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Central Administrative Tribunal
Principal Bench

O.A. 1918/94
M.A. 1080/97

New Delhi this the 27th day of August, 1997

Hon'ble Shri S.R. Adige, Member(A).

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

Shri V.K. Sinha,
S/o late Shri P.D. Sinha,
Superintending Engineer,
Ministry of Surface Transport
(Road Wing),
Transport Bhawan,
1, Sansad Marg,
New Delhi. ... Applicant.

By Advocate Mrs. Meera Chibber.

Versus

1. Union of India, through
Secretary to the Govt. of India,
Ministry of Surface Transport,
Transport Bhawan,
1, Sansad Marg,
New Delhi. ... Respondents.
2. Shri Nirmaljeet Singh,
Director (Roads),
Indian Roads Congress,
IDA Building, Jamnagar House,
Shahjahan Road,
New Delhi. ... Respondents.

By Advocate Shri R.P. Aggarwal - for Respondent 1.

By Advocate Shri M.M. Sudan - for Respondent 2.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant has filed this application on 14.9.1994 challenging the criteria of promotions laid down in the Central Engineering Service (Roads), Group 'A' of the Ministry of Surface, Shipping and Transport (Roads Wing) Rules, 1976 (hereinafter referred to as 'the 1976 Recruitment Rules'). The main reliefs sought by him are for a declaration that Rules 17(4) (i), 18(i) and 18(2)

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(3)

governing eligibility criteria for XXXXXX
promotions/selections to the post of Chief Engineers and
Additional Director Generals (Roads)/(Bridges), are
arbitrary, illegal and unconstitutional, and that two
separate seniority lists of Superintending Engineers
(Roads) and (Bridges) are null and void and for a
direction to Respondent 1 to operate the combined
integrated seniority list for promotion to the post of
Chief Engineers and higher levels with all consequential
benefits. While the case was pending, it is an admitted
fact that by notification dated 6.11.1995, the 1976
Recruitment Rules have been repealed by the Ministry of
Surface Transport (Roads Wing), Central Engineering
Service (Roads) Group 'A' Rules, 1995. Under the 1995
Recruitment Rules, there were 6 posts of Chief Engineers
(Roads) (CE(R)) and 5 posts of Chief Engineers (Bridges)
(CE(B)) and they were kept separate. However, by the
notification dated 31.3.1997, the 1995 Rules have been
amended and the Schedules I to III in the 1995 Rules have
been substituted. In Schedule-I, it has been provided
that there are 11 posts of CEs, without mentioning the
earlier sub-categories of CEs(R) or CEs(B). The applicant
claims that these amendments have been carried out in
accordance with his demands inasmuch as 11 posts of CEs in
Schedule-I of the 1997 Rules have now been shown under the
general category of Chief Engineers and not as previously
done under the sub categories of 6 posts of CEs(R) and 5
posts of CEs(B). He has, therefore, submitted that what
the respondents were doing earlier was wrong and arbitrary
and that is why they have amended the Rules in 1997 and
they should not fill all the vacancies in accordance with
the 1997 Rules.

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(V)

2. The applicant has also filed M.A.1080/97 in which he has submitted that since there are no vacant posts of CEs(R) as on date, the procedure to be followed for filling the 11 posts of CEs should be as per Schedule-II of the 1997 Rules from amongst officers on the basis of the common seniority list of Superintending Engineers (SEs) issued by the respondents dated 11.4.1997. He submits that 5 posts of CEs are vacant and the applicant's name is at serial No. 5 of the seniority list of SEs. He has submitted that he had made a representation dated 11.4.1997 but no reply has been given. His grievance in the MA is that he apprehends that the respondents are proceeding to make promotions to the post of CEs on the basis of the earlier recruitment rules which, he submits, is not permissible under law in view of the provisions in Schedules-I and II of the 1997 Rules that the posts are of CEs only. Mrs. Meera Chibber, learned counsel for the applicant, has submitted that the judgement of the Supreme Court in Y.V. Rangaiah & Ors. Vs. J. Sreenivasa Rao & Ors. (1983(3) SCC 284) is not applicable to the facts in this case. She relies on the judgement in Dr.K. Ramulu and Anr. Vs. Dr. S. Suryaprakash Rao & Ors. (1997 (3) SCC 59) to show that the Government is entitled to take a decision not to fill up the existing vacancies till the amendment of the rules. She also contends that while in Rangaiah's case (supra) the matter dealt with the change of eligibility conditions in the rules which has, therefore, to be taken as the ratio of the judgement, in this case, the Rules themselves have been amended wherein at present the existing vacancies in the post of CEs should be taken without any

specification of the number of vacancies for CE(R) and CE(B). In the MA, the applicant has prayed for filling up the posts of CEs from amongst the common seniority list of SEs and not to give any further promotion to Respondent 2 or any of his juniors without considering his case and generally to restrain the respondents from making further promotion in bifurcated Directorates as CE(R) or CE(B).

3. The respondents have filed their reply and we have heard Shri R.P. Aggarwal and Shri M.M. Sudan, learned counsel for the respondents. Respondent-1 has submitted that the 1995 rules have been amended by the notification dated 31.3.1997. They have not denied the fact that common seniority list at the level of Assistant Executive Engineers used to be maintained. However, at the level of SEs, separate seniority lists of SEs(R) and SEs(B) were maintained for promotion to the post of CE(R)/CE(B) as per rules existing at that time. They have submitted that since the rules have been amended, the vacancies occurring prior to the amendment of the rules have to be filled in terms of the rules then in force. They have relied on the judgement of the Supreme Court in Y.V. Rangaiah's case (Supra). It was also submitted on behalf of the respondents that the main relief sought by the applicant in the application was regarding the vires of Rules 17 and 18 of the 1976 Rules which have now been amended. Therefore, they have submitted that nothing really survives in this O.A. Shri M.M. Sudan, learned counsel, has also submitted that the creation and separation of cadres being a policy matter cannot be challenged, as held by the Supreme Court in Reserve Bank

of India Vs. N.C. Paliwal & Ors. (1976(4) SEC 838).

They have, therefore, submitted that the application and the MA may be dismissed.

4. It is seen from the above that what the applicant has challenged in the main application was the 1976 Rules which have been repealed and further amended by the 1995 Rules and notification dated 31.3.1997. In view of this, the learned counsel for the applicant has herself not pressed for these reliefs as they do not survive and has concentrated on the reliefs prayed for in the M.A. 1087/97.

5. We do not find any force in the submissions made on behalf of the applicant that since at present there are only 11 posts of CEs which are mentioned in Schedule-II of the 1997 rules, these posts can only be filled on the basis of the common seniority lists of SEs. We also find no merit in the arguments advanced by the learned counsel for the applicant that the principle laid down by the Supreme Court in Y.V. Rangaiah's case (supra) is not applicable to the present case. In this case, the Supreme Court has held as follows:

"9.....The vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules. It is admitted by counsel for both the parties that henceforth promotion to the post of Sub-Registrar Grade-II will be according to the new rules on the zonal basis and not on the State-wide basis and, therefore, there was no question of challenging the new rules. But the question is of filling the vacancies that occurred prior to the amended rules. We have not the slightest doubt that the posts which fell vacant prior to the amended rules would be governed by the old rules and not by the new rules". (emphasis added)

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6. Respondent 1 in their reply have stated that there are 3 vacancies of CE(B) and 2 of CE(R) which have occurred prior to the amendment of the rules and there is one post of CE which has occurred after the amendment of the rules. Their stand that the vacancies which occurred prior to amendment of the rules will be covered by the old rules in accordance with the ratio of the judgement of the Supreme Court in Y.V. Rangaiha's case (supra) cannot be faulted. It is also correct to state that the vacancies which have arisen after 31.3.1997 will be filled as per the amended rules. The facts of the case in Dr. Ramulu's case (supra) relied upon by the applicant do not appear to be relevant on the question of filling up the vacancies which have arisen prior to or after the rules have been amended and the law as laid down by the Supreme Court in Y. V. Rangaiha's case(supra) is fully applicable to the facts in the present case. The other submissions made by the learned counsel based on Rule 5 read with Rule 15 of the 1995 Recruitment Rules have also been considered but the same are rejected as being contrary to the law laid down by the Supreme Court.

7. For the reasons given above, we find no merit in the contentions made on behalf of the applicant in both the O.A. and M.A. They are accordingly dismissed. No order as to costs.

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Member(J)

Adige

(S.R. Adige)
Member(A)

'SRD'