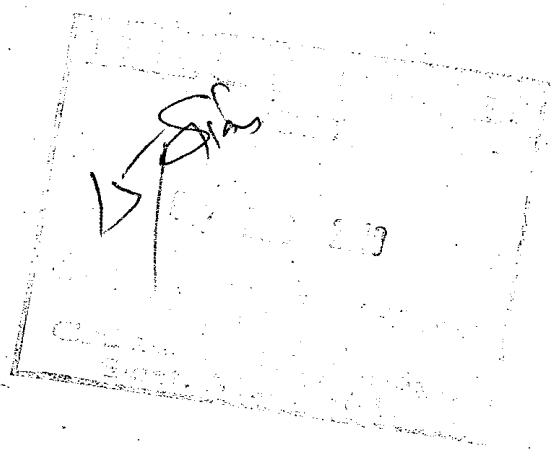


Boj 24967 @ gma 1.10.10



50A/C

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, MUMBAI

NO. CAT/MUM/JUDL/T A 06109 / 6945 DATE: 01/12/10
02

FROM:
THE REGISTRAR,
CENTRAL ADMINISTRATIVE TRIBUNAL,
BOMBAY BENCH,
GULESTAN BLDG., NO.6, 3RD/4TH FLOOR,
PRESCOT ROAD, FORT,
MUMBAI -400001.

- TO
1. SHRI/SMT S. Sadasivam In person Flat No. 2
COUNSEL FOR THE APPLICANT Pushpam Villa CHS Ltd. Shivaji
Udyog Nagar, Manpada Rd.
Dombivali (E) Thane Distn
@ 44 421204
 2. SHRI/SMT V. S. Madhwar
COUNSEL FOR THE RESPONDENT

h.c. 06/09

SUBJECT: DA NO. 06109

Smt S. Sadasivam

APPLICANT.

V/S

B.S.N.L.

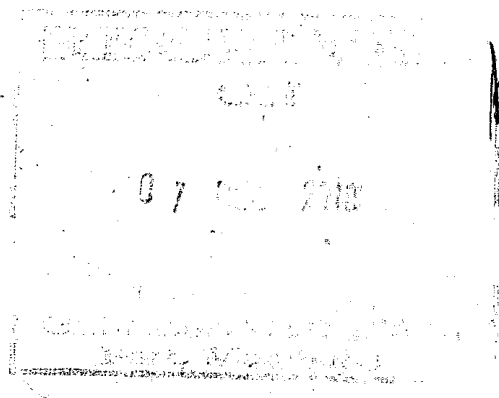
RESPONDENTS.

SIR,

I am directed to forward the accompanying copy of Judgment/Orders
dated 25/11/10 issued by this Tribunal, in the above matters.

Yours faithfully,
h.c. 2/12/2010
FOR REGISTRAR

Encl.: One Judgement Copy



CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, MUMBAI.

TRANSFER APPLICATION No.: 06/2009

DATED THIS Thursday THE 25th DAY OF NOVEMBER, 2010.

CORAM : HON'BLE JUSTICE SHRI P.R. RAMAN, MEMBER (J)
HON'BLE SHRI R.C. JOSHI, MEMBER (A)

Shri S. Sadasivan
R/at Flat No. 2,
Pushpam Villa
CHS Ltd., Shivaji
Udyog Nagar, Manpada
Road, Dombivli (E),
Thane Dist. 421 204.

Applicant

(Applicant in person)

VERSUS

1. Bharat Sanchar Nigam Ltd.,
Through Chairman & Managing
Director, Corporate Office,
6th Floor, Sates Man House,
New Delhi - 110 001.
2. Chief General Manager,
Maharashtra Telecom Circle,
Bharat Sanchar Nigam Ltd.,
7th Floor, Fountain Telecom
Bldg., II, Fort,
Mumbai - 400 001.
3. The Union of India
Through the Chairman,
Telecom Commission,
DOT, Sanchar Bhavan,
Ashoka Road,
New Delhi - 110 001.

... **Respondents**

O R D E R

Per : Shri R.C. Joshi, Member (A)

In this Transfer Application No.06/2009, the
Applicant has impugned the legality and validity of the
orders dated 28.07.2004, 12.01.2005 and revised seniority
list of 28.07.2004 and order dated 02.12.2004, the

provisional seniority lists No.6 and 7 of Telecommunication Engineering Services Group 'B' (T.E.S.) passed by the Respondents No.1 & 3.

2. The Applicant is working as Sub-Divisional Engineer in Bharat Sanchar Nigam Limited (hereinafter referred to as "BSNL"), Government of India undertaking and was transferred under the Respondent No.1 on deemed deputation w.e.f. 1.10.2000 and subsequently the Applicant exercised option to get absorbed in BSNL on 22.09.2003. Accordingly, the Applicant was absorbed on 29.12.2003 as an employee of Respondent No.1. The Applicant was promoted to the post of Sub Divisional Engineer (in short 'SDE') under the seniority-cum-fitness criteria for 75% of posts vide order dated 07.12.2001. The Respondents held a Departmental Competitive Examination on 01.12.2000 to fill up the remaining 25% quota on All India basis and the result of the said examination was declared vide order dated 15.12.2003. Thereafter, impugned seniority list Nos. 6 & 7 was published in respect of the Applicant and other similarly placed candidates in the T.E.S., Group 'B' Cadre and seniority of the Applicant and other similarly placed persons, who were subsequently promoted vide promotion order dated 26.05.2004. Hence this OA.

3. Learned Counsel for Applicant in the pleadings has stated that the Applicant was formerly a Government employee in the Department of Telecom and working in the cadre as Junior Telecom Officer since 23.07.1990. The Applicant was transferred under the Respondent No.1 on deemed deputation w.e.f. 01.10.2000 and the Applicant subsequently exercised option for absorption in BSNL on

22.09.2003. The Applicant was absorbed on 29.12.2003 as an employee of Respondent No.1. The Applicant's promotion to the next higher post is Sub Divisional Engineer which is governed by Telecommunication Engineering Services (Group 'B') Recruitment Rules, 1996, notified on 23.07.1996. The Recruitment Rules to Telecommunication Engineering Services Group 'B' (SDE) is regulated by two different promotion methods. The first method provides 75% of posts to be filled through Seniority-cum-Fitness on all India basis and the second method deals with 25% of posts to be filled through a Competitive Examination on All India basis. The eligibility criteria is 3 years in the feeder cadre of Junior Telecom Officer. The Applicant was regularly promoted to the post of SDE on seniority-cum-Fitness against 75% of posts vide order dated 07.12.2001. For filling up the remaining 25% posts on All India basis, the Respondent No.1 held a Departmental Competitive Examination on 01.12.2002 under the provisions contained in Telecommunication Engineering Services (Group 'B') Recruitment Rules, 1996. The results of the said Examination were declared on 15.12.2003. The promotion order based on the results of the above Examination was issued by Respondent No.1 vide order dated 26.05.2004. Thereafter, Respondent No.1 & 3 issued the impugned provisional seniority lists No.6 & 7 of the applicant and other similarly situated candidates in the Telecommunication Engineering Services Group 'B' Cadre (SDE). The seniority of the Applicant and other similarly placed candidates was below those candidates who were subsequently promoted vide promotion order dated

26.05.2004. It was further stated that the present Applicant promoted in the year, 2004 have been placed above the Applicant and the similarly placed candidates were promoted in the year, 2001. The Applicant was promoted to the said post of Telecommunication Engineering Services Group 'B' cadre (SDE) through an earlier promotion. The Applicant ought to have been promoted in the year, 2004. The Applicant has relied upon the orders issued by Government of India, Department of Personnel and Training vide O.M. dated 07.02.1986 and 03.07.1986. It has also been stated that the Department of Personnel and Training vide O.M. dated 07.02.1986 and 03.07.1986 modified principles to prepare a year-wise seniority list for both direct recruitees and promotees to the extent the vacancies are being filled in a particular year. Under the procedure laid down by the DoPT, if a particular quota of posts either direct recruit or promotee quota could not be filled up due to the administrative reasons in a particular year, the rotation of quotas for the purpose of determining seniority would take place only to the extent of the available direct recruits and the promotees. The unfilled direct recruitment quota or promotee quota would be carried forward and added to the corresponding direct recruitment or promotee quota of vacancies of the next year or subsequent year and the additional direct recruits or promotees selected against the carry forward vacancies of previous year would be placed en-bloc below the last promotee or direct recruit in the seniority list based on the rotation of the vacancies for that year. The revised and modified principles did away with the system of assigning an earlier

year of seniority of persons who were appointed in later year. It is the contention of the Applicant that the Respondents No. 1 & 3 failed to apply the para 2.1 of DoPT O.M. dated 03.07.1986 which provides that:-

Para 2.1 "..... persons appointed as a result of an earlier selection being senior to those appointed as a result of subsequent selection".

It was, therefore, the Applicant's contention that the respondents treated promotee candidates, promoted under the competitive examination method in the year, 2004 as senior to the candidates promoted in the year, 2001 which was contrary to the Government of India, DoPT orders dated 07.02.1986 and 03.07.1986. The Applicant made a representation dated 10.08.2004 and 20.01.2005 against the impugned seniority lists to the Respondents to fix the seniority of the candidates promoted in the year, 2004 below the candidates promoted in the year, 2001 in accordance with the para 2.1 of Government of India, Department of Personnel and Training O.M. dated 03.07.1986 and 07.02.1986. However, the representations made by the Applicant, have not been replied to by the Respondents.

4. The Applicant has sought the following reliefs:-

a) To order and direct the respondents 1 and 3 to quash and set aside the impugned seniority lists of Telecommunication Engineering Services Gr. "B" Officers dated 28.07.2004, 02.12.2004 and 12.01.2005.

b) to direct the respondents to recast the impugned seniority lists of Telecommunication Engineering Services Group 'B' Officers dated 28.07.2004, 02.12.2004 and 12.01.2005 in

accordance with the modified principles of seniority contained in the GOI, DoPT O.M. dated 07.02.1986 and 03.07.1986 and place the candidates promoted in the year, 2004 enblock below the Petitioners and similarly candidates who were promoted in the year 2001.

c) to quash and set aside any further promotions if granted by the Respondents based on the impugned seniority lists during the pendency of the present Petition.

d) to quash and set aside any further seniority lists if published by the Respondents based on the impugned seniority lists during the pendency of the present Petition.

e) to order and direct the respondents to circulate the provisional as well as final seniority lists so prepared to all the affected candidates.

5. The learned counsel for Respondents in the pleadings have stated that the seniority of persons promoted to various grades is determined in order of their selection. The Telecommunication Engineering Services Group 'B' is a 100% promotion post in which 75% posts are filled up by seniority-cum-fitness and 25% posts are filled up on the basis of a Departmental Competitive Examination. Accordingly, the seniority of the Telecommunication Engineering Services Group 'B' has been prepared in the ratio of 3:1 between the officers promoted by the method of seniority-cum-fitness and on the basis of Departmental Competitive Examination in the order in which they have been promoted in respective year of vacancies. The Applicant has been promoted to Telecommunication Engineering

Services Group 'B' against the vacancy for the year 2000-2001 and accordingly, the Applicant has been placed in the seniority list No.7 at serial No.32032. The Applicant is claiming seniority above all the officers who have been promoted on the basis of Departmental Competitive Examination under 25% quota against the vacancy for the years 1996-97, 1997-98, 1999-2000 and 2000-2001. The seniority list has been prepared as per the provisions of the Recruitment Rules and the officers promoted under 75% quota and under 25% quota have been placed in the ratio of 3:1 in order to their selection for such promotion against the vacancies of the respective years. The Officer promoted against the vacancy for the years 1996-97, 1997-98 and 1998-99 have been placed in the seniority list No.6 and Officers promoted against the vacancy year 1999-2000 and 2000-2001 have been placed in the seniority list No.7. The Applicant has claimed seniority above all the officers promoted on the basis of Departmental Competitive Examination on the ground that he was promoted in December, 2001 whereas Competitive Quota Officers were promoted in the year, 2004. There is no provision in the rule to determine the seniority on the basis of date of promotion. It has been, however, stated that the DPC for the year 1996-97, 1997-98 and 1998-99 against 75% seniority quota vacancies was held in the year 2000 and promotion order was issued in

April, 2000. The DPC for the year 1999-2000, 2000-2001 against 75% seniority quota vacancies was held in the year 2001 and promotion order was issued in December, 2001. The Applicant belongs to Recruitment year 1989 in JTO cadre and he has been promoted against 75% quota for the year 2000-2001. The Departmental Competitive Examination under 25% quota for the vacancy year 1996-97, 1997-98, 1998-99, 1999-2000 and 2000-2001 was notified by the Departmental Examination Branch, BSNL on 20.04.2001. Vacancies for the different years were notified and candidates were allowed to appear in the examination as per their eligibility. Departmental Examination Branch declared the result of the examination on 01.12.2002 and promotion order was issued on 27.04.2004. Officers were declared pass against different year of vacancies separately. The Applicant was also eligible to appear in the examination but he did not appear/pass the Competitive Examination and now he is claiming seniority above the officers who have been promoted against the vacancies of earlier years than him. It was also mentioned that there was also delay in holding the Departmental Competitive Examination due to some administrative reasons. Due to the many stages involved in holding the examination, it takes a lot of time to make promotion against the Departmental Competitive Examination quota vacancies, whereas in the cases of seniority-cum-

fitness quota vacancies, promotions are decided by holding the DPC in which no such stages of competitive quota are to be followed. As a consequence, seniority quota was issued in the year 2000 & 2001 whereas the promotion order of competitive quota was issued in the year 2004. But delay in holding the Competitive Examination does not mean that competitive quota officers would be placed in the seniority list en-bloc juniors. The Applicant was promoted against the vacancy year 2000-2001. It was also mentioned that the Applicant has no rightful claim for placement in the seniority list above the officers who have been promoted against 25% Departmental Competitive Examination quota vacancies against the vacancies for the years 1996-97, 1997-98, 1998-99, 1999-2000 & 2000-2001. The Applicant has been rightly placed in the seniority list No.7 at serial No.32032 along with the officers of Departmental Competitive Examination quota as per the rules of fixation of the seniority. The Applicant has been promoted against the seniority quota vacancy for the year 2000-2001 and seniority has been fixed in the order of promotion against respective year of vacancy and not on the basis of date of promotion. It was, therefore, stated that there was no substance in the present O.A. and the same may be dismissed with costs.

6.

We have gone through the pleadings, case

papers and have extensively heard the rival sides. The Applicant in their oral arguments has submitted that the question involved in the present case is no more *res integra* as the same has been decided by the Chandigarh Bench of this Tribunal in TA No.84 & 85/HR/2009 - **Diwan Chand etc. V/s. Union of India and others** decided on 25.08.2009. The main point raised in the present Application as well as in the Transfer Application No.84&85-HR/2009 was as to seniority is to be determined in Telecommunication Engineering Services Group 'B' between members of service who are appointed on the basis of seniority-cum-fitness vis-a-vis those who are promoted on the basis of Limited Departmental Competitive Examination.

7. The Applicant has also cited the OA No.16/09 decided by the Ernakulam Bench of this Tribunal vide order dated 23.02.2010. Both these judgments show that the cases cited (supra) are similar. The Chandigarh Bench of this Tribunal has specifically held in the case of the Diwan Chand (supra) that the seniority of the candidates has to be determined on the basis of the dates of their actual joining and not on notional basis by allotment of their work. This position of law has been confirmed in the case of **V. Govindan & Ors. V/s. Union of India** in OA No.86/2009 decided on 05.02.2010. Having carefully considered the two judgments cited herein above (supra), we do not find any valid reasons for any departure from the decision given in TA No.84-HR of 2009 dated 18.01.2010 decided by the Chandigarh Bench of this Tribunal and OA No.16/2009 dated 23.02.2010 decided by the Ernakulam Bench

Bench of this Tribunal.

8. Accordingly, the impugned orders dated 28.07.2004, 02.12.2004 and 12.01.2005 are quashed and set aside in accordance with the observation given in the cases cited (supra). Accordingly, Respondents are directed to recast the seniority on the basis of order given by the Chandigarh Bench of this Tribunal in Diwan Chand's case (supra) followed by the order given by the Earnakulam Bench of this Tribunal in OA No.16/2009 dated 23.02.2010 within six months. The respondents shall issue the revised provisional seniority lists of Telecommunication Engineering Services Group 'B' Officers and invite objections, if any, from the persons concerned within four months from the date of receipt of a copy of this order. Further, the Respondents shall consider the objections/representations, if any, received and issue the final seniority lists in accordance with law within two months thereafter. No order as to costs.

(R.C. Joshi)
Member (A)

(Justice P.R. Raman)
Member (J)

Certified True Copy
Date 2/12/2010

Secretary
Central Tribunal

Chandigarh

3D/b
B 28/11

hinto