



**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A./4164/2023
M.A./4677/2024
M.A./4847/2024
M.A./946/2024
M.A./2972/2024
M.A./940/2025

Reserved on: 13.05.2025
Pronounced on: 29.05.2025

Hon'ble Mrs. Pratima K. Gupta, Member (J)
Hon'ble Dr. Chhabilendra Roul, Member (A)

P.K. Agrawal,
S/o Shri S.K. Agrawal,
R/o D-13A, East Jyoti Nagar,
Shahdara, Delhi-110093 ...Applicant

(Through Shri Gyanendra Singh, Advocate)

VERSUS

1. Delhi State Industrial Infrastructure Corporation Limited,
N-36, Bombay Life Building,
Connaught Circus, New Delhi-110001
2. Ashwani Kumar Sinha,
Executive Engineer (Civil) DSIIDC
Aged about 50 years,
S/o Shri Shiv Narayan Sinha,
R/o 339D, Pkt-J&K
Dilshad Garden, Delhi-110095 ...Respondents

(Through Ms. Firdouse Qutub Wani, Mr. M.K. Bhardwaj
and Mr. Amit Singh Chauhan, Advocates)

O R D E R**Hon'ble Dr. Chhabilendra Roul, Member (A):-**

1. The present OA has been filed by the applicants under section 19 of the Administrative Tribunals Act, 1985 seeking quashing of the seniority list of Executive Engineers issued by the respondents on 28.11.2023 and granting consequential benefits.

2. Factual Matrix

2.1 The applicant joined Mahanagar Telephone Nigam Ltd. (MTNL), in 1992 as a Junior Engineer (JE) on deemed deputation. He was promoted to the post of Assistant Engineer (AE) in 1998 through a Limited Departmental Competitive Examination. In the year 2011, the respondents DSIIDC advertised vacancies for Executive Engineer (Civil) on deputation with eligibility criteria of, 5 years regular service on an analogous post, or 8 years as Assistant Executive Engineer (Civil), or 10 years as Assistant Engineer (Civil) with a Civil Engineering degree. The applicant applied for the said post, having found eligible and suitable, on 30.09.2011

he was sought to join as Executive Engineer (Civil) on deputation to DSIIDC, which he did on 31.01.2012. On 28.12.2018, DSIIDC issued a circular for absorption of deputationists, the circular contemplated that seniority on absorption would be determined in accordance with DoP&T OMs dated 29.05.1986 and 27.03.2001. On 25.01.2019, MTNL issued an NOC for permanent absorption of the applicant. The applicant expressed willingness for absorption, but DSIIDC delayed the process, allegedly due to bias and malafide intentions. On 10.07.2020, the applicant was absorbed in DSIIDC as Executive Engineer (Civil). On 02.06.2021, the applicant submitted a representation requesting fixation of seniority from 01.10.2010, when he had been placed in the equivalent grade of Executive Engineer (IDA Pay Scale E-5, Rs. 6600/- Grade Pay) in his parent department (MTNL). DSIIDC has failed to respond the representation.

2.2 Aggrieved by the final seniority list and pendency of the representation, applicant has

preferred the present OA seeking the following reliefs:-

“(a) To quash and set aside the Impugned Seniority List dated 28.11.2023 for the post of Executive Engineer (Civil) issued by the respondent being arbitrary, unjust, illegal and unconstitutional against the settled provisions of law, in the interest of justice;

(b) Direct the respondent to fix the seniority of the applicant as an Executive Engineer (C) w.e.f. 01.10.2010 in terms of DoP&T OM dated 29.05.1986 and thereafter amended on 16.09.2022 and the circular dated 28.12.2018 issued by the respondent himself as well as the order and judgment pronounced by the Ld. Tribunal in OA No.545/2019 - Manish Ranjan vs. Union of India, OA No. 198/2020 Narender Kumar Mishra vs. Union of India & OA No. 876/2020 D.D. Parlawar vs. Union of India, in the interest of justice.

(c) The OA may be allowed with all consequential benefits from the date when the applicant came on deputation in the respondent department w.e.f. 31.01.2012 after fixing his seniority in the Grade of Executive Engineer (Civil) from the date of his deputation in the respondent department w.e.f. 31.01.2012 in the interest of justice.

(d) Any other relief, which this Ld. Tribunal may deem fit and proper in the facts and circumstances of the instant case as well as in the interest of justice.”

3. Notices were issued to the respondents and they have filed their counter reply, to which the applicant has also filed rejoinder.

4. Submission by the learned counsel for the applicant:

4.1 that the DSIIDC delayed the absorption, and fixation of the seniority of the applicant seniority from the date of holding an equivalent grade in his parent department applicant with malafide intention.

4.2 On 22.03.2023, DSIIDC sought clarification from DOT/MTNL regarding the substantive post and pay scale held by the applicant on the date of his deputation to DSIIDC. The applicant was absorbed on 10.07.2020, while several other officials (e.g., Sh. S.N. Sharan, Sh. Shree Gopal, Sh. Rakesh Kumar, Sh. Sanjay Khanna) were absorbed on 27.05.2019, despite their NOCs being received around the same time in January 2019.

4.3 the DSIIDC delayed his absorption intentionally, citing bias, despite the NOC from MTNL being available since 25.01.2019. He submits that the juniors, such as Sh. Shobite Kumar and others who joined as Assistant Executive Engineers (AEE) in 2014, were promoted on 15.05.2020 before the absorption of the applicant.

4.4 On 10.04.2023, DOT/MTNL confirmed that the applicant was holding a Group 'A' post in the grade

pay of Rs. 6600/- (Level 11) on a substantive basis from 01.10.2010. DOT/MTNL further clarified that the applicant was in the IDA E-5 pay scale, substantively equivalent to the post of Executive Engineer (Civil), before his deputation to DSIIDC.

4.5 As per DoP&T OM dated 29.05.1986, in cases where a deputationist is later absorbed. Seniority should account for regular service in the same or equivalent grade in the parent department, subject to the earlier of the date of deputation, or the date of regular appointment to the equivalent grade in the parent department. The applicant was eligible for seniority fixation from 01.10.2010, when he was placed in Grade Pay Rs. 6600/- (IDA E-5).

4.6 The applicant submitted representation on 02.06.2021 for fixing his seniority, that was followed by reminder dated 04.05.2023 reiterating his seniority claim based on DoP&T guidelines.

4.7 On 28.07.2023, DSIIDC issued a provisional seniority list for Executive Engineer (Civil) without addressing the representation of the applicant. The applicant continued to press his claim, requesting

seniority fixation from 01.10.2010, as per DoP&T OM dated 29.05.1986.

4.8 the promotion of juniors over the applicant, despite his substantive seniority and qualifications, raising questions of fairness and equity. On 28.07.2023, the respondent (DSIIDC) issued a provisional seniority list for the post of Executive Engineer (Civil) without addressing or disposing of the applicant's prior representations regarding his seniority.

4.9 in his parent department the applicant was in IDA pay scale of E-5 i.e. Rs.6600/- grade pay, w.e.f. 01.10.2010 (vide Order No. STA-I/1-7/Synopsis/E-4 to E-5/2010-11/03 dated 25.05.2011), which is equivalent Grade Pay of Executive Engineer in the respondent's department i.e. DSIIDC. But it was the respondent who had been sitting upon the request of the applicant and as such the same has been fallen into the deaf ears of the respondent.

4.10 the Junior of the applicant, who had joined directly as Assistant Executive Engineer namely Sh. Shobite Kumar, Sh. Nitin Nandwani, Mrs. Pratibha, Sh. Ajit Kumar with the DSIIDC in 2014 were

promoted intentionally and deliberately on 15.05.2020 to downgrade the applicant, who is regular AE since 1998.

4.11 As per Board meeting dated 23.12.2019 it was resolved that in view of the advice received from the Industries department (i.e. Administrative Department of DSIIDC), the approval of the Board of DSIIDC be and is hereby granted for regularization of absorption of 4 officials namely Shri Sachidanand Sharan, SE (Civil), Shri Shree Gopal, EE (Civil), Shri Sanjay Khanna, AEE (C) and Shri Rakesh Kumar, AEE(C) and further decided that the order dated 21.06.2019 regarding keeping in abeyance of absorption issued in respect of them be withdrawn. Resolved further the consent of the Board of DSIIDC be and is hereby granted for consideration of absorption of applicant and Sh. Yogesh Kumar, AEE(C) by the screening committee which was not considered earlier due to non receipt of NOC from the parent department of the applicant and Sh. Yogesh Kumar, AEE(C) who were meeting the eligibility condition for absorption by the stipulated date. This resolution of the Board is highly

misplaced and misconceived as the NOC in respect of the applicant had already been received in the respondent department on 25.01.2019.

5. In support of the claim of the applicant, learned counsel for the applicant argues:

5.1 drawing strength from the DOPT OM dated 16.09.2022 wherein, the DOPT has modified its OM dated 29.05.1986 in compliance of the decision of the Hon'ble Apex Court in SI Roop Lal. Particularly, he refers to paras 3.5.1 and 3.5.2 of the said OM, which are reproduced as under:-

"3.5.1 In the case of a person who is initially taken on deputation and absorbed later (i.e. where the relevant recruitment rules provide for "Deputation/Absorption), his seniority in the grade in which he/she is absorbed will normally be counted from the date of absorption if he/she has, however, been holding already (on the date of absorption) the same or equivalent grade on regular basis in his/her parent department, such regular service in the grade shall also be taken into account in fixing his seniority, subject to the condition that he/she will be given seniority from

(or)

the date he/she has been holding the post on deputation, the date from which he/she has been appointed on a the same or equivalent grade in his parent department., regular basis to the same or equivalent grade in his parent department., Whichever is earlier."

3.5.2 The fixation of seniority of an absorbee in accordance with the above principle will not, however, affect any regular promotions to the next higher grade made prior to the date of such

absorption. In other words, it will be operative only in filling up of vacancies in higher grade taking place after such absorption.”

5.2 As the applicant was in the regular pay scale in his parent department, the length of service during the said period should be considered and reckoned for the purpose of determining his seniority in DSIIDC., para 3.5.3 of the said OM has been incorrectly applied for by the respondents by stating that the two posts are not identical and, therefore, the benefits could not be extended to the applicant. Para 3.5.3 is reproduced hereinbelow:-

“3.5.3 It is also clarified that for the purpose of determining the equivalent grade in the parent department following criteria may be followed for determining analogous posts in so far as posts under the Central Government are concerned –

(i) Though the scales of pay of the two posts which are being compared may not be identical, they should be such as to be an extension of or a segment of each other.”

5.3 The DoP&T OM further clarified at page 43 that the applicant was a Group ‘A’ officer as he was in the pay matrix 11. A Central Civil Post carrying pay matrix Level from 10 to 18 were in Group A. Para 3.5.3(ii) of the OM is reproduced as under:-

ii) Both the posts should be falling in the same Group of posts. Classification of civil posts are as

under:-

| Sl. No. | Description of Posts | Classification of Posts |
|---------|---|-------------------------|
| (1) | (2) | (3) |
| 1 | A Central Civil Post carrying the pay in the Pay Matrix at the Level from 10 to 18. | Group A |
| 2 | A Central Civil Post carrying the pay in the Pay Matrix at the Level from 6 to 9. | Group B |
| 3 | A Central Civil Post carrying the pay in the Pay Matrix at the Level from 1 to 5. | Group C |

5.4 The respondents themselves sought certain clarification from his parent organization with respect to the pay scales and the post acquired by the applicant which has been clarified by the parent organization on 10.04.2023, annexed thereto with a table which gives the service record of the applicant. The table would confirm that the applicant was promoted as Sr. SDE (C)/Executive E-5 as on 01.10.2010 and SDE Upgraded (C)/Executive E-6 w.e.f 01.10.2015 while he proceeded for deputation in the year 2012 and absorbed on 10.07.2022, therefore he submits that on the date of absorption the applicant was already in the pay scale of 6600/-.

5.5 the respondents have adopted the DoPT OM dated 29.05.1986 and issued executive instructions on 28.12.2018, as placed at page 56 of the OA., having adopted the said OM, the correspondence therein would **mutatis mutandis** be adopted by the respondents themselves. Therefore, the OM dated 16.09.2022 is being accepted by the respondents, and in light of the OM, the applicant's service should be counted.

5.6 An organization namely Central Government Welfare Housing Organization notified vacancies for Deputy Director (Tech.) on 22.02.2023, the applicant applied through proper channel and while forwarding his documents the respondents themselves confirmed that the applicant had 10 years of regular service in the pay scale of 6600/- i.e. level 11.

5.7 lastly places reliance of the decision of the Coordinate Bench of this Tribunal dated 03.09.2021 in OA No. 545/2019, Manish Ranjan Vs. Union of India & Anr. The operative portion of para 8 is

reproduced as under:

“Moreover, the issue as to whether a person who has been appointed on deputation by the competent authority, the services spent on deputation shall be required to be taken into account for grant of upgradation/Non-Functional grade has been raised and adjudicated by the various Benches of this Tribunal and most of them have been referred to and relied upon by the applicant and have also been precisely noted hereinabove, the said issue is no more res integra. The stand of the respondent No.1 vide their OM dated 28.9.20210 (Annexur A/3) that the period only after absorption is required to be taken into consideration for grant of Non-Functional grade has already been rejected by the Calcutta Bench, Mumbai Bench as well as this Bench of this Tribunal in the cases referred to hereinabove and the said judgments have attained finality and have been given effect to. In another case titled D.D. Parlawar us. National Highways Authority of India (supra), this Tribunal has already ruled, as noted hereinabove, that the period spent on deputation is required to be taken into consideration for determining the eligibility for promotion to the next higher grade. The said judgments have attained finality and the said Order/Judgments have been passed by referring to and relying upon the law laid down by the Hon'ble High Court as well as of the Hon'ble Supreme Court.”

5.8 relied upon the decision of Hon'ble Delhi High Court in W.P. No. 1146/2020 decided on 20.10.2023. Paras 63 to 66 thereof are reproduced hereunder:-

“63. On interpretation of the relevant rules i.e. [Regulation 5](#) and [6](#) of the Regulations, the contention of the petitioner that the services rendered by the petitioner during deputation period shall be included for calculation of his seniority, stands correct.

64. Since the order dated 2nd January, 2020, does not conform to the prescribed rules of the respondent Authority, it is termed illegal as the respondents have turned blind eye to its own rules and regulations which prescribes for inclusion of the officers on deputation in the 2016 Cadre.

65. This Court does not find any force in the arguments of the respondent Authority that the seniority of the petitioner should be decided on the basis of the OM issued by the DoPT in 2001 as the rules of the respondent Authority are clear with regards to the calculation of the seniority of an officer appointed on deputation and therefore, there is no need to supplement the said rules with the OM issued by the DoPT.

66. In view of the aforesaid observation as well as the law settled by the Hon'ble Supreme Court, the petitioner's service during the period of the deputation shall be calculated for determining his seniority."

6. Submission by the learned counsel for the Official Respondents:

6.1 Learned counsel for the respondents (DSI IDC) makes the following submissions:-

- i. The applicant was appointed as JE in 1992 and extended promotion as Assistant Engineer in 1998 (E3). He has been extended two financial upgradations – to the level E4 in the year 2005 and E5 in the year 2011, to clarify only financial upgradations and not promotions.
- ii. The chart placed on record by the learned counsel for the applicant, in fact, was correct

to the extent that it details the extension of financial upgradations. The chart itself could confirm that the applicant was never extended promotions as E4 and E5.

- iii. the issue in the O.A. would be the interpretation of the OM dated 22.12.1959 reiterated by the DOPT on 16.09.2022 (Page 34 of the O.A.), while interpreting the OM the Tribunal would have to determine whether the seniority would be assigned from the date of joining in the parent department or the date of absorption.
- iv. Dissecting the OM placed at page 34 (Para 3.5.1), she submits it would be unambiguously clear that the seniority would be decided only from the date of absorption, while an exclusion has been carved out for the persons already holding an equivalent grade on regular basis in his parent department. The applicant was not holding the grade on regular basis, as he was never promoted when he was brought into the borrowing department. Para 3.5.3 of the DOPT OM, clarifies that for the purpose of determining equivalency in the parent

department criteria has been defined and in the present case the posts were not comparable or identical.

- v. The para itself, makes it clear that the applicant was in level 9-11, therefore, he was a group B officer in the parent department, and when he was absorbed he was in a group A post, that is, in level 11.
- vi. para 3.5.3(iv) and 3.5.4, make it clear, while taking into consideration all the factors, the selection may be guided more by the nature of duties performed by the person in the parent department. The applicant in the parent department was an SDE and while he was absorbed he was at the level of Executive Engineer. Hence the duties performed by him were different in both the parent department as well as the borrowing department. Hence, the two are not comparable. For the sake of better understanding the relevant paragraphs are quoted below:-

“3.5 Seniority of persons absorbed after being on deputation 3.5.1 In the case of a person who is initially taken on deputation and absorbed later (i.e. where the relevant recruitment rules provide for “Deputation/Absorption), his seniority in the grade in which he/she is absorbed will normally be counted from the date of absorption. If

he/she has, however, been holding already (on the date of absorption) the same or equivalent grade on regular basis in his/her parent department, such regular service in the grade shall also be taken into account in fixing his seniority, subject to the condition that he/she will be given seniority from – - the date he/she has been holding the post on deputation, (or) - the date from which he/she has been appointed on a regular basis to the same or equivalent grade in his parent department., Whichever is earlier

3.5.2 The fixation of seniority of an absorbee in accordance with the above principle will not, however, affect any regular promotions to the next higher grade made prior to the date of such absorption. In other words, it will be operative only in filling up of vacancies in higher grade taking place after such absorption.

3.5.3 It is also clarified that for the purpose of determining the equivalent grade in the parent department following criteria may be followed for determining analogous posts in so far as posts under the Central Government are concerned:- (i) Though the scales of pay of the two posts which are being compared may not be identical, they should be such as to be an extension of or a segment of each other.

(ii) Both the posts should be falling in the same Group of posts. Classification of civil posts are as under:-

| Sl.No. | Description of Posts | Classification of Posts |
|--------|--|-------------------------|
| (1) | (2) | (3) |
| 1 | A Central Civil Post carrying the pay in the Pay Matrix at the Level from 10 to 18 | Group A |
| 2 | A Central Civil Post carrying the pay in the Pay Matrix at the Level from 6 to 9 | Group B |
| 3 | A Central Civil Post carrying the pay in the Pay Matrix at the Level from 1 to 5 | Group C |

(iii) The levels of the responsibility and the duties of the two posts should also be comparable. (iv) (a) Where specific qualifications for transfer on deputation/ transfer have not been prescribed, the qualifications and experience of the officers to be selected should be comparable to those prescribed for direct recruits to the post where direct recruitment has also been prescribed as one of the methods of appointment in the recruitment rules. (b) Where promotion is the method of filling up such posts, only those persons from other Departments may be brought on transfer on deputation whose qualifications and experience are comparable to those prescribed for direct recruitment for the feeder grade/post from which the promotion has been made.

3.5.4 As far as the posts under the State Governments/Public Undertakings, etc. are concerned, it is quite likely that even posts with identical designations may not have comparable scales of pay and they may also differ with reference to the extent and stage of merger of D.A. with pay. The levels in the hierarchy and the nature of duties, may not also be comparable. These posts may not also be classified into group A, B & C, as has been done under the Central Government. Taking these factors into consideration the selecting

authorities may have to be guided more by the nature of duties performed by the candidates in their parent organization vis-avis those in the posts under selection, and qualifications and experience required for the post under the Central Government for making selection for appointments by transfer/deputation (including short-term contract) from outside the Central Government service. Since details of recruitment rules for the posts under State Government/Public Undertakings etc. may not be available, bio-data sheets, signed by the officers themselves and certified/ countersigned by their employer indicating their qualifications, experience, assignments held in the past, contributions made by them in the field of research, publications to their credit and any other information which the officers might consider relevant for assessing their suitability for the posts in question may be obtained in the proforma (Annexure-II)."

- vii. The Annexure A5 (page 58) would confirm that the applicant was extended financial upgradation by order dated 25.05.2011 and the name of the applicant is reflected at serial number 11. She submits that while extending the financial upgradation the DSIIDC has mentioned in the order that there was no change in the substantive status, designation, duties and responsibilities to the executives, no claim whatsoever could be made by the executives by comparing on the grounds of seniority or otherwise.
- viii. While taking us to the reply filed by the respondents, placed reliance on page 42 and 63 of the reply wherein it is indicated that the applicant was working as SDE with the MTNL at the time of the absorption. There was no

change in the designation and the same would be affected only by promotion. Drawing attention to page 63 of the counter reply, she submits the respondents (DSIISC) had sought clarification from the MTNL with respect to the status of the applicant and the MTNL has clarified that there was no order in the service book of the applicant to establish, that the applicant was promoted to the level 11 at the relevant point in time (Page 63).

- ix. Refers to the Time Bound/Post Based Promotion Policy Group B Level Executives/Officers of MTNL is placed Page 64 of the O.A., the title itself makes it clear that the scope of the policy is confined to group B executives in the MTNL and it clarifies that level E1-E7 would fall in Group B (Para 6). Each of the documents placed on record by the respondents would confirm the status of the applicant as being a Group B employee at the time of absorption and that the applicant was only extended financial upgradations and not promoted to a Group A post. Therefore, in light of the OM Dated 16.09.2022 as the applicant

was not holding an equivalent post his seniority would be from the date of absorption only.

- x. In order to maintain parity with the employees who were already serving the DSIIDC the respondents are guided by the decision of the Board and the OM placed on record for assigning seniority to the applicant from the date of absorption.
- xi. She places reliance on the decision of the Hon'ble High Court of Delhi in Union of India Versus Ashwani Kumar, WPC No. 3737/2015 dated 27.07.2023 (Para 18 and 19). She submits that another case on similar issue titled Manish Ranajn Versus Union of India is pending before the Hon'ble High Court and is coming up for consideration on 19.04.2025.

7. Submission by the learned counsel for the private respondents:

7.1 Mr. M.K. Bhardwaj, learned counsel for the private respondents draws attention to page 57 of the O.A. wherein an NOC has been issued by the parent department for permanent absorption which

reiterates that the applicant was working as SDE (Civil, MTNL) and was extended absorption as Executive Engineer (Civil) in DSIIDC. Therefore, the two posts are not comparable. The service book of the applicant obtained by the private respondents under RTI would confirm that the applicant has been extended only one promotion throughout his career and rest were only financial upgradations. He draws attention to the decision of the Tribunal in O.A. No. 545/2019 wherein the coordinate Bench has relied upon the judgment of the Hon'ble Apex Court dated 28.04.2006 in CA No. 6960/2005 titled Indu Shekhar Singh and Others Vs. State of UP. He submits para 8 of the judgment in O.A. No. 545/2019. He goes on to argue that the issue before the coordinate Bench was counting of eligible service and not seniority, therefore, the judgment rather supports the cause of the private respondents.

8. Rejoinder submission by the learned counsel for the Applicant:

8.1 Mr. Gyanendra Singh, learned counsel for applicant places reliance on the PPO of the

applicant wherein he confirms that applicant was placed in grade pay 7600 based upon the 6th CPC pay scale.

9. Rejoinder submission by the learned counsel for the Private respondents:

9.1 Mr. M.K. Bhardwaj, learned counsel for private respondents submits that the learned counsel for the applicant is basically relying upon the order of upgradation and not seniority.

10. Analysis

10.1 Here the basic issue is whether the present applicant was holding a substantive or equivalent rank of Executive Engineer on regular basis in his parent Organisation at the time of absorption in DSIIDC, i.e. Respondent Organisation.

10.2 The above issue is crucial for adjudication of the present case as both the applicant and the respondents are relying on DOP&T OM dated 16.09.2022, placed on Pages 34-55 of the OA. The learned counsel for the applicant relies on Sub-Clauses 3.5.1 to 3.5.3 whereas the learned counsel for the official Respondents relies on all the sub-

clauses of Clause 3.5. Clause 3.5 contains the guidelines to determine the seniority of employees absorbed after being on deputation, which is the subject matter of the present case.

10.3 The learned counsel for the Applicant has forwarded the following to prove that the applicant was holding the rank/post of Executive Engineer in his parent department before being absorbed in DSIIDC :

(i) The applicant was in grade E-5, equivalent Grade of Executive Engineer with grade pay of Rs.6600/- IDA pay scale E-5 with Grade pay of Rs.6600/-.

(ii) The learned counsel for the Applicant refers to the chart given by the MTNL placed at Page 63 of the OA, which states that the applicant was in IDA pay scale Rs.15000-350-18700 in E-4, Group 'A' from 30.09.2010 to 29.09.2015. Further, the applicant was in IDA payscale Rs.32,900-58000, Group A, E-5 from 30.09.2015 to 9.07.2020, and further in IDA pay scale Rs.36000-62000, E-6, Group A, grade pay Rs.7600/- on 10.07.2020, the last day when he was technically with MTNL. The

learned counsel for the applicant has furnished a copy of the PPO of the Applicant to corroborate this.

(iii) The learned counsel for the applicant refers to DoP&T OM dated 16.09.2022, Clause 3.5.3 (ii) which states that a Central Civil Post carrying the pay in the Pay Matrix at the level 10 to 18 would be classified as Group 'A'. He claims that the applicant was in level 11 as on 1.10.2010 in his parent organization. As per sub-clause 3.5.1, the applicant should be given the seniority as Executive Engineer in DSIIC from the date he was in E-5 in his parent Organisation.

10.4 In other words, the learned counsel for the applicant equates E-5 in IDA pay scale as level 11 in Central Civil Posts in the Pay Matrix and the applicant was holding a Group 'A' post. Executive Engineer is a Group 'A' post.

10.5 However, the Official Respondents have refuted the claim of the applicant that he was in the substantive or equivalent post of Executive Engineer on regular basis when he was in MTNL. Giving the chronology of the milestones attained by the applicant in MTNL, the learned counsel for the

respondents in his submission has stated that the applicant was initially joined as Junior Engineer in 1992 in MTNL and he was promoted as Assistant Engineer in 1998. He had got two financial upgradations, one in 2005 to E-4 IDA pay scale and the second to E-5 in 2011. These were financial upgradations, rather than promotions. The chart produced by the applicant is correct; but the IDA pay scales in E5 etc. were due to financial upgradations, rather than promotions. The same chart states that he was in SDE/E-4 rank from 1.10.2010 to 30.09.2015 and Senior SDE from 1.10.2015 to 27.05.2019. Hence, he was never promoted to the rank of Executive Engineer in MTNL.

10.6 From the above, it is clear that the applicant was never promoted to the rank of Executive Engineer in his parent department before his absorption in DSIIDC. From the chart certified by MTNL at Page 63 of the OA, it is clear that the applicant was in the Rank of DSE/Senior SDE in his parent organization before he was absorbed in DSIIDC. We do not accept the claim of the learned counsel for the applicant that the applicant was in Group 'A' of Central Civil Post and hence he was

holding equivalent rank of Executive engineer in his parent organization before his absorption in DSIIDC. The Equivalency of rank as has been elucidated in Clause 3.5.4 of the DOPT OM dated 16.09.2022 can be inferred from the duties and responsibilities performed by an employee in his parent department. Pay scales and levels in IDA will not automatically bring equivalency to that of Executive Engineer. When the MTNL has categorically stated (on page 63) that the applicant was only SDE/Sr.SDE, there is no doubt that the applicant was never performing the duties and responsibilities of an Executive Engineer in his parent organization prior to his absorption in DSIIDC. The applicant has failed to produce any promotion order nor any document from MTNL showing that he was performing the duties of an Executive Engineer before his joining in DSIIDC. The Sub clause 3.5.3(ii) never mentions IDA pay scales nor its equivalency to Central Civil Posts. Accordingly, no benefit could be granted to the applicant under the same sub clause.

11. Conclusion

11.1 In view of the above, we conclude that the applicant was never holding the rank of Executive Engineer or Equivalent post in his parent organization before being absorbed in DSIIDC so as to get the benefit of seniority in the rank of Executive Engineer for any period prior to his absorption in DSIIDC under clause 3.5.3 of DoP&T OM dated 16.09.2022. The order quoted by the learned counsel for the applicant in Manish Rajan and Delhi High Court judgment in WPC no.1146/2020 are not applicable in the instant case as the facts and circumstances obtaining in the present case are at variance with those in these two cases.

12. In view of the above, the OA lacks merit and hence is dismissed.

13. No order as to costs.

(Dr. Chhabilendra Roul)
Member (A)

(Pratima K. Gupta)
Member (J)