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***IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 8185/2014

Date of decision: 2nd February, 2016

MAHANAGAR TELEPHONE NIGAM LTD. Petitioner
Through Mr. Chandan Kumar, Advocate.

versus

SANJAY BHARDWAJ & ORS Respondent
Through Mr. Rajeshkhar Rao, Advocate for R-
1 to 4.
Mr. Vivek Goyal, Advocate for UOI.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE NAJMI WAZIRI

SANJIV KHANNA, J. (ORAL)

Mahanagar Telephone Nigam Ltd. by this writ petition impugns order dated 2nd January, 2014 passed by the Principal Bench of the Central Administrative Tribunal in OA No.2306/2012. The impugned order, in brief, holds that the respondents employees would be assigned notional date of promotion as Sub Divisional Engineers, with all consequential benefits such as counting of their service for further

promotion, consequential annual increments etc. with effect from 23rd January, 2002.

2. The respondents had appeared and were selected on the basis of the result of the Departmental Competitive examination under 25% quota for vacancies, which had arisen during the years 1996-97 to 2000-01 from the cadre of Junior Telecom Officer to Telecom Engineering Service. Examination under 25% quota was first announced to be held on 23rd July, 2001, but was postponed and finally held on 1st December, 2002. The appointments, in fact, were made only on 26th June, 2004. In the meanwhile, on 28th December, 2001, several Junior Telecom Officers were promoted to Group-B cadre under 75% promotion quota on the basis of seniority-cum-fitness.

3. The respondents had urged that their seniority should be counted from the date when the Junior Telecom Officers belonging to Group-B were promoted under 75% quota in the ratio of one candidate from 25% quota, below three candidates in the 75% promotion quota. The Tribunal has accepted the plea and stance taken by the respondents.

4. The decision of the Tribunal cannot be sustainable in view of

the pronouncement of the Supreme Court on identical facts in Civil Appeal No. 7830/2014, ***Bharat Sanchar Nigam Ltd. & Ors. Vs. S.K. Dubey & Ors*** decided on 12th August, 2014. The Supreme Court while dealing with a similar order passed by the Central Administrative Tribunal, Jabalpur has observed that the directions cannot be sustained for several reasons including there was no rule with regard to assigning a notional date of promotion with retrospective effect and ROTA was not applicable. Lastly, it was well settled that a person appointed on promotion shall not get seniority in earlier years but shall get a seniority of the year in which his/her appointment was made in the absence of express provision to the contrary. It was held that the applicable rules have nothing to do with inter se seniority between promotees of 75% quota based upon seniority-cum-fitness and 25% competitive exam quota on the basis of which the respondents have been selected. Notably, the Supreme Court had set aside decision of the Central Administrative Tribunal, Bangalore Bench dated 26th April, 2010 passed in OA No.181/2009 and the decision of the Karnataka High Court dated 21st April, 2011. This decision of the Supreme Court squarely applies and covers the

facts and legal question raised. The impugned decision of the Tribunal cannot be sustained.

5. There is an additional reason to allow the present petition. The present OA seeking back dated notional promotion with effect from 2002 was filed in the year 2012. As noted above, the respondents were appointed on 26th April, 2004 to Telecom Engineering Service under 25% competitive exam quota. There was, therefore, a belated challenge.

6. For the aforesaid reasons, the present writ petition has to be allowed and the impugned order dated 2nd January, 2014 is hereby quashed and the directions given therein are set aside. There will be no order as to costs.

SANJIV KHANNA, J.

NAJMI WAZIRI, J.

FEBRUARY 02, 2016
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