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W.P.Nos.23218, 23219, 23220, 22365 and 23412 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:11.08.2023

Delivered on: .09.2023

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HONOURABLE MR.JUSTICE P.B.BALAJI

W.P.Nos.23218, 23219, 23220, 22365 and 23412 of 2013

and

W.M.P.Nos.1,1,1,1 and 1 of 2013

The Deputy General Manager (Administration),
Bharat Sanchar Nigam Limited,
Office of the General Manager,
Chennai Telephones,
Chennai-600 010.

..... Petitioner in all W.P.s

Vs.

1. S. Koteeswaran	 Respondent in W.P. No.23218 of 2013
1. R. Karunanidhi	 Respondent in W.P. No.23219 of 2013
1. D. Govindarajan	 Respondent in W.P. No.23220 of 2013
1. J. Raja	 Respondent in W.P. No.22365 of 2013
1. L.R. Nathan	 Respondent in W.P. No.23412 of 2013

2. The Registrar,
Central Administrative Tribunal,
Chennai. 2nd Respondent in all W.Ps



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PRAYER: Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified mandamus calling for the records on the file of the 2nd respondent viz., Central Administrative Tribunal, Chennai relating to the impugned order dated 10.07.2012 in T.A. Nos.88/2010, 82/2010, 84/2010, 83/2010 & 85/2010 respectively and quash the same and consequently declare the seniority list dated 22.03.2004 prepared by the petitioner for Junior Telecom Officers (JTOs) as legal and valid.

For Petitioners in Mrs. K. Parameshwari
all W.P. Nos. :

For Respondents : Tribunal [for R2] in all Wps.

No appearance for R1
Mr. L. Chandrakumar,
appointed as Amicus Curiae.

COMMON JUDGMENT

(Judgment of the Court was made by P.B.BALAJI,J.)

These Writ petitions arise out of common order passed by the Central Administrative Tribunal in T.A.Nos.88/2010, 82/2010, 84/2010, 83/2010 & 85/2010 respectively.

2. The respective 1st respondents, in the above mentioned Writ petitions, as applicants, approached the Tribunal with a grievance that their



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seniority has been improperly fixed without reference to their date of appointment and they sought for fixation of seniority to the post of Junior Telecom Officers (JTOs), to be revised and refixed with reference to their date of appointment and without reference to the year of recruitment, together with all consequential benefits. The Tribunal, accepting the case of the applicants, passed a common order on 10.07.2012, by allowing the applications and directing the Writ petitioner herein to assign seniority with reference to the date of promotion of the first respondents in all the Writ petitions and to revise the seniority of the applicants and place them appropriately as JTOs with effect from their date of promotion.

2. The department has challenged the said common order on the grounds that the seniority was fixed only in accordance with relevant rules and regulations and that the Tribunal failed to see that there are three different channels of recruitment to become a Junior Telecom Officer and the first respondents in the Writ petitions were eligible by virtue of their qualifications to only one particular channel and they cannot claim to migrate to the other channels of recruitment and therefore, according to the petitioner, the Tribunal fell in error in allowing the applications filed by the first respondents in the Writ petitions.



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3. As there has been no appearance on behalf of the 1st respondent in all the Writ petitions, we appointed Mr. L. Chandrakumar as Amicus Curiae to assist the Court.

4. We have heard Mrs. K. Parameshwari, learned counsel for the Writ petitioner and the Amicus Curiae Mr. L. Chandrakumar, for the 1st respondents in all the Writ petitions. We have also carefully perused the pleadings and the available records.

5. It is an admitted case that the rules prescribe that 50% of the vacancy ought to be filled up by direct recruitment and the remaining 50% ought to be by way of promotion or transfer amongst the department staff. The 1990 Rules in place originally pertaining to recruitment were superseded by a new set of Rules namely, 1996 Recruitment Rules. In terms of the said Rules, 15% of the prescribed 50% quota was to be filled up through competitive examinations and the remaining 35% was amongst the department staff. It is also admitted that the 1st respondent in all the Writ petitions were appointed only under the said 35% quota earmarked from departmental staff. The grievance of the 1st respondent in all Writ petitions was only that their seniority came to be fixed with reference to



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the year of their recruitment and not with reference to their date of appointment. It is also seen that the admitted case of the petitioner as well as the respondents is that the recruitment for various categories was conducted between 1995 & 2000 and the successful candidates were given seniority with reference to the recruitment year, without reference to the date of appointment. When it came to the question of fixing their seniority as JTOs, the learned counsel for the Writ petitioner would contend that the department publishes a separate DPC list every year for recruitment and the same has been followed in the case of the respondents as well and therefore there is no infirmity in the said procedure followed. However, the learned counsel for the Writ petitioner submitted that the Tribunal erroneously allowed the applications.

6. Per contra, the Amicus Curiae, Mr. L. Chandrakumar would state that the Tribunal has rightly applied the 1990 Recruitment Rules in so far as the first respondent in the Writ petitions, as they were all appointed as JTOs between the years 1995 and 1998. In so far as other group, which either belong to 15% quota, who were appointed during the years 2000-2001 and the remaining 35% amongst the departmental staff, who were already working in the cadre of JTOs, it was held by the Tribunal that the



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applicants stood on a different footing in view of their entitlement to the benefits of 1990 Recruitment Rules and merely because the appointment was subsequent and after conducting a limited departmental competitive examination, the same cannot be put against the applicants.

7. The Amicus Curiae, Mr. L. Chandrakumar has relied on the Hon'ble Supreme Court Judgments in *Niranjan Prasad Sinha and another vs. Union of India and Others* reported in 2001 SCC (L & S) 877 and *Uttaranchal Forest Ranger' Association (Direct Recruit) and others vs. State of Uttar Pradesh and others* reported in 2006 (10) SCC 346 to drive home the settled position of law that “*promotion cannot be given from a date when they were not born in the cadre, especially because any such retrospective promotion would adversely affect the seniority of persons who were already in the said cadre*”. The ratio laid down would squarely apply to the facts of the present case. In fact, we find that the said principle laid down by the Hon'ble Supreme Court in the above referred cases, has been followed by the Tribunal, holding that *seniority of JTOs should be counted from the date on which they assume duty in the cadre which was much earlier to the LDCE promotees*. Though the counsel for the petitioner would submit that the ratio laid down by the



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Hon'ble Supreme Court cannot be applied to the present Writ petitions and that the non-availability of vacancy under 35% quota was not considered, we are unable to see any merit in such contentions raised by the Writ petitioner.

8. We are of the view that the Tribunal has considered all relevant materials and also applied the ratio laid down by the Hon'ble Supreme Court judgments in *Niranjan Prasad Sinha and another vs. Union of India and Others* reported in 2001 SCC (L & S) 877 and *Uttaranchal Forest Ranger' Association (Direct Recruit) and others vs. State of Uttar Pradesh and others* reported in 2006 (10) SCC 346, in a proper perspective. The LDCE promotees cannot claim the same treatment as the respondents since their seniority can be considered only from the date on which they assume duty in the cadre, after qualifying in the examination. Such candidates who came through Limited Departmental Competitive Examination cannot claim seniority retrospectively, especially in the matter of promotion.

9. It is settled law that promotion takes effect only from the date on which the promotees join duty in the promotional post. Here, admittedly,



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the respondents were already serving as JTOs even prior to the LDCE promotees qualifying to the said post. Therefore we do not find any infirmity in the order passed by the Tribunal.

10. In fine, for all the above reasons, all the Writ petitions stand dismissed. There shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

(D.K.K.J) & (P.B.B.J)

.....09.2023

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mjs

To

The Registrar,
Central Administrative Tribunal,
Chennai Bench,
High Court Complex, Chennai.



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D.KRISHNAKUMAR, J.,

and

P.B.BALAJI, J

(mjs)

Pre-delivery judgment in
W.P.Nos.23218, 23219, 23220,
22365 and 23412 of 2013

.....09.2023