

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CWP No. 14817 of 2009 (O&M)
and connected petitions.

Date of Decision: November 25, 2011

Bharat Sanchar Nigam Limited and another

...Petitioners

Versus

Central Administrative Tribunal, Chandigarh Bench, Chandigarh and
others

...Respondents

CORAM: HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE GURDEV SINGH

Present:

For the petitioner(s): Mr. Anil Rathee, Advocate,
Mr. Rakesh Verma, Advocate,

For the respondent(s): Mr. Rajiv Atma Ram, Senior Advocate,
with Mr. Animesh Sharma, Advocate,
Mr. Girish Agnihotri, Senior Advocate,
with Mr. Vijay Pal, Advocate, and
Ms. Binayjeet Sheoran, Advocate,
Mr. Mandeep Sajjan, Advocate,
Mr. Rajshekhar Rao, Advocate,
Mr. Arun Bhardwaj, Advocate,
Mr. Sanjeev Pandit, Advocate,

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

M.M. KUMAR, J.

1. This judgment shall dispose of a bunch of petitions*, which are directed against similar orders passed by the Chandigarh Bench of the Central Administrative Tribunal (for brevity, 'the Tribunal'). The facts, however, are being taken from the order dated 26.5.2009, passed in TA No. 47/PB/09 (CWP No. 13898 of 2007).

2. Before the Tribunal, the claim made by the original applicant-respondent was that they have been members of the Telegraph Engineering Service Class II before enforcement of Telegraph Engineering Service (Class II) Recruitment Rules, 1966 (for brevity, 'the 1966 Rules'). There used to be a cadre known as 'Engineering Supervisor Telecom', which was later on re-designated as 'Junior Engineer' and promotion from the aforesaid cadre used to be made to the post of 'Assistant Engineer' in accordance with Paragraph 206 of the P&T Manual Volume-VI. In the absence of statutory rules, the executive instructions used to govern promotion and other exigencies of service concerning Assistant Engineers. Those who had passed the qualifying examination earlier were to rank senior as a group to those who passed the examination on subsequent occasions. Their *inter se* seniority, however, used to be determined according to their seniority in the cadre of Engineering Supervisor @ Junior Engineer.

3. The whole controversy was set in motion when a Division Bench of Allahabad High Court rendered a judgment in the case of **Parmanand Lal and Brij Mohan v. Union of India** (WP Nos. 2739 and 3652 of 1981, decided by the Lucknow Bench on 20.2.1985). The claim made by Parmanand and his associates in the aforesaid petition was that he had been wrongly placed in the eligibility list below the last person who passed the qualifying examination in the year 1975, whereas he had qualified the examination held in the year 1974. The writ petition was allowed by the Division Bench of the Allahabad High Court holding that those who qualified the departmental examination earlier were entitled to be promoted prior to those who qualified it later irrespective of their *inter se*

seniority in the cadre of Engineering Supervisor @ Junior Engineer. The Division Bench further held that there was no conflict between Paragraph 206 of the P&T Manual either with the 1966 Rules or any other rules. Against the aforesaid Division Bench judgment, Special Leave Petition Nos. 2284-86 of 1986 (Union of India and others v. Parmanand Lal and others) was dismissed by Hon'ble the Supreme Court on 8.4.1986 and accordingly the view of the Allahabad High Court attained finality.

4. The Chandigarh Bench of the Tribunal allowed O.A. No. 1416/PB/1991, titled as Nand Lal Jaswal v. Union of India, which was filed by the original applicant-respondents in terms of the judgment of the Allahabad High Court. Those directions have attained finality. Accordingly, they were informed vide order dated 22.3.1993 that their seniority was being revised as per Paragraph 206 of the P&T Manual to implement the judgment of the Allahabad High Court and various Tribunals.

5. It is pertinent to mention here that a contrary view was taken by Hon'ble the Supreme Court in the case of Union of India v. Madras Telephone S.C. & S.T., Social Welfare Association, (2000) 9 SCC 71 [for brevity, '2000 Madras case (supra)']. However, in para 17 of the judgment, Hon'ble the Supreme Court clarified that although the view taken in **Parmanand Lal and Brij Mohan (supra)** by the Division Bench of Allahabad High Court was not sustainable in the eyes of law but the persons who have already got benefit like Parmanand and Brij Mohan by virtue of judgments in their favour were not to suffer and their promotion already made was to remain un-affected by the later judgment of Hon'ble the Supreme Court rendered in **2000 Madras case (supra)**.

6. It is a conceded fact that the respondents had already been promoted in the year 1993. After a long period they were informed vide order dated 19.3.2007 by the petitioner-BSNL that the benefit of the judgment of Hon'ble the Supreme Court in **2000 Madras case (supra)** was to be given only to those persons who were applicants in the Interlocutory Application No. 16 in the aforesaid appeals before the Supreme Court and not to others. Thus, the petitioner-BSNL did not protect their promotion and seniority, which was revised while implementing the judgment of Allahabad High Court as protected by Hon'ble the Supreme Court.

7. Feeling aggrieved, they firstly approached this Court and when notification was issued conferring jurisdiction on the Tribunal in respect of matters relating to the petitioner-BSNL then the writ petition was transferred to the Tribunal. The Tribunal considered the grievance of the applicant-respondents and noted that they had earlier filed O.A. No. 1416/PB/1991 before the Chandigarh Bench of the Tribunal, which was decided on 9.9.1998 and the Tribunal had held that the decision of the Supreme Court in the case of **Telecommunication Engineering Service Association (Regd.) v. Union of India, 1994 Supp (2) SCC 222**, took the view that the judgment in **Parmanand Lal and Brij Mohan (supra)** had attained finality. It would be pertinent to notice para 6 of the judgment, which reads as under:

“6. So far as the first point is concerned, it appears that the interventionists filed parallel proceedings through Junior Telecom Officer's Forum v. Union of India and this Court (J.S. Verma and Anand, JJ) in an elaborate judgment took the same view as that of the Allahabad

High Court noticed by the Principal Bench of the Tribunal in the aforesaid case of Parmanand Lal and Brij Mohan which has become final and has been upheld by this Court on merits. It is thus not necessary to dwell on the first question decided by the Principal Bench any further.”

8. Accordingly, the Tribunal disposed of the controversy and opined that the department had complied with the decision of the Supreme Court holding that the issue was no longer *res integra*. The decision of Hon’ble the Supreme Court in **Telecommunication Engineering Service Association’s case (supra)** was implemented and acted upon, as a consequence, the Tribunal dismissed the original application as infructuous. The Tribunal observed that Hon’ble the Supreme Court in the **2000 Madras case (supra)** had protected those promotions which had already been made before the date of that judgment. The Tribunal appears to have followed the directions issued by Hon’ble the Supreme Court in para 17 of the judgment, which reads as under:-

“17.In this view of the matter, we are of the considered opinion that the judgment of this Court in Civil Appeal No. 4339 of 1995 has rightly been decided in interpreting the relevant provisions of the Recruitment Rules read with the procedure prescribed under the memorandum dated 28.6.1966. We, however, make it clear that the persons who have already got the benefit like Parmanand Lal and Brij Mohan by virtue of the judgments in their favour, will not suffer and their promotion already made will not be affected by this

judgment of ours.”

9. As the applicant-respondents were promoted in the year 1993, the petitioner-BSNL was not permitted to take shelter of a newly invented device, namely, unless you are a party to Interlocutory Application No. 16, the applicant-respondents were not protected. The Tribunal rejected the aforesaid stand and concluded in para 9 as under:-

“A large number of Junior Telecom Officers similarly placed had filed similar applications and the Supreme Court by an order dated 14.5.1993 stayed all the proceedings in the courts till their decision. The decision of the Supreme Court was handed down on 13.5.1994 in SLP No. 16698 of 1992 reported as 1994 Supp (2) SCC 222 and since then the Department has complied with the decision of the Supreme Court in the matter.

The issue in this case is no longer at large and it has been decided upon and implemented. In these circumstances, the present Original Application is dismissed as infructuous.”

10. Mr. Anil Rathee, learned counsel for the petitioner-BSNL has sought to re-open the issue on the basis of primacy of Rules over Paragraph-206 of the P&T Manual. In that regard he has drawn our attention to the order passed by Hon'ble the Supreme Court while dismissing the Special Leave Petition, which was directed against the judgment in **Parmanand Lal and Brij Mohan (supra)**. Learned counsel has emphasised that the special leave petition was dismissed in the facts and circumstances of that case and no general principle of law was laid down. The aforesaid order dated

8.4.1996 dismissing the special leave petition of the petitioner-BSNL against the Division Bench judgment of Allahabad High Court in **Parmanand Lal and Brij Mohan (supra)** is available on record (R-4). Learned counsel then pointed out that the judgment in **Parmanand Lal and Brij Mohan (supra)**, in any case has been overruled in the **2000 Madras case (supra)** and, therefore, no benefit could be derived from the judgment in **Parmanand Lal's case (supra)** and the applicant-respondents were erroneously promoted in the year 1993. He has also relied upon various observations made in the judgment in **2000 Madras case (supra)** to reiterate their stand and argued that this judgment put the proposition of law beyond any reasonable doubt that the seniority of Telegraph Engineering Service Class II has to be determined not on the basis of the date of passing the examination as was provided in Paragraph-206 of the P&T Manual but in accordance with the 1966 Rules.

11. It has been further pointed out that the benefits granted under the judgment rendered in **Telecommunication Engineering Service Association's case (supra)** were freezed upto 13.2.1997 after the **2000 Madras case (supra)**, which has been clarified by the later judgments. Learned counsel argued that the beneficiary of the judgment of Allahabad High Court in the case of **Parmanand Lal and Brij Mohan** could only be taken by those who were parties to the litigation because the aforesaid judgment of Allahabad High Court had attained finality on account of dismissal of SLP on 8.4.1986.

12. Reliance has also been placed on the observations made in paras 14 and 18 of the judgment of Hon'ble the Supreme Court rendered in **Union of India v. Madras Telephone S.C. & S.T. Social**

Welfare Association, (2006) 8 SCC 662 [for brevity, '2006 Madras case (supra)']. According to learned counsel, in order to secure benefit of the judgment rendered in the case of Junior Telecom Officers Forum v. Union of India, 1993 Supp (4) SCC 693, two conditions must be fulfilled, namely, that there should be an order either by the Tribunal or High Court or by Hon'ble the Supreme Court and that the aforesaid order should have been implemented by giving promotion and seniority to such officer. It is only in the aforesaid circumstances that the benefit given before 13.2.1997 could remain intact. In that regard reliance has been made on the observations made by Hon'ble the Supreme Court in the contempt proceedings in the case of Promotee Telecom Engineers Forum v. D.S. Mathur, Secretary, Department of Telecommunications, (2008) 11 SCC 579. However, learned counsel has conceded on facts that the benefit of a Division Bench judgment of Allahabad High Court was given by the petitioner-BSNL to a large number of persons, who may also be included in the list of respondents from 15 to 482. It is also not disputed that some of the private respondents had filed OA No. 1416/PB/1991 before the Chandigarh Bench of the Tribunal. On account of the pendency of some matter before Hon'ble the Supreme Court the proceedings had been stayed and eventually on 9.9.1998 (R-2), an order was passed by the Tribunal observing as under:-

"3. A large number of Junior Telecom Officers similarly placed had filed similar applications and the Supreme Court by an order dated 14.05.1993 stayed all the proceedings in the Courts till their decision. The decision of the Supreme Court was handed down on

13.5.1994 in SLP No. 16698 of 1992 reported as 1994 Supp (2) SCC 222 and since then the Department has complied with the decision of the Supreme Court in the matter.

4. The issue in this case is no longer at large and it has been decided upon and implemented. In these circumstances, the present Original Application is dismissed as infructuous.”

13. The aforesaid order having been passed on 9.9.1998, according to the learned counsel, would not enure to the benefit of the private respondents because all the benefits should have been conferred on or before 13.2.1997.

14. The other argument raised by Mr. Rathee, learned counsel for the petitioner-BSNL, is that necessary parties have not been impleaded and the original application was filed beyond the period of limitation of one year as contemplated by Section 21 of the Administrative Tribunal Act, 1985.

15. Mr. Arun Bhardwaj, learned counsel for the added respondents, has supported the arguments of Mr. Anil Rathee to the extent that only 6 persons are entitled to the benefits of the judgment of the Allahabad High Court, who had succeeded in litigation before the Tribunal, High Court or Hon'ble the Supreme Court and those order stand implemented. According to learned counsel, the added respondents constitute an exclusive class comprising of about 45 persons. They had succeeded by virtue of the Division Bench judgment of Allahabad High Court rendered in the case of **Parmanand Lal and Brij Mohan (supra)**. Learned counsel has maintained that when the judgment in the contempt matter

titled as **Promotee Telecom Engineers Forum's case (supra)** was delivered, the issue of seniority was reopened asserting that seniority cannot be fixed in accordance with Paragraph-206 of the P&T Manual but it has to be determined in accordance with the Recruitment Rules, which were framed under the proviso to Article 309 of the Constitution. Accordingly, their names in the provisional seniority list were proposed to be placed below their juniors, namely, Bilani, Biradar and Kulkarni. In order to avoid any finalisation of seniority by pushing them down to the aforesaid persons, CP No. 210 of 2001 was filed before Hon'ble the Supreme Court, which was withdrawn with liberty to file appropriate proceedings. Thereafter, OA No. 1914 of 2001 was filed before the Delhi Bench of the Tribunal and the same was dismissed in 2002. The order passed by the Delhi Bench of the Tribunal was challenged before the Delhi High Court in WP (C) No. 7399 of 2002, which was dismissed with the observation that they have to move Hon'ble the Supreme Court. Accordingly, SLP No. 9189 of 2002 was filed, which again stood withdrawn by them with permission to file interlocutory application. As a result they eventually filed I.A. No. 16 in Civil Appeal No. 4339 of 1995, which resulted in the judgment rendered in the **2006 Madras case (supra)**. Placing reliance on paragraphs 14, 15, 17 and 19, learned counsel has argued that the benefit of the order passed in **Junior Telecom Officers Forum's case (supra)** and the Division Bench of Allahabad High Court in **Parmanand Lal and Brij Mohan's case (supra)**, could only be granted to added respondents, which constitute an exclusive separate class. Mr. Bhardwaj has also submitted that despite filing of interlocutory application and clear directions, the benefit of the same was not granted, which resulted

in filing CP No. 248 of 2007, reported as **Promotee Telecom Engineers Forum's case (supra)**. In support of his submission, reliance has been placed on paras 15, 17, 18 and 19, proving that added respondents are not to be shown junior to Sarvshri Bilani, Birader and Kulkarni. According to the learned counsel, no one else could be put over and above added respondents. They are, in fact, under the protected umbrella of the order of Hon'ble the Supreme Court. Learned counsel has maintained that in 16 cases, no O.A. has been preferred by the private respondents and O.A. No. 1416/PB/1991 was filed only by six persons and, therefore, they are not entitled to claim the benefit of the judgment rendered by a Division Bench of Allahabad High Court in the case of **Parmanand Lal and Brij Mohan (supra)** or any other subsequent judgments because there was no order passed in those 16 cases by the Court i.e. Tribunal, High Court or Hon'ble the Supreme Court. In support of his submissions, learned counsel has placed reliance on an unreported judgment of Madras High Court rendered by a learned Single Judge in WP Nos. 6420 to 34430 of 2007, which have taken the view that only those who have successfully filed litigation upto 13.2.1997 were entitled to the benefit. Learned counsel has maintained that the private respondents were neither successful litigant before any Court of law nor they were beneficiary of order dated 22.3.1993 (Annexure P-1 with CWP No. 13898 of 2007). Learned counsel has submitted that they must be governed by the Recruitment Rules framed under proviso to Article 309 of the Constitution as has been held by Hon'ble the Supreme Court in **2006 Madras case (supra)**.

16. Mr. Rajshekhar Rao and Mr. Animesh Sharma appearing

for respondent Nos. 36 to 512 (in CWP No. 14817 of 2009) raised various submissions. The first argument raised by them is that the question concerning seniority of the Telegraph Engineering Service is no longer *res integra* and the writ petition filed by the petitioner-BSNL is wholly misconceived. According to the learned counsel the pivotal issue emerges for consideration is whether the respondents could secure the benefit of seniority, which has been fixed in 1993 in accordance with the judgment rendered by the Division Bench of Allahabad High Court in the case of **Parmanand Lal and Brij Mohan (supra)**, although they may not have any judgment or direction in their favour by any Court or Tribunal. They have argued that the issue has been settled by the observations made by Hon'ble the Supreme Court in **2000 Madras case (supra)**. In that regard reliance has been placed on paras 17, 18 and 19. In support of their submission learned counsel have also argued that the issue has been clarified even in subsequent judgment rendered in the **2006 Madras case (supra)** while disposing of I.A. No. 16 in C.A. No. 4339 of 1995. The aforesaid application was filed by the so called 'Exclusive Club of 45 Telegraph Engineers', who in the present proceedings are represented by Mr. Bhardwaj. In that regard reliance has been placed on paras 18 to 22 of that judgment. The aforesaid principles have also been reiterated and the contention of the petitioner-BSNL has been negated subsequently in **Promotee Telecom Engineers Forum's case (supra)**. The contention of the petitioner-BSNL has been rejected when it was argued that the benefit of the judgment in **Parmanand Lal and Brij Mohan (supra)** was restricted only to those who were parties to particular petitions. In that regard specific reliance has been made on the observations

made in paras 15 and 16.

17. Another submission advanced by the learned counsel for the promotee respondents is that the seniority and promotion ordered in their favour in the year 1993, in pursuance to the Division Bench judgment of Allahabad High Court in the case of **Parmanand Lal and Brij Mohan (supra)**, cannot be snatched and adversely affected by the later decision rendered by Hon'ble the Supreme Court in **2000 Madras case (supra)** and **2006 Madras case (supra)**. Therefore, their *inter se* seniority vis-a-vis the Exclusive Club of 45 Telegraph Engineers must be fixed after giving them the benefit of the Division Bench judgment rendered in the case of **Parmanand Lal and Brij Mohan (supra)**. The benefit has enured to them in the year 1993 in pursuance of order dated 28.2.1992 passed by the Principal Bench of the Tribunal. According to them the aforesaid facts are clearly reflected in the various seniority lists. As a corollary of the aforesaid argument, a reference to the undertaking dated 27.2.1992 filed by the Department of Telecommunication (DoT) before the Principal Bench of the Tribunal. The Tribunal has highlighted that the anomaly in the seniority of the Telecommunication Engineering Service Group B has arisen on account of implementation of the decision in respect of limited number of Telecommunication Engineering Service Group B officers who have gone to the Tribunal in respect of implementation of the entire order instead of its implementation to the entire cadre of Telecommunication Engineering Service. It has been further submitted that the Supreme Court had upheld the decision passed by the Principal Bench of the Tribunal. The DoT in its undertaking had stated before the Tribunal that the proposal to

revise the seniority of entire cadre of Telecommunication Engineering Service Group B officers in accordance with Paragraph-206 of the P&T Manual was under consideration of the department and it was likely to take some time as the total cadre exceeded 10000. It was on account of the aforesaid undertaking that a number of respondents did not initiate any proceeding either in the Tribunal or the High Court or before the Supreme Court, especially when their seniority was fixed as per the principles laid down in the Division Bench judgment of Allahabad High Court rendered in the case of **Parmanand Lal and Brij Mohan (supra)** on the basis of the undertaking given by the petitioner-BSNL. Accordingly, it is claimed that the respondents fulfilled all the conditions laid down in various judgments, namely, that there is order dated 28.2.1992 passed by the Principal Bench of the Tribunal on the basis of undertaking dated 27.2.1992 and the observations made by Hon'ble the Supreme Court in that regard in the case of **Telecommunication Engineering Service Association (Regd.) [supra]**. The Hon'ble Supreme Court had directed circulation of a copy to the Principal Bench as well as other Courts dealing with this matter on original side with a purpose. Even the second condition stands fulfilled as promotion and seniority was given to them in the year 1993, which cannot now be claimed to be erroneously given.

18. The last submission made by the learned counsel appearing for respondent Nos. 36 to 512 is that Special Leave Petition filed by the Union of India against the order passed by Kerala High Court granting benefit of seniority as per the judgment rendered in the case of **Parmanand Lal and Brij Mohan (supra)**, based on the observations made in **2000 Madras case (supra)** and

2006 Madras case (*supra*), was dismissed. The submission made is that the contention raised by the Exclusive Club of 45 Telegraph Engineers along with the petitioner-BSNL was rejected by the Division Bench of the Kerala High Court in the cases of **T.N. Peethambaran v. Union of India** [W.P. (C) No. 3807 of 2005, decided on 7.11.2008] and **Union of India v. P.J. Sangry** [W.P. (C) No. 31992 of 2009, decided on 28.6.2010]. Against the Division Bench judgment of Kerala High Court rendered in the case of **T.N. Peethambaran (*supra*)**, S.L.P. (Civil) CC Nos. 1467-1468 of 2010, filed by the Union of India, was dismissed on 4.10.2010. Even against the later Division Bench judgment rendered in the case of **P.J. Sangry (*supra*)**, S.L.P. (Civil) CC No. 8779 of 2011, filed by the Union of India, was dismissed on 7.7.2011 by Hon'ble the Supreme Court.

19. Having heard learned counsel for the parties at considerable length and perusing the various paper books with their able assistance we are of the view that these petitions do not merit admission and are, thus, liable to be dismissed. Mr. Rathee, learned counsel for the petitioner-BSNL and Mr. Arun Bhardwaj, who is representing the Exclusive Club of 45 Telegraph Engineers, have conceded that the respondents were given promotions way back in the year 1993. The question which survive for consideration would be whether promotions already given way back in 1993 could be reopened on the basis of a subsequent judgment of Hon'ble the Supreme Court rendered 17 years later in 2000. The answer appears to be 'No'. The aforesaid issue in any case is no longer *res integra* as the conflict between the observations made in the judgment dated 18.9.1992 rendered in the case of **Junior Telecom Officers Forum's case (*supra*)**, as affirmed later in

Telecommunication Engineering Service Association (Regd.) [supra] and Union of India v. Madras Telephones Scheduled Castes & Scheduled Tribes Social Welfare Association, (1997) 10 SCC 226, has been duly resolved by Hon'ble the Supreme Court in the judgment rendered in 2000 Madras case (supra). In paras 17, 18 and 19 it has been observed as follows:-

“17.In this view of the matter, we are of the considered opinion that the judgment of this Court in Civil appeal No. 4339 of 1995 has rightly been decided in interpreting the relevant provisions of the Recruitment Rules read with the procedure prescribed under the memorandum dated 28.06.1966. **We however make it clear that the persons who have already got the benefit like Paramanand Lal and Brij Mohan by virtue of the judgments in their favour, will not suffer and their promotion already made will not be affected by this judgment of ours.**

18. Since Departmental Authorities had not implemented the decision of this Court in Civil Appeal No. 4339 of 1995 for which a Contempt Petition had been filed, having regard to the circumstances under which the Departmental Authorities entertained bona fide difficulties, it would not be proper to proceed against the authorities under the contempt and the contempt proceedings accordingly are dropped. **We would, however direct the Departmental Authorities to proceed in accordance with law and in accordance with the observations made by us in this Judgment and promotions**

may be made within a period of six months from the date of this judgment....

19.We have also indicated that the promotions already effected pursuant to the judgment of the Allahabad High Court, which was upheld by this Court by dismissing the special leave petition filed by the Union of India will not be altered in any manner.....” (emphasis added)

20. A perusal of the aforesaid paras would, thus, make it clear that the persons who have already got the benefit like Parmanand Lal and Brij Mohan, by virtue of the judgment in their favour, were not to suffer and their promotion already made was to remain un-affected. In para 19 it has been categorically observed that promotion already effected pursuant to the judgment of the Allahabad High Court as upheld by Hon’ble the Supreme Court was not to be altered in any manner. It is worthwhile to notice that while disposing of I.A. No. 16 in Civil Appeal No. 4339 of 1995 in **2006 Madras case (supra)**, it has been clarified by Hon’ble the Supreme Court and the same principle has been reiterated in paras 18, 19, 20, 21 and 22, which reads as under:-

“18. The question then arises as to whether the applicants can claim the protection of their seniority and consequent promotion on the basis of observations and the clarification contained in the judgment of this Court reported in Madras Telephone [(2000) 9 SCC 71]. **Having considered all aspects of the matter we are satisfied that those whose cases stand on the same footing as that of Parmanand Lal cannot now be adversely affected by re-**

determination of their seniority to their disadvantage relying on the later judgment of this Court in Madras Telephones [(1997) 10 SCC 226] as affirmed by this Court in its judgment reported in Madras Telephone [(2000) 9 SCC 71].

19. We, therefore, direct that such of the applicants whose seniority had been determined by the competent authority, and who had been given benefit of seniority and promotion pursuant to the orders passed by Courts or Tribunals following the principles laid down by the Allahabad High Court and approved by this Court, which orders have since attained finality, cannot be reverted with retrospective effect. The determination of their seniority and the consequent promotion having attained finality, the principles laid down in later judgments will not adversely affect their cases.

20. This Court has clearly clarified the position in its aforesaid judgment. The observations made by this Court while disposing of the appeal of Parmanand Lal are also pertinent. This Court clearly laid down the principle that the seniority fixed on the basis of the directions of this Court which had attained finality is not liable to be altered by virtue of a different interpretation being given for fixation of seniority by different benches of Tribunal. Consequently, the promotions already effected on the basis of seniority determined in accordance with the principles laid down in the judgment of the Allahabad High Court cannot be altered.

21. Having regard to the above observations and clarification we have no doubt that such of the applicants whose claim to seniority and consequent promotion on the basis of the principles laid down in the Allahabad High Court's judgment in Parmanand Lal case have been upheld or recognized by Court or Tribunal by judgment and order which have attained finality will not be adversely affected by the contrary view now taken in the judgment Madras Telephones [1997 (10) SCC 226]. Since the rights of such applicants were determined in a duly constituted proceeding, which determination has attained finality, a subsequent judgment of a Court or Tribunal taking a contrary view will not adversely affect the applicants in whose cases the orders have attained finality. We order accordingly.

22. Before parting with this judgment we may observe that we have not laid down any principle or law having universal application. We have only clarified and given effect to an earlier judgment of this Court rendered in an extraordinary situation." (emphasis by us]

21. It is further pertinent to notice the observations made by Hon'ble the Supreme Court when a contempt petition was filed and the contention of the petitioner-BSNL was rejected that the benefit of the aforesaid decision was restricted only to those who were parties to the litigation before the Courts. The aforesaid observations have been made in paras 15 and 16 of the judgment rendered in the case of **Promotee Telecom Engineers Forum (supra)** and reads as under:-

“15.From this counter it is clear that in spite of the fact that the petitioners’ seniority was finally decided in Parmanand Lal case and the petitioners’ claims were also accepted by the various courts which verdicts had become final, yet the respondent has moved on the basis of later judgment of this Court dated 26.4.2000 [(2000) 9 SCC 71] interpreting it in its own manner. The interpretation which has been put forward by the Government is that the advantage of the judgment was available only to those employees who were parties to that particular petition.

16. It is obvious that a completely wrong view has been taken by the Government. It was specifically held by this Court in its order dted 28.9.2006 [(2006) 8 SCC 662] that such of the employees, whose claims for the seniority on the basis of the qualifying year had become final because of the orders of the courts, should not be disturbed on account of its subsequent judgment dated 26.4.2000 [(2000) 9 SCC 71.] (emphasis supplied)

22. The question whether respondent Nos. 36 to 512 (in CWP No. 14817 of 2009) could be regarded to have filed any petition either before the Tribunal, High Court or before Hon’ble the Supreme Court needs to be examined in a different perspective. It is true that many of them did not initiate any independent proceedings but such a necessity was obviated because on 28.2.1992 the Principal Bench of the Tribunal took note of the undertaking dated 27.2.1992 filed by the DoT stating, inter alia, that “*The anomaly in seniority of TES Group B has arisen of (as?) a*

consequence of implementation of the decision of CAT Principal Bench, New Delhi dated 07.06.1991... in respect of the petitions in the said OAs which in other words is implementation of the said decision in respect of limited No. of TES, Group B Officers who have gone to Hon'ble Tribunal instead of its implementation to the entire order of TES Group B." and that therefore, in view of the "Supreme Court decision upholding the decision of Principal Bench, the proposal to revise the seniority of entire TES Group B officers as per para 206 of P&T Manual Vol. IV is under consideration of the Deptt. since the cadre of TES, Group B exceeds 10000, the entire exercise of collecting/compiling/organisation the information is likely to take at least six months time. The exercise has already been initiated. The names of petitioners would be accordingly placed, in TES, Group B seniority list and thereafter would be considered for further promotion according to revised list in accordance with rules, availability of vacancies and on the basis of recommendations of DPC." In view of the said undertaking of the DoT, the Principal Bench of the Tribunal in its order dated 28.2.1992. While approving the aforesaid observations Hon'ble the Supreme Court in the case of **Telecommunication Engineering Service Association (Regd.) [supra]**, has concluded as under:-

"2. It is clear from what we have extracted above that the respondents have taken a firm decision to give effect to the principle laid down by the decision of the Tribunal which decision stands affirmed by the Supreme Court, by reviewing the promotions of everyone who is similarly situated and not confining it only to those who approached the court for relief. They have conceded that

they made a mistake in limiting their attention in the matter of giving deemed dates of promotion only to those who obtained orders from the Tribunal and ignoring the cases of others similarly situated only because they had not secured similar orders from the Tribunal. Now they have realized that once the principle has been laid down by the Tribunal which is of general application, it is their duty to make a comprehensive review in respect of every one who is similarly situated whether all of them have obtained orders from the Tribunal or not. The attitude now taken which is reflected in what we have extracted above is correct. That is the only way of satisfactorily give effect to the principle laid down by the Tribunal in various cases, including those enforcement of which has been sought in these contempt of court petitions. The respondents have stated that though steps have been initiated having regard to the fact that they have to review the cases of nearly ten thousand persons, the exercise is likely to take about six months' time. They have further stated that after the revised seniority list is prepared, according of further promotion on the basis of the revised seniority list and following the relevant rules would be made on the basis of the recommendations of the DPC.

3. As right steps have not been taken, there should not be any need for other similarly situated to rush to the Tribunal for grant of relief as they would all get relief by application of the same principle, whether or not they

approached the Tribunal and secured orders in their favour...

4. ...A copy of this order be also circulated to other courts in the principal bench dealing with other matters in which similar relief is claimed on the original side.”
(emphasis added)

23. It was in view of the aforesaid undertaking given to the Principal Bench of the Tribunal and as affirmed by Hon’ble the Supreme Court that no room was left for the original-applicant or other respondents to file any individual petition. Moreover, their seniority stood determined in the year 1993 as is conceded by Mr. Rathee and Mr. Bhardwaj which in fact was in accordance with the undertaking given by the competent authority in terms of the decision rendered by the Division Bench of the Allahabad High Court in the case of **Parmanand Lal and Brij Mohan (supra)**.

24. Accordingly, we are of the view that once original-applicants and respondent Nos. 36 to 512 have been granted the benefit of seniority in terms of the Division Bench judgment of the Allahabad High Court in the case of **Parmanand Lal and Brij Mohan (supra)** in the year 1993 then their case is squarely covered by the law laid down by Hon’ble the Supreme Court in both judgments of **2000 Madras case (supra)** and **2006 Madras case (supra)**, holding that the respondents whose seniority had been determined by the competent authority pursuant to the orders passed by the Courts or Tribunal, which have attained finality, was to remain un-affected by the aforesaid judgments. Therefore, it is no longer open to the petitioner-BSNL or the Exclusive Club of 45 Telegraph Engineers to argue that the benefit must be confined to those who have moved

individual applications either before the Tribunal or have initiated proceedings in the High Court or before Hon'ble the Supreme Court. In fact, undertaking has been given by the DoT to the Principal Bench of the Tribunal that those who have not filed the application before the Tribunal would be deemed to be covered by the orders of the Court, which has been duly affirmed upto Hon'ble the Supreme Court, as already noticed above.

25. In any case, the principles laid down in both the judgments rendered in **2000 Madras case (supra)** and **2006 Madras case (supra)**, which have been further clarified in the case of **Promotee Telecom Engineers Forum (supra)**, would necessarily enure to the benefit of Assistant Engineers in accordance with the principle laid down in para 19 of the judgment in **K.I. Shephard v. Union of India, (1987) 4 SCC 431**. It is pertinent to notice that their Lordships' of Hon'ble the Supreme Court has observed that merely because some of the employees did not come to the Court would not provide any justification to penalise them for not having litigated and they were also held entitled to the same benefit as persons who have already succeeded. The aforesaid principles have also been followed and applied by Hon'ble the Supreme Court in the case of **B.S.N.L. v. Ghanshyam Das, (2011) 4 SCC 374**.

26. We are also persuaded by the argument raised by the learned counsel for respondent Nos. 36 to 512 that the Division Bench of Kerala High Court in the case of **T.N. Peethambaran (supra)** and **P.J. Sangry (supra)** had granted the benefit of seniority in accordance with the Division Bench judgment of Allahabad High Court rendered in the case of **Parmanand Lal and Brij Mohan (supra)**. Against the Division Bench judgments passed in the case of

Peethambaran (supra) and **P.J. Sangry (supra)**, special leave petitions preferred by the Union of India have been dismissed on 7.11.2008 and 28.6.2010 respectively. It is pertinent to notice that in the S.L.P. filed in the case of **T.N. Peethambaran (supra)**, vide order dated 19.2.2010 their Lordships' of Hon'ble the Supreme Court recorded that the Union of India had already implemented the judgment dated 7.11.2008 passed by the Kerala High Court in **T.N. Peethambaran's case (supra)**. Copies of the orders dated 7.11.2008 passed by the Kerala High Court in **T.N. Peethambaran's case (supra)** and the order dated 19.2.2010 passed in S.L.P. (C) CC Nos. 1467-1468 of 2010, are taken on record as Mark 'X' (Colly).

27. In view of the aforesaid discussion we have no hesitation in upholding the view taken by the Tribunal. Accordingly, the writ petitions are dismissed. The contentions which have been raised by the Exclusive Club of 45 Telegraph Engineers are also rejected.

28. A photocopy of this judgment be placed on the files of each of the connected cases.

(M.M. KUMAR)
JUDGE

(GURDEV SINGH)
JUDGE

November 25, 2011
Pkapoor

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Sr. No.	CWP No.	Title
1.	14817 of 2009	Bharat Sanchar Nigam Limited and another v. Central Administrative Tribunal and others

2.	2040 of 2010	Bharat Sanchar Nigam Limited and others v. Central Administrative Tribunal and others
3.	2041 of 2010	Bharat Sanchar Nigam Limited and others v. Central Administrative Tribunal and others
4.	2042 of 2010	Bharat Sanchar Nigam Limited and others v. Central Administrative Tribunal and others
5.	2043 of 2010	Bharat Sanchar Nigam Limited and others v. Central Administrative Tribunal and others
6.	2044 of 2010	Bharat Sanchar Nigam Limited and others v. Central Administrative Tribunal and others
7.	2045 of 2010	Bharat Sanchar Nigam Limited and others v. Central Administrative Tribunal and others
8.	2046 of 2010	Bharat Sanchar Nigam Limited and others v. Central Administrative Tribunal and others
9.	2047 of 2010	Bharat Sanchar Nigam Limited and others v. Central Administrative Tribunal and others
10.	2048 of 2010	Bharat Sanchar Nigam Limited and others v. Central Administrative Tribunal and others
11.	2049 of 2010	Bharat Sanchar Nigam Limited and others v. Central Administrative Tribunal and others
12.	2050 of 2010	Bharat Sanchar Nigam Limited and others v. Central Administrative Tribunal and others
13.	11307 of 2010	Bharat Sanchar Nigam Limited and others v. Central Administrative Tribunal and others
14.	11315 of 2010	Bharat Sanchar Nigam Limited and others v. Central Administrative Tribunal and others
15.	11322 of 2010	Bharat Sanchar Nigam Limited and others v. Central Administrative Tribunal and others

16.	11325 of 2010	Bharat Sanchar Nigam Limited and others v. Central Administrative Tribunal and others
17.	11328 of 2010	Bharat Sanchar Nigam Limited and others v. Central Administrative Tribunal and others
18.	5547 of 2011	Bharat Sanchar Nigam Limited and others v. Central Administrative Tribunal and others

(M.M. KUMAR)
JUDGE

November 25, 2011
Pkapoor

(GURDEV SINGH)
JUDGE