

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. NO. 2245/94

New Delhi this the 05th day of August 1999

Hon'ble Mr. Justice V. Rajagopala Reddy, Vice-Chairman (J)
Hon'ble Mr. R. K. Aahooja, Member (A)

R.B.L. Mathur
S/o late Shri Prem Bihari Lal
R/o 25 New Rajdhani Enclave
Vikas Marg
Delhi- 110092

..Applicant

(By Advocate: Shri D.C. Vohra)

Versus

1. Union of India
through
Ministry of Communications
Sanchar Bhawan
20 Ashok Road
New Delhi- 110001

2. The Chief Engineer
Department of Telecommunications
Sanchar Bhawan
20 Ashoka Road
New Delhi-110001

3. R.K.S. Yadav,
Ex-Engineer,
Postal Civil Division
New Delhi-1

... Respondents

(By Advocate: Shri R.P. Aggarwal)

ORDER

By Reddy, J.-

The applicant submits that he was appointed on 14.3.72 in the grade of Assistant Engineer (Civil) in the office of the second respondent. His appointment was, however, made on ad hoc basis for want of recruitment rules. The recruitment rules for promotion to the post of Executive Engineers and other grades were published on 9.9.76. They provided that 33-1/3% of the vacancies in the grade of Executive Engineer (Civil) will be filled up by promotion from the grade of Assistant Engineers (Civil) who have qualified the departmental examination and have rendered not less than 8 years of regular service in that grade. On 26.10.78, the applicant was promoted as Executive Engineer (C), on ad hoc

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basis. Though several seniority lists of Assistant Engineers (C) published but they became subject matter of litigation and hence could not be finalised. Hence, the ad hoc promotion of the applicant in the post of Executive Engineer was not finalised. On 1.1.89 a provisional list was published in the grades of Executive Engineer, Assistant Engineer and Superintending Engineer and the applicant's name was placed at serial No. 27 in the seniority list of Executive Engineers. In the above seniority list ad hoc service of the applicant in the grade of Assistant Engineer was not taken into consideration. Hence, he filed OA-1783/87 before this Tribunal. The said OA was disposed of, alongwith a batch of connected matters, on 4.3.93, directing the respondents to revise the seniority list of Assistant Engineers taking into account the dates on which the incumbents were appointed on ad hoc basis followed by continuous service, in the lines of the decision in OA- 1108-10/89- R. Ganpathy & Others Vs. Union of India & Ors. rendered by the C.A.T. Bangalore Bench on 20.12.91. Accordingly, the revised seniority lists were published on 10-12-93 and 20-6-94, deeming the date of promotion as date of regularisation. But the applicant was placed below the direct recruits who were appointed later, applying the quota rule of 1:1. between direct recruits and promotees. The above Seniority Lists are under challenge in this OA.

2. It is the contention of the learned counsel for the applicant, Dr. D.C. Vohra, that applying the quota rule is directly in contravention of the directions given by the Tribunal in OA. 1783/87 in its order dated 4.3.93 and the Bangalore Bench. It is his case that the applicant was entitled under the above decisions for the benefit of the ad hoc service in the grade of Assistant Engineers, as his

C. Vohra

✓ services were regularised from the date of his initial appointment as Assistant Engineer in 1972. (23)

3. The learned counsel for the respondents 1 & 2 submits that the impugned seniority lists have been prepared strictly in accordance with the directions given by the Tribunal in earlier cases, the Principal Bench as well as the Bench at Bangalore directed the department to revise the seniority list of Assistant Engineers in accordance with the principles enunciated in the memorandum of the Ministry of Home Affairs dated 22.12.59 and prepare a seniority on a provisional basis. Accordingly, the provisional seniority list was prepared and after considering the objections, final seniority lists were issued on 10.12.93 and 20.6.94. He further points out that this list dated 10.12.93 was questioned by a promotee before the Hyderabad Bench in OA- 366/94, contending that the inter-se-seniority between the direct recruits and promotees has to be fixed on the basis of date of regularisation without making any provision for quota and rota between promotees and direct recruits. The contention was repelled and the O.A. was dismissed by the judgment dated 19.1.95. Thus, learned counsel contends that as the seniority list has been upheld by the Hyderabad Bench, holding that it was in accordance with the earlier decisions of the Principal Bench and Bangalore Bench of the Tribunal, the issue should be taken as settled.

4. We have carefully perused the orders of the Principal Bench, Bangalore Bench and Hyderabad Bench of the Tribunal. The only question that has to be seen is whether the impugned seniority list were prepared in accordance with the decisions of Principal Bench and Bangalore Bench. The grievance of the applicant is ^{that he} ~~that~~ told: Firstly, he was not regularised with effect from the date of the ad hoc appointment, in the

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grade of Assistant Engineer. Secondly, he objects to the quota and rota principle by which a direct recruit who was appointed much later to him being placed over him in the grade of Assistant Engineer. According to the learned counsel the Principal Bench clearly ruled in his favour, directing the respondents to take into account the dates of the appointment as Assistant Engineer on ad hoc basis. The Bangalore Bench also according to him, has given similar directions to the respondents. But the respondents it is contended, have acted in violation of the decisions by placing the direct recruits over the promotees. It is not disputed that the applicant was shown in the select list as regularised w.e.f. the date of his ad hoc appointment as Assistant Engineer. To this extent, there is no controversy.

The first grievance is no longer ~~there~~^{A valid}.

5. With regard to the second grievance, placement of direct recruits over the promotees without reference to their dates of appointments, which according to the learned counsel is in contravention of the decisions of the Tribunal. For this purpose it is necessary to consider the decisions of the Principal Bench in CA-1783/87. A careful perusal of it would show that it has considered the issue that is raised in this case. The applicant is one of the applicants in that case. The question that arose was whether the seniority list of Assistant Engineers should be recast in accordance with the principles laid down by the Ministry of Home Affairs OM dated 22.12.59 and in accordance with the judgement of the Bangalore Bench of the Tribunal. Before the Hyderabad Bench, a promotee challenged the same select list as is impugned here and the same question arose for decision. After an elaborate discussion

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the Hyderabad Bench found that the OM dated 22.12.59 lays down that whenever the quota is fixed rota has to be followed. "Probably as decision on the administrative side was taken even in 1969 for recruiting 50% of the AEs (Civil) in P & T by way of promotion amongst the Junior Engineers, it might have been held in OA 1783/87, TA 24/89 and batch and OA 2367/88 that quota and rota have to be followed in preparing the seniority of AEs promoted/appointed by way of direct recruitment prior to 9.9.76, the date when the P & T Rules 1976 had come into effect." The Hyderabad Bench then proceeded to consider whether the list was in accordance with the judgements dated 4.3.93 in OA-1783/87 and batch matters and held that:

"But as it is alleged for the applicant that the impugned seniority list is not in accordance with the judgement dated 4-3-93 in TA 24/89 and batch the only point which has to be considered in this OA is as to whether the said seniority list is in accordance with the judgement dated 4-3-93. OM dated 22-12-59 was specifically mentioned in the above judgement in the context that the revised seniority list has to be prepared on the basis of the said memo. It follows that rotation has to be followed in the ratio of 1:1, for a decision was taken on the administrative side even before the 1976 P&T Rules and come into effect that 50 per cent of the posts of AEs (Civil) have to be filled by promotion from amongst the junior engineers. When the rota was followed in preparation of the impugned seniority and when the judgement dated 4-3-93 in TA 24/89 and batch, states that the judgement dated 17.2.93 in O.A. 2367/88 also has to be followed, the contention for the applicant that the rotation should not have been followed has to be repelled....."

"The actual or deemed date of promotion is relevant for inter-se seniority as amongst the promotees. But it is not of any relevance when it is a case of fixation of inter-se seniority between the promotees and the direct recruits, when rotation has to be followed."

"The OA was accordingly dismissed."

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6. We are in respectful agreement with the reasoning and decision rendered by the Hyderabad Bench of the Tribunal. We, therefore, hold that the impugned seniority lists are prepared validly and in accordance with the decisions of the Principal Bench and the Bangalore Bench. Hence the second contention is also not acceptable.

7. In view of the above discussion there is no warrant to interfere with the impugned seniority lists. The O.A. is accordingly dismissed. No costs.


(R.K. Ahooja)

Member (A)


(V. Rajagopala Reddy)
Vice-Chairman (J)

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