

Supreme Court - Daily Orders

B.S.N.L. vs S.Sadasivan on 12 August, 2014

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.7830 OF 2014
(Arising out of SLP(C) No.39932 of 2012)

BHARAT SANCHAR NIGAM LIMITED & ORS.

APPELLANT(S)

VERSUS

S.K. DUBEY & ORS.

RESPONDENT(S)

O R D E R

Leave granted.

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. Signature Not Verified Digitally signed by NEETU KHAJURIA

3. The order passed by the Central Date: 2014.08.30 13:28:20 IST Reason:

Administrative Tribunal cannot be sustained for more ...2/-

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 ...3/-

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 contra-distinction 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 ...4/-

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.

5. Secondly, it is pertinent to notice that with effect from 1.10.2000, the present appellant, Bharat Sanchar Nigam Limited (for short 'B.S.N.L.'), came into existence. The Telecommunication Department was bifurcated and the telecommunication services were transferred to the appellant-company. B.S.N.L. in 2002 framed Recruitment Rules of the Sub Divisional Engineers (Telecom), which came into effect on 1.3.2002. Rule 8 of the 2002 Rules has not saved 1996 Rules, save and except reservation, relaxation of age limit and concessions required to be provided for the Scheduled Castes and Scheduled Tribes, other Backward Classes, Ex-service men and other special categories ...5/-

of persons. In the absence of any rule, either in 1996 Rules or in 2002 Rules, providing for assignment of promotion on notional basis, the view taken by the Central Administrative Tribunal is not correct.

6. The Tribunal relied upon the decision of this Court in *Union of India and Another v. J. Santhanakrishnan and Others*, (2007) 15 SCC 694, which has no application in the present fact situation. Santhanakrishnan's case (supra) relates to the 1981 Rules which as noted above provided for ROTA as well as holding the examination at least once in a calendar year. It was in that situation that this Court approved the view of Central Administrative Tribunal at Madras giving the notional date of promotion. The 1996 Rules and 2002 Rules being substantially and significantly different from the 1981 Rules, the decision of this Court in *Santhanakrishnan* has no application at all.

...6/-

7. Moreover, it is well settled principle in service jurisprudence that a person appointed on promotion shall not get seniority in earlier year but shall get a seniority of the year in which his/her appointment is made. 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. It is

common ground that 1996 Rules or 2002 Rules have nothing to do with inter se seniority between promotees of 75% quota based on seniority-cum-fitness and 25% promotion on the basis of Departmental Competitive Examination.

8. In view the above, it is held that the view of the Central Administrative Tribunal, Bangalore Bench in original application No.181 of 2009 decided on 26.04.2010 and the decision of the Karnataka High Court dated 21.04.2011 affirming the decision of the Tribunal dated 26.04.2010 are not correct view and do not lay down the correct legal position. Since the ...7/-

special leave petition from that judgment was dismissed by this Court on 25.08.2011 and a petition seeking review of that order has also been dismissed, the benefit of notional promotion given to 124 employees with effect from 23.01.2002 remains unaffected, but the benefit of the above decisions cannot be given to the present respondents in view of the legal position explained above.

9. Civil appeal is, accordingly, allowed. The judgment is set aside. The parties shall bear their own costs.

.....CJI. (R.M. LODHA)J. (KURIAN JOSEPH) NEW DELHI;
.....J. AUGUST 12, 2014 (ROHINTON FALI NARIMAN) IN THE SUPREME COURT OF INDIA CIVIL ORIGINAL JURISDICTION 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/-

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)

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ITEM NO.1	COURT NO.1	SECTION IX
S U P R E M E C O U R T O F		I N D I A
R E C O R D O F P R O C E E D I N G S		
Petition(s) for Special Leave to Appeal (C)	No(s).	35756/2012

(Arising out of impugned final judgment and order dated 21/06/2011 in WP No. 3725/2011 passed by the High Court Of Bombay) B.S.N.L.& ORS. Petitioner(s) VERSUS S.SADASIVAN & ORS Respondent(s) (With application for permission to file additional documents, prayer for interim relief and office report) WITH SLP(C) No. 35927-35928/2012 (With Office Report) SLP(C) No. 35930-35931/2012 (With appln.(s) for intervention and Office Report) SLP(C) No. 39932/2012 (With appln.(s) for directions, prayer for interim relief and Office Report) T.P.(C) No. 184/2013 (With appln.(s) for stay and Office Report) SLP(C) No. 21416/2013 (With appln.(s) for Office Report) Date : 12/08/2014 These petitions were called on for hearing today. CORAM :

HON'BLE THE CHIEF JUSTICE HON'BLE MR. JUSTICE KURIAN JOSEPH
HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN For Petitioner(s) Mr. R.D.
Agrawala, Sr. Adv.

Mr. Pavan Kumar ,Adv.

Ms. Neelam, Adv.

Mr. P.A. Kulkarni, Adv.

Mr. Khwairakpam Nobin Singh ,Adv. Mr. Rajshekhar Rao, Adv.

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Ms. Zehra Khan, Adv.

Mr. Senthil Jagadeesan ,Adv.

Mr. Govind Manoharan, Adv.

Mr. Sunil Kumar, Sr. Adv.

Mr. Manish Kumar, Adv.

Mr. Piyush Kaushik, Adv.

Mr. Rakesh K. Sharma, Adv.

For Respondent(s) Mr. S. Sadasivan, In-person Mr. Jayant Kumar Mehta ,Adv.

Mr. S. Beno Bencigar, Adv.

Mr. P. Rajendran, Adv.

Mr. P. Soma Sundaram ,Adv.

Mr. Sanjay Jain ,Adv.

Mr. Rameshwar Prasad Goyal ,Adv. Mr. P.A. Kulkurni, Adv.

Mr. Sapam Biswajit, Adv.

Mr. Ashok Kumar Singh ,Adv.

Mr. Adhyaru Yashwant, Sr. Adv.

Ms. Malini Poduval ,Adv.

Ms. Babita Sant, Adv.

Mr. W.A. Quadri, Adv.

Ms. Sadhana Sandhu, Adv.

Mr. D.S. Mahra, Adv.

UPON hearing the counsel the Court made the following O R D E R 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

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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.

SLP(C) 35927-35928 OF 2012 The view taken by the Kerala High Court does not suffer from any legal infirmity. Special leave petitions are, accordingly, dismissed.

SLP(C) 35930-35931 OF 2012 The view taken by the Kerala High Court that a person appointed on promotion shall not get a seniority of an earlier year and that the date of occurrence of vacancy is not relevant for that purpose, in the absence of the rule to the contrary, is a correct view.

The challenge to the legality of the order on merits is misconceived and misplaced. However, insofar as petitioners are concerned, it is clarified that their notional promotion with effect from 23.01.2002 will not be affected in view of Order dated 21.04.2011 passed by the High Court of Karnataka in Writ Petition Nos. 37322

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of 2010 and other connected matters and the said order of the High Court having not been interfered by this Court in Special Leave Petition (Civil) No.22720 of 2011 titled M.D.-cum-Chairman, BSNL and Another v. K.S. Premakumar and Others.

The present special leave petitions are disposed of as above. In view thereof, no separate order needs to be passed on the applications for intervention (I.A. Nos. 108-109). These are disposed of accordingly.

SLP(C) No.39932 of 2012 Leave granted.

Civil appeal is allowed in terms of the signed order.

SLP(C) No.21416 OF 2013 The view taken by the Kerala High Court does not suffer from legal infirmity and, accordingly, special leave petition is dismissed.

T.P.(C) No.184 OF 2013 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

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Court and is treated as Transferred Case. We have heard Mr. Sunil Kumar, learned senior counsel for the petitioners.

For the reasons stated by us in our order passed today in Civil Appeal arising out of SLP(C) 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.

(Neetu Khajuria)
Sr.P.A.

(Renu Diwan)
Court Master

(Signed orders in C.A. @ SLP(C) No.39932/2012 and T.C. @ T.P.(C) No.184/2013 are placed on the file)