

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 2420 OF 2002

Union of India
Through Chief Engineer (Elect.),
Ground Floor, Administrative Bldg.,
Telecom Complex, Juhu Road,
Santacruz (West), Mumbai-400 054

.. Petitioner
(Original Respondent No.1)

Versus

1. K.J. Suthar
Executive Engineer (E),
MTNL, Telephone Exchange
Bldg, 9th flr. Bandra (West),
Mumbai-400050

Respondent No.1
(Original Applicant)

2. K.P. Ramanandan SE(E)

3. S.S.Dumbhere SE(E)

4. R.K. Jain AE(E)

5. T.R.Vishwanathan EE(E)

6. S.B. Gupta EE(E)

7. M. Aarul Mani EE(E)

8. Sunder Pal EE(E)

(Respondent Nos. 2 to 8 to be
served through the Dy.Director
General (Electrical), Department of
Telecommunication, Ministry of
Communication and IT, Govt.India,
New Delhi – 110 001)

... Respondents Nos. 2 to 8
(Original Respondents Nos. 2 to 8)

**WITH
WRIT PETITION NO. 2421 OF 2002**

Union of India
Through Chief Engineer (Elect.),
Ground Floor, Administrative Bldg.,
Telecom Complex, Juhu Road,
Santacruz (West), Mumbai-400054.

... Petitioner
(Original Respondent No.1)

Versus

1. Narinder Khanna
Executive Engineer (E),
MTNL, Telephone Exchange
Bldg., 9th Flr., Bandra (West)
Mumbai-400050

Respondent No.1
(Original Applicant)

2. V.K. Dogra
3. S.K. Virmani
4. K.K. Jindal SE(E)
5. E.M.Palanimuthu EE
6. Radhey Mohan EE
7. N.K. Dhillon EE
8. K.D. Sawai EE(E)

(Respondent Nos. 1 to 8 to be
served through the Director EW)
Department of Telecommunication,
Ministry of Communication
Sanchar Bhavan 20 Ashoka Road,
Govt. of India
New Delhi-110001.)

... Respondents Nos. 2 to 8
(Original Respondents Nos. 2 to 8)

**WITH
WRIT PETITION NO. 2427 OF 2002**

Union of India
Through Chief Engineer (Elect.),
Ground Floor, Administrative Bldg.,
Telecom Complex, Juhu Road,
Santacruz (West), Mumbai-400054.

... Petitioner
(Original Respondent No.1)

Versus

1. Gobind Meghani
Executive Engineer (E),
MTNL, Telephone Exchange
Building, Goregaon (W)
Mumbai – 400 062
And presently residing
Bldg., 8-c, Flat No.21
sindhi Seva Samiti Nagar
Soni Koliwada
Mumbai – 400 037

...Respondent No.1
(Original Applicant)

2. Prateep Nettur EX(E)
3. D.R. Rao SE(E)
4. M. Sudheendran EX(E)
5. C. Sujneja EX(E)
6. Godhan Prakash EX(E)
7. V. Rajaram EX(E)
8. Ramdhar Sharma EX(E)
(Respondent Nos. 1 to 8 to be
served through the Director (EW)
Department of Telecommunication,
Ministry of Communication
Sanchar Bhavan 20 Ashoka Road,
Govt. of India
New Delhi-110001.)

... Respondents Nos. 2 to 8
(Original Respondents Nos. 2 to 8)

.....
Mrs. Neeta Masurkar with Mr. V.S. Masurkar with S.G. Thakur ,
for the Petitioner in all Writ Petitions.
Ms. Tanmayi Gadre – Rajadakshya and Mr. Dinesh Parmar i/b DSR
Legal for Respondent No.1 in all Writ Petitions.

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**CORAM : SMT. V.K.TAHILRAMANI ACTING C.J.
AND M.S.KARNIK, J.**

**RESERVED ON : 09th FEBRUARY, 2018
PRONOUNCED ON: 21st MARCH, 2018**

JUDGMENT [PER M. S. KARNIK, J.]:

1. The Petitioner-Union of India by these Petitions filed under Article 226 of the Constitution of India challenge the common Judgment and Order dated 19/10/2001 passed by the Central Administrative Tribunal, Mumbai Bench Mumbai in OA Nos. 39/1999, 40/1999 and 41/1999.

2. Before the Tribunal, the Respondent No.1-promotee challenged the Office Memorandum (O.M.) dated 09/01/1998 whereby the seniority list in the grade of Assistant Engineers (Electrical) in P&T Civil Wing of Department of Telecom has been revised. The respondent No.1 prayed for quashing and setting aside the impugned O.M. and to direct the Petitioners to recast the

seniority list on the basis of continuous officiation and further to grant the seniority strictly in accordance with the regular appointment in the cadre of Assistant Engineers (Electrical). The Respondent No.1 prayed for all consequential benefits and promotions to the grade of Executive Engineer with effect from November, 1988 and to the grade of Superintending Engineer with effect from June, 1998 i.e. the date from which the respondents juniors have been promoted with arrears of pay and allowances including interest. The respondent No.1 also prayed for a direction to the Petitioner to comply with the judgment of the Hon'ble Supreme Court reported in **1997 SCC(L&S) 1513** in the matter of ***I.K. Sukhija and others Vs. Union of India***.

3. The principal contention of the respondent No.1 (Original Applicant) before the Tribunal was that the seniority has not been rightly assigned as certain direct recruits (Respondent Nos. 2 to 8) have been shown above the promotees though they were appointed much later.

4. It is material to note that in 1964 the Post and Telegraph department started recruitment for the post of Junior

Engineer (E) and Assistant Engineer (E). In 1969, Draft recruitment rules for the department of Telecommunication for the post of AE(E) were framed which is Class-II post. In 1975 P&T Civil Engineering (Electrical Gazetted Officers) Rules 1975 were published. Ad-hoc promotions made from 1969 to 1975 to the post of AE(E) were regularised as per RR of 1975 and it was mentioned that seniority of direct recruits will be fixed and circulated subsequently. On 04/07/1976, the provisional seniority list of AE(E) was circulated. On 19/09/1987 a further provisional list of AE(E) was circulated wherein seniority was fixed on the basis of date of appointment. On 13/11/1987 the seniority list of AE(E) was finalised on the basis of date of appointment as according to petitioner-Union of India, there was a break down of rota quota because for the recruitments made from 1976 to 1978 the quota could not be adhered to.

5. Respondent No.4 Shri R.K. Jain a direct recruit filed O.A. No. 373 of 1987 before the Tribunal challenging the seniority list which was prepared on the basis of date of appointment *inter-alia* seeking a relief that the seniority should be fixed as per quota provided in the recruitment rules and in accordance with the

principles of seniority in O.M. dated 22/02/1959 which provides rotation of vacancies for direct recruits and promotees for the purpose of fixation of seniority when there is quota provided in the recruitment rules.

6. By judgment dated 03/05/1991, the Tribunal allowed the OA and quashed the seniority list prepared on the basis of date of appointment. The Tribunal directed the petitioners to prepare a fresh seniority list of AE(E) on the basis of O.M. of 1959 holding that there was no break down of rota quota.

7. The Petitioner on 22/05/1992 prepared a revised seniority list by following O.M. dated 22/12/1959. The final seniority list in the grade of AE(E) was published on 03/02/1993. The seniority list dated 03/02/1993 was challenged by some promotee AE(E)'s before the Principal Bench of Tribunal at New Delhi praying that ad-hoc uninterrupted service be counted for seniority. The said OA was rejected by the Principal Bench of Tribunal at New Delhi. Aggrieved by the order of the Tribunal, one Shri I.K. Sukhija approached the Hon'ble Supreme Court challenging the decision of the Tribunal. The Hon'ble Supreme

Court by order dated 08/07/1997 directed that the promotees are entitled to count their seniority from the dates they were initially promoted as AE(E). The Hon'ble Supreme Court held that promotion of the appellants as AE(E) are not contrary to the statutory recruitment rules. The cases of the appellants were duly considered by D.P.C. and they were found suitable by the D.P.C. The Hon'ble Supreme Court held that when the appellants were promoted though on ad-hoc basis, clear vacancies were available in the promotion quota. It is in these circumstances, that the Apex Court did not accept the contention of the department that the appointments of the appellants as A.Es(E) though temporary and ad-hoc, were by way of stop-gap arrangements only.

8. Some time on 26/03/1994, one Abraham Jacob AE(Civil) challenged the seniority list dated 20/06/1994. On 11/02/1998 the Hon'ble Supreme Court held that the relative seniority list of direct recruits and promotees decided in accordance with the OM dated 22/12/1959 by rotation of vacancies is correct. The Apex Court set aside the decision of the Tribunal Ernakulam Bench and restored the seniority list dated 20/06/1994 which was prepared as per O.M. dated 22/12/1959.

9. Learned Counsel for the Petitioner submitted that the decision of the Apex Court in the case of Abraham Jacob is totally applicable to the cases of AE(E) because both the services i.e. AE(Civil) and AE(E) are integral part of P & T Civil wing of the department of Telecommunications and are governed by identical recruitment rules which are *pari materia* in all respect. In her submission the order of the Tribunal quashing and setting aside the revised seniority list of AE(E) dated 19/01/1998 and further directions to recast the seniority from the date of regular promotion in case of promotees and from the date of appointment in the case of direct recruits on the basis of O.M. dated 07/02/1986 is untenable. Learned Counsel invited our attention to the O.M. dated 07/02/1986. She invited our attention to Clauses 6 and 7 of the said O.M. which reads thus;

“6. The General Principles of seniority issued on 22nd December, 1959 referred to above, may be deemed to have been modified to that extent.

7. These orders shall take effect from 1st March, 1986. Seniority already determined in accordance with the existing principles on the date of issue of these orders will not be reopened. In respect of vacancies for which recruitment action has already been taken on the date of issue of these orders

either by way of direct recruitment or promotion, seniority will continue to be determined in accordance with the principles in force prior to the issue of this O.M.”

10. Learned Counsel therefore submits that the Petitioners followed the decision of the Apex Court in the case of Abraham Jacob and on the basis of the O.M. dated 22/12/1959 prepared the seniority list of AE(E) dated 09/01/1998. In her submission, the O.M. dated 07/02/1986 regarding general principles of determining the seniority of various categories are to take effect only from 01/03/1986. Till that date the general principles of seniority issued on 22/12/1959 will continue.

11. Learned Counsel for the Respondents on the other hand supported the order passed by the Tribunal. She contends that the O.M. of 1986 is very specific. She pointed out that though the Respondent No.2 (direct recruit) was appointed two years after the Respondent No.1, but he was assigned the date six years prior to his appointment on the basis of O.M. of 1959. According to her, Respondent No.2 was not even borne on the cadre and therefore he could not have been given a date prior to his initial entry into the service. Learned Counsel in support of her

submissions relied upon the case of *The Direct Recruit Class-II Engineering Officers' Association and others Vs. State of Maharashtra and others* reported in *AIR 1990 SC 1607* and *Pawan Pratap Singh and others Vs. Reevan Singh and others* reported in *(2011)3 SCC 267* to contend that the date of entry in a particular service or the date of substantive appointment in the safest criterion for fixing seniority *inter-se* between one officer or the other or between one group of officers and the other recruited from different sources. She invited our attention to the findings recorded by the Tribunal in support of her submissions.

12. Heard learned Counsel. There is no dispute that Respondent No.1 was promoted as AE(E) prior to the appointment of Respondent No.2 – Direct Recruit. The direct recruits were assigned seniority based on O.M. of 1959 by following the rota quota rule and thus became senior to the Respondent No.1. The general principles of seniority issued on 22/12/1959 were modified by O.M. Dated 07/02/1986. However, O.M. dated 07/02/1986 modifying the general principles for determining the seniority were to take effect from 01/03/1986. It is further mentioned in O.M. Of 1986 that seniority already

determined in accordance with the existing principles on the date of issue of these orders will not be reopened. It is further mentioned that in respect of vacancies for which recruitment action has already been taken on the date of issue of these orders either by way of direct recruitment or promotion, seniority will continue to be determined in accordance with the principles in force prior to the O.M. Of 1986.

13. No doubt, the Apex Court in *I.K. Sukhija's* case directed that the promotees are entitled to get their seniority counted from the dates they were initially promoted as AEs(E). The Apex Court in our humble opinion was dealing with the question of entitlement of the promotees to get their seniority from the dates they were initially promoted as AEs(E). Their Lordships held that it is not possible to accept the stand of the Petitioner-Union of India that the appointments of the appellants as A.Es(E) though temporary and ad-hoc, were by way of stop-gap arrangement only. The decision of the Apex Court was rendered on 08/07/1997.

14. In the case of Abraham Jacob and others Vs. Union of India and others in Civil Appeal No. 12386 of 1996, the decision of the Central Administrative Tribunal, Ernakulam Bench was under challenge. The Tribunal by impugned judgment quashed the seniority list of Assistant Engineers (Civil) and directed the Petitioner to re-draw a fresh seniority list without importing any rota-quota rule for the period prior 09/09/1976. The Apex Court in Abraham Jacob while allowing the appeal observed that it is too well settled that the service conditions of employees, in the absence of a statutory rule could be governed by administrative instructions. The Apex Court has further recorded that in the statutory rules the principles of determination of *inter-se* seniority between the direct recruits and promotees has not been indicated and therefore Government of India followed the general principles for determining the seniority in the order of Ministry of Home Affairs dated 22/12/1959. It would be material to quote the relevant portion of the Apex Court's decision which reads thus.

“Having heard the learned counsel for the parties it appears to us that the only question for consideration is on what principle the inter se seniority between the direct recruits and promotee Assistant Engineers will have to be determined for the period 1969 till 1976 i.e. the period from which 50

percent of the posts were filled up by promotion till the enforcement of the statutory recruitment rules? It is undisputed that prior to 1969 no Junior Engineer was being promoted in the post of Assistant Engineer. From 1969 after formulation of a set of draft rules promotion was being given to the Junior Engineers to the post of Assistant Engineer in accordance with the provisions contained in the draft rules even before such draft rules were approved by the governmental authority and became a statutory rule, by virtue of an administrative decision of the Government. It is too well settled that the service conditions of employees, in the absence of a statutory rule could be governed by administrative instructions. There was, therefore, no illegality in giving promotion to the Junior Engineers to the post of Assistant Engineer because of the aforesaid administrative decision of the Government. It is also conceded that in the statutory rules the principle of determination of inter se seniority between the direct recruits and promotees has not been indicated. It is in this context the Government of India followed the general principles for determining the seniority enunciated in the order of Ministry of Home Affairs dated 22.12.1959. Clause (6) of the aforesaid Memorandum which deals with relative seniority of direct recruits and promotees stipulates that the relative seniority shall be determined according to the rotation of vacancies between the direct recruits and promotees which shall be based on the quota of vacancies reserved for direct recruits and promotees respectively. Since the statutory rule had not come into force and yet promotion could be given on the basis of the provisions contained in the draft rule by virtue of an administrative order of the Government such promotees cannot claim a greater advantage than the direct recruits having come

into the cadre on the basis of the aforesaid draft rules. Further, the inter se seniority of such direct recruits and promotees has to be determined by taking recourse to the aforesaid office memorandum dated 22.12.1959 issued by the Government of India in the Ministry of Home Affairs. Needless to mention that this principle has to be invoked for determination of inter se seniority of the appointees both direct recruits and promotees during the period 1969 till 9.9.1976 and in fact the Government has drawn up the seniority list on following the said principle. In the aforesaid premises, the direction of the Tribunal in the impugned judgment to re-draw the seniority list without importing any quota/rota rule for the period prior to 9.9.1976 is unsustainable in law and we accordingly quash the said direction. Necessarily, therefore, the inter se seniority of the direct recruits and promotees in the cadre of Assistant Engineers for the period 1969 till 9.9.1976 has to be determined in accordance with the Government Order dated 22.12.1959 issued by the Ministry of Home Affairs.

We, accordingly allow these appeals and set aside, the impugned judgement of the Central Administrative Tribunal, Ernakulam Bench. There will be no order as to costs.”

15. In this view of the matter, if on the basis of the decision of the Hon'ble Supreme Court in the case of Abraham Jacob, the Petitioner-Union of India issued a revised seniority list of AE(E) dated 19/01/1998 on the footing that both the services i.e.AE(Civil) and AE(E) are integral part of P & T Civil wing of the Department of Telecommunications and are governed by identical

recruitment rules which are *pari materia* in all respect, in our opinion under these circumstances it cannot be said that the seniority list is contrary to law. It cannot be said that the respondents are not justified in issuing the revised seniority list dated 19/01/1998. The O.M. Dated 07/02/1986 will not have any application to the facts of the present case as the Respondent No.1 was appointed in 1979 and all the direct recruitments were made prior to 1986. It will also be material to note that Respondent No.4 herein Shri R.K. Jain had filed OA No.373 of 1987 which was allowed by the Tribunal on 03/05/1991 and it was directed that the seniority list between direct recruits and promotee Assistant Engineers is to be prepared in accordance with the OM dated 22/12/1959. In this view of the matter the Petitioner proceeded to prepare the seniority list in accordance with the decision of the Apex Court in Abraham Jacob's case wherein directions were issued for determination of *inter-se* seniority of the recruits and promotees in the cadre of Assistant Engineers in accordance with the Government order dated 22/12/1959 issued by the Ministry of Home Affairs. In our opinion, the view of the Tribunal in quashing the seniority list is

untenable.

16. The Writ Petitions are therefore allowed in terms of prayer clause (a). Rule is made absolute with no order as to costs.

(M.S.KARNIK, J.)

(ACTING CHIEF JUSTICE)