

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 21ST DAY OF APRIL 2011

PRESENT

THE HON'BLE MR.JUSTICE S. ABDUL NAZEER

AND

THE HON'BLE MR.JUSTICE K. GOVINDARAJULU

WRIT PETITION NOS.37322/2010
& W.P.NOS.1576 TO 1698/2011 (S-CAT)

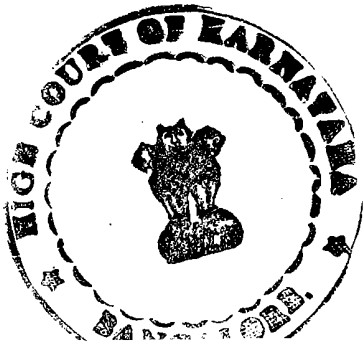
BETWEEN:

1. The Managing Director cum
Chairman
Bharat Sanchar Nigam Ltd.
Bharat Sanchar Bhawan
H.C. Mathur Lane, Janpath
New Delhi – 110 001
2. The Chief General Manager
Karnataka Telecom Circle
Bharat Sanchar Nigam Ltd.
No.1, Swamy Vivekananda Road
Halasur, Bangalore – 560 008 ... PETITIONERS

(By Sri P.S.Rajagopal, Sr.Counsel for Sri Vishnu D. Bhat, Adv.)

AND:

1. Sri. K.S. Premakumar
Aged 47 years, S/o. Sri. K.L. Sanjeevaiah
Occ: Sub-Divisional Engineer (SDE)
Office of Divisional Engineer Data
Bangalore Telecom District
7th Floor, New Telecom Building
Basaveshwara Circle
Bangalore – 560 001



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2. Sri. S.B. Danad
Aged 48 years
S/o. Sri. Basappa
Occ: Sub-Divisional Engineer (SDE)
Office of Divisional Engineer Transmission Mntc
3rd Floor, New Telecom Building
CTO Compound
Belgaum – 590 001
3. Sri. S.A. Belubbi
Aged 39 years
S/o. Sri. Anantarao
Occ: SDE (Mobile Services Development)
2nd Floor, BSNL Bhavan
Near KSRTC Bus Station
Tumkur – 572 101
4. Sri. A.M. Kumbar
Aged 39 years
S/o. Sri. Mallappa
Occ: SDE OFC Maintenance
Digital Trans Centre
Ground Floor
Telephone Exchange Building
Anand Mahal Road, Bijapur
5. Sri. D. Suresh
Aged 56 years
S/o. Sri. V.M. Doraiswamy
Occ: SDE TX Maintenance
BSNL LGF Creator Building
ITPL, Bangalore – 560 066
6. Sri. H.S. Dyave Gowda
Aged 49 years
S/o. Sri. Sannegowda
Occ: SDE
Telephone Exchange Nagarabhavi
Bangalore – 560 072



124. Sri. Srikantha. P
 Aged about 37 years
 S/o. P. Bindumadhavacharya
 Occ: SDE Mobile Services Development
 Ground Floor
 Main Telephone Exchange Compound
 Raichur – 584 101 RESPONDENTS

(By Sri. P.A. Kulkarni, Adv. for C/R-3, R-10 to R-17,
 R-20 to R-24, R-26 to R-37, R-39 to R-51, R-53 to R-66
 R-68 to R-79, R-81, R-83 to R-106, R-108, R-111 to R-124)

These Writ Petitions are filed under Articles 226 & 227 of the Constitution praying to quash the order dated 26.4.2010 passed by the CAT, Bangalore Bench, in O.A.No.181/2009 as per Annexure 'E'.

These Writ Petitions having been heard and reserved for Orders, this day, *S.ABDUL NAZEER.J.*, pronounced the following:

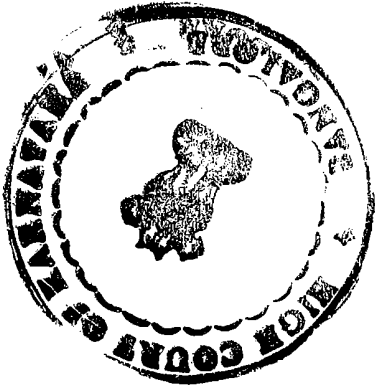
ORDER

The Managing Director-cum-Chairman and the Chief General Manager, Bharat Sanchar Nigam Limited has filed these writ petitions challenging the orders in O.A.No.181/2009 dated 26.4.2010 passed by the Central Administrative Tribunal, Bangalore Bench, Bangalore.

2. The respondents were working as Sub-Divisional Engineers with Bharath Sanchar Nigam Ltd. They have been promoted on the basis of the result of the departmental competitive examination for promotion from the cadre of Junior Telecom



Officer ('JTO' for short) to Telecom Engineering Service ('TES' for short) Group 'B' under 25% quota. A common examination was held for the vacancies from 1996-1997 to 2000-2001 on 1.12.2002 though it was scheduled to be held on 23.7.2001. As per the relevant Rules, on appointment, the seniority is to be fixed on the common gradation list by providing one candidate who had qualified under the competitive examination below three candidates, who have been promoted in the 75% promotion quota i.e. seniority-cum-fitness. The examination under 25% quota of vacancies arising for the aforesaid period was scheduled to be held on 23.7.2001. However, it was postponed from time to time and was finally held on 1.12.2002. On 28.12.2011, the petitioners had already promoted JTOs to Group 'B' cadre under 75% quota. The result of the examination for 25% quota of vacancies was declared on 15.12.2003 and respondent Nos.1 to 27 were declared successful under 25% quota against the vacancy year of 1996-97, respondent Nos.28 to 85, 86 to 112 to 124 were declared successful under 25% quota against the vacancy years of 1997-98, 1998-99, 1999-2000 and 2000-2001 respectively. On 26.5.2044, BSNL had issued



promotion orders to JTOs to the grade of SDE Telecom in BSNL against 25% competitive quota on the basis of the merit list. On 12.1.2005, DOT finalised the seniority of TES Group 'B' officers taking recruitment year as the basis for fixing the seniority and issued revised seniority list of the cadre. Two of the respondents, namely Sridhar and S.B.Nagavi filed representations contending that they had qualified in the departmental competitive examination for the vacancies of 2000-2001, their notional date of promotion should be in the year 2000-2001. They requested that their pay may be fixed on notional basis w.e.f. 2000-2001 and arrears of salary may be drawn from the date of actual assumption of charge of SDE post on 25.6.2004. Since the petitioners failed to consider the grievance of the respondents, the respondents filed O.A.No.181/2009 before the Tribunal seeking the following reliefs:

“(a) Direct the respondents to assign the notional date of promotion as SDE in respect of applicants 1 to 112 w.e.f. 16.5.2000 on par with promotees under 75% quota as witnessed by R-4's promotion and posting order dated 16.5.2000 Annexure A12 and in respect of applicants 113 to 124 w.e.f. 31.12.2001 on par with promotees under 75% quota as witnessed by R-4's



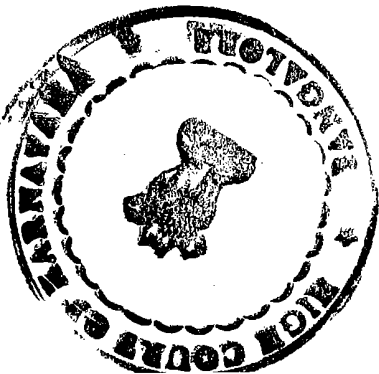
promotion and posting under dated 28.12.2001 Annexure A13.

(b) Direct further the respondents to cause notional fixation of pay of the applicants w.e.f the above mentioned dates with all the consequential benefits such as counting of experience for further promotions w.e.f. respective notional date of promotion of the applicants in terms of relief (a) above.

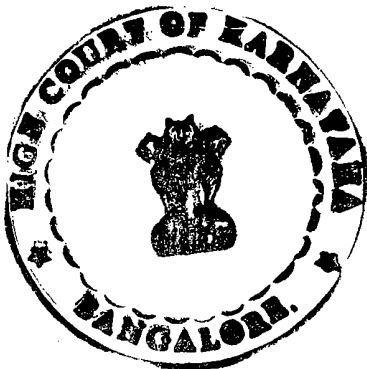
(c) Direct the respondents to grant benefit of annual increments from the notional date of promotion and such other benefits admissible under service rules flowing out of reliefs (a) and (b) above.

(d) Pass any other order or direction that this Hon'ble Tribunal may deem it fit and necessary in the facts and circumstances of the present case and in the interest of justice and equity."

3. BSNL filed objections to the application contending that the examination scheduled to be held on 23.7.2001 was finally held on 1.12.2002 and the promotion orders of the successful candidates could be issued only on 26.5.2004. The delay was due to administrative reasons. The DPC for the 75% quota of vacancies



for 1996-97 to 2000-2001 could also be held only in the year 2000-2001 as DOT/BSNL was in the thick of litigation in respect of seniority and promotion issues. Thus, the delay was unavoidable in order to comply with the various orders issued by the Tribunals and Courts. The inter-se-seniority of the officers in the seniority quota (75%) and competitive examination quota (25)) has been rightly fixed in the ratio of 3:1 as per relevant Recruitment Rules of TES Grade B. Seniority of a person appointed to a post is determined according to the general principles of 5(i) contained in MHA OM No.9/11/55-RPS dated 22.12.1959 and para 2.2 in DoP&T OM No.22011/7/86-East (D) dated 3.7.1986 read with DoP&T OM No.20011/5/90 Estt (D) dated 4.11.1992. Seniority of such persons is determined by the order of merit indicated at the time of initial appointment and seniority of persons promoted to various grades is determined in the order of selection for such promotion. The respondents have been given pay and allowances in the higher post of SDE (T) (i.e. TES Grade B) from the date of assumption of charge, since pay cannot be fixed from retrospective date or drawn retrospectively. Thus, notional fixation of pay with reference to officers promoted against 75% promotion quota earlier cannot be



allowed, as there is no provision in any Rules for such notional fixation. Some of the competitive quota successful candidates were promoted as SDEs under 75% quota, even before taking the said competitive examination. In fact, their placement in the gradation list of promoted cadre (TES Group B) is improved, as year wise vacancies are identified and filled accordingly as per the merit. Thus, if an applicant is fitted in 1996-97 or 1997-98 vacancy and figured along with 75% seniority quota, consequent placements in the ratio of 3:1 is an added benefit for him/her for his future promotions and career progression. They are not supposed to have any grievance with respect to their seniority. Thus, their further comparison with 75% quota SDEs for actual date of promotion, on the basis of the gradation list for the purpose of notional fixation, is neither based on any Rules of BSNL, nor justifiable. It is further contended that there is no provision in any of the Rules in BSNL to fix the pay of the applicants notionally with retrospective effect on par with the officials who were promoted under 75% quota. It is further contended that the Apex Court in **UNION OF INDIA & ANOTHER VS. J. SANTHANA KRISHNAN & OTHER [(2007) 15 SCC 694]**, was dealing with an unprecedented and one time



problem which had cropped up on account of delay in holding the examination. The said case dealt with in Civil Appeal was entirely in different circumstances from the facts and circumstances in the present case. The said case is not applicable to the facts of the present case.

4. The respondents have filed a rejoinder before the Tribunal reiterating that it was imperative for the petitioners to hold the departmental examinations annually. The Recruitment rules make it clear that 75% of the vacancies are to be filled up by way of promotion based on seniority-cum-fitness and 25% through departmental competitive examination. In *SANTHANAKRISHNAN*'s case (supra), the problem faced by the petitioners therein is similar to the problem faced by the respondents in the present case. It was only when the Department of Telecom introduced the time bound promotion scheme for the Assistant Engineers on 25.9.1990 on completion of 12 years service in the grade, the petitioners made representations for giving them promotion from the same date on which their counter parts in the 2/3rd quota (as per the qualifying examination) got the time bound promotion. The same problem was taken up by the Apex



Court as the petitioners had denied the benefits and the Central Administrative Tribunal in Madras Bench and Chandigarh Bench allowed the OAs. The respondents contention was that promotion to the SDE grade against 1/3rd quota should be the same as the date of promotion of the counter parts under the 2/3rd quota which happened to be 11.5.1981. Chandigarh Bench has allowed the notional date of promotion in respect of the candidates who were before the said Bench, whereas the Madras Bench had allowed the promotion w.e.f 12.9.1982 taking into account the time consumed for completing the process of examination and for processing of the ACRs etc., for which six months was allowed. The Supreme Court allowed the notional date of promotion as 12.9.1982 for the purpose of counting experience and other service benefits and accordingly *SANTHANAKRISHNAN*'s notional date of promotion was fixed as 12.9.1982 and he was made eligible to get the time bound promotion on 12.9.1994 on completion of 12 years, which he would have otherwise got only in June, 1997.

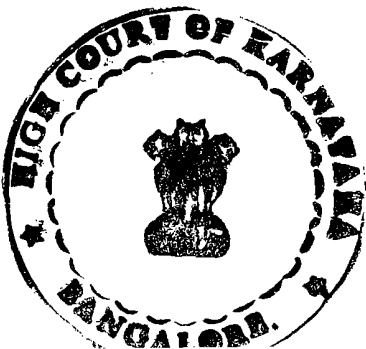
5. The Tribunal after hearing the rival contentions of the parties, has directed the BSNL to assign notional date of promotion as SDEs to the respondents w.e.f. 23.1.2002 i.e. six months from



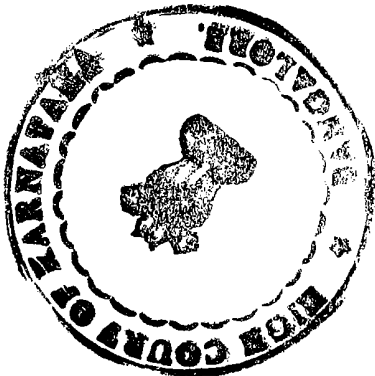
23.7.2001, the date on which the examination was announced to be held keeping in view the law laid down by the Apex Court that if the promotion of an employee is delayed because of pendency of Court proceedings, he shall be entitled to a deemed date of promotion viz., the date of promotion of their counterparts. The BSNL was further directed to grant consequential benefits such as counting of experience for further promotions, annual increments, etc., w.e.f. 23.1.2002. However, it was made clear that the respondents will not be entitled for any arrears of pay from the date of such notional fixation on 23.1.2002, but will be entitled for arrears of pay from 1.4.2008.

6. I have heard Sri P.S. Rajagopal, learned Senior Counsel for Sri Vishnu D. Bhat, learned Counsel appearing for the petitioners and Sri P.A.Kulkarni, learned Counsel for the respondents.

7. Sri P.S.Rajagopal, learned Senior Counsel contends that the O.As are highly belated. Annexure 'A5' is the order of promotion of SDEs under 75% quota. It is dated 26.5.2004. Annexure 'A6' is the posting order. It is dated 8.6.2004. First

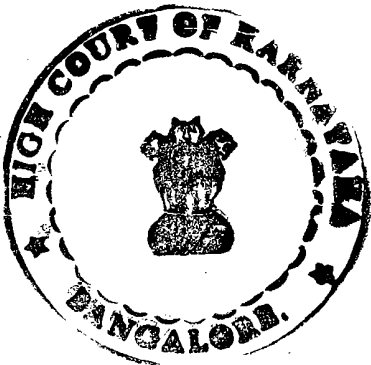


representation at Annexure 'A17' filed by Sri S.Sreedhar is dated 10.1.2006. The seniority list at Annexure 'A7' is dated 12.1.2005. The respondents have filed O.A. on 4.4.2009 after about 5 years 9 months from the date of the promotion. He draws my attention to Section 21 of the Administrative Tribunal's Act, 1985 (for short 'Act,1985') and submits that the Tribunal is competent to entertain an application if it is made within a period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act as provided under sub-section (2)(a) of Section 21 of the Act. The respondents have not filed any application seeking condonation of delay in filing the applications. On this ground alone, the Tribunal ought to have rejected the application. It is further contended that the limitation goes to the root of the matter. If an application is barred by time, the Court or the adjudicating authority has no jurisdiction, power or authority to entertain an application and decide it on merits. Secondly, it is contended that 1996 of TES Grade B Rules do not stipulate or mandate that the recruitment from different sources are to be made simultaneously. Rules prescribe two methods of recruitment, viz., one by promotion on



seniority cum fitness and another by akin to direct recruitment by limited competitive departmental examination. While the promotion on seniority is based on assessment of annual confidential reports by the departmental promotion committee, the direct recruitment involves holding of competitive examination, evaluation of performance therein, etc. Recruitment from two or more sources cannot take place simultaneously. Neither a direct recruit nor a promotee is entitled for any notional date of appointment anterior to actual date of appointment. It is further contended that in *SANTHANAKRISHNAN*'s case, the Apex Court has specifically observed that the decision is a unprecedented one time measure. It is further contended that right of the employees is only to consider their case for promotion. They cannot claim promotion as a matter of right from the date much prior to the date of examination. Therefore, the Tribunal has acted contrary to the settled law and acted de hors the Rules in directing a notional date of entry thus ante dating the appointments by years.

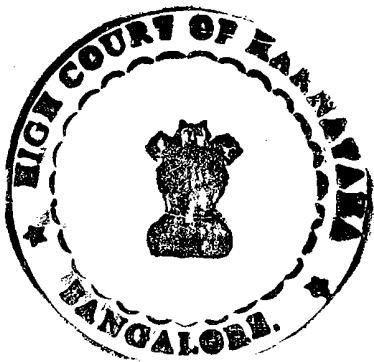
8. On the other hand, learned Counsel appearing for the respondents has sought to justify the impugned order of the Tribunal. It is argued that the respondents have not challenged the



order of promotion under 75% quota as per Annexure A5 dated 26.5.2004 nor have they challenged the posting order at Annexure A6 dated 8.6.2004. The promotion of the respondents to SDE Grade B was delayed on account of delay in holding the examination for promotion under 25% quota. On this basis, the Supreme Court in *SANTANAKRISHNAN*'s case has approved the advancement of promotion date for promotees of competitive quota on notional basis. The respondents have sought for a direction to the BSNL to assign the notional date of promotion as SDEs on par with promotees under 75% quota. The respondents have got their promotion in the year 2004 and IDA scale of up-gradation was ordered on 18.1.2007. Even before the said date, the respondents had represented in the year 2006 itself for giving them notional date of promotion for the purpose of fixation of pay, etc., on the basis of *SANTANAKRISHNAN*'s case. Therefore, the application is not barred by time. It is further contended that as per 1996 Recruitment Rules, promotion against 25% quota is on the basis of departmental competitive examination. In order to provide equal opportunities in the matter of promotional chances, the authorities are bound to carry out the exercise of 75% and 25% quota by



initiating required steps simultaneously. If this examination was held on time every year as it is a regular annual feature, then all the respondents were also available for consideration for their promotion by the time the DPC exercise to fill up the 75% quota of these respective vacancy years was undertaken by the department. For the reasons wholly attributable to the department, this competitive examination in respect of the vacancies of all these vacancy years is held at a stretch on 1.12.2002 and result was announced on 15.12.2003. The respondents are not in any way responsible nor can they be penalised for the delay in issuing belated promotion orders in June, 2004. The action of the department in ordering promotion of the respondents in June, 2004 while going ahead with the promotions under 75% quota in the year 2000 and 2001 is also hit by unreasonableness as it would seriously impair the applicants further promotional chances like time bound promotions. In the previous instance, when the department has extended the notional date of promotion to the competitive quota promotees based on the decision in *SANTANAKRISHNAN*'s case, denial of benefits to the respondents on the same ground is violative of Articles 14 and 16



of the Constitution of India. He prays for dismissal of the writ petitions.

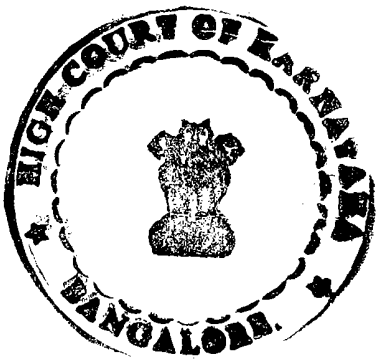
9. We have carefully considered the arguments of the learned Counsel made at the Bar and perused the materials placed on record.

10. Before proceeding with the merits of the matter, it is appropriate to consider the contention relating to delay in filing the application. It is well settled that limitation goes to the root of the matter. If an application is barred by limitation, the Court or an adjudicating authority has no jurisdiction, power or authority to entertain the application and decide it on merits. Section 21 of the Act deals with the limitation aspect, which is as under:

“Section 21: Limitation: (1) A Tribunal shall not admit an application,-
(a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of Section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made.”



11. The contention put forth by the learned Senior Counsel for the petitioners is that the promotion of 75% quota was passed as per Annexure A5 dated 26.5.2004. The posting order is at Annexure A6 dated 8.6.2004. The representation filed by two of the respondents are dated 10.1.2006 and 1.11.2006. The respondents were promoted on 26.5.2004 to fill up 25% of the quota for the years from 1996-97 to 2000-2001. The relief sought in the application is to direct the BSNL to assign the notional date of promotion as SDEs in respect of respondent Nos.1 to 112 w.e.f. 16.5.2000 on par with promotees under 75% quota and respondent Nos.113 to 124 w.e.f. 31.12.2001 and for a further direction to the respondents to cause notional fixation of pay of the respondents with effect from the aforementioned dates with all the consequential benefits. There is no challenge to the promotion order at Annexure A5 or posting order at Annexure A6. Therefore, it cannot be said that the application is barred by time. In fact, the Tribunal on consideration of the rival contentions of the parties, has held that the respondents got their promotion only in 2004 and thereafter the IDA scale of up-gradation was ordered only on 18.1.2007. Even before the said date, the respondents had

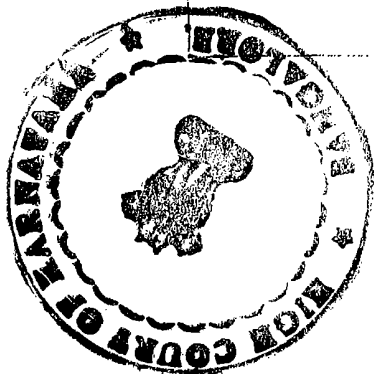


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represented in the year 2006 itself quoting the decision of the Apex Court in Civil appeal No.1655/1997 for giving them a notional date for promotion only for the purpose of fixation of pay, etc. The respondents have not given any reply to their representations. We are in complete agreement with the reasoning assigned by the Tribunal for rejecting the contention regarding the delay in filing the application.

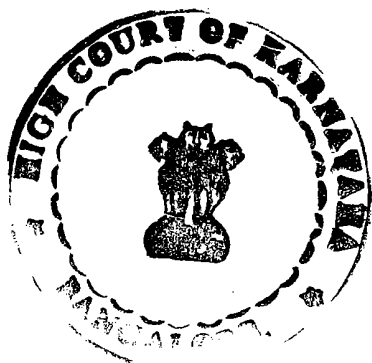
12. Rules regulating the method of recruitment of Telecommunication Engineering Service Group-B in the department of Telecommunications is called 'The Telecommunications Engineering Service (Group 'B' Posts) Recruitment Rules, 1996. The Recruitment Rules for promotion are as under:

PERIOD OF PROBATION IF ANY	METHOD OF RECRUITMENT WHETHER BY DIRECT RECRUITMENT OR BY DEPUTATION/TRANSFER AND OF PERCENTAGE OF VACANCIES TO BE FILLED BY VARIOUS METHODS	IN CASE OF RECRUITMENT BY PROMOTION/DEPUTATION/TRANSFER, GRADES FROM WHICH PROMOTION/DEPUTATION/TRANSFER TO BE MADE	IF A DEPARTMENTAL PROMOTION COMMITTEE EXISTS WHAT IS ITS COMPOSITION	CIRCUMSTANCES IN WHICH UNION PUBLIC SERVICE COMMISSION TO BE CONSULTED IN MAKING RECRUITMENTS
10	11	12	13	14
2 YEARS	PROMOTION: (i) 75% ON THE BASIS OF SENIORITY CUM FITNESS	PROMOTION: (i) UNDER 75% QUOTA JUNIOR TELECOM OFFICER WITH 3 YEARS REGULAR SERVICE IN THE GRADE.	GROUP 'B' DEPARTMENTAL PROMOTION COMMITTEE: 1. ADVISER, TELECOM COMMISSION CHAIRMAN	CONSULTATION WITH UNION PUBLIC SERVICE COMMISSION NOT NECESSARY



<p>(ii) 25% ON THE BASIS OF A DEPARTMENTAL COMPETITIVE EXAMINATION.</p>	<p>(iii) UNDER 25% QUOTA ON THE BASIS OF DEPARTMENTAL COMPETITIVE EXAMINATION FOR WHICH JUNIOR TELECOM OFFICERS WITH 3 YEARS REGULAR SERVICE IN THE GRADE SHALL BE ELIGIBLE.</p> <p>NOTE: 1. DEPARTMENTAL PROMOTION COMMITTEE FOR PROMOTION OF JUNIOR TELECOM OFFICERS SHALL BE HELD ON THE BASIS OF AN ALL INDIA ELIGIBILITY LIST AT HEAD QUARTER ONLY.</p> <p>2. THE CRUCIAL DATE FOR DETERMINING THE ELIGIBILITY SHALL BE FIRST OF JULY OF YEAR TO WHICH THE VACANCIES PERTAIN</p> <p>3. THE SYLLABUS & RULES FOR CONDUCTING DEPARTMENTAL COMPETITIVE EXAMINATION SHALL BE SUCH AS THE TELECOM COMMISSION MAY PRESCRIBE FROM TIME TO TIME.</p> <p>4. WHERE JUNIOR WHO HAVE COMPLETED THEIR QUALIFYING ELIGIBILITY SERVICE ARE BEING CONSIDERED FOR PROMOTION, THEIR SENIORS WOULD ALSO BE CONSIDERED PROVIDED THEY ARE NOT SHORT OF REQUISITE.</p>	<p>2. DEPUTY DIRECTOR GENERAL (Pers.) - MEMBER</p> <p>3. DIRECTOR (STAFF TELECOM) - MEMBER</p>	
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13. It is true that promotion will take effect only from the date of an official assumes charge in the promoted post. Admittedly, the examination for 25% quota of vacancies from 1997-98 to 2000-2001 was held on 1.12.2002 and promotion for the candidates who are eligible for promotion was effected by an order dated 27.8.2004. The seniority of the respondents was fixed



correctly along with the persons who were promoted under 75% quota as per the rules. The applicants also got their seniority vis-à-vis promotees under the 75% quota based on the year in which the vacancy arose. The petitioners had held the DPC for promotion under 75% promotion quota in the year 2000-2001 itself and issued promotion orders on 16.5.2000 and 28.12.2001. If the Department had conducted the examination annually to fill up the 25% quota of vacancies, the respondents would have got their promotion w.e.f. 16.5.2000 and 31.12.2001. Though the examination was held in December, 2002, actual appointment orders were issued in the year 2004 as per Annexure 'A5' dated 26.5.2004 and the posting orders were made on 8.6.2004 as per Annexure 'A6'.

14. In *SANTANAKRISHNAN*'s case, the Apex Court was considering a similar matter. In the said decision, Department of Telecom introduced the time bound promotion for the Assistant Engineers on 25.9.1990 on completion of 12 years service in the grade. The petitioners therein made representations for giving them promotion from the same date on which their counter parts in

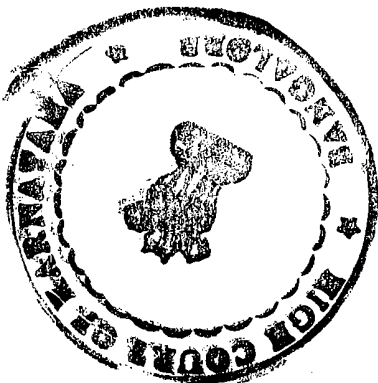


the 2/3rd quota got the benefit of time bound promotion. Santanakrishnana, a candidate for competitive examination against 1/3rd quota of the corresponding year was actually promoted in June, 1986 on account of delay in holding the examination. His contention was that the promotion to the SDE grade against 1/3rd quota should have been the same as the date of promotion of the counter parts under the 2/3rd quota, which happened to be 11.5.1981. Chandigarh Bench allowed the notional date of promotion in respect of the candidates who were before it, whereas the Madras Bench allowed the promotion w.e.f. 12.9.1982 taking into account the time consumed for completing the process of examination, which was actually held in 1992 and for processing ACRs etc., for which six months was allowed. The Supreme Court allowed the notional date of promotion as 12.9.1982 for the purpose of counting experience and other service benefits and accordingly Santhanakrishnan's notional date of promotion was fixed as 12.9.1982 and he was made eligible to get the time bound promotion on 12.9.1994 on completion of 12 years, which he would have otherwise got only in June, 1997. In the present case also, the respondents prayed for giving notional date of promotion



with all consequential benefits such as counting of experience for further promotions with effect from the notional date of promotion. In **SANTANAKRISHNAN**'s case, the Hon'ble Apex Court agreed with the view of Madras Bench of the Tribunal. In the instant case, the examination was indefinitely postponed after announcing. The Tribunal has noted the crucial events in **SANTANAKRISHNAN**'s case and in the instant case as under:

YEAR FOR WHICH BACKLOG WAS EXISTING	DATE OF PROMOTION OF OFFICIALS UNDER SENIORITY QUOTA	DATE OF HOLDING OF LIMITED DEPARTMENTAL COMPETITIVE EXAMINATION	DATE OF DECLARATION OF RESULT	DATE ON WHICH PROMOTION WAS GIVEN TO LDCE QUOTA	DELAY IN PROMOTING LDCE COMPARED TO SENIORITY QUOTA	NOTIONAL DATE OF PROMOTION ORDERED BY MADRAS BENCH OF CAT AND UPHELD BY HON'BLE APEX COURT
1973 TO 1981	11.5.1981	11/12.3.1982	29.10.1984	19.6.1985	4 YEARS	12.9.1982 (6 MONTHS FROM DATE OF HOLDING THE LDCE EXAMINATION)
1996 TO 2001	16.5.2000 AND 28.12.2001	1.12.2002 (ORIGINALLY SCHEDULED TO BE HELD ON 23.7.2001)	15.12.2003	8.6.2004 (EXCEPT APPLICANT NO.16, WHO WAS PROMOTED ON 2.11.2007.	3 TO 4 YEARS	



15. The applicants before the Madras Bench were notionally promoted from 1.6.2003 i.e. six months from the date of holding the examination. In the present case, examination was held within one year of promoting senior quota officials but the declaration of results was delayed because of the Court proceedings. The examination was first scheduled on 23.7.2001 i.e. little later than 16.5.2000, the date on which first batch of seniority quota officials were promoted. Thereafter, it was postponed from time to time. It was finally held on 1.12.2002 and results were announced on 15.12.2003 i.e. after one year after holding the examination. It took six months to issue promotion orders. The candidates of vacancy year 1996-97 were promoted after four year of their counter parts in seniority quota were promoted. The end result is the same as in *SANTHANAKRISHNAN*'s case. Considering all these aspects, the Tribunal has directed the petitioners to assign notional date of promotion as SDEs to the respondents with effect from 23.1.2002 i.e. six months from 23.7.2001, the date on which the examination was announced to be held.

16. In *BALWANT SINGH NARWAL & OTHERS VS. STATE OF HARYANA & OTHERS - (2008) 7 SCC 728*, the



Apex Court has held that if the promotion of an employee is delayed because of the pendency of the Court proceedings, he shall be entitled to a deemed date of promotion viz., the date of promotion of their counter parts. In the present case, the Tribunal has directed the petitioners to grant consequential benefits such as counting of experience for the purpose of promotions, annual increments, etc., with effect from 23.1.2002. It has clarified that the respondents are not entitled to any arrears of pay from the date of such notional fixation on 23.1.2002 but will be entitled for arrears of pay from 1.4.2008 as the O.A. was filed only on 2.4.2009. We are of the view that the said order does not call for interference.

17. In the result, writ petitions fail and they are accordingly dismissed. No costs.

Sd/-
JUDGE

Sd/-
JUDGE



23-4-11

The date on which charges and additional BMM/Est-ans, are called for 4-7-11

Let The date on which charges and additional charges, if any, are deposited/paid 4-7-11

(d) The date on which the copy is ready 6-7-11

(e) The date of notifying ~~that~~ the copy is ready for delivery 6-7-11

(f) The date on which the applicant is required to appear on or before 8-7-11

(g) The date on which the copy is delivered to the applicant 6-7-11

(h) ~~transmitted to~~ filed

TRUE COPY

[Signature]
Section Officer
High Court of Karnataka
6/7/11