



CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH

OA 722/2012

MA 3619/2014

With

OA 643/2012

MA 539/2012

MA 3620/2014

New Delhi this the 23rd day of December, 2014

Honble Mr. V. Ajay Kumar, Member (J)

Honble Mr. P.K. Basu, Member (A)

1. Telecom Executives Association of MTNL

Through its General Manager

9A, Shri Sandesh,

Rajarshi Sahu Maharaj Marg,

Andheri (East), Mumbai 400069

2. Raj Kumar

S/o Shri Ram Niwas Garg

Aged about 59 years

Working as Divisional Engineer

in the Office of General Manager (SS)

K.L. Bhawan, New Delhi-110001

R/o 8/84, Sector-3, Rajendra Nagar,

Sahibabad (Uttar Pradesh)

3. M.C. Singhal

S/o Shri P.C. Singhal

Aged about 56 years

Working as Assistant General Manager (Legal)

in the Office of General Manager (Law)

K.L. Bhawan, New Delhi

R/o 141, Surya Apartment,

Plot 14, Sector 6, Dwarka

New Delhi-110093

Applicants

(Through Shri A.K. Behera, Advocate)

Versus

1. Union of India through Secretary

Department of Telecommunications

Sanchar Bhawan, New Delhi-110001

2. Mahanagar Telephone Nigam Ltd.

Through its Chairman & Managing Director,

K.L. Bhawan, New Delhi-110001

Respondents

(Through Ms. Jyoti Singh, Sr. Advocate with Ms. Tinu Bajwa and

Ms. Neha Bhatnagar, Advocates)

With

OA 643/2012

1. MTNL Executives Association

Through its General Manager

116-D, AP Block, Maurya Enclave

Pitam Pura, Delhi-110085

2. Praveen Kumar
Senior SDE, MTNL
B-184, Surya Nagar,
Ghaziabath (UP)

Applicant

(Through Shri Rajshekhar Rao with Ms. Gauri Puri, Advocate)

Versus

1. Mahangar Telephone Nigam Limited
Through CMD, MTNL
Sanchar Haat, Eastern Court, Janpath
New Delhi-110001

2. The Director (HR), MTNL
Sanchar Haat, Eastern Court, Janpath

New Delhi-110001

3. The Chairman, Telecom Commission,
94, New Moti Bagh,
New Delhi-110023
4. Member Services, Telecom Commission
H-23, Sector-10, R.K. Puram
New Delhi-110022
5. Babloo Data Yadav
S/o Shri N.S. Yadav,
R/o B-504, Pocket 4, MTNL Qtr.,
Rohini, Sector-3, Delhi-85
6. Rakesh Arora
S/o Shri K.K. Arora,
R/o D-32, MTNL Qtr.,
Paschim Vihar, Delhi-110085

7. Kamlesh Kumar
S/o Shri S. Chandra
R/o D-21, MTNL Qtr.
GH-17, Paschim Vihar,
Delhi-110085
8. Vivek Malakar
S/o Shri G.L. Malakar
R/o Flat No.201, WZ-18,
Titarpur Tagore Garden,
New Delhi-110027
9. Saurach Sachan,
S/o Shri Virendra Singh Sachan
R/o E-21, GH-17, MTNL Qtr.,
Paschim Vihar, Delhi-110085
10. Jay Singh

S/o Shri R.P. Singh

R/o 27-D, B21A, Dhawalgiri Aptmt.,

Sector-34, Noida-201301

11. Parvesh Kumar Sah

S/o Shri Umesh Prasad Sah

R/o M-402, Swarn Residency

GT Road, Ghaziabad-301005

12. Subhash Chand Rojha

S/o Shri Bhawan Singh

R/o B-7/205, Gaurs Plaza,

Shalimar Garden Extn. 2,

Ghaziabad-201005

13. Sandeep Rathee

S/o Shri Sunil Kumar

R/o Sankhol, Bahagurgarh,

Jhajjar, Haryana-124507

14. Vijit Kumar Singh
S/o Shri Haka Singh
B-3/265, Arawali Apart.,
Sector-34, Noida UP-201301 Respondents

(Through Ms. Jyoti Singh, Sr. Advocate with Ms. Tinu Bajwa and
Ms. Neha Bhatnagar, Advocates-MTNL
Sh. M.K. Bhardwaj, Advocate for private respondents)

ORDER

Mr. P.K. Basu, Member (A)

Upto 1.04.1986, the telecom services in metropolitan cities of Delhi and Mumbai were provided by the Central Government in the Department of Telecommunications (DOT). The said functions stood vested in Mahanagar Telephone Nigam Limited (MTNL) on its formation with effect from 1.04.1986. The government decided that telecom services in these two cities be provided through an organization run on commercial principles. With this objective, MTNL was incorporated as a Company under the Companies Act in 1986. On the initial constitution of MTNL, the primary source of manpower to man different positions in MTNL was the officers and staff appointed at different levels by the Central Government in the DOT.

2. The Recruitment Rules (RRs) notified by the Central Government in the Department of Telecommunications under proviso to Article 309 of the Constitution of India regulated recruitment to the various posts.

3. Recruitment to Group A posts comprising the following grades was governed by the Indian Telecommunication Service (Group-A) Recruitment Rules, 1992:

- (a) Advisor
- (b) Chief General Manager
- (c) Senior Administrative Grade (General Manager)
- (d) Junior Administrative Grade (Selection Grade) (Deputy General Manager)
- (e) Junior Administrative Grade (Deputy General Manager)
- (f) Senior Time Scale (Divisional Engineer), and
- (g) Junior Times Scale

4. The vacancies of Advisor, Chief General Manager, General Manager, Additional General Manager, Deputy General Manager and Divisional Engineer were filled exclusively by promotion, whereas the posts in Junior Time Scale were filled by direct recruitment through Engineering Services Examination conducted by Union Public Service Commission and by promotion of Sub Divisional Engineer (Group B Gazetted) (earlier designated as Assistant Engineer) with three years service, in the ratio of 1:1.
5. The appointment to the post of Sub-Divisional Engineer was regulated under the Telecommunication Engineering Services (Group B Posts) Recruitment Rules, 1996 and the post formed the feeder grade for promotion to 50% of the posts in Junior Time Scale in ITS Group A.
6. The post of Junior Engineer subsequently re-designated as Junior Telecom Officer served as feeder grade for promotion to the post of Sub Divisional Engineer (earlier known as Assistant Engineer).
7. Recruitment to the post of Junior Engineer was regulated by the Junior Engineers (Recruitment) Rules, 1980. The Central Government notified the Junior Telecom Officers (Recruitment) Rules, 1990 to regulate recruitment to the post of Junior Telecom Officer, which were superseded by the Junior Telecom Officer (Recruitment) Rules, 1996.
8. In pursuance of the New Telecom Policy 1999, the Central Government decided that all Group `A and `B posts in MTNL be manned by permanent absorption of the officers and other staff in the Central Government under Department of Telecommunications on permanent absorption basis.
9. Accordingly, Department of Telecommunications by its letter No.400-41/98-STG III dated 8.05.2000 called for options from Group A and B officers for permanent absorption with effect from 01.10.2000 in accordance with the detailed terms and conditions contained therein.

10. The option letter dated 8.05.2000 was for permanent absorption of Group `A and `B officers and certain Group `C posts having all India transfer liability in MTNL. Annexure `B to that letter contains the provisional terms and conditions for permanent absorption of DOT staff (Group `A and `B) in the services of the MTNL. It mentioned that the employees in question will be permanently absorbed in the services of the MTNL with effect from 1.10.2000. They would cease to be government servants from the said date and such of the government servants working presently in MTNL and who are not absorbed will be transferred to other circles by DOT. We make reference to clause (xii) of the terms and conditions which reads as follows as this would form one of the main contested issues in these OAs:

xii) Promotional Avenues Promotion of the Officers will be made time bound by personal upgradation of posts upto the level of JAG Selection Grade and beyond JAG Selection Grade the same will depend upon availability of posts and their suitability and selection for promotion which will be uniformly evaluated in the various streams of discipline. The average eligibility period for promotion from one grade to the next higher grade will vary between 4 to 6 years upto the level of JAG Selection Grade and beyond that as already mentioned above. The same will be dependent on the selection process and availability of vacancies.

11. The different pay scales in which the absorption was given to the officers under the Central Government are given as follows:

| | |
|----------|--|
| E1 Scale | Rs.8600-14600 |
| E2 Scale | Rs.10750-16750 |
| E3 Scale | Rs.13000-18250 (Sr. Divl. Engineer) |
| E4 Scale | Rs.14500-18700 (Sub-Divl. Engr. (Telecom)) |
| E5 Scale | Rs.16000-20800 |
| E6 Scale | Rs.17500-22300 |

12. Through OM dated 11.09.2007, MTNL issued Time

Bound/ Post Based Promotion Policy for Group `B level executives/ Officers of MTNL. This OM was in two parts (i) Time Bound IDA Scale Upgradation Policy; and (ii) Post Based Promotion Policy. For the Time Bound Upgradation Policy, the scope, due date and review date was indicated as follows:

a. Scope:

Time Bound IDA scale upgradations shall be provided to the executives from IDA Pay Scale of Rs.8600-250-14600 (E-1) upto IDA Pay Scale of Rs.18,500-450-23,900 (E-7).

b. Eligibility :

1. Due Date : The date of which the Executive fulfills the Qualifying Service Conditions for upgradation to next higher IDA Pay Scale as defined in sub para 3 below.

2. Review Date : As on October 1st of each year with the first review under the policy with reference to October 1st, 2004.

13. Para 3 of the OM provided qualifying service conditions, which was as under:

3.1 FIRST UPGRADATION: The FIRST UPGRADATION of IDA Scale of Individual Executive will be due for consideration on completion of 4 (four) years of service in the current IDA scale subject to the condition that the Executives basic pay in the current IDA scale has crossed/ touched the lowest of the higher IDA scale for which his/ her upgradation is to be considered OR he/ she has completed 6 (six) years of service in the current IDA scale, which is earlier. In cases where Executives have been appointed as Officer Trainee (JAO/ JTO/ MT), the eligibility for first upgradation shall be 4 (four) years after successful completion of one year training during which stipend has been paid to the Executives. This training period shall also be counted for calculating the eligibility period for Limited Departmental Competitive Examination (LDCE) under Recruitment Rules.

3.2 SUBSEQUENT UPGRADATION : The subsequent upgradation of Scale to the next higher IDA scale will be due on completion of 5 (five) years of service in the current IDA Scale.

4. The qualifying service conditions indicated in sub para 3 above will only enable the Executive for consideration for upgradation to next higher IDA scale. Completion of such period alone shall not entitle any Executive for automatic upgradation to the next higher IDA Scale.

5. The service rendered by any Executive in existing IDA Pay Scale in MTNL will only be counted for upgradation to next higher IDA scale. However, for first upgradation, Qualifying Service shall be calculated as per Clause 1 (b) (3.1) above.

14. We may also note the provisions of para 8 as this would be relevant to decide the rival contentions:

8. With the implementation of IDA TIME BOUND Pay Scale Upgradation Scheme with effect from 01.10.2004, provisions

with regard to arrangements like in-situ/ ACP or any other time bound promotion/ upgradation scheme of Government set up shall stand withdrawn, unless permitted in any specific context.

15. Under the heading Post Based Promotion Policy, clause (ii) provided as follows:

(ii) Post based regular promotions, in tune with the above hierarchy levels, be regulated as per provisions of concerned already notified/ to be notified RRs of MTNL.

Further clause (x) provides as follows:

(x) Induction of Management Trainee: Each year, the MTNL Management will decide about the total number of posts in the pay-scale of Rs.10000-20800 (E-5) to be filled up from feeder cadre executives as well as from Management Trainee (both, Internal as well as External). Fifty percent (50%) of the said total posts in the pay-scale of Rs.16000-20800 (E-5) earmarked for filling up in any year be filled up by seniority-cum-fitness from amongst the feeder cadre executives and rest 50% by Management Trainees (with 50% reserved for Internal Executives and remaining 50% for external candidates), as per MTNL RRs (to be notified). Thus, the induction of Management Trainees will be corresponding to posts in the pay-scale of Rs.16000-20800 (E-5) level in the ratio of 50:25:25 through Departmental Promotion, LDCE with internal candidates and Direct Recruit respectively.

In para 2, the following was provided:

2. Necessary action may immediately be taken for implementation of Time Bound based IDA scale Upgradation policy as

provided in para 1 (i) above on a time bound basis and all out efforts be made to complete the exercise within three months from the date of issue of this promotion policy for all eligible executives with respect to review due on 01.10.2004, 01.10.2005 and 01.10.2006. In so far as the implementation of Post Based Promotion Policy is concerned, the same will be carried out by the Corporate Office in consultation with Units for which instructions shall be issued in due course.

16. On 1.08.2009, the MTNL issued an office order on the subject of promotion of executives from the grade of SDE to the grade of Divisional Engineer (DE) on regular basis, by which it promoted 343 executives from the substantive grade of SDE (Telecom) to the grade of Divisional Engineer in the IDA pay scale of Rs.16000-400-20800 (E-5) on regular basis with effect from 30.06.2009 and posted to the units as shown against their names.

17. Vide OM dated 17.04.2010, the DGM (Pers) issued the MTNL Senior Manager Recruitment Rules 2008, which came into force on 29.03.2010. Para 5 and 6 of these Rules are extracted below for reference to indicate the quota set forth for external candidates and internal candidates:

5. Number of Posts: Sr. Management Trainees shall be recruited against 50% of posts in the Scale of Pay of Rs.16000-400-20800 (1997 level) as decided for filling up by MTNL Management from time to time as per requirement in relevant functional stream.

6. The total number of Sr. Management Trainees is equivalent to 50% of total authorized strength of Rs.16000-400-20800 (1997 level) grade. Sr. Management Trainees shall be recruited to the Functional stream in a particular discipline as per requirement from amongst the following:

^ 50% of above i.e. 25% of total, by recruitment of External Candidates amongst those who fulfill the conditions stipulated in these rules, through All India Open Competitive Examination (AIOCE), as prescribed from time to time by the company.

^ 50% of above, i.e. 25% of total, by recruitment of internal candidates who possess service, experience and educational qualifications etc. stipulated in these rules through the same All India Open Competitive Examination.

^ Balance 50% posts of Sr. Managers shall be filled up in terms of col. 11 of the Annexure 1 hereunder.

18. In fact, Annexure 1 of this Rule indicates that 50% of the posts of Senior Manager in the pay scale of Rs.16000-400-20800 would be filled by seniority-cum-fitness and 50% by selection on merit through limited departmental competitive examination (LDCE), of which 25% would be external and 25% would be internal candidates. In case of recruitment through LDCE, the following was provided:

All regular MTNL employees possessing the prescribed eligibility conditions and working in the pay scales E2 and above shall be eligible to appear in the open competitive examination for 25% of vacancies. Maximum three attempts shall be permitted to the internal candidates.

19. Lastly, the MTNL published the Senior Management Services Promotion Policy 2010 on 30.06.2011 and these rules came into effect from 11.06.2009. The applicability clause reads as follows:

2. APPLICABILITY: This policy shall be applicable to all the employees recruited by MTNL and those permanently absorbed from Department of Telecom, also from those categories who are on deputation to other Organizations/ subsidiaries/ Joint Ventures.

20. Schedule 1A of these Rules indicates that for the post of Senior Manager (Telecom)/ DE/ AGM (equivalent of STS i.e. E-5) Rs.32900-58000 (Post Based Promotion), the method of recruitment etc. would be as per MTNL Senior Manager Recruitment Rule, 2008. However, for higher level posts i.e. E-6 to E-9, along with the method of recruitment, minimum qualifying service for promotion and inter-se-seniority were elaborately expressed.

21. The Telecom Executives Association of MTNL wrote to the Chairman and Managing Director of MTNL on 20.01.2012 stating that the Senior Manager Recruitment Rules framed by the MTNL are detrimental to the career prospects of JTOs (E-2) and SDE (E-3). The relevant points raised therein were as follows:

(i) The posts of Divisional Engineers (DEs) (E-5) are the promotion posts for the promotion of SDEs (E-3 & E-4). Likewise the posts of SDEs are the promotion posts for the first promotion of JTOs. These officers of DOT who were absorbed in MTNL w.e.f. 01.10.2000 on the written and clear assurance of the better (time bound) promotion prospects have been stagnating since long simply because D.P.C. was not held regularly even though the adequate number of promotion posts were already available. Thus there have been a back log.

(i) Most unfortunate thing is that MTNL corporate office ignored the promotion matter of the absorbed officers (JTOs, SDEs etc). The simple fact that huge number of posts of DEs are being manned by purely temporary local officiating promotion, ad-hoc promotion and local arrangement promotion indicates the sole intention behind such manipulative action on the part of management as to deprive the SDEs (E-3 & E-4) of their regular promotion to the posts of DEs which is long due, at the same time managing the need of the field by these officers. This is little short of fraud on the actual Recruitment Rules of DOT which MTNL is supposed to follow for the purpose of the promotions after absorption and till such time MTNL Rules are ready for implementation.

(ii) MTNL ignored the written assurance given for exercising option for absorption in MTNL and MTNL deliberately did not hold DPC for regular promotion to DEs even though posts were already available and rules were in place. Thus MTNL

created the back log.

Their main grievance and prayer is summarized in para 7 and 8, which read as follows:

7. a) The SDEs (E-3 & E-4) officiating as DEs for 4/5/6 years having age profile of 45/50/55 years are required to appear in competitive examination along with JTOs (E-2) of 4 years of Service.

b) The SDEs (E-3 & E-4) officiating as DEs for 4/5/6 years having age profiles of 55 years, on being success in the competitive examination, is required to undergo training and probation for 3 years before promotion to DEs.

8. Our request is that this rule of Sr. management Recruitment should be put on hold till the overdue promotion to the posts of DE against the posts not yet filled through regular DPCs are done.

22. The MTNL issued an advertisement No.MTNL/SMT/2011 on 28.11.2011 amended on 16.01.2012 for recruitment of Senior Management Trainees at E-5 level in Telecom Marketing in which it was indicated that 30 posts are vacant of Senior Management Trainee (E-5 level) in Telecom Stream. Column 2 provides for age limit for external candidates as 30 years

and for internal candidates as 40 years as on 1.07.2012. Column 4 also provides as follows:

4. Pay Scale : Selected candidates shall initially be appointed as Sr. Management (Trainee) in the IDA pay scale of E-4 grade i.e. Rs.29100-54500 (annual increment @ 3% of basic pay) plus HRA, Perks, Medical Benefits, LTC etc. as admissible as per company rules. After successful completion of three years of training-cum-probation period the candidate should be confirmed and designated as Sr. Manager in the IDA scale of Rs.32,900-58000.

Further career progression for promotion to higher grades shall be regulated by relevant Policies/ Recruitment Rules existing from time to time.

23. It was pointed out by the learned counsel for private respondents, Shri M.K. Bhardwaj that clause 2 was later relaxed in as much as the upper age limit for internal candidates was raised to 55 years in place of 40 years for the first attempt and 50 years for subsequent two attempts vide letter dated 16.01.2012 issued by Shri Kulwant Chand, DGM (Pers.).

24. Applicants no.2 and 3 in OA 722/2012 were initially appointed as JTOs but were subsequently promoted as Sub Divisional Engineer (SDE) in 1994 and were absorbed in MTNL as SDE in E-3 scale with effect from 01.10.2000. They have not yet been promoted to E-5 scale on regular basis though they are officiating in the higher E-5 scale i.e. Divisional Engineer which has now been re-designated as Senior Manager on local officiating basis vide orders dated 02.12.2008 and 30.06.2006. It is stated that local officiating promotion was given to the applicants and other similarly situated through a process of DPC in which the CRs of the persons under consideration were considered and recommendations made and all such persons fulfilled the conditions of eligibility for regular promotions. It is further stated that regular vacancies were also available in the grade of Divisional Engineer for regular promotion. According to the applicants, in the Time Bound /Post Based Promotion Policy dated 11.09.2007, respondents were obligated to review cases of executives upto E-7 scale for upgradation to next higher grade in a time bound manner every year with effect from 01.10.2004. In paragraphs 4.22, 4.24 and 4.25 of their application, the applicants assert as follows:

4.22 The post-based promotion policy inter alia envisaged promotion of Junior Telecom Officer (E2) to Sub Divisional Engineer (E3) and of Sub Divisional Engineer (E3)/Senior Sub Divisional Engineer (E4) to the grade of Divisional Engineer (E5). It was further envisaged that 50% of the vacancies in E5 scale would be filled by promotion of the feeder grade executives on the basis of seniority-cum-fitness and the remaining 50% by Management Trainees.

XXXX

XXXX

XXXX

4.24 In accordance with the MTNL Senior Manager Recruitment Rules, 2008, 50% of the posts in E-5 scale (Senior Manager) are to be filled by internal promotion of executives in E3/E4 scales who on promotion are designated as Divisional Engineer.

4.25 Further, under the Senior Manager Recruitment Rules, 2008, the posts of Senior Manager, other than those filled by promotion of internal candidates, are filled from amongst Senior Management Trainees who have completed three years service including one years training and one years probation period. The Senior Management Trainees are appointed by recruitment of external candidates and internal candidates in the ratio of 50:50 through All India Competitive Examination. The upper age limit for external candidates has been fixed as 35 years whereas in case of internal candidates upper age limit fixed is 40 years in accordance with the Senior Manager Recruitment Rules. All MTNL executives with four years service in E2 scale (Junior Telecom Officer) and above qualify to be eligible for appointment as internal candidates provided they possess the prescribed educational qualifications.

25. The learned counsel for the applicants Shri A.K. Behera in support of his OA submitted that MTNL has formulated its Time Bound/ Post Based Promotion Policy, which provides time bound promotion to the executives upto the level of E-7 grade wherein eligibility period for promotion from one grade to next higher grade is five years. It is thus stated that the respondents themselves have accepted that time bound promotion has to be given upto the level of E-7 grade and eligibility has also been prescribed as five years. The learned counsel also contended that reservation indicated in para 6 of the

2008 Rules will come into effect only from 29.03.2010 and the advertisement dated 16.01.2012 is based on 2000 Rules. Reliance has been placed on the following judgments:

(i) Surya Narain Yadav and others Vs. Bihar State Electricity Board and others, (1985) 3 SCC 38 in which the Honble Supreme Court has held as follows:

Labour and Services Absorption Statutory bodies bound by representations made by them to their employees relying upon which the employees acted to their own prejudice Repeated representations made by Electricity Board that its ex cadre trainee engineers would be permanently absorbed and encadred without taking any examination and would be confirmed after two years probation, but not implemented Relying upon such representation some trainees not seeking employment elsewhere Held, Board bound to honour its representations and assurances and regularize the appointments of the trainees It cannot avoid it on ground of any rules to the contrary as the trainees formed a special class in the peculiar fact situation entitled to the special benefit assured to them Constitution of India, Article 14 Promissory estopped.

(ii) Arjun Singh Rathore and others Vs. B.N. Chaturvedi and others, (2007) 11 SCC 605 in which it has been held as follows:

Service Law Recruitment process Applicable rules New or old vacancies occurring prior to promulgation of new Rules of 1998 Held, vacancies to be filled up according to old Rules of 1988 even though interview was held in 2000 when the new Rules had already been notified Regional Rural Banks (Appointment and Promotion of Officers and Other Employees) Rules, 1988 Regional Rural Banks (Appointment and Promotion of Officers and Other Employees) Rules, 1998 Banks Regional Rural Banks Act, 1976.

(iii) Y.V. Rangaiah and others Vs. J. Sreenivasa Rao and others, (1983) 3 SCC 284, where the Honble Supreme Court held thus:

Held, vacancies in the promotional posts occurring prior to the amendment have to be filled up in accordance with the unamended rules. Hence the panel prepared for filling those vacancies under the amended rules set aside and fresh panel under the old rules directed to be prepared.

(iv) State of Rajasthan Vs. R. Dayal and others, (1997) 10 SCC 419 in which the Honble Supreme Court held as follows:

8This Court has specifically laid that the vacancies which occurred prior to the amendment of the Rules would be governed by the original Rules and not by the amended Rules. Accordingly, this Court had held that the posts which fell vacant prior to the amendment of the Rules would be governed by the original Rules and not the amended Rules.

9Even a carried-forward vacancy is required to be considered in accordance with the law existing unless suitable relaxation is made by the Government. As on that date, when the appointment came to be made, the selection was required to be made on the basis of the Rules as existing on the date the vacancy arose.

(v) Bhim Singh and others Vs. State of Haryana and others, (1981) 2 SCC 673 where it was held as follows:

Promissory Estoppel Government employees moving over to the new department because of certain inducements held out by the government. Held, government cannot go back on the representation made by it and acted upon. Labour and Services. Conditions of service.

(vi) *M/s Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and others*, (1979) 2 SCC 409, the Honble Supreme Court held as follows in the cited case:

A. Equity Promissory estoppel or equitable estoppel Doctrine of Nature, scope and extent of Applicability, held, not restricted to parties already contractually bound to one another or having a pre-existing legal relationship Doctrine is not based on estoppel and can be the basis of a cause of action Its operation cannot be shackled by the doctrine of consideration.

B. Equity Promissory estoppel Applies to government or State in whichever capacity it acts Position in England and the United States compared However, government will not be bound if it can show that enquiry lies in its favour Heavy burden on government in such a situation to bring the relevant facts and circumstances on record Government can also save itself if on notice and reasonable opportunity being given by it the promisee can resume his position, not otherwise Also promissory estoppel cannot be applied against the government if it is under an obligation or liability imposed by law to act differently.

26. The learned counsel thus argued that since there was an agreement between the employees and the MTNL at the time of absorption that upto the level of E-7, they would be given upgradation, the respondents now cannot take shelter under the new rules to deny the applicants that benefit by inducting direct recruits which would clearly reduce the promotional avenues of the applicants. They have sought the following reliefs:

(a) direct the respondents to give effect to the time-bound promotion policy (Annexure A-1) with effect from 1.10.2004 for upgradation/ promotion of the executives in MTNL with all the consequences from due date(s) at the E-5 scale level in respect of vacancies arising prior to 2008 by giving the applicants regular promotion against the said vacancies before filling the current vacancies on regular basis.

(b) set aside the notifications dated 26.11.2011 and 16.01.2012 (Annexure A-3 (colly) as illegal, discriminatory and void ab initio.

) put the MTNL Senior Manager Recruitment Rules, 2008 (Annexure A-2) in abeyance till the vacancies at E-5 and other levels are not filled up according to the commitment given at the time of absorption of the applicant.

(d) declare that the selection process started by Respondent No.2 pursuant to the MTNL Senior Manager Recruitment Rules, 2008 (Annexure A-2) and the notifications dated 26.11.2011 and 16.01.2012 (Annexure A-3 (colly) is non est.

27. Learned counsel for the applicants in OA 643/2012, Shri Rajshekhar Rao stated that the applicant in his case is an association comprising executives working at JTO (E2) and SDE (E3) level who are deeply aggrieved by the impugned promotion policy dated 30.06.2011 and notification dated 26.11.2011, for the same reasons as stated by the learned counsel for the applicants in OA 722/2012. In addition, it was argued that in OA 1086/2010, which was a similar matter between the employees of BSNL and BSNL, vide order dated 2.11.2010, the Tribunal held as follows:

18. On a perusal of the option scheme dated 2.9.1993, which provides promotion, in paragraph 5.2 promotional avenues have been made applicable as per Annexure 4 to the absorbees in BSNL and shall be indicated in enclosure as well as the officers officiating the higher pay scale, etc. will have to be absorbed in BSNL in substantive grade. We cannot deny this fact, which is admitted on the face of record that while referring to Annexure 4, what has been spelt out by the respondents on clarification pursuant upon the directions of the Tribunal, to provide promotional avenues to the applicants. However, in promotional avenues at Annexure 4, there is no whisper as to the promotion to be given to the applicants and what has been talked about as a policy decision is to give time bound/post based grant of IDA scales upto the JAG selection grade. Thereafter, this Annexure 4 stipulates promotion on the basis of selection and adjudging the suitability, which, on a prudent reading and applying the principle of literal and harmonious construction, would indicate that the time bound scales in IDA were made available to the applicants, which, now being reflected as per the impugned order

dated 18.1.2007, has not conferred upon the status of the promotional post and are only an eyewash for BSNL employees and are not amounting to promotions. In a promotion, as per the legal methodology, which is a fundamental right of consideration, it is not only the higher pay scale but also assumption of higher post, which are part and parcel of the process of promotion. It would not be a promotion when a person remains in the same post and is only given the scale of the promotion post. This methodology has been used by the Government in case promotions are not given and there has been a stagnation in the cadre and also to overcome the stagnation, some financial measures are adopted by the Government to accord financial upgradation, which, by the rules and norms prescribed by the Government from time to time, have not been treated as promotions. In such view of the matter, when itself the policy decision indicated to the applicants at the time of absorption does not talk of promotion, this condition, which has been specified, is clearly in contravention of the order passed by the Tribunal, against which the applicants have not gone for an apt methodology in law to assail the order in contempt proceedings. If it was so, the law would have taken its course. However, when it comes to us, we cannot in oblivion decide the issue only on the basis of the promulgation of decision of the respondents dated 18.1.2007 whereby they have, except laying down the conditions of upgradation in IDA scales, have not laid down any methodology for promotion on post-based, i.e., selection-cum-seniority. It appears that the promise extended to the applicants by the respondents while they were being absorbed, they have almost resiled from it and backed out and have implemented what has not been provided or put to notice to the concerned.

XXXX

XXXX

XXXX

21. Resultantly, we dispose of this OA with a direction to the respondents to reconsider the entire matter regarding promotional avenues to the applicants as promised earlier by them having been implemented and consider their grievances, including the averments now taken before us in the OA and our observations made in the preceding paragraphs. A reasonable and prudent reconsideration as apt in law would culminate into a speaking order to be passed by the respondents within a period of three months from the date of receipt of a copy of this order. No costs.

It was argued that in letter dated 31.10.2002 addressed to the General Secretary, MTNL Executives Association by Shri S.S. Kaushal, Manager (HR), in para 5, the following had been promised:

5. No lateral entry at the level of JTO and above, Recruitments will be made at Executive entry level; except in key non-technical areas at an appropriate level in exceptional cases.

28. It was further added that in their representation dated 18.02.2005 to the CMD, MTNL, the relevant demands of the applicants were the following:

1. No post bound promotion upto E7 level. All promotion upto E-7 should be, on time bound basis as per terms & conditions.

2. E4 to be eliminated i.e. promotion from E3 to E5. However such officers in the scale of E3 who retire on completion of 3 years of service but prior to completion of 4 years of service E4 may be given to benefit them on retirement.

3. The residency period for promotion from one grade to another must be uniformly 3 years (three years) except E3 to E5 which should be 4 years.

4. No attendant conditions for time bound promotion. It should be given on fitness basis as was in DOT.

5. 100% weightage of service rendered in DOT/DTS/DTO/Delhi/Mumbai units including Adhoc/Offtg/ACP/Lateral grade.
6. The date of effect of promotion from 1.10.2000 and onwards as and when the officer completes the specified eligibility period, including the weightage of service.
7. No lateral recruitment at any grade.

In their representation dated 12.03.2009 also, one of the demands was that there should be no external recruitment for 25% quota, as large number of experienced and well qualified executives are available in MTNL.

29. It was argued that there was never any ambiguity as to what the demand was and what the government has agreed to. The only exception provided for lateral entry was for key non-technical areas at an appropriate level in exceptional cases. Therefore, the respondents cannot resile from their promise and use this exception clause to deprive them of their legitimate claims as contained in the terms and conditions of absorption, referred to above. The learned counsel Shri Rao also relied on K.A. Nagamani Vs. Indian Airlines and others, (2009) 5 SCC 515, where the Honble Supreme Court observed as follows:

23. The Indian Airlines Corporation Employees Service Regulations, 1955 which are made in exercise of the powers conferred upon the Corporation by the Act are undoubtedly statutory in nature but the Recruitment and Promotion Rules are not statutory in their nature. These Rules are not framed in exercise of any Rule Making Power. Mere administrative rules are not legislation of any kind. They are in the nature of statements of policy and the practice of government departments, statutory authorities, whether published or otherwise. Statutory rules, which are made under the provisions of any enactment and regulations, subject to Parliamentary approval stand on entirely different footing. The administrative rules are

always considered and have repeatedly been held to be rules of administrative practice merely, not rules of law and not delegated legislation and they have no statutory force. Mere description of such rules of administrative practice as "rules" does not make them to be statutory rules. Such administrative rules can be modified, amended or consolidated by the authorities without following any particular procedure. There are no legal restrictions to do so as long as they do not offend the provisions of the Constitution or statutes or statutory rules as the case may be.

24. In the present case the agreement/settlement arrived at between the Management and its Officers' Association has the effect of protanto amending the Recruitment and Promotion Rules. The Rules and the agreement/settlement are complimentary to each other and have to be read together.

XXXX

XXXX

XXXX

30. We find it difficult to agree with the contention of the appellant that the respondents could not have entered into agreement/settlement with the Indian Airlines Officers Association and decided to make promotions/appointments as per the said agreement contrary to Recruitment and Promotion Rules. It is not unusual for the Managements to consider the representation of its Officers' Association and arrive at a mutually agreed settlement after negotiations as long as such settlement does not run counter or contrary to any statutory instrument. Once it is to be held that the Recruitment and Promotions Rules are not statutory in nature but are in the nature of guidelines, there are no impediments to uphold the merger of software and hardware cadres into one cadre.

Based on this, it is argued that since 2008 and 2010 Rules are not statutory Rules but only in the nature of policy, they cannot be cited to defeat the agreement arrived at between the respondents and the applicants.

30. The applicants in OA 643/2012 have prayed as follows:

(a) Grant stay of the competitive examination scheduled to be held on 04.03.2012 for external recruitment at E5 level vide Notification MTNL/SMT/2011 dated 26.11.2011.

(b) Quash and set aside the impugned MTNL Senior Management Services Promotion Policy Ref. No.MTNL/CO/R&E/2009 dated 30.06.2011.

31. Ms. Jyoti Singh, learned senior counsel appearing on behalf of MTNL, first of all, raised the issue that the applicants have failed to challenge the policy of 2007 or rules of 2008 and 2011 and, therefore, now cannot question the notifications dated 26.11.2011 and 16.01.2012. Secondly, it is argued that what was promised in 2000 option letter was that promotion of officers will be made by time bound personal upgradation of pay scales upto the level of JAG Selection Grade and beyond JAG Selection Grade with overall eligibility period of 4-6 years. It is stated that the OM dated 11.09.2007 is in accordance with that as through this OM, Time Bound Pay Scale Upgradation Scheme was implemented exactly as promised in 2000 offer letter. In sub-clause (x), it was clearly mentioned about induction of management trainees and 50% reservation for direct recruits (with 50% reserved for internal executives and remaining 50% for external candidates), making it clear that induction will be in the ratio of 50:25:25 through departmental promotion, Limited Departmental Competitive Examination with internal candidates and direct recruits respectively. At that time, the applicants did not challenge this OM. The Recruitment Rules (RRs) of 2008 notified in 2010 indicated the same ratio. Again there was no challenge to these RRs. It was further pointed out that in 2010 promotion policy, it was made clear that for the post of Senior Manager (Telecom), the method of recruitment would be as per the RRs of 2008. Again there was no challenge. The case of the MTNL is that they have been consistent throughout from 2000 till 2011 in whatever policy or rules that they have framed and these have been as per the agreement of 2000. There has not only been no challenge to these rules for this period but they have also been beneficiaries of this promotion policy. Question was, therefore, raised as to whether the applicants can now challenge the 2011 notification without first challenging 2007, 2008 and 2010 policy. It was further pointed out that it is clear from the notification dated 26.11.2011 that the internal candidates have also been given opportunity to participate and they have been provided age relaxation upto 40 years, later raised to 55 years, as mentioned earlier. It was stated that para 4.37 of the OA actually summarises what has been bothering the applicants, which will be clear from the paragraph, which we quote below:

4.37) With the issue of notifications under the Senior Manager Recruitment Rules, 2008 many of the executives working in

E3/E4 scales (Sub Divisional Engineer) have been seriously prejudiced as with more than 17 years service as Sub Divisional Engineer and ad hoc/local officiating promotion to E5 scale for nearly six years have necessarily to compete with E2 scale executives (Junior Telecom Officers) with four years service in the grade in order to get regularized in E5 scale. Further, E3/E4 scale executives, after selection as Senior Management Trainee shall be required to undergo training etc at the advanced stage of their age and after long years of service.

32. It is argued that the applicants cannot raise a grievance now as to why E2 is being given the facility of jumping seniority through Limited Departmental Competitive Examination (LDCE), without challenging 2008 RRs. In fact, it was pointed out that such form of facility of LDCE is provided in several cadres to open faster promotional avenues for talented youngsters. It was further argued that the applicants cannot claim as a matter of right that their pay scales should be upgraded after every 4/5 years as the period of 4-6 years mentioned in the policy or in the RRs is only an eligibility condition. It does not confer a right on the employee to claim promotion immediately on completion of four/five years.

33. It was clarified that time bound promotions are being given to the E2 level officers. Recruitment Rules is an opportunity for E2 level officers. As and when vacancies are arising in the E-3 grade (Deputy Manager), DPCs are being held regularly for promotion of officers from the grade of E2. Since the officers got absorbed in MTNL (absorption was complete in 2004), DPCs are being held regularly almost every year for the promotion of these officers. Therefore, the allegation in para 4.35 of the OA that vacancies in E3 scale have not been filled by MTNL is incorrect. It is claimed that upgradation in 524 posts against 646 vacancies have already been done and another 200 are being released soon.

34. Ms. Jyoti Singh, learned senior counsel representing the MTNL also relied on CMD/Chairman, B.S.N.L. and others Vs. Mishri Lal and others, Civil Appeal No.1405/2007 with specific reference to para 14 and 15 of the judgment, which we quote below:

14. Hence, the approach of the High Court, in our opinion, was totally incorrect. In State of Punjab and others vs. Arun

Aggarwal and others, (2007) 10 SCC 402, it was observed (in para 30):

There is no quarrel over the proposition of law that the normal rule is that the vacancy prior to the new Rules would be governed by the old Rules and not the new Rules. However, in the present case, we have already held that the Government has taken a conscious decision not to fill the vacancy under the old Rules and that such decision has been validly taken keeping in view the facts and circumstances of the case.

15. In the present case, a conscious decision was taken in 2005 providing that all the posts in question should be filled up by Limited Internal Competitive Examination. This was a policy decision and we cannot see how the High Court could have found fault with it. It is well settled that the Court cannot ordinarily interfere with policy decisions.

It was thus argued that through this judgment, the Honble Supreme Court has held that the government can take a conscious decision not to fill vacancies under the old Rules and that the Court cannot ordinarily interfere with such policy decisions. Therefore, the judgment of the Honble Supreme Court in Rangaiah (supra) also will not apply as in 2007, 2008 and 2010, it was the conscious decision of the respondents. Even if, for the sake of argument, it is taken that it is not consistent with 2000 offer, the Honble Apex Court had not interfered even when the entire quota was open to LDCE.

35. Shri M.K. Bhardwaj, learned counsel appearing on behalf of private respondents additionally argued that while in DOT, 50:50 ratio was being followed but after absorption in MTNL, the applicants are now seeking something more than what was available to them in DOT. Shri Bhardwaj argued that the OA was filed on 1.03.2012 and is pending for the past two years and the private respondents were all internal candidates at E-2 level who took the examination but have been stopped in their way of fast track promotion, thereby losing opportunity for higher promotions in future as well. The learned counsel also referred to an order of the Hyderabad Bench of the Central Administrative Tribunal in OA 1044/2009, N. Ashok Kumar & ors. Vs. Bharat Sanchar Nigam Limited. The applicants in that case were all working as Sub Divisional Engineers. They had filed the OA to restrain the respondents from making direct recruitment to the post of DGM as per the

impugned rules of BSNL Management Services Recruitment Rules 2008 and a further declaration to direct the respondents to fill up all the posts of DGM only by the internal BSNL candidates either by promotion or by direct recruitment. The Tribunal vide its order dated 6.07.2010 dismissed the OA and the provision for direct recruitment was not interfered with.

36. Learned counsel for the applicants in OA 643/2012 contended that in their OA, they have challenged 2011 policy as well. Therefore, it is incorrect on the part of the respondents to state that the policy has not been challenged. The cause of action arose when the Notification was issued in 2011. It was reiterated that the applicants in this case in their letter dated 12.03.2009 had also challenged 2008 RRs by stating that there should be no external recruitment for 25% quota, as large number of experienced and well qualified executive were available in MTNL and total 50% competitive quota should be filled up through LDCE only. It is also argued that the advertisement does not refer to any policy and therefore, nothing stops MTNL from taking all 30 persons directly from the market as direct recruits. It is argued that in the brochure of permanent absorption, the agreement was that the promotion of the officers was to be made time bound by personal upgradation of posts upto the level of JAG selection grade and the average eligibility period for promotion from one grade to the next higher grade will vary between four to six years upto the level of JAG selection grade. However, the rules framed by the respondents are contrary to this inasmuch as they permit post based promotions. It is asserted that it was never contemplated at the time of absorption of the applicants in 2000 that Senior Management Service at E-5 level would be constituted, which is being done, through the impugned rules. In fact, in the guise of making recruitment to the Senior Management Service, the respondents are attempting to go behind the terms of the settlement arrived at in 2000. In the end, the learned counsel raised the following questions:

A. Whether the Respondent No.1 was entitled to issue and implement the impugned MTNL Senior Management Promotion Policy contrary to the assurances made to the Applicant/its membership at the time of their absorption into MTNL in 2000 and contrary to the terms of the Settlement recorded between the parties in 2002 as recorded in the communication dated 31.10.2002 issued by the Respondent No.1?

B. Whether the Respondents being public authorities, are estopped from acting contrary to a negotiated Settlement with the Applicant Association?

C. Whether the impugned notification dated 26.11.2011 which is contrary to the assurances made to the Applicant/its membership at the time of their absorption into MTNL in 2000 and contrary to the terms of the Settlement recorded between the parties in 2002 as recorded in the communication dated 31.10.2002 issued by the Respondent No.1 is illegal and liable to be struck down as such?

D. Whether the Respondent No.1 vests with the power to change Recruitment Rules and Promotion policies at its own will without being bound by its own previous conduct?

E. Whether the Applicant/its membership has a legitimate expectation that the assurances made at the time of their absorption into MTNL in 2000 and contrary to the terms of the Settlement recorded between the parties in 2002 as recorded in the communication dated 31.10.2002 issued by the Respondent No.1 would be honoured and therefore, be entitled to enforce the same against the Respondents herein?.

37. Shri A.K. Behera, learned counsel for applicants in OA 722/2012, in reply, stated that they have not challenged 2007 and 2008 policy as 2007 policy is in two parts, one for time bound promotion (Part I) and the other for post based promotion (Part II) and para (x) cited by MTNL pertains to post based promotion. In fact in para 2 of the said policy, it is clearly mentioned regarding post based promotion that instructions will be issued in due course. Since the applicants were interested only in time bound promotion, they are concerned with only Part I of the policy i.e. time bound promotion, which is in consonance with the agreement of 2000 as it provides for in the scope itself for time bound promotion upto E7 level in which qualifying service for first upgradation and subsequent upgradations has been laid down as well as the review date being indicated as 1st October of each year starting with 1.10.2004. Moreover, it is stated that in reply to para 4.17 of the OA, the MTNL themselves have accepted this position and stated as follows:-

MTNL framed Time Bound/Post Based Promotion Policy 2007 and issued on 11.08.2007 which was effective from

01.10.2004. The applicants were being given promotion through personal upgradation as per this policy. They were given local officiating to the post. There was no loss to the employees in respect of salary, post and duties.

It was also clarified that for the post based promotion also, it was mentioned in clause (ii) as follows:

Post based regular promotions, in tune with the above hierarchy levels, be regularized as per provisions of concerned already notified/ to be notified RRs of MTNL.

38. It was further argued that it would be clear from the office order dated 1.08.2009 (referred to above in para no.16) that promotion had been accorded to the SDE (Telecom) to the grade of Divisional Engineer in the IDA pay scale of Rs.16000-400-20800 (E-5) on regular basis with effect from 30.06.2009, which is approximately 4-1/2 years from 1.10.2004, indicating that the time bound promotion has also been implemented by the MTNL. Regarding 2008 RRs, it is argued that these have been published on 17.04.2010 and will have effect from 20.03.2010 and since the applicants are not claiming promotion beyond 2010, therefore, there has been no challenge to 2010 policy either. It is also argued that counting from 2000, 14 years have passed i.e. the applicants should have already reached E-7 level and once they reach E-7 level, they have no complaint. Shri Behera, learned counsel argued that the judgment of the Honble Supreme Court in Mishri Lal (supra) would not apply in this case as that related to vacancy based promotion whereas in the present case, question of upgradation is involved. Moreover, in this case there is no conscious decision of the government and further that Mishri Lal case (supra) did not involve the question of absorption. Our attention was drawn to para 5.13 of the reply where it is stated that the request of the applicants is under examination whereas, in actual practice, the respondents have gone ahead to implement the policy, which is contrary to the commitment during absorption. It was next contended that the order of the Hyderabad Bench of the Central Administrative Tribunal in N. Ashok Kumar (supra) cited by Shri M.K. Bhardwaj, learned counsel appearing on behalf of private respondents will not be applicable here as that was not a case of absorption and also the RRs are not being questioned here.

39. Ms. Jyoti Singh, learned senior counsel representing the respondents drew our attention to the fact that the OM dated 11.09.2007 does not provide that it is only for absorbees. It is for all employees. She explained that like the Assured

Career Progression (ACP) Scheme and Modified Assured Career Progression (MACP) Scheme, MTNL had assured its employees, including the absorbees, that there would be post based promotions but at the same time, there would be a Scheme of time bound promotion also in order to avoid stagnation in the cadre and this time bound promotion Scheme was open to all employees from E-1 to E-7 level. Beyond E-7, it was post based. It was pointed out that the agreement with the employees was for personal upgradation of the posts held by them upto the level of JAG and Selection Grade, akin to ACP and MACP Scheme. It was never the intention or mentioned in any of the documents that all promotional avenues will be for the absorbees by upgrading the posts, thus crowding out all entrants through other channels. Moreover, this Scheme has nothing to do with vacancies and those upgradations will be purely personal to the applicants. It did not mean that the incumbent would be given the charge of the higher post or that his post would be converted into the higher level post. All that was meant was that the pay scale would be upgraded to the next scale under the time bound promotion Scheme in case he does not get promotion in normal course.

40. We have heard learned counsel for the parties, gone through the pleadings available on record and judgments cited by either side.

41. The facts are that when MTNL was created, DOT officials working in Group `A, `B and some Group `C posts, were given option to seek absorption in MTNL in IDA scales. The promise made to them was that they would be given time bound promotions through personal upgradation. The applicants have been laying lot of emphasis on para (xii), Annexure `B of the letter dated 8.05.2000 stating that expression used is personal upgradation of posts. However, the applicants have stated that OM dated 11.09.2007 as regards time bound upgradation policy is not in conflict with their interest. Para 8 of this OM reads as follows:

8. With the implementation of IDA TIME BOUND Pay Scale Upgradation Scheme with effect from 01.10.2004, provisions with regard to arrangements like In-situ/ACP or any other time bound promotion/ Upgradation scheme of Government set up shall stand withdrawn, unless permitted in any specific context.

Clearly this mention of IDA TIME BOUND Pay Scale Upgradation Scheme with effect from 01.10.2004 means it was a time bound pay scale upgradation Scheme which becomes further clear from para quoted above as it states that with the implementation of IDA time bound pay scale Upgradation Scheme with effect from 01.10.2004, provisions with regard to arrangements like In-situ/ACP or any other time bound promotion/ Upgradation scheme of Government set up shall stand withdrawn. Therefore, it would become clear that what the learned senior counsel has been stating on behalf of respondents is true, which is that the MTNL had framed this Time Bound Upgradation Scheme for its employees including that for absorbees in case some employees do not get benefit of post based promotion.

42. By no stretch of imagination, we can come to the conclusion that the absorbees would be treated as a special class and provided time bound substantive promotions on higher posts, depriving other employees who are non-absorbees. These would be people who would be directly recruited from 1986 onwards or those on deputation etc. Nowhere in the letter dated 8.05.2000, it is stated that there will be no lateral entry at E-5 level. After issuance of letter dated 8.05.2000 and acceptance of that by the absorbees, we do not have to go to any document or letters exchanged between DOT/ MTNL and these absorbees association, as the result of all those discussions has culminated in letter dated 8.05.2000. It is also clear that in neither of the OAs have the 2007 or 2008 policy been challenged. Therefore, those issues cannot be reopened now. Moreover, as stated earlier, the learned counsel for the applicants in OA 722/2012 has categorically stated, during the course of arguments, as a defence against the respondents charge that 2007/ 2008 policy has not been challenged, that they accept the 2007 OM as regards time bound IDA upgradation, which makes it amply clear under general principle clause 8 that it is a Time Bound Pay Scale Upgradation Scheme and not a Time Bound Promotion Scheme, as is being construed by the applicants. Therefore, even if we reject the respondents argument that having not challenged 2007/2008 policy the applicants cannot question the notifications dated 26.11.2011 and 16.01.2012, the very policy which is accepted by the applicants, states that it is time bound pay scale upgradation.

43. As pointed out by the learned counsel for the respondents, and rightly so, the 2000 OM nowhere states that it is meant only for absorbees. It applies to all employees. It is a beneficial Scheme introduced by the MTNL on the lines of ACP Scheme and Modified ACP Scheme under the government that in case an employee does not get promotion in post based system, he/she at least has the benefit of time bound upgraded pay scale. The actual holding of charge of the promotional post would obviously be given through a proper procedure under the post based scheme, following the rules of seniority etc. and in case an absorbee holds the upgraded scale and a post in that upgraded scale is vacant for some reason, then he/ she can be given the officiating charge or current duty charge and that is exactly what the MTNL has been doing. There is

another aspect to this whole issue. MTNL is a telecom company. The knowledge in this filed is in constant flux and it is very important to induct technical people who have acquired advance knowledge and the company should get the benefit of inducting such personnel who are qualified to handle new systems through lateral entry and creation of a separate management cadre. This is true for every field but is extremely crucial in the field of telecom where knowledge is expanding at a very fast rate. Any company in this sector would prefer to rely only on those having up-to-date knowledge and experience. In this regard, learned senior counsel Ms. Jyoti Singh has rightly cited the judgment in Mishri Lal (supra) in which the Honble Apex Court basically accepts the philosophy that if the government takes a conscious decision to apply new rules, then that cannot be a matter of challenge. To that extent, Rangaiah (supra) would not be applicable and in this case, as demonstrated, there is no application of new rules but the same rules and the notifications dated 26.11.2011 and 16.01.2012 are exactly in line with 2011, 2008 and 2007 policy and the offer letter dated 8.05.2000. Also, even if it is considered to be a new rule, the Honble Apex Court in Mishri Lal (supra) has held that to be a valid option for the government.

44. Indian Airlines case (supra) cited by Shri Rao, learned counsel for the applicants in OA 643/2012 would not apply here as it is incorrect to hold that the rules framed by the Corporation are not statutory in nature, as they have been framed in exercise of the powers conferred on it under the relevant Act and are not mere administrative instructions. In any case, the judgment of the Honble Supreme Court in Mishri Lal (supra) will hold the field as this is also a Division Bench judgment and a later one.

45. In view of the above discussion, we are of the considered opinion that there has been no breach by the respondent-MTNL of its agreement with the employees as captured in the letter dated 8.05.2000 and the policy of 2007, 2008 and 2010, which are absolutely consistent with the 2000 policy, as accepted by the absorbees. In the result, we find no illegality in the 30.06.2011 policy or the notifications dated 26.11.2011 and 16.01.2012 and the OAs are thus dismissed. There shall be no order as to costs.

(P.K. Basu)

Member (A)

(V. Ajay Kumar)

Member (J)

/dkm/