

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1833/2000
with
OA No.2119/2000

New Delhi this the 19th day of December, 2000.

HON'BLE MR. JUSTICE V. RAJAGOPALA REDDY, VICE-CHAIRMAN
HON'BLE MR. GOVINDAN S. TAMPI, MEMBER (ADMNV)

Q.A.No. 1833/2000:

1. K.K.Jindal
s/o Sh. Jaganath
r/o 557, Pocket-E
Mayur Vihar
Phase-II
New Delhi - 110 091.
2. V.K.Dogra
s/o Shri K.C.Dogra
r/o Sector-15, House No.134
Duplex Flat
Vasundhra
Ghaziabad - 201 001.

(By Senior Advocate Shri M.N. Krishnamani with
Ms. Kumud L. Dass, Counsel)

vs.

1. Union of India through
Secretary
Dept. of Telecom Operation
Sanchar Bhawan
20-Ashoka Road
New Delhi - 110 001.
2. Sr. Deputy Director General (EW)
Dept. of Telecom
Sanchar Bhawan
20-Ashoka Road
New Delhi - 110 001.
3. Secretary
Dept. of Personnel & Training
North Block
New Delhi.
4. Secretary
Union Public Service Commission
Shahjahan Road
New Delhi.

(By Advocate Shri R.V. Sinha)

5. Daya Nand
EE(E), TEDI
Jitendra Chambers
Ashram Road
Ahmedabad.
6. Vinod Kumar Hirna
s/o Shri K.L.Hirna

(7)

Telecom Electrical Division
 Plot No.9, Lahane Road
 Small Scale Ind. Estate, Gultekdi
 Pune - 411 037.

7. Narendra Kumar
 Executive Engineer
 Telecom Electrical Division-II
 Ahmedabad.
8. S.K.Talware
 EE(E) TED, Chandnani Hall
 Tarabai Park
 Kolhapur - 416 001.
9. T.K.Parihar
 Telecom Electrical Division
 11nd Floor, New T.L.Building
 Col DC., Matar Pula
 Vadodara - 390 010.
10. J.S.Yadav
 Executive Engineer
 Telecom Electrical Division-I
 Delhi.
11. Ms. Rama Rani
 DE (E), ALTTC
 Ghaziabad
 Uttar Pradesh.
12. A.S.Chaudhary
 Executive Engineer
 Telecom Electrical Division
 11nd Floor, Renuka Complex
 Seetharampuram, Eluru Road
 Vijayawada - 520 002.
13. U.K.Nandapurkar
 TED-I
 Gadwal Rani Comp.,
 Hyderabad - 1.
14. Vishwanath Agarwal
 s/o Sri Deep Chand Agarwal
 Executive Engineer
 Telecom Elect. Division
 3-B, Habibullah Estate
 Hazrat Ganj, Lucknow. ... Interveners

(By Senior Advocate Sh. A. Saran with Sh. Himanshu Sekhar,
 Counsel)

O.A.No.2119/2000:

1. Shri V.M.Kohli
 s/o late Sh. S.P.Kohli
 Director (EW-QC)
 Department of Telecom Services
 1300-A, Sanchar Bhawan
 New Delhi - 110 001.

2. Shri J.S.Baidwan
 s/o Shri N.S.Baidwan
 Superintending Engineer (Elect.)
 Department of Telecom Services
 Shimla (H.P.).

3. Shri C.Gopalan
 s/o Late Shri A.Neelambi
 Superintending Engineer (Elect)
 Department of Telecom Services
 Telecom Electrical Circle No.1
 Chennai - 600 006 (T.N.).

... Applicants

(By Advocate Shri Naresh Kaushik)

Vs.

1. Union of India through
 its Secretary
 Ministry of Communications
 Sanchar Bhawan
 20-Ashoka Road
 New Delhi - 110 001.

2. The Sr. Deputy Director General (EW)
 Department of Telecommunications
 Sanchar Bhawan
 20-Ashoka Road
 New Delhi - 110 001.

3. Union of India
 through its Secretary
 Ministry of Home Affairs
 Deptt. of Personnel & Training
 North Block
 New Delhi - 110 001.

4. Union Public Service Commission
 through its Secretary
 Shahjahan Road
 New Delhi - 110 011.

... Respondents

(By Advocate Shri R.V. Sinha)

5. Daya Nand
 EE(E), TEDDI
 Jitendra Chambers
 Ashram Road
 Ahmedabad.

6. Vinod Kumar Hirna
 s/o Shri K.L.Hirna
 Telecom Electrical Division
 Plot No.9, Lahane Road
 Small Scale Ind. Estate, Gultekdi
 Pune - 411 037.

7. Narendra Kumar
 Executive Engineer
 Telecom Electrical Division-II
 Ahmedabad.



8. S.K.Talware
EE(E) TED, Chandnani Hall
Tarabai Park
Kolhapur - 416 001.

9. T.K.Parihar
Telecom Electrical Division
11nd Floor, New T.L.Building
Co1 DC., Matar Pula
Vadodara - 390 010.

10. J.S.Yadav
Executive Engineer
Telecom Electrical Division-I
Delhi.

11. Ms. Rama Rani
DE (E), ALTTC
Ghaziabad
Uttar Pradesh.

12. A.S.Chaudhary
Executive Engineer
Telecom Electrical Division
11nd Floor, Renuka Complex
Seetharampuram, Eluru Road
Vijayawada - 520 002.

13. U.K.Nandapurkar
TED-I
Gadwal Rani Comp.,
Hyderabad - 1.

14. Vishwanath Agarwal
s/o Sri Deep Chand Agarwal
Executive Engineer
Telecom Elect. Division
3-B, Habibullah Estate
Hazrat Ganj, Lucknow. ... Interveners
(OA No. 1833/2000 only)
(By Senior Advocate Shri A. Sharan with Sh. Himanshu
Sekhar, Counsel).

O R D E R

By Justice V. Rajagopala Reddy, Vice-Chairman (J):

As these two OAs raise common questions of law, they are disposed of by a common order. In order to illustrate the facts that are involved in these cases, we state the facts in OA-1833/2000.

2. These applications are directed against the seniority list dated 16.8.2000 of Executive Engineers Electrical (EEs, for short). Thus the question of

[Signature]

seniority of the applicants and their ad hoc promotion to the posts of Superintending Engineers (SEs for short) are involved in these two OAs.

3. To state the facts in brief: The applicant No.1 joined the department of Telecommunication as Assistant Engineer (AE for short) on 28.6.79 whereas applicant No.2 joined on 21.11.77, on the basis of the competitive examination conducted by the UPSC in 1977. They are governed by the rules called the Post and Telegraph Civil Engineering (Electrical-Gazetted Officers) Recruitment Rules, 1975, (for short, 1975 rules), which came into force on 5.4.75 w.e.f. 5.4.75. The rules were amended in 1984. The next promotional post for AEs is EE. The cadre of EE consists of officers promoted from the grade of Assistant Executive Engineers (AEEs) and AEs in the ratio of 66-2/3% :33-1/3%. The method of promotion of AEEs to the grade of EEs is on the basis of seniority whereas promotion of AEs to the EEs is on the basis of selection on merit.

4. The applicants 1 and 2 were promoted as EEs on regular basis on 3.11.88. Subsequently they were also promoted as SEs. The applicants in OA No.2119/2000 were also promoted on 3.11.88. The seniority list in the grade of EEs was issued in 1992 and the applicants were placed at serial Nos. 31 and 26 respectively. It was, however, revised in view of the judgement of the Central Administrative Tribunal (Mumbai Bench) in OA No.286/92 S.N. Mishra v. Union of India on 13.9.95. In the said list the applicants were placed at serial Nos.35 and 25 respectively. The applicants thereafter having completed 5



years regular service in the grade of EEs were promoted as SEs on 2.6.98 on the basis of the recommendations made by the duly constituted DPC. However, by erroneous interpretation of the judgement of the Supreme Court in M.K. Shanmungam v. Union of India & Others, (CA No.5086/94 and 5081/94) decided on 25.4.2000, the respondents have again revised the seniority list, by the impugned order, wherein the applicants' seniority was pushed down drastically. Hence the present OA is filed, impugning the said seniority list.

5. The learned senior counsel for the applicants Shri M.N. Krishnamani and Shri Naresh Kaushik vehemently contend that though the applicants had been promoted against the vacancies of 1988 to the post of EEs, they were wrongly rotated with Assistant Executive Engineers who have been appointed against the vacancies of 1998, they should have been rotated with AEEs promoted against their quota of vacancies which arose in 1988. It is contended that the cases of S.N. Mishra and Shanmungam (supra) or the judgement of the Supreme Court in I.K. Sukhija v. Union of India & Ors., Civil Appeal No.3207-3210 of 1995 deal the question of counting of ad hoc service to fix seniority. As the applicants had been regularly appointed against their own quota, their inter-se-seniority has to be fixed taking into consideration the date of their initial appointment in service. It is further argued that in revising the seniority list of 1995 and preparing the impugned seniority list, the recruitment rules have been ignored and the settled principles of service jurisprudence were unsettled and hence the action of the respondents is highly arbitrary, and discriminatory attracting the frown

Chh

of the Article 14 of the Constitution of India and is violative of Rule 6 and 9 of the Recruitment Rules of 1994. The seniority of the applicants should be fixed in accordance with the principles of seniority as contained in the recruitment rules of 1975 as amended in 1984.

6. In the impugned seniority list, the applicant's seniority was brought down rendering them liable to be reverted from the grade of Superintendent Engineers.

7. The official Respondents No.1, 2 and 3 have filed the counter and contested the case. As it is averred that the applicants were initially appointed in the grade of Executive Engineers in 1988, as no other eligible officer was available at that time. Subsequently, on revision of seniority list, on the basis of several orders of the Courts, the regular promotions were reviewed in April, 1995 and in view this review, the seniority of the applicants was brought down. The inter-se seniority in the grade of Executive Engineers between officers promoted from the feeder cadre was under dispute since the first seniority list was prepared in 1992. Pending the finalisation of the seniority, the provisional seniority list has been prepared in 1995 which was challenged in OA No.108/96 before the Chennai Bench of the Tribunal. The Tribunal found fault with the respondents for preparing the seniority list of 1995 giving go by to the observations made by the Mumbai Bench of the Tribunal in the earlier case. While the matter was pending disposal in an SLP before the Apex Court, and as the promotions to the post of Superintending Engineers could not be made since 1994 in

Chh

accordance with the orders of the Supreme Court issued in 1997, the applicants were promoted purely on a stop-gap arrangement. Subsequently on account of the revision of seniority in the feeder cadre group of the Assistant Engineers, their seniority list was revised on 9.1.1998 and on account of this revision, their appointments to the post of Executive Engineer came up for review and in view of the same the position of the applicants have undergone change. In view of the Judgment of the Supreme Court in Civil Appeal No.506/94, decided on 25.4.2000, filed against Mumbai Bench of the Tribunal in OA No.286/92 coupled with Civil Appeal No.3018/97 filed against Chennai Bench of the Tribunal in OA No.108/96, the impugned seniority list in the grade of Executive Engineers was finalised. It is, therefore, argued by the learned counsel Shri R.V. Sinha that the applicants cannot place reliance upon 1995 seniority list as it was only provisional. The seniority list was revised after holding DPCs, applying rota and quota in strict compliance of the rules and in view of the judgement of Supreme Court dated 25.4.2000, the seniority list cannot be faulted.

8. The private respondents 4-14 have been impleaded by order dated 19.10.2000 in MA-2416/2000. Supporting the case of official respondents they state that in view of the judgement of the Supreme Court dated 25.4.2000 the applicants cannot place reliance upon the provisional seniority list of 1995. The seniority list was prepared strictly in accordance with rules, following the quota and rota applicable as mentioned in the rules, in preparation of the impugned seniority list. The applicants' promotion to the posts of SEs were made purely

as a stop gap arrangement and now that the private respondents are eligible for promotion to SEs, unless the applicants are demoted, they cannot be promoted on regular basis. The applicants do not have any right to continue as their promotions were not regular.

9. We have given careful consideration to the submissions made by the learned counsel. As seen supra, the AEEs and AEs form the feeder cadre for promotion to the posts of EE in the ratio of 66-2/3%:33-1/3% (2:1). The 1975 rules were amended in 1984 by which a 'Note' was added to the Schedule, which reads as under:

"Note" The seniority, inter-se, of Assistant Executive Engineer (Electrical) and Assistant Engineer (Electrical) in the post of Executive Engineer (Electrical) shall be determined according to the rotation of vacancies reserved for them. In case the required number of suitable eligible officers is not available from a particular category for filling in the vacancies allocated to be filled by promotion from that category, the appointing authority may fill in all or any of the vacancies by promotion of suitable eligible officers from the other category subject to the condition that the overall proportion of vacancies to be filled from among the officers of other category will eventually be maintained in accordance with the quotas prescribed."

10. A close reading of the 'Note' shows that it is in two parts, one deals with seniority inter-se of AEEs and AEs in the post of EEs had to be determined as per their ratio of 2:1, by rotating them according to their quota. The second part deals with filling up of the posts in case eligible officers from each category were not available to be filled up as per their rota and quota. The 'Note' permits the appointing authority to promote the suitable officers from other categories without keeping their slot vacant. It was, however, made clear that this

method of promotion is contrary to the rota and quota, however, will not give any right, to such promoted persons contrary to their quota, to claim, seniority over the other category. Eventually, the quota should be maintained as per the rules. Thus, it is seen from the above Note that the inter-se seniority should be strictly in accordance with rules, though the initial appointment may be in violation of the quota and rota as and when the particular category of eligible category were available.

11. The applicants were promoted in 1988 to the posts of Executive Engineers as per the 1975 rules as amended in 1984. In 1992 a seniority list was prepared in which the applicants were shown at serial No.31 and 26 respectively. But in view of S.N. Mishra's case (supra) it was revised and in 1995 a provisional seniority list was issued and in the said list the applicants were shown at serial No.35 and 25 respectively. The applicants have no grievance against the 1995 list, in fact they place reliance upon it. The 1975 rules were superseded on 6.8.94 when the Post and Telegraph Building Works (Group 'A') Service Rules, 1994 have come into force. Rules 6 and 9 are relevant for our purpose and are extracted below:

"6. Initial Constitution of Service:-

(1) All existing officers holding Group 'A' duty post on regular basis in the Posts and Telegraphs Civil Wing on the date of commencement of these rules shall be members of the service in the respective grades.

(2) The regular continuous service of officers referred to in sub rule (1) before the commencement of these rules shall count for the purpose of probation, qualifying service for promotion, confirmation and pension in the service.



(3) To the extent the Controlling Authority is not able to fill authorised regular strength of various grades in accordance with the provision of this rule, the same shall be filled in accordance with the provision of rule 7 and 8.

9. 'Seniority' :-

(1) The relative seniority of members of the service appointed to a grade in the respective sub-cadres at the time of initial constitution of the service under rule 6 shall be as obtaining on the date of commencement of these rules. Provided that if the seniority of any such member had not been specifically determined on the said date, the same shall be as determined on the basis of the rule governing the fixation of seniority as were applicable to the members of the service prior to the commencement of these rules.

(2) The Seniority of persons recruited to service after the initial constitution shall be determined in accordance with the general instructions issued by the government in the matter from time to time.

(3) In cases not covered by sub-rule (1) and (2) seniority shall be determined by the government in consultation with the Commission."

12. Learned counsel for the applicants placing strong reliance upon the rules 6 and 9, submit that as per sub rule (1) of Rule 6 the applicants having become members of the service in 1988, their length of service should be the only determinative factor to fix their seniority and hence they cannot be shown as juniors to AEEs who were appointed in 1998, ten years later. They add that as per sub rule (1) of 9, their seniority as obtaining on the date of the commencement of the 1994 rules should be maintained. But if we closely examine the rules, it becomes clear that the membership of the service has no relevance for seniority. As per sub rule (2), the regular service shall count only for the purpose of probation, qualifying service for promotion, confirmation and pension in the service. But, it does not count for seniority. As to how the seniority should be determined is shown in Rule 9. Sub

Chh

rule (1) of Rule 9 would appear to support the applicants argument. But Proviso to sub rule (1) clearly states that the seniority of any member which has not been finally determined on the date of the commencement of the rules shall be fixed as per the rules applicable prior to the commencement of the 1994 rules, governing the fixation of seniority. Hence, there seniority has to be fixed as per the 'Note' of 1984 rules. The 'Note' which specified the method of determination of seniority is now substituted in rule 9 of 1994 rules. As the applicants' seniority was not finalised in 1992 and 1995, list being only provisional, the same was fixed in the impugned seniority list. The applicants cannot claim benefit of seniority in the light of their regular appointments in 1988.

13. It is true that the applicants in OA-1833/2000 were placed at serial No.31 and 26 respectively in the seniority list of 1992 and at serial No.35 and 25 respectively in the 1995 seniority list. A perusal of the above two senioritys list does not, however, give the impression that the rotation between the AEEs and AEs was not made in accordance with their quota fixed in the rules. Thus the principles laid down in rules for fixation of seniority have been followed only in their breach. It is also seen from the judgement of the Madras Bench of the Tribunal in OA No.108/96 that once again the EEs promoted from AEs initially on ad hoc basis and subsequently regularised in 1988 have generally been given the benefit of ad hoc service. It is thus clear that the 1995 seniority list was not only not in-conformity with the recruitment rules, but also not in accordance with the directions issued by the Mumbai Bench of the Tribunal in

S.N. Mishra's case. It is now brought to our notice that the Supreme Court affirmed the principles laid down by the Madras Bench as well as the Mumbai Bench of the Tribunal in its judgement dated 25.4.2000 in civil appeal No.3018/97 and 5086/94. Subsequently the respondents had held DPC in 1995 and June/July, 2000 and following the judgement of the above Benches as well as conforming to the rules, following rota as per quota, prepared the impugned seniority list. We have perused the same and we find that, refreshingly the AEEs and AEs are rotated as per their quota in strict conformity with the rules in 2:1, systematically.

14. The OM dated 16.8.2000 says in its preamble how the seniority list has been prepared. It says:

"In order to arrive at inter-se-seniority between Group A and Group B, officers are rotated as per the Recruitment Rules, i.e, 2:1 for vacancies prior to 1994 and 1:1 subsequent to this in accordance with the Ministry of Home Affairs OM No.9-11/85-RPS dated 22.12.1959 and OM No.20020/4/89-Estt.(D) dated 7.2.90. The relative position of Group A officers promoted from AEE(E) to EE(E) grade is as per their year wise selection through UPSC. The relative seniority position in respect of Group B officers promoted from AE(E) to EE(E) is as per their position in the Select List of the Review DPC held by UPSC on 3.7.2000 issued vide order No.3-3/98-EW dated 9.8.2000."

15. Thus it is clear that the quota of 2:1 prior to 1994 and 1:1 subsequent to 1994 was followed for fixing seniority and they were rotated as per their quota, taking into consideration the year wise selection through UPSC. It is seen that the applicants were rotated with the private respondents though they have been appointed in 1995 as their appointments are made against the vacancies arose in 1988 against which the applicants are promoted. The applicants were initially appointed in the grade of EEs in

Ch

1988 as no other officer was available as per seniority list in operation at that time. The 1995 list was only provisional and it was also found to be in order by the Madras Bench. Subsequently on revision of seniority list of AEs based on the judgement of the Tribunal, the promotions made in 1988-89 were reviewed by the review DPC held in 1995 and another review was held by the review DPC in June/July, 2000. The 'Note' to the 1984 rules, as already discussed supra, though it permitted the promotion of officers belonging to the another category without reference to the rotation of the vacancies reserved for them but it enjoined that the overall filling up of vacancies from amongst the two categories of officers as per their quota should be maintained eventually. Seniority cannot be sacrificed by any contingency and it was to be determined according to the rotation of the vacancies reserved for them. Thus though the promotion of the applicants in 1988 was in accordance with this 'Note' and thus was a regular promotion, but their seniority was rightly determined in accordance with the rules, in the impugned seniority list rotating them as per that quota, which was not the case in 1992 and 1995 seniority lists.

16. The contentions that as per sub Rule (2) of Rule 9 of 1994 Rules the seniority of the intervenors have to be fixed in accordance with the Government instructions cannot be accepted as they were appointed against the vacancies arose in 1988. Hence, the sub rule (1) applies and consequently the 'Note' comes into operation.

17. Hence, we are of the view that the seniority list was prepared in conformity of Rules 6 and 9.

(15)

18. We do not find any warrant to interfere with the impugned seniority list. The OAs, therefore, fail and are accordingly dismissed. We do not, however, order any costs.

(Govindan S. Tampi)
Member (Admnv)

'San.'

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

Original judgement is placed in OA 1053/2011.

Attacted

b. b. Statement

C. O. Cet