

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. NO. 2159/2002

This the 17th day of December, 2002

HON'BLE MR. JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE MR. S.A.T. RIZVI, MEMBER (A)

Shri V.K. Sinha,
S/o Late P.D. Sinha,
Chief Engineer,
Ministry of Road Transport and Highways,
Transport Bhavan,
1, Sansad Marg,
New Delhi 110 001

...Applicant

(By Advocate : Shri R.N. Singh)

Versus

1. Union of India, Through
Secretary to The Government of India,
Ministry of Road Transport and Highways,
Transport Bhavan,
1, Sansad Marg,
New Delhi 110 001
2. Shri Nirmaljeet Singh,
Chief Engineer,
Ministry of Road Transport and Highways,
Transport Bhavan,
1, Sansad Marg,
New Delhi 110 001
3. Shri P.K. Chakraborty,
Chief General Manager,
National Highways Authority of India,
Plot No. G 5 & 6, Sector-10,
Dwarka, New Delhi-110001

...Respondents

(By Advocate : Shri M.M. Sudan)

O R D E R

BY S.A.T. RIZVI :

The grievance in this OA arose on account of the official respondent passing a non-speaking order on 07.05.2002 in the matter concerning the seniority of the applicant at the level of Chief Engineer in the Ministry. The Tribunal when approached (OA-1527/2002) by its order directed the official respondent to pass a supplementary order in continuation of the aforesaid order of 07.05.2002 by specifying reasons for rejecting the

(2)

(2)

applicant's claim for seniority vis-a-vis the private respondents 2 and 3 (Annexure 'B'). In pursuance of the aforesaid direction, the official respondent has passed orders on 1.8.2002 (Annexure 'C') whereby the seniority accorded to the private respondents has been maintained.

2. Earlier on 13.02.2002 (Annexure 'A'), the official respondent had issued a provisional seniority list in respect of the post of Chief Engineer in which the private respondents 2 and 3 have been shown as senior to the applicant. The private respondents 2 and 3 were appointed as Chief Engineer on ad hoc basis even earlier on 22.09.1997 (Annexure 'P') and the claim of the applicant was then ignored.

3. The applicant's case is that he entered service along with the private respondents 2 and 3 on the basis of the combined Engineering Service Examination, 1971 held by the UPSC. At the entry stage, the applicant, in view of his merit, ranked senior to the private respondents 2 and 3 and all of them were appointed as Assistant Executive Engineer (AEE). Subsequently, the applicant ranked senior to the aforesaid private respondents all along. However, at the stage of appointment as Chief Engineer, the applicant has been shown as junior to the aforesaid private respondents in the aforesaid provisional seniority list (Annexure 'A'). The fact that the applicant was regarded as senior to the aforesaid private respondents right upto the stage of promotion to the post of Superintending Engineer has been

2



(3)

admitted by the official respondent himself in paragraph 7 of the impugned order dated 01.08.2002 (Annexure 'C'). The problem arose, according to the applicant, by the official respondent's decision to allocate the applicant to the Directorate of Bridges whereas the private respondents were allocated to the Directorate of Roads. This was done by the respondent, according to the applicant, in an arbitrary fashion and against the 1995 Service Rules. Hence the grievance and the present OA.

4. We have heard the learned counsel on either side at great length and have also perused the material placed on record.

5. The official respondent, in support of his averment that the applicant has no case, has relied upon the judgement rendered by the Tribunal on 27.08.1997 in OA No.1918/94 (Annexure 'Q'). He has also argued that the present OA is barred by limitation. Further, according to him, the applicant has incorrectly interpreted the provisions of the 1995 Service Rules to create an impression that at the stage of promotion from the rank of Superintending Engineer (S.E.) to that of Chief Engineer, it was immaterial whether the S.E. concerned was working on the Bridges side or on the Road side. The respondent's case is that in accordance with the 1995 Service Rules only those S.Es could be promoted to the rank of Chief Engineer (Bridges) who were senior as S.E. (Bridges) and likewise in the case of Chief Engineer (Roads). The private respondents were, according to him, senior to the applicant on the Roads

side as S.E. and were correctly promoted as Chief Engineer (Roads) in preference over the applicant, who worked on the Bridges side. Thus, despite being senior to the private respondents at the entry stage and subsequently upto the stage of S.E., the applicant was rightly over-looked for promotion to the post of Chief Engineer (Roads). The fact that in any case the applicant as well as the private respondents were regularly promoted as Chief Engineer on one and the same date, namely, on 06.08.1998 has been emphasised by the official respondent in order to show that no discrimination has been made against the applicant.

6. In order to appreciate the argument advanced on either side and particularly those dealing with the interpretation of the 1995 Service Rules, it is necessary in our view to dwell at some length into the provisions, if any, made in the Service Rules of 1959, 1976, 1995 and the Service Rules of 1997 which pertain to the allocation of directly recruited A.E.E. to the Bridges side or as the case may be, the Roads side. Copies of the aforesaid Service Rules have been placed on record at Annexures 'D', 'E', 'F', and 'G' of the OA. However, before we do so, we would like first to go into the order issued by this Tribunal on 27.08.1997 in OA No. 1918/1994 and MA No.1080/1997. We will do so briefly in the following paragraph.

7. In the aforesaid OA No.1918/1994, the present applicant had primarily assailed the preparation of two separate seniority lists in respect of the post of S.E.,



(5)

one on the Roads side and the other on the Bridges side. Accordingly, he had in the aforesaid OA sought directions to be issued to the official respondents to operate the combined/ integrated seniority list of S.Es for making promotions to the post of Chief Engineer and higher posts. At the time the 1976 Service Rules were in force. However, during the pendency of the aforesaid OA, the 1976 Service Rules were modified by the Notification issued on 06.11.1995 and a further Notification was issued thereafter on 31.03.1997 modifying the 1995 Service Rules. Thus, all the different Service Rules which we will briefly go into in the latter part of this order were noticed by the Tribunal during the course of hearing in the aforesaid OA (No. 1918/1994). The Tribunal finally relied on the case of Y.V. Rangaiah & Ors vs. J. Sreenivasa Rao & Ors. (1983 (3) SCC 284) to reject the plea of the applicant that the promotion to the post of Chief Engineer should have been governed by the 1997 Service Rules instead of the 1995 Service Rules. The Tribunal's view, in the aforesaid OA, was that since the relevant vacancies arose before the 1997 Service Rules were notified on 31.03.1997, the official respondent's action in making promotions in accordance with the 1995 Service Rules could not be faulted. The Tribunal also found that the applicant could not, in the circumstances, rely on the case of Dr. K. Ramulu & Anr. vs. Dr. S. Suryaprakash Rao & Ors. (1997 (3) SCC 59). The applicant had in the aforesaid OA advanced the plea that following the proposition of law laid down in the case of Dr. Ramulu & Another (supra), the official respondents were competent to with-hold making of promotions to the

post of Chief Engineer until the modified Service Rules of 1997 had been enforced/notified.

8. We have carefully perused the judgement rendered by the Supreme Court in the case of Y.V. Rangaiah & Ors (supra) as well as in the case of Dr. K. Ramulu and Anr (supra). In the former, the issue involved related to the change in the criteria of eligibility for promotion introduced by a subsequent modification in the Service Rules. Accordingly, the Supreme Court held that the vacancies arising during the currency of the previous criteria of eligibility for promotion should be filled by following the said criteria and not the fresh criteria brought into force by the modified Service Rules. This is what the Supreme Court observed in the aforesaid case-

"4. xxxxxxxx The grievance of the petitioners is that contrary to the rules and instructions a list of the approved candidates was not prepared as on September 1, 1976; instead it was considerably delayed and drawn up only in the year 1977 when an amendment to the rules had been incorporated by G.O. Ms. No. 265-Revenue (UI) dated March 22, 1977 whereby the original rules, providing for consideration of Lower Division Clerks for appointment as Sub-Registrars Grade II were done away with and promotion or transfer to that category was to be made from amongst Upper Division Clerks employed in the Registration and Stamps Department. xxxxx"

It was in the above background that the Supreme Court held that -

"9. xxxxxx . The vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules. xxxxx."

9. What has really happened in the present case is altogether different from what had taken place in the aforesaid case decided by the Supreme Court. In the



(7)

present case, by the modified Service Rules notified on 31.03.1977, the posts of S.E. (Roads)/Chief Engineer (Roads) and S.E. (Bridges)/Chief Engineer (Bridges) have been done away with altogether in favour of a unified hierarchical structure starting from AEE going upto the level of Chief Engineer and beyond without any earmarking/suffixing such as Roads and Bridges which was in force during the currency of the 1995 Service Rules and the earlier Service Rules of 1976. Clearly, it is not just the criteria of eligibility for promotion which has been altered. In fact, a fundamental change has been made by dispensing with the posts designated and styled as CE (Roads), CE (Bridges), SE (Roads/Bridges) etc. The general pattern of recruitment and promotion from one post to the other has nevertheless been maintained. Thus, on par with the provisions made in the 1995 Service Rules, the 1997 Service Rules also provide for direct recruitment at the level of AEE and promotion thereafter to the post of Executive Engineer by following the same pattern. The position continues to be the same upto the level of S.E. (NFSG) and Chief Engineer. The 1997 Service Rules, essentially do nothing more than abolish the suffixes "Roads" and "Bridges" whenever these found place in the 1995 Service Rules. In the instant case, we are directly concerned with the posts of S.E. and the Chief Engineer as it is the promotion from the former to the latter which has given rise to a dispute in this OA. At these levels, the relevant provisions in the 1995 and the 1997 Service Rules are identical except ~~that~~ that the aforesaid suffixes "Roads" and "Bridges" added to the description of various posts have been abolished in the

2

1997 Service Rules. We are, in the circumstances, convinced that the Tribunal, while passing orders in the aforesaid OA No.1918/1994, has applied the proposition of law laid down in the case of Shri Y.V. Rangaiah & Ors. (supra) on the basis of an insufficient appreciation of the facts and circumstances of the case. Moreover, the promotions in this case have been made on 06.08.1998, i.e., after the 1997 Service Rules came into force on 31.03.1997. Since the aforesaid 1997 Service Rules had abolished the posts of Chief Engineer (Bridges) and Chief Engineer (Roads), the promotion of the private respondents made to the aforesaid posts would be clearly illegal. The post of Chief Engineer (Roads) and Chief Engineer (Bridges) were clearly not in existence on the date on which the private respondents and the applicant have been promoted respectively to the posts of Chief Engineer (Roads) and Chief Engineer (Annexures 'M' and 'N'). For this specific reason also the order dated 06.08.1998 (Annexure 'M') by which the private respondents have been promoted to the post of Chief Engineer (Roads) should be held to be void, while no such objection can be taken in the case of the order of the same date passed in relation to the applicant, who has been promoted, as would be seen from the aforesaid order (Annexure 'N') from the post of S.E. to the post of Chief Engineer as both these posts were in existence according to 1997 Rules then in force.

10. By not holding the meeting of the DPC during the currency of the 1995 Service Rules and holding the same after the modified 1997 Service Rules had come into

force, the official respondent has clearly indicated his decision to with-hold the meeting of the DPC for promotion to the post of Chief Engineer until the Service Rules had been modified, and this modification, as stated, took effect from 31.03.1997. In terms of the decision taken by the Supreme Court in the aforesaid case of Dr. K. Ramulu (supra), the official respondent was within his rights to delay and withhold promotions and to make promotions only after the modified Service Rules had come into force. Following the proposition of law laid down in the case of Dr. K. Ramulu & Anr. (supra), the aforesaid action of the respondent cannot be faulted. To bring home the point, we reproduce below the head note of the judgement made by the Supreme Court in the case of Dr. K. Ramulu & Anr (Supra) -

"A. Service Law - Promotion - Panel - Panel for promotion as Assistant Director in A.P. Animal Husbandry Department - Omission to prepare and operate such panel for the years 1995-96 on facts not arbitrary - Government taking a conscious decision in the year 1988 to amend the 1977 Rules and not to fill up any vacancy till such amendment - Meanwhile the Government appointing a Commission to examine the anomalies in the 1977 Rules and after receiving its report framing the 1996 Rules repealing the 1977 Rules w.e.f. 12.6.1996 - In such circumstances, omission to prepare the panel for promotion to the post of Assistant Director in A. P. Animal Husbandry Department for the years 1995-96, held, intra vires clause (ii) of second proviso to R.4 of the A.P. Subordinate Service Rules and no arbitrary - Hence, even though vacancies existed prior to the commencement of the 1996 Rules, the respondent did not acquire any vested right for being considered for promotion in such vacancies in accordance with the repealed rules of 1977 - Administrative Tribunal erred in directing the Government to prepare and operate the panel for the years 1995-96 in accordance with the 1977 Rules - Andhra Pradesh Subordinate Service Rules, Rr. 3 and 4 second proviso clause (ii) - Andhra Pradesh Animal Husbandry Service Special

Rules, 1977 - Andhra Pradesh Animal Husbandry
Service Rules, 1996 - Constitution of India,
Art. 14 - Arbitrariness"
(emphasis supplied)

11. It will be noticed that in the aforesaid case, the Supreme Court had clearly enough observed that "even though vacancies existed prior to the commencement of the 1996 Rules, the respondent did not acquire any vested right for being considered for promotion in such vacancies in accordance with the repealed rules of 1977." Likewise in the present case also the private respondents cannot be said to have acquired any vested right to be promoted to the post of Chief Engineer (Roads) even after the 1995 Service Rules had been modified by abolishing the post of Chief Engineer (Roads) in the 1997 Rules.

12. We have seen in the above paragraphs that the Tribunal in its Order dated 27.08.1997 (OA No. 1918/1994 and MA No.1080/1997) has failed to apply the ratio of the judgements made by the Supreme Court in the cases of Shri Y.V. Rangaiah & Ors and Dr. K. Ramulu & Anr. (supra) correctly and on the basis of a proper appreciation of the propositions of law laid down by the apex Court. The official respondents cannot, therefore, rely on the aforesaid judgements of this Tribunal in support of their case. The fact, however, remains that the aforesaid judgement of the Tribunal has become final as between the parties.

13. Having dealt with the Tribunal's decision in OA No.1918/1994, we now revert to the Service Rules framed by the official respondents from 1959 onward. The earliest Service Rules were notified on 16.10.1959 and the same simply lay down that the vacancies arising in

the Administrative (Selection Grades) including the higher administrative posts shall be filled by selection from amongst suitable officers working in the next lowest grades in the Department (rule 4 of the 1959 Service Rules). Though these rules are known as the Civil Engineering Service (Roads) of the Ministry of Transport and Communication, Department of the Transport (Roads Wing), Class I, Recruitment Rules, 1959, nothing has been mentioned in these Rules about the Roads side or the Bridges side as constituting separate and distinct streams. The implication of this is clear. The Rules themselves relate to the "Roads Wing" of the Ministry and this position has remained unaltered in all the rules framed by the Ministry/Department right upto the Service Rules of 1997. While building roads, some experience in building bridges is also required, but the main task is road building. It appears that the impression at the time was that the Civil Engineers who build roads can always build bridges as well, as and when required during the course of construction of roads. That seems to be the reason why in the 1959 Service Rules (Annexe 'D'), the official respondents have not cared to make a mention of the roads side on the one hand and the bridges side on the other. In course of time, the official respondents seem to have realised that an amount of focussed specialisation in the building of bridges would be required as part of the experience in the construction of roads generally. Accordingly, in the 1976 Service Rules (Annexure 'E'), they have provided as follows:-

- "(4) (i) Appointment to the Higher Administrative Group 'A' Level II posts (that is to say, the grade of Chief Engineer, Level II) on the Roads or

Bridges or Mechanical sides shall be made by selection on merit from amongst Officers with not less than five years' regular continuous service in the grade of Superintending Engineer on the Roads or Bridges or Mechanical sides, as the case may be, and

- (ii) Appointments to the Higher Administrative Group 'A' Level I posts (that is to say, the grade of Chief Engineer, Level I) on the Roads or Bridges side shall be made by selection on merit from amongst officers holding Higher Administrative Group 'A' Level II posts with not less than two years' regular continuous service in the grade on the Roads or Bridges sides, as the case may be."

(emphasis supplied)

In laying down the aforesaid rule, the official respondent would appear to have made an attempt to divide the single cadre of Civil Engineers into two different cadres pertaining respectively to the Roads and Bridges sides. However, the official respondent was content so to say to "create" the two cadres as above only from the stage of Chief Engineer Level-II. Upto the level of Superintending Engineer, the cadre remained a unified cadre of Civil Engineers. These Rules, however, did not clarify the basis on which such a segregation was sought to be made from the stage of Chief Engineer Level-II. There is nothing in these Rules to throw light on this aspect, nor have the official respondent placed on record any executive instructions clarifying the matter. The aforesaid rules merely say that the selection for the post of Chief Engineer Level-II was to be made on the basis of merit from amongst officers with not less than five years regular continuous service in the grade of S.E. on the Roads or the Bridges side, as the case may be. Moreover, the use of the word "side" is also significant. Such a word is not used in service

jurisprudence to signify or denote sub cadre or cadre. Since, as stated, right upto the stage of Superintending Engineer, no segregation appears to have been made in these rules, it cannot be said with confidence that the true intention of the official respondent was to create two different cadres from the stage of Chief Engineer Level-II upward. The intention, on the other hand, appears to ^{2 have been} ~~be~~ merely to designate a CE as CE (Roads) if he had had the experience of working on the Roads side for five years and likewise in respect of CE (Bridges). This would give rise to an unambiguous impression, and a well founded one at that, that promotions to the rank of Chief Engineer Level-II and beyond were to be made on the basis of a common seniority list of Superintending Engineers and, once promoted, the CEs were to be designated as CE (Roads) or CE (Bridges) as the case may be. It would be worthwhile to note right at this stage that the applicant as well as the private respondents came to be governed by the aforesaid 1976 Service Rules four years after they were directly recruited as AEEs in 1972 and this regime clearly lasted till 1995 ^{2 when it} ~~and~~ is alleged by the official respondent to have undergone a material change with the notification of the 1995 Service Rules.

14. With more experience gained in the construction of roads, the Roads Wing of the Ministry of Surface Transport reformulated the Service Rules in 1995 to be known as the Ministry of Surface Transport (Roads Wing) Central Engineering Service (Roads) Group 'A' Rules, 1995. The main problem in the present OA has arisen due to a certain provision made in these Rules which we shall



(14)

advert to now. A perusal of the Schedule-II attached to these Rules would show that as usual the posts of AEEs are to be filled by way of direct recruitment with promotions being made to the post of Executive Engineer from amongst the AEEs with four years regular service in the grade. In column 1 of this Schedule, the post of Executive Engineer has been designated as Executive Engineer (Roads/Bridges). No such suffix has been added in the Schedule in relation to the post of AEE. Going up further to the level of S.E. again the designation shown in column 1 of the aforesaid Schedule is S.E. (Roads/Bridges). Of course, the Executive Engineers with five years regular service in the grade have been made eligible for promotion to the post of S.E.(Roads/Bridges). While laying down the aforesaid eligibility condition for promotion to the post of E.E. or to the post of S.E., no condition has been stipulated as to the nature of experience required for promotion to the aforesaid post. That is to say, in column 4 of the aforesaid Schedule, it has not been pointed out that only those AEEs will be promoted to the post of EE (Roads) or as EE(Bridges) as had acquired experience on the Road side or the Bridges side as the case may be. The same is true of the post of S.E./SE Selection Grade (Non-Functional) (Roads/Bridges). Here again no such condition of eligibility has been indicated. It is only at the level of Chief Engineer (Roads/Bridges) that it has for the first time been laid down in the column 4 of the aforesaid Schedule that 8 years regular service in the grade of S.E. (including the service rendered in the Non-Functional Selection Grade) would be required on the

2

Roads side or the Bridges side, as the case may be. The implication appears to be that the two streams, namely, the Roads and the Bridges streams got separated and segregated at this stage. We have already noticed that the same position obtained in the 1976 Service Rules. However, an important difference appears to have been introduced in the 1995 Service Rules by providing in the same column 4 of Schedule-II as follows:-

Serial No.	Grade/Duty/ Posts	Method of Recruitment	Field of selection of minimum qualifying service for promotion
1	2	3	4
Part II	Civil Engineer- ing Chief Engineer (Roads/Bridges) (Rs.5900-200-6700)	Promotion	Superintending Engr with 8 years' regular service in the grade including service, if any, rendered in the non functional selection grade of Superintending Engineer in the Roads or Bridges, as the case may be, or <u>with 17 years' regular service in Group A posts, out of which at least 4 years regular service should be in Junior Administrative Grade</u> "

From the aforesaid underlined portion it becomes clear that while the official respondent, at the stage of promotion to the post of Chief Engineer, provided for eight years of service in the grade of S.E. on the Roads side or the Bridges side, as the case may be, a distinction based on experience gained on either side (Roads or Bridges) could be dispensed with if officers

with 17 years of regular service in group 'A' posts (out of which at least 4 years regular service in JAG) became available. The aforesaid provision in its entirety, naturally and harmoniously interpreted would mean that SEs with 8 years regular service on either side (Bridges or Roads) were to be equated with Civil Engineers with 17 years regular service in Group 'A' posts for the purpose of promotion to the post of Chief Engineer. That being so, the intention clearly seems to have been to give weightage to seniority without going into the question of experience gained on either side. Thus, when a Superintending Engineer with 17 years regular service in Group 'A' post (with 4 years or more of service in JAG) become available, he could be promoted to the post of Chief Engineer without any regard for his experience on either side. In other words, in such a situation, the seniority in the rank of S.E. ^{& alone} would matter and ^{& the officer} cannot be by-passed on the ground of lack of experience of working on the Roads side or the Bridges side. This is what the learned counsel appearing on behalf of the applicant in the present case has repeatedly stressed.

15. Having expressed our views in the matter on the basis of the provisions made in Schedule-II of the 1995 Service Rules, we find it convenient now to take a look at the provisions made in the Schedule-I of the aforesaid rules and in the main body of the rules. In Schedule-I of the 1995 Service Rules, the post of Chief Engineer (Roads) and Chief Engineer (Bridges) have been separately shown with six such posts earmarked for Chief Engineer (Roads) and five for Chief Engineer (Bridges). No such

segregation is in evidence, however, in respect of the posts upto Superintending Engineer Selection Grade (Non-Functional). However, right from the stage of AEE upto the stage of S.E. Selection Grade (Non-Functional) the suffix Roads/Bridges has been added perhaps to indicate that two different disciplines, namely, those of Roads and Bridges were in existence. What we have failed to comprehend is that if the official respondent actually intended to create two distinct and separate disciplines of "Roads" and "Bridges", they could as well show in this very Schedule the posts of AEE etc. separately for each discipline. They have not done so. However, in the main body of the 1995 Service Rules, particularly in rule 5 thereof, we have come across the use of suffix "Roads and Bridges" in rule 5 (ii) which relates to direct recruitment to the post of AEE. Thereafter, in rule 5 (iii), it has been provided that appointments to the STS, JAG and SAG shall be made by promotion from amongst the officers of the respective discipline in the next lower grade. Further on, in the same sub rule it is provided that "promotion from one grade to the other upto the level of Chief Engineer shall be made within the respective sub cadres. The official respondent has heavily relied upon the distinctions pointed out above in order to press his argument that Civil Engineers were to be promoted on the basis of separate seniority lists prepared for the post of SE, one in respect of each discipline, and since the applicant was junior as S.E. (Roads) to the private respondents, he was over-looked when it came to promoting S.Es to the post of Chief Engineer (Roads).

d

(2)

(18)

16. We have carefully considered the aforesaid provision made in rule 5 of the 1955 Service Rules. We do not find any provision in this rule in regard to the manner in which directly recruited AEEs would be allocated to the disciplines of Roads and Bridges. The official respondent does not seem to have issued any executive instructions either in this regard. It would, therefore, appear that the allocation of a directly recruited Assistant Engineer to either side was to be made under the aforesaid rule without any guide-lines on the subject and that being so, such allocations would have to be termed as arbitrary. The aforesaid rule also does not indicate that a Civil Engineer could not change sides after being appointed to the service. Further, at the time the 1955 Service Rules were notified, a large number of Civil Engineers were already available with diverse experience partly on the Roads side and partly on the Bridges side. How will such officers be dealt with and in what manner their inter-se seniority on either side will be fixed has not been laid down anywhere in these rules. Normally, whenever it is sought to create two different disciplines or two different sub cadres out of one single discipline/cadre, an option is required to be given to the incumbents in position and the matter is thereafter decided in the light of the representations made by such incumbents. No such provision appears to have been made by the official respondent in the aforesaid rules and the learned counsel appearing on his behalf has also not placed before us any executive instructions dealing with the said matter.

17. In the aforesaid circumstances, there would appear to be an element of mutual inconsistency in the different provisions made in the 1995 Service Rules together with Schedules I and II thereof. We have, after a careful consideration, found that as a matter of fact the mutual inconsistency pointed out is more apparent than real. A harmonious interpretation of the rules would, in our view, be helpful in arriving at the correct conclusion. We have just noticed in paragraph 13 above that a certain provision has been made in column 4 of Schedule II to these rules dealing with the matter of promotion to the post of Chief Engineer. That provision clearly emphasises the relevance of seniority by laying down that Civil Engineers with 17 years regular service in Group 'A' posts would be eligible for promotion to the post of Chief Engineer. In Schedule-I of these Rules, no real distinction has been made on the basis of experience on the Roads side or the Bridges side upto the stage of S.E. Selection Grade. Such a seniority list, in our view, will, therefore, have to be only one seniority list common to both sides.

18. We have also carefully perused the impugned order dated 01.08.2002 (Annexure 'C') to find out as to how the aforesaid Rules have been interpreted by the official respondent himself and the practice followed by him. In paragraph 7 of the impugned order, it has been stated that "as per practice at that time, he was allocated to Bridges Directorate, whereas S/Shri Nirmaljit Singh and P.K. Chakraborty were allocated to the Roads Directorate." Admittedly, therefore, no rule existed for

allocating directly recruited AEEs to this or that Directorate. It was some vague practice which appears to have been followed, the basis of which has not been made known. In the circumstances, such allocations are bound to have been made on pick and choose basis and in an arbitrary fashion. Furthermore, the impugned order also relies heavily on the apex Court's judgement in the case of Y.C. Rangaiah etc. which we have already noticed has been incorrectly applied in the facts and circumstances of the present case. In paragraph 17 of the impugned order, the official respondent has sought to place reliance on certain guide-lines purportedly issued by the DOP&T laying down that those selected for promotion in a DPC meeting for an earlier year of vacancy shall be regarded as senior to those selected in a DPC meeting held to consider filling of vacancies of later years. These guide-lines would, in our view, find application only in the context of hierarchical promotions made in one and the same cadre. In the circumstances, placing of reliance on the aforesaid DOP&T guide-lines amounts to an admission on the part of the official respondent that, all said and done, only one cadre existed instead of two sub cadres talked about by him to press his argument that in view of the provisions made in the 1995 Service Rules, which we have already referred to, two sub cadres existed at any rate in the rank of Superintending Engineer, and that is why further promotions to the rank of Chief Engineer were made by placing the latter post again in two sub cadres.

19. The impugned order, in its paragraph 4, contains a clear admission to the effect that a common seniority list was prepared by them right upto the stage of Superintending Engineer but promotion to the post of Chief Engineer was not made to depend on the said common seniority list. Rather such promotions were based on seniority within the respective Directorates of Bridges and Roads. The 1995 Service Rules do not clearly provide for the preparation of seniority lists of S.Es within the respective Directorate of Bridges and Roads, nor any executive/administrative instructions appear to have been issued in this regard.

20. The aforesaid admission made by the official respondent does not find support in what he has to say in paragraph 6 of the same order. As per the statement contained in this paragraph, the official respondent had to amend the 1995 Service Rules to introduce the concept of common seniority at the level of Superintending Engineer. This, in our view, is an obvious contradiction in terms and should adversely affect the impugned order.

21. In paragraph 7 of the impugned order, the official respondent has clearly stated that the applicant in the present OA ranked senior to both the private respondents from the post of AEE upto the stage of S.E. At the same time, the statement further made in the same paragraph is that as per practice prevailing at that time, the applicant was allocated to the Bridges Directorate whereas the private respondents were allocated to the Roads Directorate. At what stage was

27
this allocation made, how and in accordance with which principle and on the basis of which instructions/rules, have been left vague. The official respondent in paragraph 8 of the impugned order states that the applicant was allocated to the Bridges Directorate at the time of his initial recruitment as AEE and he continued to remain in the same Directorate as E.E. From what the official respondent has further stated in the same paragraph, it appears that the applicant was posted out to the Regional Office at Patna on two different occasions and that whenever he came back to the Headquarters he was posted in the Bridges Directorate. This would mean that during the period of the applicant's posting in the Regional Office at Patna, he was performing duties different from the duties attached exclusively to the Bridges Directorate, or perhaps duties in addition to the duties attached to the post under the Bridges Directorate. In what precise manner the aforesaid period spent by the applicant at Patna has been taken into account for determining his seniority in the Bridges Directorate has not been made clear. If the applicant kept on working in the Bridges Directorate all along without any break (which does not seem to be the case) he would in any case have maintained his seniority over and above the private respondents in common seniority lists at all stages. By issuing separate seniority lists in respect of SE (Roads) and SE (Bridges) in July 1994 (Annexure 'H') and showing the applicant and the private respondents in these separate seniority lists pertaining to Bridges and Roads Directorate respectively, the official respondent cannot suppress the actual

seniority of the applicant upto the level of S.E. This is, as already stated, due to the absence of any rules/instructions permitting preparation of separate seniority lists for the post of S.E. as above with a view to utilising the same for making promotions to the posts of C.E.(Roads) and C.E. (Bridges) separately.

22. The official respondent has in the same paragraph, namely paragraph 8 of the impugned order, in so many words admitted that the officers were shifted from one Directorate to another purely on the basis of need and vacancy in a particular Directorate and this used to be done after obtaining Government orders. We look upon this admission again as something which clearly brings out the arbitrary manner in which the officers were allocated to this or that Directorate and/or were shifted from one Directorate to the other during the course of their service. In these circumstances, the preparation of seniority lists on the basis of work done in this or that Directorate and that too for the purpose of making promotions is clearly bad and would deserve to be set aside. The only arrangement to be relied upon in such a situation would be the one in which a common seniority list is prepared and acted upon for promoting officers from one post to the other including from the post of S.E. to the post C.E, and giving of designations to themf as CE (Roads) or as the case may be, CE (Bridges), and so on.

23. In the background of the detailed discussions contained in the preceding paragraphs, we would like to

sum up the findings arrived at by us in the following terms:-

- i) The 1959 Service Rules as also the 1997 Service Rules do not refer to different sub cadres on the Roads side and the Bridges side in the manner provided in the Service Rules notified in 1976 and 1995. It is as if the initial/original scheme of things has been restored by the official respondent in the light of experience gained over the years.
- ii) The 1976 and the 1995 Service Rules do indeed refer to posts on the Roads side and on the Bridges side by adding suffixes such as "Roads", "Bridges" and "Roads/Bridges". A harmonious interpretation of the aforesaid Rules, however, makes it clear that the aforesaid suffixes have been used to indicate designations rather than posts. For instance, when a reference is made, say, to the post of Chief Engineer (Roads), all that is implied is that the incumbent of the post enjoys the rank of a Chief Engineer and has been placed on the Roads side for the purpose of performance of the duties of a Chief Engineer. In other words, a Chief Engineer (Roads) is just a Chief Engineer who has been earmarked to work on the Roads side. Of course, in the aforesaid rules, the posts of Chief Engineer (Roads) and Chief Engineer (Bridges) have been treated as separate categories of posts and the actual

number of such posts in each category is different from the other. In our judgement, by providing as above, the official respondent has done nothing more than conveying his decision that out of the total number of the posts of Chief Engineer, so many would work on the Roads side and so many on the Bridges side. We are clear in our mind that such a categorisation of posts cannot, and in the circumstances of the present case, did not, amount to creation of different sub cadres in the ranks of Chief Engineer upward.

- iii) We have clearly noticed that in terms of the 1976 and 1995 Service Rules, the concept of sub cadres has been applied only from the stage of Chief Engineer inasmuch as upto the post of Superintending Engineer/Superintending Engineer (Non Functional Grade), there is no categorisation of posts on the Bridges side and the Roads side. It is our considered view that the aforesaid arrangement is nothing more than the division of the total number of posts in the rank of Chief Engineer into two parts, one on the Roads side and the other on the Bridges side so as to facilitate assignment of duties to the Chief Engineers to enable them to work on either side. Sub cadres, whenever properly and logically conceived, must take root from the entry stage in service. There can be no question, in our view, of one and the same cadre



being bifurcated only from a certain stage in the hierarchy of posts. In point of fact, the official respondent, in our view, never wanted to do this and, as stated, the various provisions referred to, when harmoniously interpreted, lead ~~to~~ to the conclusion that one and the same cadre and one and the same hierarchy effectively remained in tact all along, notwithstanding the earmarking or designation of posts in a certain manner. This being so, we are inclined to conclude that promotion to the post of Chief Engineer is to be made logically speaking on the basis of the combined seniority list of Superintending Engineers and, after promotions have been made, the Chief Engineers could be earmarked to work on this or that side.

iv) Supreme Court's verdict in the case of Y.V. Rangaiah & Ors (supra) has been relied upon by this Tribunal in OA No. 1918/1994 and also by the official respondent in the impugned order dated 01.08.2002 entirely due to insufficient and inadequate appreciation of the facts and circumstances obtaining in that case.

v) The Tribunal in the aforesaid OA (1918/1994) also failed to apply the principle laid down by the apex Court in Dr. K. Ramulu & Anr. (supra) again due to insufficient and inadequate appreciation of the facts and circumstances

(27)

obtaining in that case as also in the present case. Since the application is being allowed on ~~the~~ other grounds, therefore, we deem it unnecessary to refer this controversy to a Larger Bench.


24. In view of the findings recorded by us above, we find merit and substance in the present OA and accordingly proceed to grant the relief prayed for in the OA by quashing and setting aside the Office Order No. 46/98 dated 06.08.1998 (Annexure 'M') by which the private respondents have been promoted to the post of Chief Engineer (Roads). By the same token, the Office Order No.82/97 dated 22.09.1997 (Annexure 'P'), based as it is on the assumed seniority of the private respondents above the applicant is also quashed and set aside. Consequently we also quash and set aside the seniority list issued vide Office Memorandum dated 13.02.2002 (Annexure 'A') in which the applicant has been shown as junior to the private respondents. The official respondent is directed to re-draw the seniority list for the post of Chief Engineer in accordance with the combined seniority list of S.Es in existence before the promotions to the post of Chief Engineer were made. He is further directed to consider the applicant's claim for promotion to the higher level posts of Member, NHAI and Additional Director General on the basis of the seniority list to be drawn up afresh for the post of Chief Engineer. The aforesaid orders will be complied with by the official respondent as expeditiously as possible.

25. For all the reasons mentioned in the preceding paragraphs the impugned order dated 01.08.2002 is also

(28)

quashed and set aside on the grounds we have already mentioned above even if the ground dealing with the application of the proposition of law laid down by the apex Court in the cases of Y.V. Rangaiah & Ors and Dr. K. Ramulu & Anr. (supra) is set aside in view of our observations contained in para 12 above.

26. The OA is allowed and disposed of in the aforestated terms. *d*


(S.A.T. RIZVI)
Member(A)

/pkr/


(V.S. AGGARWAL)
Chairman