



5. Shri V.K. Jambholkar,  
S/o Shri Krishna Rao,  
Executive Engineer (E), P&A,  
R/o Block-I, Level-V,  
East Block, R.K. Puram,  
New Delhi. ... Respondents.

(By Advocate Shri R.V. Sinha -for respondents 1-4,  
By Advocate Shri R.K. Shukla - for respondent 5)

O R D E R

Hon'ble Smt. Lashmi Swaminathan, Vice Chairman (J).

In this application, the applicants, four in number, have alleged that the respondents have not acted strictly in terms of the directions given by the Hon'ble Supreme Court in **J.N. Goel Vs. Union of India & Ors.** (JT 1997 (1) SC 451). They are also aggrieved that the respondents have not disposed of their representations. Hence, this O.A.

2. The respondents have issued O.M. dated 6.7.1999 (Annexure-II) in which they have stated that it is a supplementary seniority list of Executive Engineers (Elect.) (EEs) which has been revised and prepared after holding a review Departmental Promotion Committee (DPC) in compliance with the directions of the Tribunal (Chennai Bench) dated 9.9.1997 in OA 295/95 and OA 493/95. In this order, the respondents have also mentioned that the Tribunal's order dated 9.9.1997 directing them to revise the seniority list by reviewing the promotions of Diploma holder Assistant Engineers (AEs) to the grade of EEs is in accordance with the judgement of the Hon'ble Supreme Court dated 14.1.1997 in **J.N. Goel's case** (supra). In this seniority list, the applicants are at Serial Nos. 82,80,78 and 95, respectively. Shri Venkataramani, learned Sr. Counsel has submitted that the applicants had no locus to

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approach the Supreme Court in J.N. Goel's case (supra) as they were not parties in that case. He has submitted that the applicants have now come to the Tribunal. Learned Sr. counsel has submitted that Diploma holder AEs, were applicants in J.N. Goel's case (supra). He has submitted that in OA 704/1988 which was before the Supreme Court in the bunch of cases dealt with by them along with J.N. Goel's case (supra), the same was filed by the Graduate AEs and the relief prayed for was confined to future promotions of Diploma holder AEs to the cadre of EEs on regular as well as ad hoc basis. He has referred to paragraph 15 of the judgement. His submission is that the respondents, while implementing the judgement of the Supreme Court dated 14.1.1997 have extended the scope of the order which they ought not to have done. According to him, it was only after the date of filing of OA 704/88 in the Tribunal, when those applicants had sought ~~for~~ certain reliefs and ~~were~~ granted by the Supreme Court finally, that the respondents could have reviewed the promotions. His contention is that erroneously the respondents have reviewed the promotion of Graduate AEs who had been promoted from a date prior to 1988 which, therefore, is illegal and contrary to the directions of the Supreme Court. He has submitted that there is also no question of <sup>any</sup> non-joinder of parties in the present case, as contended by Shri R.V. Sinha, learned counsel for the respondents because what the applicants are aggrieved is part of the policy or Scheme. He relies on the judgement of the Supreme Court in G.M. South Central Railway, Secunderabad Vs. A.V.R. Sidhanti (1974(3) SCR 207).

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3. Further, learned Sr. counsel has drawn our attention to Annexure XIII (Page 175 of the paper book), in which a comparative statement of 1994 and 1999 seniority lists prepared by the applicants has been given. He has submitted that in the case of the first three applicants in the present case, there was only one person shown senior to them in the 1994 seniority list, whereas in the revised seniority list of 1999, there are eight persons who have been placed senior to applicant No.1. Similarly, in the case of applicant 4, while in the seniority list of 1994, there were two persons above him, in the impugned seniority list there are as many as 16 persons placed above him. Learned Senior counsel has submitted that taking into account the directions of the Tribunal (Chennai Bench) in **Anandram Vs. Union of India & Ors.** dated 9.9.1997 and those of the Supreme Court in the order dated 14.1.1997, the respondents were only directed to review the promotions of Diploma holder AEs as EEs made prior to 1996. He has also drawn our attention to the order passed by the Madras High Court in the Writ Petition filed by the Union of India against the Tribunal's order in **Anandram's case** (supra). He has submitted that in the circumstances the respondents could not have reviewed the promotions which they have done prior to the year 1988, which is the date of filing of OA 704/1988 by the Graduate AEs. This, he has submitted, has adversely affected the positions of the applicants in the impugned seniority list which was issued on 6.7.1999. He has, therefore, prayed that the reliefs as set out in Paragraph 8 of the O.A. except sub-paragraph (d), which was also objected to by Shri R.V. Sinha, learned counsel, that it was vague and not maintainable, may be granted.

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4. The respondents in their reply have controverted the above submissions. Shri R.V. Sinha, learned counsel has submitted that the seniority in the cadre of AEs, which is the feeder grade for promotion to the grade of EEs, has been under litigation for a long time since 1955. He has referred to the various judgements which have a bearing on the issues raised in this case, from the judgement of the Supreme Court in R.L. Bansal's case dated 8.5.1992. A number of cases have been filed by the affected parties in the past and the Supreme Court orders on the same have been referred to in the reply given by the respondents which shows that the respondents have been given directions from time to time to prepare revised seniority lists which they have complied with. They have stated that in J.N. Goel's case (supra), the dispute was between Diploma holder AEs and Graduate AEs. Learned counsel has submitted that taking into account the directions of the Supreme Court in the order dated 14.1.1997 and the other relevant orders of the Courts, which had to be kept in view in preparation of the revised seniority list, they had undertaken the review. This included the promotion of Diploma holder AEs who had been earlier promoted to the post of EEs because of the several cases filed by the affected parties. He has further submitted that the regular promotions against the vacancies which occurred prior to the promulgation of the 1996 Recruitment Rules had to be made in accordance with the earlier Rules of 1954. In the circumstances, Shri R.V. Sinha, learned counsel has submitted that for issuing the impugned seniority list dated 6.7.1999, the respondents have followed the directions of the Supreme Court and the Tribunal and reviewed the promotions made prior to 1996 in

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accordance with the relevant Rules. He has also submitted that there are separate quotas for promotions from the feeder categories of AAEs and AEs which have also been maintained. On this ground, he has submitted that the applicants should have no grievance as their positions are not disturbed.

5. The learned counsel for the respondents has also taken certain preliminary objections, namely, (1) that the applicants have not exhausted the departmental remedies which are required under the provisions of Section 20 of the Administrative Tribunals Act, 1985. He has submitted that the applicants had submitted a representation against the impugned seniority lists dated 6.7.1999 on 29.7.1999 and this OA has been filed on 27.9.99. The O.A. was admitted on 8.7.2000. He has submitted that the applicants have, therefore, not waited for a reply from them. Another preliminary objection taken by the respondents is that the applicants have not joined the Diploma holder AEs as party and the O.A. suffers from non-joinder of necessary parties. A third objection taken by the learned counsel for the respondents is that the applicants have no cause of action and have filed this application more in the nature of a Public Interest Litigation as their positions have not been disturbed as they belong to different streams in the feeder categories for promotion to the posts of EEs. He has also submitted that the relief prayed for in paragraph 8(d) is not maintainable as this would tend to seal the future rights of other persons who have not even been impleaded. For these reasons, he has submitted that the O.A. may be dismissed as the applicants are not entitled for any of the reliefs prayed for.

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6. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

7. The preliminary objection taken by the respondents that the applicants have not exhausted the departmental remedies cannot be accepted in the facts and circumstances of the case. The applicants had submitted a representation on 29.7.1999 and as the O.A. has been filed nearly two months later, the preliminary objection is rejected. However, on the second preliminary objection that the application suffers from non-joinder of necessary parties, we find force in the submission made by the learned counsel for the respondents. The contention of Shri R. Venkataramni, learned Sr. counsel that the issues raised in the present case involve only questions of policy or Scheme and hence it was not necessary to implead other persons who are likely to be affected by any order that may be passed, is untenable. According to the applicants' own contentions and statement drawn up by them, it is noted that compared to the seniority list of 1994, in the impugned seniority list of 1999, a number of persons are shown senior to them who would be affected if their claims are allowed and they ought to have been impleaded in the O.A. So on this ground the O.A. is liable to be dismissed. The third objection is rejected, while the relief in Paragraph 8(d) as mentioned has not been pressed by the learned Senior counsel.

8. On the merits of the case, we find force in the submissions made by Shri R.V. Sinha, learned counsel for the respondents. The impugned seniority list dated 6.7.1999 issued by the respondents has been issued in

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pursuance of the orders of the Supreme Court in J.N. Goel's case (supra) and the Tribunal in Anandram's case (supra). Learned counsel has also referred to the various other judgements of the Supreme Court, including A.K. Subraman & Ors. Vs. Union of India & Ors. dated 11.12.1974, the order dated 23.5.1984 in P.S. Mahal & Ors. Vs. Union of India & Ors. and the order dated 5.8.1992 in R.L. Bansal & Ors. Vs. Union of India & Ors. (copies of these judgements have been filed by the applicants) which have a bearing on the issues raised in the present case, following which revised seniority lists have been issued. On the other hand, learned Senior counsel for the applicants, has relied on paragraph 15 of the judgement in J.N. Goel's case (supra) to support his contentions that the respondents had to review only the promotions made after 1988, that is the date of filing of O.A. 704/1988 and nothing else. Learned counsel for the respondents has also relied on this paragraph for his contentions. The relevant portion of paragraph 15 of the judgement reads as follows:

"15. In O.A. No. 704 of 1988 which filed by the graduate Assistant Engineers, the relief sought was confined to future promotions of diploma holder Assistant Engineers to the cadre of Executive Engineers on regular as well as ad hoc basis. The scope of Civil Appeal No. 5363 of 1990 filed by the graduate Assistant Engineers is, therefore, confined to promotions made to the cadre of Executive Engineers from amongst diploma holder Assistant Engineers after the date of filing of O.A. No. 704 of 1988 in the Tribunal. It has been pointed out that subsequent to the filing of O.A. No. 704 of 1988 before the Tribunal some orders were passed in 1994 whereby regular appointments have been made to the cadre of Executive Engineers from amongst Assistant Engineers, degree holders as well as diploma holders. It has also been stated that most of the diploma holder Assistant Engineers who were regularly appointed as Executive Engineers under these orders have already retired from service. The grievance of the graduate Assistant Engineers is mainly confined to diploma holder Assistant Engineers who have been working as Executive Engineers on ad hoc basis. Since the 1954 Rules were in operation prior to the promulgation of the 1996 Rules, regular promotion on the post of

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Executive Engineers against vacancies which occurred prior to the promulgation of the 1996 Rules will be governed by the 1954 Rules. If any of the appellants in Civil Appeal No. 5363 of 1990 feels aggrieved by the regular promotion of any of the diploma holder Assistant Engineers to the cadre of Executive Engineer after the filing O.A. No.704 of 1988 and prior to the coming into force of the 1996 Rules, he may agitate the said grievance in the competent forum. The promotion of diploma holder Assistant Engineers who have been promoted on the post of Executive Engineer on ad hoc basis, will have to be reviewed by the authorities and regular promotions against vacancies which occurred prior to the promulgation of the 1996 Rules will have to be made in accordance with the 1954 Rules. Regularisation of Diploma holder Assistant Engineers who are working as Executive Engineers on ad hoc basis against vacancies which occurred after the promulgation of the 1996 Rules will have to be made in accordance with the provisions of the 1996 Rules".

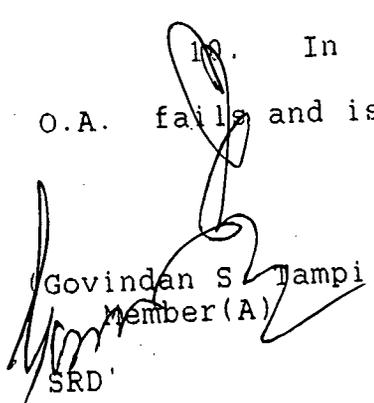
(Emphasis added)

9. From the aforesaid directions of the Supreme Court in J.N. Goel's case (supra), we are unable to agree with the contentions of Shri R. Venkataramani, learned Sr. counsel that the actions taken by the respondents in conducting the review of the promotions which had earlier been done as AEs is either arbitrary or unreasonable or wrong implementation of the aforesaid directions. Para 15 of the above judgement has to be read as a whole. Therefore, the contentions of Shri R. Venkataramni, learned Sr. counsel that the review should have been confined only to a date after 1988, that is after OA 704/1988 was filed, cannot be accepted, having regard to the other portions of the paragraph underlined. The directions of the Supreme Court include review of the promotions of Diploma holder AEs who have been promoted as EEs on ad hoc basis, which has to be done against the vacancies which occurred prior to the promulgation of the 1996 Rules in accordance with the 1954 Rules which also justifies the action taken by the respondents to review the promotions in question. In this view of the matter, the

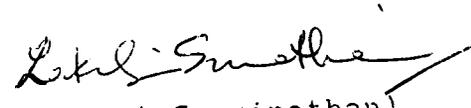
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actions of the respondents in issuing the impugned seniority list dated 6.7.1999 of EEs, following the directions of the Supreme Court in J.N. Goel's case (supra) and the Tribunal in Anandram's case (supra) are neither illegal nor arbitrary justifying any interference in the matter.

18. In the result, for the reasons given above, O.A. fails and is dismissed. No order as to costs.

  
Govindan S. Jampi  
Member (A)

SRD

  
(Smt. Lakshmi Swaminathan)  
Vice Chairman (J)