

REPORTABLE**IN THE SUPREME COURT OF INDIA****CIVIL APPELLATE JURISDICTION****CIVIL APPEAL NO.14967 OF 2017****VINOD VERMA****... APPELLANT(S)****VERSUS****UNION OF INDIA & ORS.****... RESPONDENT(S)****JUDGMENT****ASHOK BHUSHAN, J.**

This appeal has been filed against the judgment dated 03.12.2014 of the High Court of Punjab and Haryana at Chandigarh dismissing the writ petition filed by the appellant as well as the order dated 24.02.2016 rejecting the Review Application No.21 of 2016 filed by the appellant to review the judgment dated 03.12.2014.

2. Brief facts giving rise to the appeal need to be noted are:

Rules have been framed under proviso to Article

309 of the Constitution, namely, the Telecommunications Engineering Service (Group "B" Posts) Recruitment Rules, 1996 (hereinafter referred to as "Rules, 1996"). The post of Sub-Divisional Engineer is the post governed by the Rules, 1996. The post of Sub-Divisional Engineer is hundred percent promotional post. Junior Telecom Officers are eligible for promotion under two methods: (i) 75% on the basis of seniority-cum-fitness, (ii) 25% on the basis of departmental competitive examination. In the year 2000, the Telecommunication Department initiated the process for filling up of the vacancies "Post 1996-97". In the year 2001, the appellant was promoted as Sub-Divisional Engineer under the seniority-cum-fitness quota. The department announced the Limited Departmental Competitive Examination(LDCE)for promotion for the 25% quota for vacancies after 22.07.1996 which examination could be held on 01.12.2002. The department issued the promotion orders dated 26.04.2000 and 07.12.2001 for the officers promoted under the seniority-cum-fitness category for the vacancies occurring after 23.07.1996. The result of

Limited Departmental Competitive Examination was declared on 15.12.2003. The appellant also appeared in the Departmental Competitive Examination held on 01.12.2001. The promotion order dated 26.05.2004 was issued for the promotion of LDCE successful candidates. The order contemplated that the seniority of these officers will be fixed as per Rules shortly. DPC was again conducted and promotions were made against the 75% category for the subsequent years 2001-02 and 2002-03 on 16.09.2004. The seniority list of Sub-Divisional Engineers was issued on 12.01.2005 which seniority list became the subject matter of the challenge in various Benches of Central Administrative Tribunal. In Central Administrative Tribunal, Chandigarh Bench, TA No.84-HR-2009, Dewan Chand & Ors. vs. Union of India was filed. Before Central Administrative Tribunal, Bombay Bench, TA No.6 of 2009, S. Sadashivan vs. BSNL was filed. Before Central Administrative Tribunal, Ernakulam Bench, OA No.16 of 2009, Thomas Zachariah vs. BSNL and OA No.86 of 2009, V. Govindan vs. Union of India were filed. Chandigarh Bench of Central Administrative

Tribunal decided TA No.84-HR-20090 (Dewan Chand vs. Union of India) vide its judgment dated 25.08.2009. The Central Administrative Tribunal, Chandigarh allowed the Transfer Application. The applicants before the Tribunal were working as Sub-Divisional Engineers. The question raised was as to what would be the mode of fixation of seniority in TES Group 'B' between members of service who are appointed on the basis of seniority vis-a-vis those who enter the service after qualifying the Limited Departmental Competitive Examination. The Tribunal held that the seniority of the incumbents has to be determined on the basis of date of joining and not of the notional date of promotion. The applicants before the Tribunal belonged to the stream who were promoted under seniority-cum-fitness where few of the respondents who were impleaded before the Tribunal were those who were promoted Sub-Divisional Engineers vide order dated 26.05.2004 on the basis of Limited Competitive Departmental Examination. The Tribunal quashed the seniority list prepared by the department and directed for redrawing the seniority list on the basis of date of joining of the

incumbents. In paragraph 17 following was directed:

"17. In view of the above discussion, both these Original Applications are allowed. Orders/seniority lists impugned in these petitions are quashed and set aside. The respondents are directed to re-draw the seniority of officers of TES Group-B on the basis of dates of joining of incumbents, as discussed above, within a period of six months from the date of receipt of copy of this order. Before undertaking such exercise, respondents may invite objections from the persons likely to be adversely effected before re-drawing seniority as observed herein above. No costs."

3. The appellant was not the party to the said case in Dewan Chand vs. Union of India, TA No.84-HR-2009, hence, he filed the review petition before the Central Administrative Tribunal. The review petition was dismissed by the CAT on 18.01.2010. The Writ Petition No.5148-CAT of 2010 was filed by the appellant challenging the order dated 25.08.2009 and 18.01.2010 passed by the Central Administrative Tribunal, Chandigarh. The writ petition filed by the appellant was dismissed by the Punjab and Haryana High Court vide its judgment and order dated 03.12.2014. The High Court in its judgment dated 03.12.2014 held that controversy in the case stands settled by the decision dated 12.08.2014 rendered by

this Court in SLP(C)No.35756 of 2012 (BSNL and others vs. S. Sadasivan and others). Against the judgment dated 03.12.2014 SLP(C)No.18621 of 2015 was filed by the appellant which was disposed of on 16.10.2015 by this Court permitting the appellant to withdraw the SLP with liberty to file review application before the High Court. In pursuance of the order dated 16.10.2015 appellant filed a review application before the High Court which has been rejected on 24.02.2016. Aggrieved by the judgment dated 24.02.2016 and initial judgment dated 03.12.2014 this appeal has been filed by the appellant.

4. We have heard Shri C.A. Sundaram, learned senior counsel for the appellant. Shri Vikramjit Banerjee, learned Additional Solicitor General has appeared for the Union of India. Shri B.H. Marlapalle, learned senior counsel has appeared for BSNL. We have also heard Shri J.S. Attri, learned senior counsel for the respondents. Shri S. Sadasivan, who has filed application for intervention and appeared in-person has also been heard. There are several other applications seeking

impleadment in these proceedings. We do not find any necessity to implead applicants in these proceedings. IAs seeking impleadment in this appeal are refused.

5. Learned counsel for the appellant submits that the recruitment Rules, 1996 are silent about the seniority rules. It is submitted that the seniority has to be determined as per OM dated 22.12.1959 and various other subsequent OMs laying down rules for determination of seniority. It is submitted that as per Rules, 1996 there being 75% quota fixed for seniority-cum-fitness and 25% for LDCE, the ROTA rules have to be determined to decide the seniority between those who have been promoted under seniority-cum-fitness and those who have been promoted under LDCE. It is submitted that the LDCE candidates eligible for the year 1996-97 have to be placed senior to the candidates eligible for 1997-98, 1998-99 and so on. Learned counsel submits that OM dated 07.02.1986 and 07.02.1990 clarified that even if the promotions for two grades under General Principle 5(ii) takes place through separate DPC's, "...the principle of rotation of vacancies between different streams will have to be followed...".

6. It is submitted that **Union of India vs. N.R. Parmar, (2012) 13 SCC 340**, is clearly applicable. It is submitted that neither the Central Administrative

Tribunal nor the High Court has considered the relevant OM dated 22.12.1959 and subsequent OMs laying down principles of seniority due to which error has been committed in setting the seniority list finalized by the department. It is submitted that judgment of this Court in SLP(C)No.35756 of 2012(BSNL & Ors. vs. S. Sadasivan & Ors.) dated 12.08.2014 does not decide the issues raised before the Punjab and Haryana High Court. It is further submitted that the judgment of this Court in C.A.No.7830 of 2014(Bharat Sanchar Nigam Limited & Ors. Vs. S.K. Dubey & Ors.) decided on 12.08.2014 does not consider the relevant OMs determining the seniority. This Court in the said judgment fell in error in holding that ROTA rule is not applicable.

7. Learned counsel submits that the judgment of this Court in **Union of India vs. N.R. Parmar, (2012) 13 SCC 340**, has again been reiterated by this Court in its judgment dated 03.10.2018 in C.A.Nos.5518-5523 of 2017 (Punjab and Haryana High Court vs. State of Punjab) that when the quota has been prescribed under the statutory rules, the ROTA is

applicable automatically in the seniority. The appellant who was eligible earlier years for promotion has to be placed in the slot according to his eligibility and has to be given seniority of that position.

8. Learned Additional Solicitor General, Shri Vikramjit Banerjee submitted that the seniority list was drawn by the department in the ratio of 3:1 as per OM dated 03.07.1986. Seniority list Nos.6 and 7 were prepared affecting the Rules of ROTA and quota. Although there are statutory Rules, 1996 but the same were not for determining the seniority. The seniority was determined on the instructions issued by the Government of India, Department of Personnel and Training dated 03.07.1986. It is, however, submitted that although department has been supporting the seniority list based on ROTA and quota but after it was reversed by three-Judge Bench judgment of this Court dated 12.08.2014, the department and the BSNL has implemented the judgment.

9. Shri Marlapalle, learned senior counsel,

submits that the BSNL has been following the instructions of the department on the judgment of **S.K.Dubey (supra)** and if now the quota and ROTA rules are implemented it will cause new problems.

10. Learned counsel for promotees under 75% quota submits that promotions were initially governed by 1981 Rules where quota for seniority-cum-fitness was 2/3 and for LDCE was 1/3. The 1981 Rules provided for ROTA rules and further provided that examination has to be held every year. Rules, 1981 were replaced by the Rules, 1996 which do not indicate that examination has to be held every year. Further, Rules, 1996 do not provide for ROTA.

11. Learned senior counsel further submits that the issue raised in this appeal is covered by judgments of this Court dated 12.08.2014 (BSNL & Ors. vs. S.K. Dubey & Ors.) and judgment dated 12.08.2014 in Transferred Case No..... of 2014 (arising out of T.P(C)No.184 of 2013), Rajesh Banta & Ors. vs. Dewan Chand & Ors. Learned counsel submits that quota of 75% and 25% is applicable but ROTA is not applicable.

12. Shri S. Sadasivan, who appeared as intervener submits that benefit of judgment of larger Bench cannot be taken away by any order in this appeal. He submits that the present is not a case of any direct recruitment. Further, different grades are not available in the present promotion exercise. He submits that OM dated 03.07.1986 is for direct recruitment.

13. We have considered the submissions of learned counsel for the parties and perused the records.

14. The statutory rules, namely, the Telecommunications Engineering Service (Group "B" Posts) Recruitment Rules, 1996 have been framed under proviso to Article 309 according to which the post of Sub-Divisional Engineer(SDE) is a post which is to be filled up by 100% promotion. Schedule to the Rules in Column 11 provides as follows:

"Promotion:

- (i) 75% on the basis of seniority-cum-fitness.
- (ii) 25% on the basis of a departmental competitive examination."

15. In the seniority list Nos.7 and 8, the inter se

seniority of SDE promoted through seniority-cum-fitness and LDCE was fixed by the department in the ratio of 3:1 as per OM dated 03.07.1986 which was sought to be challenged in the present case, where the appeal has arisen out of the order passed by the Chandigarh Bench of Central Administrative Tribunal. In TA No.84-HR-2009 (Dewan Chand vs. Union of India), the applicants who had approached the Tribunal were promoted under seniority-cum-fitness and they were allocated to the seniority position below the promotees under LDCE quota under which they were given seniority slots earlier to date of promotion. The Tribunal had allowed the TA No.84-HR-2009 and set aside the seniority list and directed for drawing the seniority list on the basis of date of joining of the incumbents. The appellant who claims seniority position as per occurring of vacancy for LDCE quota is aggrieved by the direction of the Tribunal.

16. A perusal of Rules, 1996 indicates that Rules, 1996 provides for the method of recruitment, age and other qualifications. The Rules which have been brought on record as Annexure P-8 to the appeal do

not contain any provision relating to determination of seniority. The statutory Rules, 1996 being silent on the question of determination of seniority, Shri Sundaram is right in his submission that for determination of seniority OMs dated 22.12.1959, 24.06.1978, 07.02.1986, 03.07.1986 and 07.02.1990 have to be looked into. It is settled law that the determination of seniority can be provided by the Executive instructions if the subject matter is not covered by the statutory rules.

17. It is to be noted that the High Court has dismissed the writ petition filed by the appellant challenging the order of the CAT dated 25.08.2009 holding that the issue is covered by the judgment of this Court in **BSNL vs. S. Sadashivan**. It is necessary to look into the judgment of this Court in **BSNL vs. S. Sadashivan** and proceeding giving rise to this Court's order dated 12.08.2014. Shri S. Sadashivan before CAT, Bombay Bench, Mumbai has challenged the validity of the seniority list dated 28.07.2004. In seniority list Nos.6 and 7 of Telecommunication Engineers Group "B" S. Sadashivan was promoted under 75% quota on 07.12.2001. On 01.12.2002 Limited

Departmental Competitive Examination was held for 25% quota, result of which was declared on 15.12.2003. Thereafter, seniority list Nos.6 and 7 were issued. The case of S. Sadasivan was that seniority of the applicant was below to who was subsequently promoted on 26.05.2004. It is relevant to notice that the Central Administrative Tribunal, Bombay Bench allowed the application vide its judgment dated 25.11.2010 and set aside the seniority list. The respondents were directed to recast the seniority list on the basis of the order given by the Chandigarh Bench of CAT in Dewan Chand's case, (which is the order of the Tribunal which has given rise to the present appeal) against which order BSNL filed Writ Petition No.3725 of 2011 which was dismissed by the Bombay High Court on 21.06.2011.

18. Against the order of the Bombay High Court dismissing the writ petition matter was taken to this Court by filing SLP(C)No.35756 of 2012 (BSNL & Ors. vs. S. Sadasivan & Ors.). This Court on 12.08.2014 dismissed the said SLP by passing the following order:

"SLP (C) No.35756 OF 2012

In paragraph 3 of the impugned order, the High Court has observed thus:

"The question is : whether the Tribunal was right in answering the controversy on the principal that the correct date for reckoning seniority of the respondent ought to be taken as 7th December, 2001 which is his date of joining. In our opinion, there is no infirmity in the said view taken by the Tribunal."

We find no infirmity with the above view taken by the High Court. Special leave petition is, accordingly, dismissed."

19. The order of the CAT, Bombay which was passed issuing direction for casting of the seniority on the basis of the judgment of Dewan Chand passed by CAT, Chandigarh, thus, has been received final approval by this Court.

20. At this stage, we may consider one more submission which has been raised by the learned counsel for the respondents. The submission which has been raised by the learned counsel for the respondents is that a three-Judge Bench of this Court in BSNL vs. S.K. Dubey (*supra*) has finally determined the controversy and held that ROTA rule will not be applicable for determining the seniority

of Sub-Divisional Engineers. We may notice the judgment of this Court dated 12.08.2014 in BSNL vs. S.K. Dubey in some detail. BSNL has filed the appeal. In the said appeal the challenge was made to the order of CAT, Jabalpur which directed the appellant, BSNL to assign the notional date of promotion to Sub-Divisional Engineers which order was set aside by this Court by the said judgment.

Paragraphs 2 to 4 of the judgment are as follows:

"2. This appeal by special leave is directed against the order of the Central Administrative Tribunal, Jabalpur, whereby the original application filed by the respondents herein was allowed and the direction has been given to the present appellants (respondent therein) to assign the notional date of promotion as Sub Divisional Engineers (SDEs) with consequential benefits such as counting of experience for further promotions, annual increments etc. to the original applicants with effect from 23.01.2002.

3. The order passed by the Central Administrative Tribunal cannot be sustained for more than one reason. In the first place, there is no rule with regard to the subject service which gives benefit of assigning the notional date of promotion with retrospective effect. The present respondents were employees of the Department of Telecommunications, Government of India and were working as Junior Telecom Officers prior to 1996. In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the Telecommunications

Engineering Services (Group 'B') Recruitment Rules, 1996 were made with effect from 22.07.1996. Inter alia, these rules provide for method of recruitment, age limit and other qualifications for the recruitment by way of promotion to the post of TES Group 'B'.

4. As per these Rules, 75% promotion is to be made on the basis of seniority-cum-fitness from amongst Junior Telecom Officers with three years regular service in the Grade and 25% is to be promoted on the basis of Departmental Competitive Examination from Junior Telecom Officers with three years regular service in the Grade. The crucial date for determining the eligibility is 1st July of the year to which the vacancy pertains. 1996 Recruitment Rules do not provide for ROTA nor does it provide for holding Departmental Competitive Examination for the vacancies every year in contradistinction to the earlier Rules of 1981 entitled Telegraph Engineering Service (Group 'B' Posts) Recruitment Rules, 1981. 1981 Rules, inter alia, had a provision that inter se seniority of the officials who have qualified in the Departmental Qualifying Examination shall be in the ratio of 2:1 starting with the officers selected by the method of selection by Departmental Promotion Committee on the basis of Departmental Qualifying Examination. It also provided that there shall be normally one examination consisting of two parts called Qualifying-cum-Competitive Examination for promotion to the service which shall be held at least once in a calendar year. The ROTA rule as well as holding the examination at least once in a calendar year which were provided in the 1981 Rules are conspicuously absent in the 1996 Rules. The validity of the 1996 Rules has not been put in issue by any one."

21. This Court further held that in the absence of any express provision in the rules, no promotion or seniority can be granted from a retrospective date when the employee has not been born in the cadre.

22. There is one more reason to hold that the present appeal is covered by three-Judge Bench judgment of this Court dated 12.08.2014. Against the judgment of Tribunal in TA No.84-HR-2009 (Dewan Chand vs. Union of India) a writ petition was filed in Punjab and Haryana High Court being CWP No.5133/CAT of 2010 (Rajesh Banta and others vs. Central Administrative Tribunal and others). Thus, in the said writ petition the same order of the Tribunal dated 25.08.2009 was under challenge which has been challenged by the appellant herein. This Court transferred CWP No.5133/CAT of 2010 (Rajesh Banta and others vs. Central Administrative Tribunal and others) by Transferred Case (Civil) No.....of 2014(arising out of T.P.(C)No.184 of 2013) and by the judgment dated 12.08.2014, the three-Judge Bench dismissed the writ petition which was filed challenging the order of the CAT in Dewan Chand. The

order of this Court is brought on record at pages 181-182 of the paper book which is to the following effect:

"TRANSFERRED CASE (CIVIL) NO. OF 2014
(Arising out of T.P.(Civil) No.184 of 2013)

RAJESH BANTA & ORS. PETITIONER(S)
VERSUS
DEWAN CHAND & ORS. RESPONDENT(S)

O R D E R

Transfer petition is allowed. Writ Petition being C.W.P. No.5133/CAT-2010 titled "Rajesh Banta and Others v. Central Administrative Tribunal and Others" is transferred from Punjab and Haryana High Court to this Court and is treated as Transferred Case.

2. We have heard Mr. Sunil Kumar, learned senior counsel for the petitioners.

3. For the reasons stated by us in our order passed today in Civil Appeal arising out of SLP(C) ...2/- -2- No.39932 of 2012 titled 'Bharat Sanchar Nigam Ltd. & Ors. vs. S.K. Dubey & Ors.', the transferred case is liable to be dismissed and is dismissed accordingly. No costs.

.....CJI.
(R.M. LODHA)

.....J.
(KURIAN JOSEPH)

NEW DELHI;J.
AUGUST 12, 2014 (ROHINTON FALI NARIMAN)"

23. When three-Judge Bench of this Court following

the pronouncement in BSNL & Ors. vs. S.K. Dubey & Ors., judgment of the same day, has dismissed the writ petition against the same very judgment of the CAT of Chandigarh Bench in Dewan Chand vs. Union of India, the fate of this appeal is sealed by the said judgment by dismissing the writ petition against the order of the Central Administrative Tribunal, Chandigarh Bench in TA No.84-HR-2009. The writ petition filed by the appellant has to meet the same fate. In view of the facts as noticed above that the controversy raised in this appeal is covered by three-Judge Bench judgment dated 12.08.2014 we see no necessity to delve into various other arguments raise in this appeal. We are not persuaded to take any different view to one which has been taken by three-Judge Bench as noted above.

24. We, thus, hold that the present appeal deserves to be dismissed in view of the judgment of this Court dated 12.08.2014 Transferred Case (Civil) No..... of 2014(arising out of T.P.(C)No.184 of 2013)(Rajesh Banta & Ors. vs. Dewan Chand & Ors.) and judgment of the three-Judge Bench of this Court in BSNL & ors. vs. S.K. Dubey & Ors. decided on 12.08.2014. The

appeal is, accordingly, dismissed.

.....J.
(ASHOK BHUSHAN)

.....J.
(K.M. JOSEPH)

New Delhi,
April 02, 2019.