

(4)

(5)

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

OA No. 1638/95

New Delhi: this the 30<sup>th</sup> day of JANUARY, 2001

HON'BLE MR. S. R. ADIGE, VICE CHAIRMAN (A)

HON'BLE DR. A. VEDAVALLI, MEMBER (J)

Sh. P. K. Agarwal,  
S/o Sh. J. L. Agarwal,  
R/o B-126, Subhadra Colony,  
Sarai Rohilla,  
Delhi-11035,

working as Asstt. Surveyor of works,  
SSW-III Unit,  
Civil Construction Wing,  
All India Radio,  
Soochna Bhavan,  
New Delhi

.... Applicant.

(By Advocate: Shri B. K. Agarwal)

Versus

1. Union of India  
through

Secretary,  
Ministry of Information & Broadcasting,  
Shastri Bhavan,  
New Delhi-1

2. Director General,  
Directorate of All India Radio,  
Akashvani Bhavan,  
Parliament Street,  
New Delhi-1

.... Respondents.

(By Advocate: Shri S. M. Arif)

ORDER

S. R. Adige, VC (A):

Applicant impugns respondents' order dated 27.6.95 (Annexure-A1) reverting him to the grade of JE (Civil).

2. Applicant joined service as Junior Engineer (Civil) on 5.5.84 with Diploma in Civil Engineering as qualification in Civil Construction Wing of AIR. While working as JE, he acquired Degree in Civil Engineering on 27.3.87. As per interpretation of Col. 12 of the Schedule

~

to the relevant recruitment rules of 1998 (Copy annexed with respondents' reply), the service rendered by him as JE with diploma was also included in the required length of service of 5 years for promotion to the grade of AE (Civil) while his case was considered by the DPC as on May, 1989.

3. The proceedings/recommendations of the DPC held in 1989 were challenged in OA No.1075/89 on the ground that the promotions were not in accordance with the RRs for promotion to the grade of AE (Civil). CAT Calcutta Bench in its order dated 6.5.94 (Annexure-A5) in that OA upheld the challenge observing inter alia

".....in the absence of such a specific and enabling provision in the instant Recruitment Rules we are unable to accept the contention of Mr. Das that the period of service of 5 years for Degree Holder may be a composite with degree holder as well as Diploma Holder.....

and directed to hold a review DPC and consider the cases of the applicants strictly in terms of Recruitment Rules, if they are otherwise found eligible."

4. SLP No.27230/94 filed by the UOI against the aforesaid order dated 6.5.94 was dismissed by the Hon'ble Supreme Court, after condoning the delay by order dated 9.1.95 (Annexure-R-2).

5. Thereupon, pursuant to the Tribunal's order dated 6.5.94 and dismissal of the SLP challenging the same on 9.1.95, respondents held review DPC to review the recommendations of DPCs held after the notification

(M)

amending the Recruitment Rules in 1985 for promotion to the grade of AE (Civil). As applicant did not fulfil the required length of 5 years' service as JE, after obtaining the degree in Engineering for promotion to the post of AE (Civil) he was not considered in the review DPC of 1989, review DPC of 1990 (cut off date 1.10.90) and review DPC of 1991 (cut off date 1.10.91), and was therefore reverted by impugned order dated 27.6.95.

6. Heard both sides.

7. The question for adjudication is whether as per RRs amended in 1988, the period of five years as JE is to be counted from the date of acquisition of the Degree in Engineering, or the period as JE even prior to the acquisition of a Degree in Engineering can be counted towards the 5 years' experience.

8. Relying upon the Hon'ble Supreme Court's ruling in N. Suresh Nathen & another Vs. UOI & Ors. AIR 1992 SC 564, the CAT Calcutta Bench in its order dated 6.5.94 in OA No.1078/89 N.C. Baman & Ors. Vs. UOI & Ors. has held that the 5 years' experience qualification as JE has to be counted from the date of acquisition of a Degree in Engineering, and the SLP challenging that decision dated 6.5.94 has been dismissed by the Hon'ble Supreme Court on 9.1.95.

9. When the implementation of the aforesaid order dated 6.5.94 resulted in the promotion of some AEs being disturbed, they filed review application before the CAT Calcutta Bench seeking review of their order dated 9.4.94, but the RA

~

44

was rejected. Thereupon they filed SLP No.21236/95 on 29.9.95, which however was permitted to be withdrawn with liberty given to applicants to pursue any remedy available in law. Thereupon they filed OA No.2055/99 before a Division Bench seeking a declaration that the 5 years regular service contemplated in the rules means 5 years regular service in the grade irrespective of the date of the date of acquisition of the degree in engineering and to quash the order by which they were sought to be reverted.

10. The Division Bench doubted the correctness of the view taken by the CAT Calcutta Bench in its order dated 9.4.94, and recommended that the matter be placed before a larger Bench to rule on

- i) whether the applicants who were promoted subject to the result of the case pending before the Tribunal were precluded from quashing the correctness of the CAT Calcutta Bench's order and agitating their right to promotion on completion of 5 years' service irrespective of the date of acquisition of the degree.
- ii) If point No.(i) above was to be answered in the negative whether the view taken by the Calcutta Bench could still hold good in the light of the decision of the Hon. Supreme Court in M.B. Joshi's case 1993(2)SCC 419 and Stephen Joseph's case 1997(4)SCC 753.

11. The CAT Full (Principal ) Bench heard OA No.2055/95 Jagdish Chandra & Ors. Vs. UOI & Ors along with OA No.409/95 Pradyut Kumar Vs. UOI & Ors. After discussing various Hon'ble Supreme Court's rulings extensively including Suresh Nathan's case (supra) which

2

had been relied upon heavily by the CAT Calcutta Bench in its order dated 9.4.94, the Full Bench in its order dated 6.12.99 answered both (i) and (ii) above in the negative.

12. We as a Coordinate Division Bench are bound by the aforesaid CAT Full (Principal) Bench order dated 6.12.99. Indeed, the CAT Cuttack Bench in its order dated 30.6.2000 in O.A. No. 409/95 based upon the Full Bench's aforesaid order dated 6.12.99 has quashed the reversion order in that O.A. and held that the applicant would be entitled to all financial benefits. Even otherwise, we find no good reasons to disagree with the interpretation of the law as contained in the decision of the Full Bench in view of the judgment of the Apex Court in A.K. Raghmani Singh & Others Vs. Gopal Nath and others 2000 (3) SCALE 39 which is very relevant to the present case.

13. We are informed that the Full Bench order dated 6.12.99 has been challenged in the Delhi High Court, but nothing has been shown to us to establish that its operation has been stayed, or modified, till the challenge is disposed of.

14. In the facts and circumstances of this case, following the Full Bench order dated 6.12.99 <sup>referred to</sup> ~~replied to~~ above, and the Cuttack Bench's order dated 30.6.2000 in O.A. No. 409/2000 and in the light of the foregoing discussion this O.A. succeeds, and is allowed to the extent that the impugned order dated 27.6.95 is quashed and set aside. Respondents are directed to restore applicant as A.E. w.e.f 27.6.95 and release to him all consequential financial and service benefits, including arrears of pay and seniority as A.E. w.e.f. 27.6.95 within three months from the date of receipt of a copy of this order. It is, however, made clear that these directions will be subject to the ultimate outcome of the appeal against the Full Bench order dated 6.12.99 awaiting disposal in the Delhi High Court and this fact should be mentioned in

46

the orders respondents shall issue pursuant to the above directions. No costs.

*A. Vedavalli*  
( DR.A.VEDAVALLI )  
MEMBER (J)

*S.R. Adige*  
(S.R.ADIGE )  
VICE CHAIRMAN (A).

/ug/