

Central Administrative Tribunal
Principal Bench

O.A. No. 375 of 2001

New Delhi, dated this the 20th APRIL, 2001

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

1. Vinod Kumar Hirna,
S/o Shri K.L. Hirna,
Telecom Electrical Div.,
Plot No. 9, Lahane Road,
Small Scale Industrial Estate,
Gultekdi, Pune-411037.
2. Narendra Kumar
3. Balbir Singh
4. Rajeev Kansal
5. S.K. Talware
6. T.K. Parihar
7. Rajeev Soni
8. J.S. Yadav
9. Dines Sharma .. Applicants

(By Advocate: Shri Himanshu Shekhar)

Versus

1. Union of India through
the Secretary,
Dept. of Telecom Operation,
Sanchar Bhawan,
20, Ashoka Road, New Delhi-110001.
 2. Sr. Dy. Director General (EW),
Dept. of Telecom,
Sanchar Bhawan, New Delhi.
 3. Secretary,
Dept. of Personnel & Training,
New Delhi.
 4. Secretary,
UPSC, Shahjahan Road,
New Delhi-110011.
 5. Shri V.M. Kohli
 6. Shri J.S. Baidwan
 7. Shri C. Gopalan .. Respondents
- (By Advocate: Shri R.V. Sinha for
R-1 to 4
Shri Naresh Kaushik
for R-5 to 7

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ORDERS.R. ADIGE, VC (A)

Applicants seek a direction to treat them as regularly appointed Executive Engineers (E) w.e.f. the date of their ad hoc promotions as such, and to consider them for promotion to the post of Superintending Engineer (E) for vacancies upto 2000-2001.

2. Applicants joined the Telecom Dept. as direct recruit Assistant Executive Engineers (Elec.) Group A on various dates between 28.10.87 and 4.10.90, on the basis of Combined Engineering Services Examination, conducted by UPSC. They were promoted on ad hoc basis as an Executive Engineer (E) on various dates between 10.11.92 and 7.11.94, vide statement at Page 13 of the O.A. One such promotion order is dated 19.11.92 (Page 34 of OA) which clearly specifies that the ad hoc promotion is for a period of one year from the date of assumption of charge of the post or till the post is filled up on regular basis, whichever is earlier, and would not confer upon the promotees any claim for regularisation or seniority in the cadre.

3. Applicants were subsequently regularly promoted as E.X. (E) w.e.f. 15.4.96 vide respondents' order dated 13.8.96 (Page 5 of respondents' reply).

4. We note that the aforesaid order dated 13.8.96 is a Presidential order while the order dated 19.11.92 promoting applicants as E.E. (E) on ad hoc basis is not a Presidential order. In other words, the authority competent to promote applicants as E.E. ^{on regular basis} (E) is the President.

5. The circumstances in which ad hoc service followed by regular service can be counted towards seniority have been set forth in Conclusion (A) and Conclusion (B) of the Direct Recruit Class II Engineering case (1990) 2 SCC 715.

6. Under Conclusion (A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment. As applicants' appointment as E.E. (E) on ad hoc basis w.e.f. 19.11.92 was not made by the President, it cannot be said to have been made according to Rule, and hence the benefit of Conclusion (A) is not available to applicants.

7. The question then arises whether applicants' cases would fall under Conclusion (B). Here, the Hon'ble Supreme Court's ruling in State of West Bengal Vs. Aghore Nath Dey and connected cases (1993) 3 SCC 371, which was delivered by a three member Bench is relevant, wherein it has inter alia been stated in Para 25 thereof, that Conclusion (B) would be attracted, when the initial appointment was not limited to a fixed period of time or purpose by the appointment order itself. In the present case,

we find that the ad hoc appointment of applicants was limited to a fixed period of one year (in the case of the order dated 19.11.92) or till the post was filled up, whichever was earlier. Thus notwithstanding the fact that applicants were allowed to continue uninterruptedly till they were ultimately regularised on 15.4.96, the fact remains that the appointment order limited the ad hoc appointment to a fixed period. Under the circumstances, applicants' cases also do not fall under Conclusion (B).

8. We are then left with the corollary to Conclusion (A). It is clear that applicants' initial appointment was ad hoc and not according to rules. These ad hoc appointments are, therefore, squarely hit by the corollary to Conclusion (A) of the Direct Recruits case (supra) and hence their prayer to treat them as regularly appointed Executive Engineer (E) w.e.f. the date of their ad hoc appointment is rejected.

9. We then come to the applicant's prayer for promotion as S.E. (E) for vacancies for the period 2000-2001.

10. As per the DOPT's O.M. dated 17.9.98, a copy of which is taken on record, for the panel year 2000-2001 (financial year) which covers the period

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from 1.4.2000 to 31.3.2001 and the panel year 2000 (calendar) which covers the period from 1.1.2000 to 31.12.2000, the crucial date for eligibility of officers for promotion would be 1.1.2000 irrespective of whether ACRs are written financial year wise or calendar year wise.

12. As per relevant Recruitment Rules, E.E (E) with five years of regular service in the grade are eligible for consideration for promotion as S.E. (E). However, if any officer is considered for promotion as S.E. (E) all persons senior to him in the grade shall also be considered, notwithstanding the fact that they do not fulfil the eligibility criteria if the shortfall is not more than one year and provided they successfully fulfil their probation period.

13. It is not denied that persons junior to applicants in the seniority list of E.E. (E) are being considered for promotion as S.E. (E). That seniority list of EE (E) is dated 16.8.2000, the validity of which was challenged in O.A. No. 1833/2000 K.K. Jindal and one other Vs. Union of India & others in which some of the present applicants featured as private respondents. That O.A. along with O.A. No. 2117/2000 was dismissed by a coordinate Bench of the Tribunal on 19.12.2000 and nothing has been shown to us to establish that the aforesaid order dated 19.12.2000 has been stayed, modified or set aside.

14. As stated earlier it is not denied that persons junior to applicants in the aforesaid seniority list dated 16.8.2000 of E.E. (E) are being considered for promotion as S.E. (E). However, even if the benefit of one years shortfall is granted to applicants, in view of the fact that they are regularly promoted as E.E. (E) only w.e.f. 15.4.96, they still do not have four years regular service as E.E. (E) to their credit as on 1.1.2000, which is the crucial date for determining eligibility.

15. In the result the O.A. warrants no interference. It is dismissed. No costs.

A. Vedavalli

(Dr. A. Vedavalli)
Member (J)

/GK/

S.R. Adige

(S.R. Adige)
Vice Chairman (A)