-petitioners feeling aggrieved by the decision of the CAT dated 25.5.2009 preferred a review application before the CAT. On 18.1.2010, the review application No. 85 of 2009 was rejected stating that applicant-petitioners would get an opportunity before the official respondents in view of the observations made in the order that the official respondents shall invite objections from the persons likely to be adversely effected. Still aggrieved, applicant-petitioners approached this Court questioning the orders of the CAT in CWP No. 5148-CAT of 2010.

On 3.12.2014, after hearing counsel for the parties, it was ordered that the case stands settled by the decision dated 12.8.2014 rendered by the Supreme Court in SLP (Civil) 35756 of 2012

(B.S.N.L. and others vs. S. Sadasivan and others). Thus CWP No.

5148-CAT of 2010 was dismissed.

The petitioners approached Supreme Court in SLP No. 18621 of 2015 with 18665 of 2015. On 16.10.2015 the SLPs were disposed of. An extract of the order is reproduced herein :-

“UPON hearing counsel the Court made the following

ORDER

The learned counsel for the petitioner seeks leave to withdraw these Special Leave Petitions with liberty to file an application for review before the High Court on the ground that the statement made that the case is covered by SLP (C) 35756 of 2012 is factually incorrect.

Permission is granted with the above liberty.

The Special Leave Petitions are, accordingly, dismissed as withdrawn.

We make it clear that we have not expressed any opinion on the merits of the case.

It will be open to the petitioner to challenge the merits of the case, if required, at an appropriate stage.”

In view of the liberty obtained from the Supreme Court to file review application, the applicant-petitioners have filed this review application.

There is a delay of 359 days in filing the review application.

CM No. 839 of 2016 in RA No. 21 of 2016 in CWP No. 5148 CAT of

2010, for condonation of delay in filing Review Application is perused. Reasons stated for delay condonation are accepted and the delay of 359 days is condoned in filing RA No. 21 of 2016.

The applicant-petitioners have sought review of the order passed in CWP No. 5148 CAT of 2010, on two grounds. Firstly, the circulars dated 28.7.2004, 2.12.2004 and 12.1.2005 read with OM dated 7.2.1986 and 3.7.1986 stated to have direct bearing on the fixation of seniority of the petitioners have not been considered. Secondly, decision of the Apex Court rendered in *Union of India vs. N.R. Parmar (2012) 13 SCC 340*, squarely answers the legal issue in favour of the applicant-petitioners, according to which “the date of joining would not be the relevant factor for determining seniority of direct recruits.”

Before considering the above two issues, it is necessary to peruse the rules governing the post of TES (Group-B) SDEs. The Sub Divisional Engineer Post is required to be filled up only by promotion but through two methods, namely, under 75% quota Junior Telecom Officer with three years regular service in the grade and under 25% quota on the basis of departmental competitive examination for officers with 3 years regular service in the grade of Junior Telecom Officer shall be eligible. It is to be noted that mode of recruitment to the post of SDEs is by promotion from amongst the in service candidates, who are Junior Telecom Officers and are eligible with three years of regular service to appear for departmental competitive examination. In view of the eligibility criteria under 25% quota it is

evident that it is not a case of direct recruitment. In *N.R. Parmar's case (Supra)*, which is of the Income Tax department, method of recruitment to the post is 33 ½ % of vacancies by direct recruitment and 66% by promotion. The relevant Rule in said case is reproduced herein:

“Ministerial Class III Staff of the Income Tax
Department and Insurance) Income Tax Wing
XXXX XXXX XXXX

10. 33 ½ % of the vacancies by direct recruitment
and 66% by promotion.”

In view of the aforesaid different mode of recruitment any reliance by the applicant-petitioners to *N.R. Parmar's case (Supra)*, is not tenable.

Having regard to the provision of Rules governing the post of SDEs namely, 25% quota, the Office Memorandums, Government orders governing the determination of seniority in the Government is not applicable for the reasons that those office memorandums are relating to determination of seniority in respect of 'direct recruitment' and 'promotion' and that too where 'quota' and 'rota' Rules are to be applied. That is not the criteria in the case in hand.

Determination of seniority would always be with reference to the date of appointment irrespective of the source of recruitment unless the Rules contemplates 'Rota' in the matter of assigning seniority. Retrospective date of promotion or appointment is permissible provided the rule permits or if the name of the person was

overlooked contrary to the rules. In such cases only the date of entry into service would be considered from the retrospective date with notional benefits etc.

In the present case, while filling up the 25% quota, examinations were conducted on 1.12.2002 and appointments were made on 25.5.2004. The writ petitioners thus have no right to seek determination of their seniority prior to the date of appointment i.e. 25.5.2004 in the absence of any such statutory provision for determination of their seniority from the date of occurrence of the vacancy or from the date of process of start of recruitment under 25% quota as claimed by them. The post of SDEs under 25% quota if not promotion, is surely not direct recruitment. Consequently, determination of seniority would be from the date of appointment to the post of SDE. It can't relate back to the date of occurrence of the vacancy, for the reasons that applicant-petitioners entered the cadre of SDEs only on 25.5.2004 and they were born in the SDEs cadre on the said date. Hence, the applicant-petitioners have not made out a case to review the order dated 3.12.2014. Moreover, the issue involved in this matter was already considered by the Supreme Court in the case of **BSNL and others vs. S. Sadasivan and others**, laying down as follows :-

“ xxx xxx xxx

The view taken by the Kerala High Court that a person appointed on promotion shall not get a seniority of an earlier year and that the date of

occurrence of vacancy is not relevant for that purpose, in the absence of the rule to the contrary, is a correct view.”

Therefore, *N.R. Parmar's case (Supra)*, is distinguishable and is not relevant having regard to the different set of rules governed in the present case. The Supreme Court in the case of *Nair Service Society vs. T. Beermasthan and others* in Civil Appeal No. 1991 of 2009 arising out of SLP (Civil) No. 20419 of 2008, has held as follows:-

“45. Different State Governments in the country may have different methods for providing reservations, and these will be valid as long as the method adopted by a particular State Government does not violate any constitutional provision or statute. It is not for this Court to decide on the wisdom or otherwise of the said method of reservation. This Court should exercise judicial restraint and not interfere with the same unless there is some clear illegality. In our opinion the method prescribed by the Rules made by the State Government suffers from no infirmity or illegality, and hence the High Court acted wrongly in allowing the Writ Petition. We are clearly of the opinion that the High Court has placed a wrong interpretation on the relevant Rules.”

Moreover, the applicant-petitioners should have sought their

retrospective appointment/promotion to the cadre of SDEs, since seniority would be determined with reference to the date of appointment/promotion. In the absence of challenge to their appointment/promotion and seeking retrospective appointment/promotion, the applicant-petitioners are not entitled to seniority prior to their date of appointment in the cadre of SDEs.

In view of above facts and circumstances, the applicant-petitioners have failed to make out a case so as to review the order dated 3.12.2014.

In view of the facts and statutory provisions governing the post in question, the review application is dismissed.

(Surya Kant)
Judge

(P.B. Bajanthri)
Judge

24.2.2016
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