

A JUNIOR TELECOM OFFICERS FORUM AND ORS.

v.

UNION OF INDIA AND ORS.

SEPTEMBER 18, 1992

B [J.S. VERMA AND DR. A.S. ANAND, JJ.]

C *Civil Services : P. & T. Manual, Vol. IV—Para 206—Telecom Engineering Service (Group B)—Promotion Mode of—Seniority of junior telecome officers and assistant engineers—Fixation of—Eligibility or approved list—Preparing—Matters concluded by Allahabad High Court and CAT—Finality of.*

D *Constitution of India, 1950 : Article 32—Writ to reagitate matters settled in previous cases, wherein petitioners' cause was espoused—Maintainability of—Petitioners' conduct—Whether abuse of the process of the Court.*

E One P.N. Lal (recruited in the 1966 batch), and one Brij Mohan (recruited in the 1965 batch) qualified in the qualifying examination held in 1974. In 1981, they filed two writ petitions in the Allahabad High Court complaining of their placement in the eligibility list below the last man, who passed the qualifying examination in 1975.

The case of the department was that the eligibility list was prepared on the basis of the seniority, based on the year of recruitment ignoring the year of passing the qualifying department examination.

F The High Court came to the conclusion that those who qualified in the department examination earlier were entitled to be promoted prior to those who qualified later irrespective of the year of their initial recruitment and also held that para 206 of the P&T Manual was not in conflict with either the rules of 1961 or 1981 but was supplemental to those rules.

G The Union of India appealed against the judgment of the Allahabad High Court before this Court by special leave.

H This Court dismissed the S.L.P. on merits and directed the authorities to deposit half of the sum, which was directed by the High Court, as arrears of respondent No.1's salary.

Subsequently, some other Junior Engineers approached the Central Administrative Tribunal, Ernakulam Bench, and sought relief on the basis of the Allahabad High Court judgment. The CAT allowed the applications.

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Some more Junior Engineers later on approached the Principal Bench of Central Administrative Tribunal seeking relief identical to that of the Allahabad cases.

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The Principal Bench allowed the applications and issued directions for refixation of the seniority.

Since, the directions of the Principal Bench were not complied with, contempt petitions were filed. On notices being issued, the Union of India and others informed Tribunal that they were in the process of revising the seniority of the entire cadre of TES (Group B) as per the guidelines contained in para 206 of the P&T Manual. A direction was issued to the respondents to comply with the orders of Central Administrative Tribunal within the time fixed by the CAT.

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The order of CAT was challenged in this Court both by the Union of India and JTOA (India) who had sought permission to file the SLP. The special leave petitions were dismissed.

Some more applications were filed in the Central Administrative Tribunal, Principal Bench raising common questions and seeking relief on the basis of the judgment of the Allahabad High Court and various other orders rendered by different benches of the CAT in identical cases.

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The Forum, (Petitioner in WP(C) No. 460 of 1992) filed an application for intervention and opposed the grant of relief.

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The CAT rejected the application of the Forum and granted relief to the applicants, following the judgment of the Allahabad High Court, against which the SLP had been dismissed.

Thereafter the present writ petition (W.P.(c) No.460 of 1992) was filed by the Forum. Forum filed Special Leave Petition Nos. 9063-64 of 1992 against the order of the Central Administrative Tribunal, Principal Bench refusing Intervention Application of the petitioner in O.A. No.2407 of 1988 vide an order dated 22.4.1992; Transfer Petition (Civil) No.417 of 1992 seeking transfer of various petitions pending in different benches of the

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A Tribunal to this Court under Article 139-A(i) of the Constitution of India.

B The controversy in the writ petition related to the mode of promotion to Telecom Engineering Service (Group B) as well as to the fixation of seniority of junior telecom officers and assistant engineers in that category and the preparation of the eligibility or the approved list for the said purpose by the department in accordance with the recruitment rules and Para 206 of the P&T Manual, Vol. IV.

C The caveators raised a preliminary objection to the maintainability of the present writ petition, contending that the petitions were set up only for the purpose of getting a new lease in the litigation after the matters stood concluded in the SLPs filed against the judgment of the Allahabad High Court as well as against the judgment of Principal Bench of the Central Administrative Tribunal; that matters which were concluded and the issues which had been settled could not be permitted to be reopened in the manner adopted by the petitioners, which was nothing but an abuse of the process of the court, because JTOA (India) had espoused the cause of all its members, including those now constitution the Forum; and that after the battle was lost by JTOA (India) the Forum had come up to reopen the concluded views.

E The petitioners submitted that the petitioners were not parties either before the Allahabad High Court or the Central Administrative Tribunal in the earlier cases, that since their interests were adversely affected by the orders made in those cases, they had a right to get the matter examined by this Court, more so, because the order of the CAT and the Allahabad High Court would affect a very large number of junior engineers and the Bangalore Bench had struck a divergent note; and that the point of view of the petitioners was not considered or discussed in the earlier cases and therefore they could not be debarred either by the principle of *resjudicata* or even constructive *resjudicata* to agitate their grievances; that the dismissal of the special leave petitions by this Court *in limine* could not be treated to be any precedent so as to bind the petitioners.

G Dismissing the Writ Petition, the Special Leave Petitions and the Transfer Petition, this Court,

HELD : 1.01. The Forum and the petitioners, excepting a few, were not parties in their individual capacity in the earlier litigation before the

CAT or this Court since obviously the Forum was not even in existence at that time, but their cause was being espoused by their association JTOA (India) which had appeared before the CAT as well as filed a SLP in this Court against the order of the CAT dated 7.6.1991. JTOA (India) had in the SLP projected the same view point and highlighted the same views as are being projected now in the writ petition. [777-H, 778-A]

1.02. The correctness of the Allahabad High Court Judgment and CAT was unsuccessfully assailed in the previous litigation. The SLP filed by JTOA (India) was dismissed by this Court. [778-B]

1.03. The order of the Division Bench of this Court in SLP Nos.3384-86 of 1986 unmistakably shows that the dismissal of the SLP, though *in limine*, was on merits and the Court declined to interfere with the impugned judgment of the Allahabad High Court except to a limited extent as indicated therein. [778-F]

1.04. The issue which has been high-lighted in the present petition in actual substance is only that the year of recruitment, irrespective of the year of qualifying the departmental examination, should form the basis for promotion and the fixation of *inter se* seniority ignoring para 206 of the P&T Manual. Reliance has been placed in that behalf on the recruitment Rules of 1966, 1981 and the executive instructions. These issues including Rules and instructions were directly and substantially projected in the earlier litigation including the one to which JTOA (India) was a party. It is, therefore, impermissible now for the Forum to make attempts in this manner to have the very same matter reopened by asserting that their view point had not been projected in the earlier litigation, when admittedly JTOA (India) of which the Forum forms a part, had projected that view point though unsuccessfully. It is, therefore, incorrect to say that the plea now set up by the Forum was not asserted or considered in the earlier litigation at the instance of parties representing the interest of the subsequently formed Forum comprising some members of JTOA (India).

[778-H, 779 A-C]

1.05. Besides, on the petitioners' own showing all the issues which they have raised in the writ petition had been also raised in their intervention applications which had been heard alongwith the original applications and rejected on 22.4.1992 after the intervention application had been taken on board by the CAT. [783-C]

A 1.06. It is improper, for the petitioners to now urge that they had no occasion or opportunity to raise the issues and contentions, as now raised, before the Principal Bench of the CAT or that the same were not heard and considered on merits. [783-D]

B 1.07. Since, the issues now raised have been agitated twice over, it is not permissible for the petitioners to once again reagitae the matter by coming now under the 'cloak' of a Forum. [784-F]

C 1.08. OA 1707/92 was filed while the proceedings were pending in this Court. The prayers made in paragraph 81 of Original Application No.1707/92 are a verbatim reproduction of the prayers in the present writ petition. How the petitioners chose to pursue different remedies at the same time in respect of the same matter in different forums is not at all understandable. This Court records its disapproval and concern on such conduct of the Forum, which exposes the effort of the Forum to somehow or the other reagitae the concluded issues and frustrate the orders already made by the Allahabad High Court, different Benches of the CAT and upheld by this Court. [783 G-H, 784-A]

SLP(C) Nos. 3384-86 of 1986 disposed of on 8.4.1986; SLP (C) Nos. 19716-19722 of 1991 disposed of on 6.1.1992, referred to.

E *Makhanlal Waza & Ors. v. State of Jammu & Kashmir & Ors.*, [1971] 3 SCR 832, followed.

ORIGINAL/CIVIL APPELLATE JURISDICTION : Transfer Petition (Civil) No. 417 of 1992.

F Under Article 139A (1) of the Constitution of India.

IN

Writ Petition No.460 of 1992.

G (Under Article 32 of the Constitution of India.)

WITH

Special Leave Petition (C.) Nos. 9063-64 of 1992.

H From the Order dated 22.4.1992 of Central Administrative Tribunal

Principal Bench, New Delhi in M.P. Nos. 3396 and 3397 of 1991 in O.A. No.2407 of 1988. A

Ashok Desai, Arun Jaitley, R.F. Nariman, Jatinder Sethi and Ms. Meenakshi Arora for the Petitioners.

Gobinda Mukhoty, Naresh Kaushik, Ms. Lalita Kaushik and Shankar Divate for the Respondents. B

The Judgment of the Court was delivered by

DR. A.S. ANAND, J. Junior Telecom Officers Forum (for short 'Forum') through Shri Satpal Batra claiming to be the President of the Forum has filed Special Leave Petition Nos. 9063-64 of 1992 against the order of the Central Administrative Tribunal, Principal Bench, New Delhi refusing Intervention Application of the petitioner in O.A. No.2407 of 1988 vide an order dated 22.4.1992; Transfer Petition (Civil) No.417 of 1992 seeking transfer of various petitions pending in different benches of the Tribunal to this Court under Article 139-A (1) of the Constitution of India and Writ Petition (Civil) No.460 of 1992. Mr. Ashok Desai, the learned senior advocate appearing for the petitioners in all the cases requested for the writ petition to be taken up for consideration, since, the issues involved in the writ-petition and the special leave petitions are the same. We shall, accordingly, first take up the writ petition for consideration. The relief prayed for in the writ petition is as follows: C D E

"(a) Issue a Writ in the nature of mandamus or any other appropriate writ order or direction directing the respondents to give effect to the TES (Class II) Recruitment Rules 1966, memorandum dated 28.6.1966 and other such memorandum issued thereunder for the period 15.6. 1966 to 6.5.1981 along with the TES (Group B) Recruitment Rules 1981 and amendments thereto as promulgated under proviso to Article 309 of the Constitution of India w.e.f. 7.5.1981 onwards; F G

AND

(B) Issue a Writ in the nature of mandamus or any other appropriate writ, order or direction, directing the respon- H

- A dents to make promotions based on to the TES (Group B) Service in conformity and in accordance with the eligibility list (Annexure-9) on the basis of (*sic*) the same year of recruitment separately for each year of recruitment and persons of the same year of recruitment be arranged on the basis of the exam. in that order,
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AND

- C (c) Issue a writ in the nature of *certiorari* or any other appropriate writ, order or direction, declaring Para 206 of the P&T Manual Volume IV to be redundant and superseded by TES (Class II) Recruitment Rules 1966 w.e.f. 15.6.1966 and quashing its applicability thereafter to TES (Group B) Service;

AND

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- E (d) Issue a Writ in the nature of *certiorari* or any other appropriate writ, order or direction, quashing, varying or setting or setting aside the judgment and order dated 20.2.1985 passed by Allahabad High Court in W.P. No.2339/81 and W.P. No.3652/81 and set aside, vary or quash, either in part or in full, the various judgments and orders following the said judgment including this Hon'ble Courts orders dated 8.4.1986 in SLP Nos.3384-86/86 and dated 6.1.1992 in SLP Nos. 19716-22/91;

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- AND

- G (e) Issue a writ, in the nature of Prohibition, or any other appropriate writ order or direction restraining the respondents from revising the seniority of Cadre of TES (Group B) Officers as per Para 206 of the P&T Manual Volume IV and further restrain the respondents from reverting Assistant Engineers already promoted in accordance with the TES (Class II) Recruitment Rules 1966 and TES (Group B) Recruitment Rules 1981 and memoranda and amendments thereto respectively;
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AND

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(f) Issue any other such or further appropriate writ order or direction, as this Hon'ble Court may deem fit and proper in the facts and circumstances of this case and in the interest of justice;

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AND

(g) Awards costs of the Petition to the petitioners;

AND

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(h) Pass such further and other orders as this Hon'ble Court may deem fit in the facts and circumstances of the present case.

In paras H, N and O of the writ petition, it has been averred as follows:

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"That dismissal of SLP by this Hon'ble Court in *P.N. Lal's* case and *Brij Mohan's* case, is in all humility and with great respect a nullity and not operative as a precedent at all. Whereas *P.N. Lal's* case and *Brij Mohan's* case were based on suppression of relevant rules, regulations and statutory instructions rendering the judgment vitiated and erroneous, this Hon'ble Court too did not have any occasion to consider the said facts since the same were not brought to the notice of this Hon'ble Court as well. The order of this Hon'ble Court in SLPs is based on the facts and circumstances of the case as before the Allahabad High Court, and not ratio decidendi and hence is not a judgment binding under Article 141 of the Constitution of India and is neither a precedent nor acts as *resjudicata* to even fresh action by adversely affected persons/petitioners. AIR 1989 SC 38.

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(N) That the order of this Hon'ble Court dated 6.1.1992 dismissing SLP Nos. 19716-22 of 1991 *in limine* is with all humility and great respect not a precedent but is an order on facts and circumstances of the case and do not lay down any law for puposes of Article 141 of the Constitu-

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- A tion of India. Further more its is settled law that a judgment rendered in ignorance of a statute or a rule having a statutory force, which would have affected the result is not binding on a Court, otherwise bound by its own decisions [1962] 2 SCR 558.
- B (O) That the orders of this Hon'ble Court in the two SLPs dated 8.4.1986 and 6.1.1992 are judgments in the facts and circumstances of the case and cannot be cited as precedents, more so since no ratio nor any principles are laid therein, AIR 1975 SC 1087. AIR 1967 SC 1480. It is always
- C open to this Hon'ble Court to reexam the question already decided by it and to overrule, if necessary, the view taken earlier insofar as all other Courts in India are concerned ought to be bound by the view even in advisory jurisdiction. AIR 1979 SC 478. Furthermore where it is an error
- D apparent on the face of record complained of such as the judgment does not deal effectively and determine an important issue in the case on which depends the maintainability of the petition, such error must be recorded as a sufficient reason for interference. 1955 SCR 520.
- E The controversy, as we have been able to gather from the voluminous record of the writ petition, relates to the mode of promotion to Telecom Engineering Service (Group B) as well as to the fixation of seniority of
- F junior telecom officers and assistant engineers in that category and the preparation of the eligibility or the approved list for the said purpose by the department in accordance with the recruitment rules and Para 206 of the P&T Manual, Vol. IV. Para 206 provides for a pass in the departmental qualifying examination as a condition precedent for promotion to the Telecom Engineering Service (hereinafter TES) Group B. Para 206 (II) of the Manual provides that promotion to the TE and WS (Class II) will be
- G according to the seniority-cum-fitness, but engineering supervisors who pass the qualifying examination earlier will rank senior en-block as a group to those who pass the examination later. Their seniority *inter se* has been arranged according to their seniority in the cadre of engineering supervisors. In case the year of passing of the examination is the same, the percentage of marks obtained at the end of theoretical training, at the
- H training centres, governs the arrangement of *inter se* seniority. The basis

under which the lists are being prepared by the department and against which the petitioners have a grievance are certain judgments and we shall refer to the same in brief hereafter. A

In 1981 S/Shri P.N. Lal (recruited in the 1966 batch) and Brij Mohan (recruited in the 1965 batch) who had qualified in the qualifying examination held in 1974 filed two writ petitions in the Lucknow Bench of the Allahabad High Court complaining of their placement in the eligibility list below the last man who passed the qualifying examination in 1975. The case of the department was that the eligibility list had been arranged on the basis of the seniority, based on the year of recruitment ignoring the year of passing the qualifying departmental examination. The High Court considered the rules of 1966 as also the rules of 1981 and para 206 of the P&T Manual and came to conclusion 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. The High Court noticed that para 206 of the P&T Manual was in existence when the rules of 1966 and 1981 came into force and held that para 206 was not in conflict with either the rules of 1961 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. B C D

The Union of India preferred SLP Nos. 3384-86 of 1986 against the judgment and order of the Allahabad High Court. In the SLP, the following question was stated to be involved: E

"This petition involves important and, substantial question of law as to whether the High Court should have directed that the petitioner be promoted with effect from the day prior to a date of promotion of any person who passed the departmental examination subsequent to them and in that case fix their seniority accordingly and pay them salary and allowances with effect from the said date. In the facts and circumstances of the case and whether 1966 Rules are applicable." F G

On 8.4.1986, after hearing counsel for both sides, a bench of this Court made the following order:

"Special leave petition is dismissed on *merits*. In the H

- A *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. We modify the direction made by the High Court requiring the petitioners to deposit a sum of Rs.79.100.50 P. for payment to respondent No.1 Parmanand Lal, alleged to be due towards arrears of his salary. We direct instead that the petitioners shall deposit half the amount for payment to respondent No.1 as arrears of his salary within one month from today, subject to adjustment."*
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C (Emphasis supplied)

Subsequently, some other Junior Engineers approached the Central Administrative Tribunal, Ernakulam Bench, and sought relief on the basis of the Allahabad High Court judgment. The CAT allowed the applications and granted relief to the applicants before it.

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- E Some more Junior Engineers later on approached the Principal Bench of Central Administrative Tribunal seeking relief identical to that of P.N. Lal and Brij Mohan. The Principal Bench on 7.6.1991, by a detailed order, allowed the applications and issued directions for refixation of the seniority keeping in view the relevant recruitment Rules and Para 206 of the manual. Since, the directions of the Principal Bench dated 7.6.1991 were allegedly not complied with, contempt petitions came to be filed and on notices being issued the Union of India and others, informed the Tribunal that they were in the process of revision the seniority of the entire cadre of TES (Group B) as per the guidelines contained in para 206. A
- F direction was issued to the respondents to comply with the orders of Central Administrative Tribunal within the time fixed by CAT. While the matters rested thus, the order of CAT dated 7.6.1991 was challenged in this Court both by the Union of India and JTOA (India) who had sought permission to file the SLP. The special leave petition Nos. 19716-19722 of 1991 were dismissed alongwith LA's on 6.1.1992.
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- H On 22.4.1992, some more applications were filed in the Central Administrative Tribunal, Principal Bench raising common questions and seeking relief on the basis of the judgment of the Allahabad High Court and various other orders rendered by different benches of CAT in identical cases. The Forum, (petitioner herein), filed an application for intervention

and opposed the grant of relief. The application of the Forum was rejected and relief was granted to the applicants before the CAT following the judgment of the Allahabad High Court, against which the SLP had been dismissed and the Judgment of the other Benches of CAT. It is, thereafter that the present writ petition and the SLP against the order of CAT dated 22.4.1992 and the Transfer Petition have been filed by the Forum.

Mr. Gobinda Mukhoty, the learned senior counsel appearing for the caveators, has raised a preliminary objection to the maintainability of the present writ petition. It is argued that the petitioners had been set up only for the purpose of getting a new lease in the litigation after the matters stood concluded in the SLP's filed against the judgment of the Lucknow Bench of the Allahabad High Court as well as against the judgment of the Principal Bench of the Central Administrative Tribunal. Argued the learned counsel that matters which stand concluded and the issues which stand settled cannot be permitted to be reopened in the manner adopted by the petitioners which was nothing but an abuse of the process of the court because JTOA (India) had espoused the cause of all its members, including those now constituting the Forum and after the battle was lost by JTOA (India) the Forum had come up to reopen the concluded views.

Mr. Ashok Desai, learned senior counsel appearing for the petitioners sought to meet the objection by arguing that the petitioners were not parties either before the Allahabad High Court or the Central Administrative Tribunal in the earlier cases of *P.N. Lal* and *Brij Mohan or Daljit Singh & Ors.* and since their interests are adversely affected by the order made in those cases, they have a right to get the matter examined by this court more so because the order of CAT and the Allahabad High Court effect a very large number junior engineers and the Bangalore Bench had struck a divergent note. He submitted that the point of view of the petitioners, who form a class by themselves, i.e. those who had been recruited earlier but had passed the departmental qualifying examination subsequent to those promoted earlier than them, was not considered or discussed in the earlier cases and therefore they cannot be debarred either by the principle of *resjudicata* or even constructive *resjudicata* to agitate their grievances and that the dismissal of the special leave petitions by this Court *in limine* cannot be treated to be any precedent so as to bind the petitioners. It was submitted that since the views which the petitioners are now projecting particularly based on the 1966 instructions and Para 32E

- A of the P&T Manual read with the Recruitment Rules of 1966 and 1981 were not considered by the Allahabad High Court or by the CAT, the petitioners are entitled to maintain the writ petition particularly to demonstrate that Para 206 of the manual, on the basis of which relief was granted by the High Court and the CAT, could not be pressed into aid for purposes of fixation of *inter se* seniority and future promotions.

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In order of appreciate the controversy regarding the maintainability of the writ petition, let us first find out as to who the petitioners are and whether their view point had been considered and decided in the earlier litigation or not.

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The writ petition has been filed in a representative capacity by the Forum through Shri Satpal Batra, President and some other engineers. Mr. Mukhoty drew our attention to a circular issued on 16.3.1992 by the Forum. The correctness or the existence of the circular was not disputed by Mr. Desai on a specific query put to him by the Bench. According to the circular, the Forum was set-up to take legal action to prevent the implementation by the department of para 206 of P&T Manual, Vol.IV; to ensure that settled seniority position of TES (Group B) Officers is not unsettled and that no regular AE is demoted. The life of the Forum, according to the circular, is co-extensive with the time it may take to resolve the issues relating to seniority. It has been stated in the circular that SLP's filed by JTOA (India) and the department in the Supreme Court against recasting of seniority was rejected on 6.1.1992. It is also stated that after the dismissal of the SLP the department filed statement in various Benches of Central Administrative Tribunal stating that they require 6/9 months time for recasting the seniority of TES (Group B) Officers and for preparation of the eligibility list of qualified JTO's as per para 206 of P&T Manual. Vol. IV i.e. as per the year of passing the examination. The circular then goes on to say:

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"A. The Forum is also involved in Principal Bench, CAT, New Delhi in two cases. Unfortunately, TESA (I) leadership has taken a very damaging stand by supporting Para 206 and opposing us in CAT.....

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B. It appears now that after the dismissal of the SLP, the JTOA (I) has some genuine limitations in resorting to further legal steps in addition to the on-going cases in

CAT. Therefore, the onus to protect the seniority and or further promotion has been shifted to the affected groups.....

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C. Therefore, the picture before us is very grim. As per legal opinion, the outcome of the pending CAT cases is totally uncertain. We consulted some senior advocates of the Supreme Court. According to the senior advocates, there is bright chance if we take up the case in Supreme Court by filing cases on behalf of more than at least 200 affected people."

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It is, thus, obvious that the petitioners cause was being espoused by JTOA (India) in the earlier litigation but realising the "limitations" of JTOA (India) to take further steps after the special leave petitions filed by the Union of India and the JTOA (India), alongwith an application seeking leave of the court to file the SLP, were dismissed by this Court, they have come forward to have the matter 'reconsidered' and 'reviewed'. Statutory Rules and instructions, relied upon now, had been brought to the notice of the High Court and CAT and the judgments had been rendered after considering the same. The argument to the contrary has been advanced only to reopen the issues. This effort is amply exposed by the relief claimed in the writ-petition even if we ignore the rather indiscreet language used in various prayers made as extracted above.

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In the writ petition, the petitioner Forum has not disclosed its status. It filed I.A. No.3/92 alongwith the writ petition seeking permission to sue in a representative capacity. In paragraph 2 of that application, it is stated that the petitioners form class of persons who have cleared the departmental examination in the second and subsequent attempts from the time they first became eligible to appear for the qualifying examination and that they want their seniority to be fixed on the basis of their year of recruitment after qualifying in the test, ignoring the year when they qualified the departmental examination by ignoring Para 206 of the Manual which stands in their way. The Forum, as would appear from the circular, has come into being for the limited purposes stated therein. While it is correct that the Forum and the petitioners, excepting a few, were not parties in their individual capacity in the earlier litigation before the CAT or this Court since obviously the Forum was not even in existence at that time, but their

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A cause was being espoused by their association JTOA (India) which had appeared before the CAT as well as filed an SLP in this Court against the order of CAT dated 7.6.1991. JTOA (India) had in the SLP projected the same view point and highlighted the same views as are being projected now in the writ petition. The correctness of the Allahabad High Court judgment and CAT was unsuccessfully assailed in the previous litigation. The SLP filed by JTOA (India) through Mr. N.S Das Bahal Advocate and the Union of India was dismissed by this Court on 6.1.1992 and the following order was made:

C "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 2739 and 3652 of 1981 decided on February 20, 1985 SLP (c) nos.3384-86/86 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."

E This order was made after hearing all the parties including the counsel for JTOA (India) and noticing the earlier litigation on the subject.

We are unable to agree with Mr. Desai that the judgment of the Allahabad High Court had not acquired any finality because the SLP against the same had been dismissed *in limine*.

F The order of the Division Bench of this Court in SLP Nos. 3384-86 of 1986 (supra) unmistakably shows that the dismissal of the SLP though *in limine* was on 'merits' and the Court declined to interfere with the impugned judgment of the Allahabad High Court except to a limited extent as noticed therein.

G The issue which has been high-lighted in the present petition in actual substance is only that the year of recruitment, irrespective of the year of qualifying the departmental examination, should form the basis for promotion and fixation of *inter se* seniority ignoring para 206 of the manual. Reliance has been placed in that behalf on the recruitment Rules of 1966. H 1981 and the executive instructions. These issues including Rules and

instructions were directly and substantially projected in the earlier litigation including the one to which JTOA (India) was a party, as a reference to the memo of SLP filed by it discloses. It is, therefore, impermissible now for the Forum to make attempts in this manner to have the very same matter reopened by asserting that their view point had not been projected in the earlier litigation, when admittedly JTOA (India) of which the Forum forms a part, had projected that view point though unsuccessfully. The Union of India had also, as already noticed, put up the same pleas in the SLP which are being raised now by the petitioners. It is, therefore, incorrect to say that the view now set up by the Forum was not asserted or considered in the earlier litigation at the instance of parties representing the interest of the subsequently formed forum comprising some members of JTOA (India).

Besides, while considering the intervention application in the batch of 29 OA's, the Central Administrative Tribunal again noticed the grievance of the Forum, and its vehement opposition to the applications. The Tribunal, after a detailed discussion observed that it was not impressed by the contention raised on behalf of the Forum that *all* aspects of the matter had not been brought to the notice of the Allahabad High Court, or the Tribunal or the Supreme Court in the earlier round of litigation. The plea that the dismissal of the SLPs in 1986 and 1991 had not given finality to the controversy was rejected. The Tribunal also considered the submission made on behalf of the Forum that giving promotions and fixation of seniority on the basis of the year of passing the qualifying the departmental examination and not on the basis of the year of recruitment may, at this stage, entail large scale reversions giving rise to wide-spread discontentment and with a view to mitigate the hardship and to do substantial justice between the parties, in paragraph 17 of its order dated 22.4.1992, the CAT observed:

"In case the redrawing of the seniority list results in reversion of officers who had been duly promoted already, we are of the opinion that, in all fairness, their interests should be safeguarded at least to the extent of protecting the pay actually drawn by them, if the creation of the requisite number of super-numerary posts is not found to be feasible from the administrative angle."

- A We have perused the application for intervention filed by the Forum before the Principal Bench of the CAT and find that almost all the pleas which have now been raised in the present writ petition had been raised therein. The grievance projected in the present writ petition was squarely projected in that application also and the issues now sought to be raised were directly and substantially again raised in that application, notwithstanding the dismissal of the SLP of Union of India and JTOA (India) by this Court in 1991. The thrust of the petitioners in that application was that para 206 of the manual was only in the nature of an instruction and could not prevail over the statutory Rules of 1966 and 1981 or the executive instructions issued thereunder and that the judgment of the Principal Bench, the Ernakulam Bench as also of the Allahabad High Court had been rendered, ignoring those statutory rules and executive instructions resulting in wrong orders being made and therefore none of those judgments could bind the petitioners. It was also maintained that the dismissal of the special leave petitions against the judgment of the Allahabad High Court and the CAT could not be treated as any precedent as the dismissal of the SLP was not on merits on either of the two occasions.
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The Tribunal after a detailed consideration of the applications and arguments made in support of the intervention application opined that the decision of the Allahabad High Court laid down good law and constituted good precedent to be followed in similar cases. The Tribunal then observed:

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"We reject the contentions of the interveners to the contrary and further hold that having urged before the Supreme Court their various contentions and their SLP having been dismissed by the Supreme Court, they cannot reargue the matter before us. We, therefore, dismiss MP Nos.3396, 3397, 3493 and 3494 of 1991 in OA 2407 of 1988 as being devoid of any merit."

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We may at this stage also point out that the relief to the applicants before the Bangalore Bench of CAT, which according to the petitioners had taken a contrary view, was denied on the facts of that case and that Bench had also observed:

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"We cannot and do not sit in judgment on the orders of the High Court and the Supreme Court in favour of

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respondents 4 and 5. The order of Government only implements the orders of the courts that had become final and binding on them."

While not disputing that in the intervention application filed by the Forum before CAT, similar pleas had been raised. Mr. Desai, submitted that since the application filed by the petitioners for intervention was dismissed by CAT, it could not be said that the petitioners had been heard in the matter or that the CAT had rendered any judgment on merits after hearing them with regard to the pleas raised by them in the application. We are unable to agree. The order of CAT reveals that it had considered various pleas raised by the Forum and had rejected the same. The petitioners cannot, therefore, say that they had not been heard by the CAT in respect of the issues now projected in the writ petition. The Forum even after the filing of the and during the pendency of this writ petition, the special leave petition against the order of the Tribunal dated 22.4.1992 and the transfer application in this Court, has filed Original Application No.1707 of 1992 before the CAT. A copy of that application has been filed by the caveators, though the petitioners adopted the attitude of complete silence in regard thereto throughout the hearing of the writ petition by this Bench. That application, leaving aside the question of propriety and legality of filing the same, while the matters were pending in this Court and seeking same relief as claimed in this writ petition, is rather revealing. We find that Shri Satpal Batra through whom the Forum, has filed this writ petition and who is also petitioner No.2 in his individual capacity in the writ petition, has filed the Original Application No.1707/92. In paragraph 57 of that OA with reference to the earlier intervention application it is stated thus:

"The said OA was clubbed together with 28 other similar OAs and the said batch of OAs were fixed for final hearing. On 23.10.1991 the present applicant No.1, Junior Telecom Officers Forum for Redressal of Grievances, an association, comprising JTOs, AEs and DEs working in the Department of Telecommunication, Government of India, for and on behalf of about 6000 employees moved an application in representative capacity for impleadment as respondents, opposing the grant of reliefs prayed for by the applicants. *The said application being M.P. No.3396 of 1991 along with application M.P. No. 3397 of 1991 under*

A *Rule 4 of the CAT Rules were taken on board and heard along with the batch of 29 Original Applications. A copy of MPS 3396-97 of 1991 dated 23.10.1991 are annexed hereto and marked as Annexure - 18 Collectively."*

Emphasis ours)

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That the petitioners had in those applications for intervention, during the arguments before CAT, raised all the pleas which they are now projecting is amply borne out from para 58 of the OA 1707/92 and it would be useful to extract the same hereunder:

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"The Applicant No.1 contended before the CAT Principal Bench, New Delhi that the judgment of the Allahabad High Court and the decisions of the said Principal Bench do not constitute good precedents and that the matter should be considered on merits afresh since there was suppression of material facts/Rules by Shri PN Lal and Brij Mohan before the Allahabad High Court and the Court did not have any occasion to deal with the entire controversy as has arisen now. The applicants also contended that in any case the Allahabad High Court judgment could not act as a precedent over subsequent events which followed including coming into effect of 1966 Rules and various memorandum pursuant thereto, the 1981 rules and amendments thereto as also complete breakdown of Rule insofar as mandatory provision of holding Departmental Qualifying Exam every calendar year in accordance with Appendix I Rule 3 of 1966 Rules and Appendix 1 Rule of the 1981 Rules was not followed and no exam was held from the year 1981 to 1984. All JTOs recruited in the year 1973, 1974, 1975, 1976, 1977, 1978, 1979, in one lot were put in for appearance in the exam held in 1985 for the first time, and consequently suffered extreme prejudice. It was also contended that the department was grossly negligent in conducting the cases and it was on their default that things had come to such a pass. Furthermore, it was contended that para 206 was not properly interpreted by various Tribunals and when read with Paras

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32 E (b) (ii) and 181 to 204 it became apparent that 1966 and 1981 Rules and the memorandum issued thereunder, the rule of seniority gaining priority over year of passing the exam held good. It was also argued that the judgments of the Hon'ble Supreme Court dismissing SLPs of Union of India in SLP Nos. 3384-86 of 1986 and SLP Nos.19716-22 of 1991 did not stand in the way of the applicant contention. Further all such adversely affected persons were neither given notice of the same nor were parties to the said litigation at any stage."

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Thus, on the petitioners own showing all the issues which they are now seeking to raise had been raised in their intervention application which had been heard along with the original applications and rejected on 22.4.1992, after the intervention application had been taken 'on board' by CAT also. It is, therefore, to say the least, improper, for the petitioners to now urge that they had no occasion or opportunity to raise the issues and contentions, as now raised, before the Principal Bench of the CAT or that the same were not heard and considered on merits. Their assertion is, thus, not correct. It is also interesting to note that in paragraph 80 of the Original Application No.1707/92, the petitioners have this to state:

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"That the Applicants state that they have filed a writ petition before the Hon'ble Supreme Court along with a Transfer Petition under Article 139A (1) of the Constitution of India and a Special Leave Petition against order dated 22.4.1992 of this Hon'ble Court, on the subject matter in issue before this Hon'ble Court in the present application based on identical issues and cause of action, and are pending therein presently."

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Which goes to show that OA 1707/92 was filed while the proceedings were pending in this Court. The prayers made in paragraph 81 of Original Application No.1707/92 are a verbatim reproduction of the prayers in the present writ petition, as noticed in the earlier part of this order. How the petitioners chose to pursue different remedies at the same time in respect of the same matter in different forums is not at all understandable? Except to record our disapproval and concern on this conduct of the Forum, we need say no more as it exposes the effort of the Forum to somehow or the

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- A other reagitates the concluded issues and frustrate the orders already made by the Allahabad High Court, different Benches of CAT and upheld by this Court.

- B Though learned counsel for the parties have referred to some judgments on the questions of *resjudicata*, constructive *resjudicata* 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 for 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 espousing their cause in the earlier litigation right up to this Court, but also by the Union 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 is a binding precedent. The issues were again raised and agitated by the Union of India as well as JTOA in SLP (c) Nos.19716-22/91 against the judgment of Principal Bench of CAT dated 7.6.1991 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 Constitution Bench of this Court in *Mukhanlal Waza & Ors. v. State of Jammu & Kashmir & Ors.*, [1971] 3 SCR 832 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 permissible for the petitioners to once again reagitates 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.
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- G In view of our discussion above relating to writ petition No.460 of 1992, the special leave petition Nos.9063-64 of 1992 also fail and are dismissed as the issues involved in both are common and identical.

We also do not find any justification for transfer of the various cases referred to in Transfer Petition (c) No.417 of 1992 to this Court. Transfer Petition is also therefore dismissed.

V.P.R.

Petitions dismissed.