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UNION OF INDIA AND ANR.

v.

MADRAS TELEPHONE SC & ST SOCIAL WELFARE ASSOCIATION
AND ANR.

SEPTEMBER 28, 2006

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[B.P. SINGH, S.B. SINHA AND P.K. BALASUBRAMANYAN, JJ.]

Service Law:

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Telegraph Engineering Service, Class—II—Seniority—Fixed pursuant to decision of High Court—Said decision attaining finality—Subsequently Supreme Court taking a contrary view but protecting seniority and promotion granted to the employees like the petitioners therein—Application for clarification and similar protection by persons whose seniority was fixed on*

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*the basis of High Court decision, but later affected by subsequent judgment of Supreme Court—Held, 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 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 taken in the judgment **—Since the*

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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 —It is clarified that in this order the Court has not laid down any principle or law having universal

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application, but has only clarified and given effect to an earlier judgment of this Court rendered in an extraordinary situation—Telegraph Recruitment Rules, 1966—Post and Telegraph Manual, Vol. IV—Paragraph 206.

**Union of India v. Madras Telephone SC & ST Social Welfare Association, [2000] 9 SCC 71; Junior Telecom Officers Forum and Ors. v. Union of India and Ors., [1993] Supp. 4 SCC 693; Telecommunication Engineering Service Association (India) and Anr. v. Union of India and Anr., [1994] Supp. 2 SCC 222 and **Union of India v. Madras Telephone SC & ST Social Welfare Association, [1997] 10 SCC 226, referred to.*

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CIVIL APPELLATE JURISDICTION

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I.A. No. 16.

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Civil Appeal No. 4339 of 1995.

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From the Judgment and Order dated 31.12.1986 of the Central Administrative Tribunal Madras in T.A. No. 909/1986 and R.A. No. 44/1987.

L. Nageshwar Rao, P.P. Khurana, Dayan Krishnan, Nikhil Nayyar, Gatuam Narayan, R.K. Kapoor, Mukesh Kumar Verma, Govind Kaushik, Anita Sharma (for Anis Ahmed Khan), Hemant Sharma, V.K. Verma, P. Parmeswaran, Subramonium Prasad and Arvind Kumar Sharma, for the appearing parties and Parmanand Lal in-Person.

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The Order of the Court was delivered by

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B.P. SINGH, J. This application for clarification has been filed by the applicants pursuant to the liberty granted to them by order of this Court dated July 18, 2003 in Petition for Special Leave to Appeal (Civil) No.9189 of 2003 in *Promotee Telecom Engineers Forum & Ors. v. Secretary, Department of Telecommunications & Ors.* The applicants pray that this Court may be pleased to clarify that the observations made by this Court in its judgment and order reported in [2000] 9 SCC 71 *Union of India v. Madras Telephone SC & ST Social Welfare Association* dated April 26, 2000 protects the seniority and consequent promotion of persons who had judgments in their favour from the Central Administrative Tribunal duly confirmed by this Court which have thus attained finality. Their seniority and promotion, therefore, cannot be disturbed in any manner whatsoever. The respondents who have revised the seniority list on 22nd, 26th and 28th March, 2001 respectively and purporting to give effect thereto issued the letter dated March 30, 2001, must recognize the finality of the judgments in favour of the applicants and restore them to their original seniority.

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To appreciate the controversy it is necessary to refer to the background in which this question has arisen.

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The applicants are/were members of the Telegraph Engineering Service Class II. Before coming into force of the Telegraph Engineering Service Class

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A II Recruitment Rules, 1966 framed in exercise of powers conferred by the proviso to Article 309 of the Constitution of India, the promotion from the post of erstwhile Engineering Supervisor Telecom (re-designated as Junior Engineer) to the post of Assistant Engineer was made in accordance with the instructions contained in paragraph 206 of Post and Telegraph Manual, Vol. IV. These instructions were executive instructions which governed the field in the absence of statutory rules. In accordance with the aforesaid executive instructions contained in the Manual promotion to Class II was made according to the principle of seniority-cum-fitness. Those who passed the qualifying examination earlier ranked senior as a group to those who passed the examination on subsequent occasions, i.e. officials who passed the examination held in the year 1956 ranked en block senior to those who passed in 1957. Their seniority inter se, however, was determined according to their seniority in the cadre of Engineering Supervisors. However, with the coming into force of the Recruitment Rules, 1966 w.e.f. June 15, 1966, the method of determining seniority was changed. It was provided that the Engineering Supervisors must complete 5 years of service to be eligible for appearing at the departmental qualifying examination. The same requirement existed earlier as well, but under para (v) of Appendix 1 of Recruitment Rules, the eligibility list of candidates for consideration of the Departmental Promotion Committee was to be prepared in accordance with the instructions as may be issued by the Government from time to time. Accordingly, the Government of India, Department of Communication issued instructions dated June 28, 1966 prescribing the procedure for the preparation of eligibility list of the officers for being placed before the Departmental Promotion Committee. The instructions required the preparation of a separate list for each year of recruitment. Para (v) of the instructions provided that all officials of a particular year of recruitment/ appointment, who had qualified in the examination, would rank en-block senior to those officials of the same year of recruitment/ appointment, who qualified in subsequent examination. It would thus appear that in the matter of promotion the emphasis shifted from the year of passing the examination to the year of recruitment/ appointment of the candidate concerned.

G In the year 1981 one Shri Parmanand Lal (1966 batch) and Brij Mohan (1965 batch), both of whom qualified in the qualifying examination held in 1974, filed two writ petitions complaining of their placement in the eligibility list below the last man who passed the qualifying examination in 1975. The department contended that the eligibility list had been arranged on the basis of seniority, based on the year of recruitment and ignoring the year of passing the qualifying departmental examination, as required by the Recruitment

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Promotion Rules of 1966. The Lucknow Bench of Allahabad High Court considered the submissions urged before it in the light of the Recruitment Rules of 1966 as also the Rules of 1981 and para 206 of the P & T Manual and concluded that those who qualified in the departmental examination earlier were entitled to be promoted prior to those who qualified later, irrespective of the year of their initial recruitment. It was held that para 206 of the Manual was not in conflict with either the Rules of 1966 or 1981, but was supplemental to those Rules. Relief was accordingly granted to the writ petitioners based on the interpretation of the Rules and para 206 of the P & T Manual.

Petitions for Special Leave to Appeal were preferred by the Union of India challenging the aforesaid decision of the Allahabad High Court which were numbered as Special Leave Petition Nos. 3384-3386 of 1986. By Order of April 8, 1986 this Court dismissed the special leave petitions observing as follows:

“Special leave petition is dismissed on merits. In the facts and circumstances of the present case, we are not inclined to interfere with the judgment of the High Court except to a limited extent”.

It is the case of the applicants that following the judgment of the Allahabad High Court several petitions were allowed by the Principal Bench, Central Administrative Tribunal seeking identical relief. The Principal Bench by a detailed order of June 7, 1991 allowed the applications and issued directions for re-fixation of seniority, keeping in view the relevant recruitment rules and para 206 of the Manual. The Order of the Principal Bench of the Central Administrative Tribunal dated June 7, 1991 was challenged before this Court both by the Union of India and Junior Telecommunication Officers Association (India) representing the case of some of the aggrieved officers. The Special Leave Petition Nos. 19716-19722 of 1991 were dismissed on January 6, 1992. While dismissing the special leave petitions this Court observed:-

“These special leave petitions are directed against the judgment of the Central Administrative Tribunal, Principal Bench, Delhi dated June 7, 1991. The Principal Bench has followed the judgment of the Allahabad High Court in Writ Petition Nos. 2739 and 3652 of 1981 decided on February 20, 1985. SLP (C) Nos. 3384-86 of 1986 against the judgment of the Allahabad High Court have already been dismissed by this Court on April 8, 1986. We see no grounds to interfere. Special Leave petitions are dismissed”.

A Subsequently, the same questions were again agitated before this Court in [1993] Supp 4 SCC 693 *Junior Telecom Officers Forum and Ors. v. Union of India and Ors.*, This Court while dismissing the writ petition before it observed:-

B “Though learned counsel for the parties have referred to some judgments on the questions of res judicata, constructive res judicata and the binding nature of a precedent, we do not think it is necessary to refer to any of those judgments as in the facts and circumstances of this case, and from what we have noticed above, we are satisfied that the issues which the petitioners now wish to raise had been agitated directly and substantially not only by JTOA, which was

C espousing their cause in the earlier litigation right up to this Court, but also by the Union of India. The order made by this Court in SLP (C) Nos.3384-86 of 1986 interfering with the judgment of the Allahabad High Court to a limited extent is an order made on the merits of the case as is quite apparent from the expressions used in that order and

D is a binding precedent. The issues were again raised and agitated by the Union of India as well as JTOA in SLP (C) Nos.19716-22 of 1991 against the judgment of Principal Bench of CAT, dated June 7, 1991 unsuccessfully. Those judgments have settled the controversy and have become final and binding in respect of the questions debated therein and the issues settled thereby and as was observed by a

E Constitution Bench of this Court in *Makhanlal Waza v. State of J & K*, the Union of India and its officers are bound to follow the same even if the members of the Forum or a majority of the engineers were not individually parties in the case before the Allahabad High Court. Since, the issues now raised have been agitated twice over, it is not

F permissible for the petitioners to once again reagitate the matter by coming now under the ‘cloak’ of a Forum. The preliminary objection, therefore, must succeed and is upheld. The writ petition is accordingly held not maintainable and dismissed”.

G The applicants contend that following the judgment of the Allahabad High Court and the Supreme Court, the Benches of the Central Administrative Tribunal decided a large number of cases. In some of the cases appeals were preferred by the Union of India before this Court which were rejected by this Court. The applicants have referred to the judgment of this Court in [1994] Supp 2 SCC 222 *Telecommunication Engineering Service Association (India) and Anr. v. Union of India and Anr.*; wherein in substance the view of the

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Allahabad High Court was approved by this Court by dismissal of the special leave petitions. The Tribunal in that case had held that the decision of the Allahabad Bench in the case of *Parmanand Lal and Brij Mohan* and the judgments of the Tribunal following the said decision lay down good law and constitute good precedents to be followed in similar cases. The Tribunal accordingly rejected the contentions of the appellants to the contrary and further held that having urged before the Supreme Court their various contentions, and their SLPs having been dismissed, they could not agitate the matter before the Tribunal. This Court observed :-

“So far as the first point is concerned, it appears that the interventionists filed parallel proceedings through *Junior Telecom Officers' 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”.

It would thus appear that this Court upheld the view of the Allahabad High Court in the case of *Parmanand Lal and Brij Mohan*. This view was upheld by this Court by dismissing the special leave petitions against the said judgment. The same view was reiterated by this Court in [1993] Supp 4 SCC 693 *Junior Telecom Officers Forum and Ors. v. Union of India & Ors.*, and [1994] Supp 2 SCC 222 *Telecommunication Engineering Service Association (India) and Anr. v. Union of India and Anr.*,

It appears that the *Madras Telephone SC & ST Social Welfare Association* had filed a writ petition before the Madras High Court with a prayer that the eligibility list must be prepared by determining the seniority on the basis of confirmation as Junior Engineer. That list should form the basis for promotion to Class II Service. The writ petition stood transferred to the Central Administrative Tribunal and the Tribunal by its judgment dated December 31, 1986 held that the year of recruitment for the purpose of seniority is extraneous and irrelevant and accordingly directed that the eligibility list be arranged according to the year of passing the qualifying examination. As amongst those who pass the examination in the same year, the list should be according to their merit as seen from the marks obtained in the examination. The judgment of the Tribunal was challenged before this

A Court in Civil Appeal No.4339 of 1995 and the judgment of this Court is reported in [1997] 10 SCC 226 *Union of India v. Madras Telephone SC & ST Social Welfare Association*; This Court held :

B “From the aforesaid clause read with instructions, it is clear that the eligibility lists have to be prepared according to the year of recruitment/ appointment. The respondent’s case, before the Tribunal, however, was that the said lists should be prepared not with reference to the year of recruitment/ appointment but with reference to the year of confirmation. The Tribunal neither accepted their statement nor did it uphold the Department’s case but directed that these lists should be prepared on the basis of the year of the passing of the Departmental Qualifying Examination and not on the basis of the year of recruitment/ appointment. In our opinion what the Tribunal has done really amounts to rewriting the rule which should not have been done by it. The appeal is accordingly allowed. The order of the Tribunal is set aside. For the same reasons, the order dismissing the review filed by the Union of India, by the Tribunal, is also set aside. No costs”.

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In Civil Appeal No.4339 of 1995, the notice of this Court was not drawn to the earlier judgments of this Court, wherein the Allahabad High Court view had been approved namely, the order of this Court dismissing the special leave petition in *Parmanand Lal and Brij Mohan* case, and the judgments reported in [1993] Supp 4 SCC 693 *Junior Telecom Officers Forum and Ors. v. Union of India and Ors.*, and [1994] Supp 2 SCC 222 *Telecommunication Engineering Service Association (India) and Anr. v. Union of India and Anr.*, The judgment of this Court does not notice the judgments aforesaid.

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F In view of the earlier judgments of this Court and the later judgment in Civil Appeal No.4339 of 1995, which apparently took a contrary view, the Union of India found difficulty in implementing the order of this Court and, therefore, it filed an application for clarification which came to be disposed of by this Court along with other applications, petitions and civil appeals, by a common judgment reported in [2000] 9 SCC 71 *Union of India v. Madras Telephone SC & ST Social Welfare Association*. Shorn of unnecessary details this Court took the view that the judgment of this Court in Civil Appeal No.4339 of 1995 reported in [1997] 10 SCC 226 laid down the correct law. It did not approve the view of the Allahabad High Court observing that once the statutory recruitment rules came into force and the procedure was prescribed under the said Rules for preparation of eligibility list of officers for

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promotion to the Engineering Service Class II by Notification dated June 28, 1966, it is that procedure which has to be adopted, and the earlier administrative instructions contained in para 206 of the P & T Manual cannot be adhere to. It observed that the contrary conclusion of the Allahabad High Court was undoubtedly incorrect. However, it made a pertinent observation with which we are concerned in the instant application. While upholding the correctness of the law as declared in [1997] 10 SCC 226, it was clarified as follows:-

“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”.

By the same judgment this Court also disposed of the appeal preferred by Parmanand Lal which was directed against the Order of Central Administrative Tribunal dated April 11, 1997. Parmanand Lal had approached the Tribunal challenging the order of reversion because of judgments of different Tribunals and of this Court. This Court observed that though the correctness of the view in [1997] 10 SCC 226 had been upheld, 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. That judgment having attained finality and Parmanand Lal having received the benefit of the said judgment and having been promoted, could not have been reverted because of some later judgments and directions given either by the Tribunals or by this Court. It accordingly, quashed the order of reversion and also clarified that the seniority of Parmanand Lal in the cadre of Assistant Engineer, fixed on the basis of the directions of Allahabad High Court, after dismissal of the special leave petition against the same by this Court, is not liable to be altered by virtue of a different interpretation being given for fixation of seniority by different Benches of the Central Administrative Tribunal.

The applicants claim that their cases are also similar and in fact identical to that of *Parmanand Lal and Brij Mohan*. In their cases as well, the High Court or the CAT have rendered judgments in their favour pursuant to which they have already been promoted on the basis of their seniority determined in accordance with the principles laid down by the Allahabad High Court. Thus, they are covered by the observation earlier quoted in this order wherein it has been clarified that persons who have already got the benefit like Parmanand Lal and Brij Mohan by virtue of the judgment in their favour will not suffer, and their promotion already made will not be affected by that

A judgment.

On behalf of the Union of India three main objections have been raised. In the first instance, it is submitted that this Court should not entertain an application for clarification three and a half years after the judgment of this Court dated April 26, 2000. Secondly, it is contended that the applicants are seeking clarification from this Court to the effect that though a part of the seniority list should be prepared in accordance with paragraph 206 of the P & T Manual, the rest of it be prepared in accordance with the 1996 Rules. Since the larger Bench held that the Statutory Rules of 1966 will supersede the administrative instructions contained in the Manual, there is no need to undertake this exercise as it would result in unnecessary complications. Lastly, an objection has also been raised on the ground that in the case of *Shri Parmanand Lal* this Court had protected his seniority as well as promotion but in the instant case only the promotion has been protected and not the seniority.

D So far as the last submission is concerned, we consider the submission to be hyper technical and does not deserve serious consideration. If the promotions have been protected, it is only on the basis of seniority determined by the concerned authority in accordance with the principles laid down in the earlier judgments.

E So far as the question of delay is concerned, the applicants have explained that after the judgment of this Court, they have not been sitting idle. They have referred to the various proceedings taken by them before this Court, before the Central Administrative Tribunal, New Delhi and thereafter before the High Court. In fact, while disposing of their writ petition, the Delhi High Court in its Order of December 16, 2002 observed that since the issue involved interpretation of the judgment of this Court in [2000] 9 SCC 71 (supra) the petitioners were free to approach this Court seeking clarification. The applicants, thereafter filed a Special Leave Petition No.9189 of 2003 which was withdrawn by the petitioners with liberty to seek clarification of the judgment and order of this Court. We are, therefore, satisfied that this application cannot be rejected on the ground of delay.

H 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 [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 C.A. No. 4339 of 1995 reported in [1997] 10 SCC 226 (supra) as affirmed by this Court in its judgment reported in [2000] 9 SCC 71 (supra). A

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. B C

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. D

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's* 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 reported in [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. E F

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. G

R.P.

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