

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.No. 1863 /1996

Date of Decision: 22- 4 -1998

Shri Arbind Kumar & Anr.

(18)
APPLICANT

(By Advocate Shri G. K. Aggarwal)

versus

Union of India & Ors. . .

RESPONDENTS

(By Advocate Shri R. V. Sinha)

CORAM:

THE HON'BLE ~~SMT.~~ Smt. Lakshmi Swaminathan, Member (J)

THE HON'BLE SHRI S.P. BISWAS, MEMBER (A)

1. TO BE REFERRED TO THE REPORTER OR NOT? YES
2. WHETHER IT NEEDS TO BE CIRCULATED TO OTHER BENCHES OF THE TRIBUNAL?


(S.P. Biswas)
Member (A)
22.4.98

Cases referred:

1. Patwardhan S B v. State of Maharashtra 1977 (3) SCC 399
2. R. L. Bansal v. UOI 1992 Suppl (2) SCC 318
3. Direct Recrt. Class II Officers Assn. v. State of Maharashtra JT 1990 (2) SC 264

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO. 1863/1996

(19)

New Delhi this the 22nd day of April, 1998.

HON'BLE SMT. LAKSHMI SWAMINATHAN, MEMBER (J)

HON'BLE SHRI S. P. BISWAS, MEMBER (A)

1. Arbind Kumar
C/O G. K. Aggarwal,
G-82, Ashok Vihar-I,
Delhi-110052,

2. Mahadev Prasad Srivastava
B-121/1, Gali-9,
Bhajanpura,
Delhi-110053. Applicants

(By Shri G. K. Aggarwal, Advocate)

-Versus-

1. Union of India through
Secretary, Department of
Telecommunications,
Sanchar Bhawan, Ashok Road,
New Delhi-110001.

2. Superintending Engineer (Civil)
Telecom Circle (Civil),
Dept. of Telecommunications,
A-2/E-2, Kasturba Gandhi Marg,
New Delhi-110001.

3. Asit Kumar Mondal,
Junior Engineer (Civil),
C/O Chief Engineer (Civil)
Telecom, Yoga Yog Bhawan,
36, CR Avenue,
Calcutta-700012. Respondents

(By Shri R. V. Sinha, Advocate)

O R D E R

Shri S. P. Biswas, Member (A) :

Both the applicants, belonging to Scheduled Caste community, are posted as Junior Engineers (Civil) (JE (C) for short) under the respondent Departments at Delhi. They are aggrieved by A-1 and A-2 orders dated 19.1.1996 and 15.7.1996 respectively.

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2. By A-1, the seniority list for the JEs (C) has been finalised based on dates of confirmation and not from the dates of continuous officiation. By A-2 dated 15.7.1996, the respondents have issued the seniority and eligibility list of JEs (C) on all India basis for promotion to the next higher grade of Assistant Engineers (Civil) (AEs (C) for short) which is on all India basis. But the said list contains the seniority position of JEs (C) working in Delhi Circle based on the dates of confirmation and of JEs(C) of other Circles based on year of examination and merit position. Consequently, the officials who were appointed later have been ranked senior to applicants appointed earlier. As an example, they have cited the case of one Shri Ganga Ram who has figured at sl. No. 47 in A-1 list as on 31.3.1995 though the said official was appointed almost about a month after the appointment of the applicants herein. In A-2, they have again been made junior to one Shri Vinod Kumar Sharma who was appointed after the applicants.

3. In Delhi Circle, ranks in seniority have been worked out on the basis of date of confirmation, i.e., the date of passing the prescribed departmental tests. The applicants would argue that by determining the seniority on the basis of date of confirmation, as against the rule of length of continuous regular service, their seniority has been fixed in the all India list at Sl. No. 649 and 651 in A-2. With such a position having been determined to their detriment the applicants apprehend that they may not get promoted. However, if the seniority was fixed on the

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basis of length of continuous regular service, as has been done in Circles other than Delhi, their seniority position would have been at SI. Nos. 530 and 531, above Shri Vinod Kumar Sharma, and they would have been considered for promotion in their respective quota amongst the 302 members who were due for promotion in September/October, 1996.

4. The learned counsel for the applicant seeks to justify the above claim on the basis that the cadre of JEs (C) is a unified all India cadre to which recruitment is made through all India competition and there cannot be any Circle-wise seniority list for the JEs (C). That apart, the principle of seniority should be the same for all the JEs (C) all over India, irrespective of the Circles where they are posted. The seniority in the Circle and the inter se seniority outside the Circle should be made out on the basis of length of continuous service and not on the date of confirmation.

5. Drawing support from the decisions of the Hon'ble Supreme Court in the case of Patwardhan SB vs. State of Maharashtra, (1977) 3 SCC 399, the learned counsel said that seniority cannot be made to depend on the fortuitous circumstances of confirmation, when all other factors are equal. The case of R. L. Bansal vs. Union of India, 1992 Supp. (2) SCC 318 has been cited in support of the contention that determination of seniority based on confirmation has been considered to be discriminatory by the Hon'ble Supreme Court.

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6. Applicant No.1 has specifically drawn our attention to the irregularity in respect of his seniority as hereunder :-

"That the applicant was appointed on 29.11.82 and remained all the time Senior with Shri Ganga Ram, J.E.(C) and Shri V. K. Sharma, J.E.(C).

That the applicant was appointed on 29.11.82 and whereas S/Shri Ganga Ram was appointed on 27.12.82 and Shri V. K. Sharma, J.E.(C) at S.No. 49 was appointed on 10.7.85, thus Shri Ganga Ram and Shri V. K. Sharma is Junior to me."

7. Based on the arguments aforesaid, the applicants have sought for issuance of direction to respondents 1 and 2 praying that the applicants' seniority as JEs (C) may be fixed on the basis of their merit position in examination of 1981 and that the impugned seniority list at A-1 and A-2 may be modified accordingly in respect of entries for both the applicants.

8. In the counter, the respondents have opposed the claims. It has been submitted that the Ministry of Communication, Department of Telecommunication is required to maintain all India eligibility list of JEs for promotion to the grade of AEs (C). The said eligibility list is prepared after merger of all the Circle seniority lists but without disturbing the Circle-seniority position of JEs (C) within a particular Circle. In other words, while preparing the all India eligibility list of JEs (C), due care is required to be taken so that the inter-se Circle Seniority position of JEs within a Circle is

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not at all disturbed in the all India eligibility list. That means that placings of JEs (C) in the all India eligibility list of JEs (C) for promotion to the AEs (C) grade are based on their respective Circle seniority positions."

9. Respondents have further argued that the Circle seniority placings of the applicants were determined by the issue of Circle seniority list by Delhi Circle on 3.3.1990 and the seniority list issued by the Delhi Circle on 19.1.1996 is only the continuation of the seniority list issued earlier on 3.3.1990. Therefore, if the applicants had any grievance about the seniority, they should have challenged the seniority list issued by Delhi Circle on 3.3.1990. They cannot be allowed to take the shelter of the seniority list issued during 1996 to challenge their seniority position determined six years before. Their claim in this regard is, therefore, highly belated and as such barred by limitation.

10. The issue that falls for determination is whether the seniority of such JEs, appointed on all India basis, is to be determined on the basis of date of confirmation or on the basis of length of continuous service?

11. It is seen that the respondents vide R-III dated 4.11.1992 have decided that seniority of a person regularly appointed to a post would be determined according to the order of merit indicated

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at the time of initial appointment and not according to the date of his confirmation. These orders, however, have been allowed to take effect from the date of issue of the Office Memorandum dated 4.11.1992. We find that A-1 seniority list dated 19.1.1996 is based on the provisional seniority list R-II dated 3.3.1990. Since A-1 order in 1996 is arising out of the provisional list of 1990, the said order could have been issued on the basis of the rules prevailing prior to the law laid down by the Supreme Court in the case of Direct Recruit Class II Officers Association vs. State of Maharashtra, JT 1990 (2) SC 264 decided on 2.5.1990. In other words, the finalised list should have been on the basis of the law laid down on the subject.

12. It is apparent that the respondents have taken the stand of de-linking seniority from date of confirmation as per directions of the Supreme Court in the aforesaid case decided on 2.5.1990 but giving effect to the Apex Court's judgment only from 4.11.1992. This is impermissible for two reasons. The rule that seniority cannot be linked with 'confirmation' was decided long before in Patwardhan's case (supra). Secondly, since order of 3.3.1990 was provisional and made final only in 1996, a duty was cast upon the respondents to adhere to the law laid down by the Apex Court on 2.5.1990 in the case of Direct Recruit Class II Officers' Association (supra) on the very issue on hand.

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13. That apart, the eligibility list of 15.7.1996 suffers from yet another infirmity. Except in Delhi Circle (where the applicants are working), other Circles have determined the seniority on the basis of date of appointment. This can be seen from Sl. Nos. 15 to 19 or Nos. 634 to 650 of the 15.7.1996 eligibility list. Nos. 649, 650 and 651 of Delhi Circle have been placed along with 1985 batch of other Circles on the ground that there was no recruitment in Delhi Circle in 1986 and 1987. In other words, in Circles other than Delhi, seniority has been reckoned from the date of appointment and not from the date of confirmation or passing departmental tests, as could also be seen from the eligibility list dated 15.7.1996 in between Sl. Nos. 186 to 651.

14. Based on the law laid down on the subject as well as reasons aforesaid, the O.A. deserves to be allowed on merit and we do so accordingly with the following directions :-

- (a) The respondents shall modify 15.7.1996 eligibility list in respect of the applicants by taking into account the principle of determination of seniority on the basis of regular appointment in a cadre and not from the date of confirmation or passing departmental tests.
- (b) Re-assign appropriate seniority position in the eligibility list in respect of entries relating to applicants, as per rule.

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(c) This shall be done in six months from the date of receipt of a copy of this order.

15. There shall be no order as to costs.

S. P. Biswas
(S. P. Biswas)
Member (A)

/as/

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)