

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

**O.A. NO. 2081/2001 &
M.A. NO. 1741/2001**

New Delhi this the 29th day of November, 2002.

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN

HON'BLE SHRI V.K. MAJOTRA, MEMBER (A)

1. A.K.Sharma
Asstt. Engineer (Civil)
CCW AIR SUB DIV.BH
New Delhi.
2. Mahinder Singh Yadav
Asstt.Engineer
CCW AIR, MHP Division PH-II
Mandi House, New Delhi-1.
3. U.N.Singh
Superintending Engineer (Civil)
Mandi House Circle,
Soochana Bhawan
C.G.O.Complex
New Delhi-3.Applicants

(By Advocate Shri Rakesh K.Gogna)

-versus-

1. Union of India
Through the Secretary
Ministry of Information &
Broadcasting, Shastri Bhawan
New Delhi.
2. The Chief Executive Officer
Prasar Bharti, Doordarshan Bhawan
Copernicus Marg.
3. Directorate General
All India Radio
Akaswani Bhawan
New Delhi.
4. The Chief Engineer (Civil)
CCW, A.I.R. 5th Floor,
Soochna Bhawan, New Delhi-3.
5. Sh.Vijay Kumar
R/o C-4/87, Indian Airlines Colony
Vasant Vihar, Delhi-57.
6. A.K.Sachdeva
R/o G(P)-101, Pitam Pura,
Delhi-110034.

7. Ashish Kumar Ghosh
Asstt. Engg. (Civil)
All India Radio,
Delhi.

8. Sunil K. Aggarwal
Asstt. Engg. (Civil)
All India Radio
Delhi.

9. Sh. Ved Prakash
Asst. Engg. (Civil)
All India Radion
Delhi.

.... Respondents

(By Advocate Shri H.K. Gangwani)

O R D E R (ORAL)

Justice V.S. Aggarwal:-

MA No 1741/2001

MA No. 1741/2001 for joining together in OA
No. 2081/2001 is allowed.

O.A. No. 2081/2001

Applicants seek quashing of the order of
3.1.2001 by virtue of which the seniority of
certain officers including them had been re-fixed.
They seek a direction not to disturb the seniority
as fixed on the basis of the recruitment rules of
1975 and that the respondents should insert a note
under the recruitment rules as directed by the
Department of Personnel and Training (for short,
the DOP&T).

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2. It is asserted that in the year 1975, the recruitment rules were framed. According to the recruitment rules, promotion was based on seniority-cum-selection. Junior Engineers were to be promoted to the post of Assistant Engineer with 8 years of service in the grade rendered after appointment thereto on a regular basis who were holding diploma certificate in their respective cadres. The applicants, Shri A.K.Sharma and others were appointed as Junior Engineers in the years 1981 and 1982. Shri Vijay Kumar, R.K.Dua and A.K.Sachdeva and others joined as Junior Engineers after the applicants. They were also holding a diploma certificate but during te service they acquired additional qualification of degree in Engineering.

3. It is alleged that in 1988, Government of India (DOP&T) issued guide-lines and provided that in some cases of promotion, the senior officers would not have completed the requisite service while the juniors would have completed the prescribed eligibility criteria. In such cases to avoid such a situation, a suitable note should be inserted in the recruitment rules so that the seniors who have completed the probation period are also to be considered where the juniors who have completed the requisite service are being considered and that the eligibility service shall

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continue to be the same for persons holding the feeder posts on regular basis. In the year 1988, an amendment was effected in the recruitment rules and according to it, the Junior Engineers holding degree in Civil Engineering with five years service in the grade were to be promoted as Assistant Engineers and those holding diploma in Civil Engineering with 8 years of regular service in the grade were also to be promoted as Assistant Engineers.

4. The grievance is that in pursuance thereto, different lists of seniority had been issued and some Assistant Engineers preferred OA No.1078/1989 before the Calcutta Bench of this Tribunal. The Calcutta Bench held that no specific different provisions had been provided for those persons who have acquired degree during their service and in the absence of a specific enabling provision in the recruitment rules, the contention therein was not accepted that the service of five years for degree holders may be composite service. Aggrieved by the order of the Calcutta Bench S/Shri Vijay Kumar, R.K.Dua and A.K.Srivastava had filed OA No.1268/1996 with the Principal Bench of this Tribunal. It directed the respondents to issue fresh orders restoring the earlier seniority based upon their orders of promotion issued in the year 1988 after issuing show cause notice to the



concerned persons. The said seniority list had been re-drawn and hence the present application.

5. The application has been contested. The respondents point that the Calcutta Bench of this Tribunal in OA No.1078/1989 held that the promotions made to the post of Assistant Engineer were not in accordance with the recruitment rules of 1988 and the respondents were directed to review the Departmental Promotion Committee meetings and consider the applicants strictly in terms of the recruitment rules. Thereafter in pursuance of the orders of the Calcutta Bench, all meetings of the Departmental Promotion Committee held in accordance with the recruitment rules were reviewed and the revised promotion order were issued. The seniority of Shri Vijay Kumar, Shri R.K.Dua and Shri A.K.Sachdeva was refixed. Aggrieved by the same, Shri Vijay Kumar & others had filed OA No.1268/1996 before the Principal Bench. It was their contention therein that the order of the Calcutta Bench was not applicable and a direction was given for restoration of their earlier seniority. Thereafter a decision was taken to implement the decision of the Principal Bench and the impugned order had been passed.

6. After hearing the learned counsel for the parties, we find that the contentions raised by



the applicants in the peculiar facts are without merit. It is true that in the year 1988, the DOP&T vide its Office Memorandum for revision of guide-lines pertaining to recruitment rules had provided:-

3.1.2. It may so happen that in some cases of promotion the senior officers would not have completed the requisite service whereas the juniors would have completed the prescribed eligibility conditions for promotion. In such cases, senior will be left out from consideration for the higher post. To avoid such a situation, a suitable note may be inserted in the recruitment rules so that the senior who have completed the probation period, are also be considered where the junior who have completed the requisite service are being considered.

3.1.3. Whereas the eligibility service for promotion prescribed in the existing rules is being enhanced (to be in conformity with the guide-lines issued by this Department) and the change is likely to affect adversely some persons holding the feeder posts on regular basis, a note to the effect that the eligibility service shall continue to be the same for persons holding the feeder posts on regular basis on the date of notification of the revised rules, could be included in the revised rules."

Indeed these were the guide-lines as is apparent from the tenor of the directions which were not mandatory. Unless they are incorporated in the recruitment rules, the applicants indeed can have no right to insist that they must be given effect to. The recruitment rules are framed in exercise of the power under provision to Article 309 of the Constitution and the rights, if any, would flow from the recruitment rules as existing. In the

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absence of any change thereto or amendment affected, the said Office Memorandum will not substitute the said recruitment rules.

7. The recruitment rules of the year 1975 provided:-

"Promotion

Junior Engineer with 8 years service in the grade rendered after appointment thereto on a regular basis."

The same were amended in the year 1988 and presently the recruitment rules provide:-

"Promotion

i) Junior Engineers holding degree in Civil Engineering with 5 years regular service in the grade.

(ii) Junior Engineers holding diploma in Civil Engineering with 8 years regular service in the grade."

It becomes unnecessary for us to go further into the said controversy because this question as is now being agitated came up for scrutiny in Civil Writ Petition No.879/2002 in the case of **Navindra Raghav & Ors. v. Union of India & Ors.** decided on 22.3.2002. The plea raised as in the present case was for consideration before the Delhi High Court. Therein also some of the degree holders had obtained their degree during their employment as Junior Engineer and they had claimed that upon completion of 5 years' regular, they should be promoted irrespective of their date of obtaining

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the degree. This Tribunal had followed the Full Bench decision of this Tribunal in OA No.2055/1995 and OA No.1638/1995. Like the applicants, the contention raised was that having regard to the fact that at the time of their joining, 1975 rules were operative, the subsequent amendment in Rules in the year 1988 would not apply to their case. When the matter came to the Delhi High Court, the decision of this Tribunal had been upheld. Once the matter has been agitated and principle laid, the same plea cannot be allowed to be re-agitated and we find no reason to take another view.

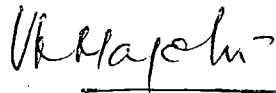
8. In that event, it was urged that amended rules could not be made applicable and strong reliance was placed on the decision of the Supreme Court in the case of **P.Mohan Reddy v. E.A.A.Charles and Others**, (2001) 4 SCC 433. This decision even had been taken note of by the Delhi High Court and it was held that it had no application. Position herein is identical. In the absence of any other contention being available, we have no hesitation, therefore, in following the decision of the Full Bench referred to above negating the said contention.

9. Resultantly, the application being without

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merit must fail and is dismissed.

Announced.



(V.K. Majotra)
Member (A)



(V.S. Aggarwal)
Chairman

/sns/