

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

TA No. 220/2009

New Delhi, this the 20th day of January, 2010

HON[□]BLE MR. JUSTICE V.K. BALI, CHAIRMAN
HON[□]BLE MR. L.K.JOSHI, VICE CHAIRMAN (A)

1. Shri S.M. Lal (G.O. No.4786)
S/o Shri S. Lal,
R/o A-203, Mahalaxmi Apartments,
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2. Shri S.P. Pandey (G.O. No.7796)
S/o Shri R.Y. Pandey,
R/o WZ-9/1, Krishna Nagar,
M.B.S. Nagar, New Delhi-110018
3. Shri M.L. Kureel, (G.O. No.5565)
S/o Late Shri Bharosa Kureel,
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4. Shri Subhash Chander Bhargave (G.O. No.7909)
S/o Late Shri R.P. Bhargave,
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5. Shri R.B. Gupta (G.O. No.7794)
S/o Shri Harbhuj Rai,
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6. Shri R.P. Gupta (G.O. No.9724)
S/o Late Shri S.S.Gupta,
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7. Shri Jhansi Ram Meena (G.O. No.13677)

S/o Late Shri Chhaju Ram Meena,
R/o 427, Laxmi Bai Nagar,
New Delhi-110023 □ Applicants

(By Advocate: Shri D.S. Chaudhary)

Versus

Mahanagar Telephone Nigam Ltd.,
Through the Chairman & Managing Director,
13th Floor, Jeevan Bharti Building, Jan Path,
New Delhi-110001 □ Respondents

(By Advocate: Shri Dinesh Agnani)

ORDER

Mr.L.K.Joshi,ViceChairman(A)

This is a Transfer Application transferred by the Honourable Delhi High Court after the Tribunal's jurisdiction over service matters of Mahanagar Telephone Nigam Limited (MTNL) was notified.

2. The grievance of the Applicants in this TA is that they were absorbed in the service of the Respondent □ MTNL in the cadre of Telecom Engineering Service (TES Group `B□) with effect from 1.10.2000 by order dated 24.01.2004, whereas they have been working in the Senior Time Scale (STS) of the Indian Telecommunication Service (ITS) as Group `A□ officers since 1996, albeit on ad hoc basis. The following relief has been sought:
□i) direct the respondent to treat the petitioners as regular Divisional Engineers w.e.f. the date of their adhoc promotion with all the consequential benefits, by way of an appropriate writ, order or direction in the nature of mandamus.□

3. Briefly the facts of the case are that the Applicants were initially appointed as Engineering Supervisors in the erstwhile Indian Posts and Telegraph Department, Government of India. The post of Engineering Supervisor was re-designated as Junior Engineer and again as Junior Telecom Officer. The Applicants were subsequently promoted to the post of Assistant Engineer (TES Group `B□) re-designated as Sub-Divisional Engineer (SDE). On the corporatization of the telecommunication service of Delhi and Mumbai, a newly constituted company known as MTNL was constituted. The entire staff of the Indian Posts and Telegraph Department was transferred to the Respondent □ MTNL on deemed deputation without any deputation allowance. The Applicants were promoted from the post of Assistant Engineer (TES Group `B□) and appointed Divisional Engineer in STS (Group `A) on ad hoc basis in the year 1996 under the orders issued by Telecommunication Headquarters (TCHQ). The Applicants continued on the said post till their absorption in the service of the Respondent □ MTNL. The promotion of the Applicants was on the basis of consideration and

recommendation by a Departmental Promotion Committee (DPC) on the basis of common seniority and assessment of their performance. The promotion was with the approval of the concerned Minister. Only the Union Public Service Commission (UPSC) was not consulted in this matter. All the officers of Group `A and `B, who opted for absorption in MTNL were permanently absorbed with effect from 1.10.2000. The Department of Telecommunication (DOT) and the Respondent □ MTNL had issued a brochure containing provisional terms and conditions on the basis of which the employees had to make an informed choice about the option for absorption under the Respondent or for reversion to the service of the DOT. A copy of the brochure has been annexed at Annex P-2. An order was issued by the DOT on 24.01.2004 by which the Applicants were permanently absorbed under the Respondent-MTNL with effect from 1.10.2000. However, the Applicants were treated as TES Group `B officers on 1.10.2000, although they were working as Divisional Engineers in the STS of ITS, Group `A. The Respondent-MTNL promoted the Applicants on the same day, i.e., 1.10.2000 as Divisional Engineer but on ad hoc basis. The Applicants are continuing in the same position since then. The Applicants made representations to the Respondent on 8.03.2004 (Annex P-5 colly) requesting that their absorption under the Respondent should be considered for treating them as officers in STS Group `A as Divisional Engineer. There was no reply to the representations but the Respondent posted the Applicants as Deputy General Manager by order dated 12.04.2006, only on current duty charge without any extra remuneration. The Applicants further represented on 24.07.2006, in which, inter alia, they mentioned that Shri Manoj Kumar, who had been working in the Junior Time Scale (Assistant Divisional Engineer) till 25.05.1999, when the Applicants had already been working on ad hoc basis as Divisional Engineers, was promoted regularly to the STS of ITS Group `A (Divisional Engineer) by the Department of Telecommunications by order dated 11.04.2001. The said Shri Manoj Kumar had also been promoted to Junior Administrative Grade (JAG), as Deputy General Manager on ad hoc basis with effect from 2.05.2003. The Applicants have requested that while a person sufficiently junior to them had been promoted in the Department of Telecommunications, they were made to languish as ad hoc Divisional Engineers for more than a decade. The representations are placed at Annex P-7 (colly). A Writ Petition had also been filed before the Honourable Bombay High Court by similarly placed officers of the Respondent □ MTNL. However, the representations of the Applicants have remained unheeded.

4. The learned counsel for the Applicants has pointed to the circular dated 8.05.2000 of the Department of Telecommunications, Government of India, which is included in the brochure issued by the DOT and Respondent □ MTNL. In paragraph 3 of the aforesaid circular, it has been observed thus:

□3. Selection of officers opting for MTNL will be strictly on the basis of their seniority in their respective cadre. Since due to litigation, DPC in some of the services could not be conducted for quite long time, hence all the officers promoted on TCHQ orders will be treated in promoted cadre provided they have assumed the charge of higher cadre□..□

It is argued that the Applicants had been promoted to the grade of Divisional Engineer in Senior Time Scale of ITS Group `A in 1996. Their selection was against the vacant posts and by a detailed process of selection through a DPC. A regular DPC for their

promotion could not meet because of administrative problems. However, by virtue of the above quoted paragraph 3 of the circular of 8.05.2000, the Applicants ought to have been absorbed under the Respondent □ MTNL as STS officers of ITS Group `A□. It is contended that since the Applicants have been working on regular basis, although ad hoc, on the post of Divisional Engineer and have also been drawing increments in the post, they have to be treated as regular Divisional Engineers. The learned counsel for the Applicants would contend that the Respondent □ MTNL was unnecessarily trying to create an imaginary problem of clash with the officers of the ITS Group `A□, in case the Applicants are promoted from TES Group `B□ to STS of ITS Group `A□. It is stated that the Applicants were working in the Department of Telecommunications up to 30.09.2000 as Divisional Engineers on ad hoc basis. The learned counsel for the Applicants would contend that these posts are filled up by way of promotion from amongst the Junior Time Scale Officers of ITS Group `A□. It is stated that the posts are non-selection posts and are filled up by promotion. In so far as the posts of Junior Time Scale are concerned, 50 per cent of such posts are filled up by direct recruitment through UPSC and 50 per cent posts are filled up by way of promotion of Assistant Engineer/ Sub Divisional Engineer with three years□ regular service in the grade. The learned counsel for the Applicants would contend that the number of posts of Divisional Engineer at the relevant time was 3000 whereas the number of posts of JTS officers was only 400. It is argued that in such a situation only 200 officers could be recruited directly and 200 officers could be promoted from the post of Assistant Engineer. The learned counsel would cite the judgement of the Honourable Supreme Court in N.S.K. Nayar and ors. V. Union of India and ors., AIR 1992 SC 1574, in which the Honourable Supreme Court observed that the number of posts in the JTS is limited, whereas the number of posts in the grade of STS is substantial. It is stated that the grade structure of Group `A□ service is that of an inverted pyramid and that it would not be possible to fill up all the posts of STS from the JTS officers. Hence there is an administrative compulsion to fill up the STS posts with a frog-leap by appointing TES Group `B□ officers bypassing the JTS. The learned counsel would contend that the Supreme Court had observed that it could never be the intention of the framers of the Rules to permit the ad hoc appointment to go on for 10 to 15 years. The Honourable Supreme Court, contends the learned counsel, held that denial of right of regularization of their services would be wholly arbitrary and in violation of the articles 14 and 16 of the Constitution. The learned counsel would contend that the promotee officers having worked in the STS for almost a decade, should be deemed to be regular members of Group `A□ service in STS. He would contend that the Respondent □ MTNL was creating the chimera of the possible conflict with ITS officers with some ulterior motive to promote those ITS officers who may join the MTNL much later at the cost of the Applicants. The learned counsel for the Applicants would also take exception to the contention of the Respondents in the counter affidavit that about the dozen similar cases were pending before this Tribunal and, therefore, the decision in this case could create serious conflict, when the other cases were decided. It is contended that there is no mention of the nature of cases and an unnecessary imaginary conflict has been projected. Reference has also been made to the order dated 27.04.2005 of the Honourable Bombay High Court in which the Division Bench observed that □[T]he petitioners were holding the post of D.E. from September, 1990 onwards. We see no reason as to why they had to be kept on ad hoc basis for such a long period. In the

light of that the respondent are directed to file an affidavit before this court explaining their stand as to when the petitioners if eligible will be regularized against the said posts. It is further contended that while in DOT an officer who was working as Assistant Engineer till 1999, when the Applicants were working as Divisional Engineers, had been promoted, the Applicants had been denied this opportunity.

5. The Respondents, per contra, have stated at the outset that the petitioners had no ground to seek regularization as Divisional Engineers because they had been promoted only on ad hoc basis and the ad hoc promotion would not give them any right of seniority or future promotion. They have also stated that the matter regarding absorption of Group `A officers is already under challenge before this Tribunal and, therefore, the issue can be resolved only after the disposal of such TAs. It is further contended that the terms and conditions of absorption clearly stated that the absorption of officers would be in their substantive grades/ posts and not on the posts on which they were working on officiating/ ad hoc basis. It is also contended by the learned counsel for the Respondents that the Applicants were promoted on ad hoc basis to the STS of ITS Group `A in the interest of service as sufficient number of eligible JTS officers were not available. However, the substantive grade of the Applicants would remain TES Group `B. It is contended that as per the recruitment rules of ITS Group `A, the officers of JTS of ITS Group `A with four years regular service are eligible for consideration for regular promotion to STS of ITS Group `A. Since the Applicants' substantive grade continued to be TES Group `B, they could not be considered for promotion to the post of STS of ITS Group `A. It is further contended that Group `A officers have not yet been absorbed in MTNL in view of various cases pending before various Courts and the Tribunal. The matter could only be resolved after the decision in those cases. Since the Applicants had not even been promoted to JTS of ITS Group `A, they could not be absorbed under the Respondent MTNL as STS officers of ITS Group `A. It is further contended that the Applicants had never been promoted as Deputy General Managers but only given current duty charge to look after work of such posts without any extra remuneration. It is contended that on the basis of this, the Applicants could not claim any relief.

6. We have given our utmost consideration to the rival contentions and have minutely gone through the records placed before us.

7. The Honourable Supreme Court in N.S.K. Nayar (supra) had dealt with a similar question. The petitioners before the Honourable Supreme Court were the promotee members of ITS Group `A. They were working as officiating Divisional Engineers in the STS. The Rules provided that appointment to the JTS in ITS Group `A would be made by selection on merit from amongst the officers of TES Group `B ordinarily with not less than eight years regular service in Group `B on the recommendations of the duly constituted DPC and on the recommendations of the UPSC. The Rules also provide that appointment to the STS in ITS Group `A would be made by promotion of officers in the order of seniority. A directly recruited Assistant Divisional Engineer would not ordinarily be promoted as Divisional Engineer unless he had put in five years service. There was another provision in the Rules that the posts in STS may, however, be filled up as a purely temporary measure in an officiating capacity to hold charge by the promotion of permanent members of TES Group `B. The TES Group `B could be promoted to JTS of ITS Group `A after five years of permanent service in the TES Group `B. The petitioners before the Honourable Court belonged to TES Group `B and had been

promoted to the STS of ITS Group 'A' on ad hoc basis. The petitioners had been working in the STS for almost a decade. The question framed by the Honourable Supreme Court was whether the service rendered by the petitioners in the Senior Time Scale for over a decade entitled them to claim that they were regular holders of the posts in the STS of ITS Group 'A'. It was held thus:

□3. It is obvious from the scheme of the Rules that regular channel of promotion for the members of the Telegraph Engineering Service Class-II is to the JTS in Group A Service. Rule 27(b), however, provides that posts in the STS - which is a grade higher than the JTS - may be filled, as a temporary measure, in an officiating capacity to hold charge, by promoting members of the Telegraph Engineering Service Class II who are on the approved list for promotion to the JTS. In other words as soon as a member of the Telegraph Engineering Service Class II is brought on the approved list for promotion to the JTS he can be promoted to a post in STS without being appointed to a post in the JTS. The number of posts in JTS is limited whereas the number of posts in the next higher grade of STS is substantial. In an affidavit filed by Mr. R. Parthasarthy dated January 19, 1988 on behalf of Union of India it has been stated that total number of permanent vacancies in JTS and STS grades at that time were 451 and 724 respectively. In the written arguments on behalf of Union of India it has been mentioned that the number of posts in JTS and STS on February 1, 1985 was 451 and 1146 respectively. Generally the grade structure in a service is pyramidal in the sense that the number of posts in a lower grade are more than that in the higher grade, but on the contrary in Group A Service the posts in JTS are small in number whereas the number of posts in STS is large. The structure is that of an inverted pyramid. It is difficult to fill all the posts in STS from amongst the officers in JTS and as such there is an administrative compulsion to fill the STS posts by promoting the members of Telegraph Engineering Service Class II. The posts in JTS being less in number there are not many vacancies to accommodate the Class II officers who are on the approved list for promotion to the said cadre. There is thus no option for the Government but to make appointments under Rule 27 (b) of the Rules.

4. Petitioner No. 1 Mr. N. S. K. Nayar was selected in the year 1975 for promotion to the JTS. He was, however, promoted to STS under Rule 27B of the Rules on July 14, 1975. He continuously worked in STS till June 30, 1987 when he retired from service. Petitioners 2 to 9 were brought on the approved list for promotion to JTS during the period 1976-78. They were promoted to the STS on October 21, 1976, October 30, 1976, January 16, 1978, October 30, 1978, October 30, 1978, October 31, 1978, June 27, 1979 and June 27, 1979 respectively. These petitioners are holding the posts in STS to date. They were also appointed substantively to JTS during that period but they never held the posts in the said grade. What emerges is that petitioner 1 retired from service after holding the post in STS for about 12 years and the other petitioners are holding the posts in STS from 12 to 15 years. The grouse of the petitioners is that in spite of holding the posts in STS for such a long period they are not being treated as regular members thereof. To buttress their claim further it is stated that the direct recruits with much lesser service have long been promoted to the higher posts in JAG. For example Mr. Raiesh Wadhwa, respondent No. 5 joined JTS as direct recruit on December 29, 1975. He was promoted to STS on December 29, 1979 and was further promoted to the JAG on February 22, 1984.

The petitioners are not being considered for promotion to the JAG because they are not regularised in the cadre of STS in spite of the fact that they have put in 10 to 15 years of service in the said grade.

5. We have heard learned counsel for the parties at length. It is no doubt correct that the regular channel of promotion to Group A Service provided to the officers of the Telegraph Engineering Service Class II under the Rules is to the JTS and their promotions under Rule 27(b) are only to meet the administrative exigency of short-tenure. We are of the view that Rule 27(b) of the Rules has been made to enable the Government to meet an ad hoc shortage of officers to man the posts in STS. The Class II officers have long experience to their credit and the nature of their work is almost identical to that of the posts in JTS. The direct recruits to JTS are deputed to work in Class-II posts to acquire experience. It is also not disputed that a class-II officer who is on the approved list for promotion is competent and eligible to work in JTS and STS. It is in this background that Rule 27(b) has been enacted to enable the Government to fill the large number of vacancies in STS by appointing Class-II officers with a frog-leap from class-II to STS by-passing the JTS. The object of having Rule 27(b) of the Rules is to provide a source of appointment to meet an administrative exigency of short tenure. It could never be the intention of the framers of the Rule to permit the appointments under the said Rule to go on for 10 to 15 years. The appointments for such a long period cannot be considered to be purely temporary/ officiating or to hold charge. Taking work out of the petitioners in the STS posts for 10/ 15 years and denying them the right of regularisation and the consequent benefits in the said grade, is wholly arbitrary and is violative of Article 16 of the Constitution of India.

6. We have given our thoughtful consideration to the question as to what relief under the circumstances can be given to the petitioners and other officers similarly situated. While doing justice to the petitioners we do not wish to cause any prejudice to the direct recruits. Rule 27(a) of the Rules provide that a direct recruit to JTS shall not ordinarily be promoted to STS unless he has put in five years' service in JTS. Taking clue from the said Rule we hold that the promotee officers who have worked in STS for a continuous period of five years and are holding the posts to-date shall be deemed to be regular members of Group A Service in STS. They shall be entitled to count their seniority in the STS from the date of completing the said period of five years and shall be entitled to be considered for further promotion to JAG and SAG on the basis of the said seniority.

7. We make it clear that the petitioners or other officers similarly situated who have already retired shall not be

entitled to the benefit of this judgment. We further direct that none of the direct recruits who have already been promoted to STS, JAG or SAG shall be reverted as a consequence of this judgment. If necessary the Government shall create super-numerary posts in STS, JAG and SAG to accommodate the petitioners and other officers similarly situated.□
(emphasis supplied)

8. The Applicants have also been working in the STS of ITS Group `A□ for over a decade. On their absorption in the Respondent □ MTNL also, they were appointed as Divisional Engineers although on ad hoc basis. Clearly, in these circumstances, the ratio laid down by the Honourable Supreme Court in N.S.K. Nayar (supra) would apply.

9. The brochure of the Respondent-MTNL to which advertence has been made also support this contention. In the circular dated 8.05.2000, included in the brochure it has been mentioned without any ambiguity that in the services where DPC could not be conducted for quite long time, officers promoted to TCHQ cadre will be treated in promoted cadre provided they have assumed the charge of higher cadre. The Applicants have been promoted on TCHQ orders. They had assumed the charge of the higher cadre, on which they had been working for a very long time. Although the Respondents have mentioned the possibility of conflict with officers of ITS Group `A□, yet this has not at all been clearly brought out as to how, in the facts and circumstances of this case, there could be a conflict.

10. Considering the above facts and the judgement of the Honourable Supreme Court in N.S.K. Nayar□s case (supra), the TA is allowed. The Applicants would be considered to have been promoted to ITS Group `A□ service in Senior Time Scale at the time of their absorption in Respondent - MTNL. They would be eligible for all consequential benefits. No Costs.

(L.K.Joshi)
ViceChairman(A)

(V.K.Bali)
Chairman

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