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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No. 1487/89

New Delhi this 8th Day of April 1994

The Hon'ble Mr. J.P. Sharma, Member (J)

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

Shri V.B. Mendiratta,
Architect,
Son of Shri G.R. Mendiratta,
Resident of C-5A/93 Janakpuri,
New Delhi-110 058.

2. Shri J.P. Garg,
Architect (On Deputation)
Civil Construction Wing,
All India Radio,
Lok Nayak Bhawan,
New Delhi.
3. Shri D.P. Manaktala,
Architect,
Son of Shri H.R. Manaktala,
C/o 62/4 Napier Road,
Ambala Cantt.
4. Shri D.R. Duppar,
Architect,
Son of Shri Jiwan Lal Dhupar,
C/o C-73 P&T Quarters,
Wadala, Bombay-400 032.
5. Shri Avtar Singh,
Architect,
Son of Shri Mela Singh,
C/o B-8 P&T Officers Quarters,
Indira Nagar,
Bangalore-560 038.
6. Shri S.P. Suri,
Architect,
Son of Shri G.R. Suri,
Resident of 677, Chota Bazar Kashmiri Gate,
Delhi. ... Applicant

(By Advocate: Shri C.L. Dhawan)

Versus

1. Union of India,
Through Chairman,
Ministry of Communication,
Telecom Commission,
Sanchar Bhawan,
New Delhi.

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2. Assistant Director (General) (CW),
Ministry of Communications,
Telecom Commission,
Sanchar Bhawan, Ashoka Road,
New Delhi-110 001.

... Respondents

(By Advocate : Shri V.S.R. Krishna)

O R D E R (Oral)

Hon'ble Mr. J.P. Sharma, Member (J)

All the applicants are architects working in the telecomm. Commission in the Ministry of Communication. All the above applicants were promotees to the post of Assistant Architect a feeder post to the post of Architect. All the applicants jointly filed this application for a common grievance that the seniority list of officers in the grade of Architects as on 1.1.1989 had depressed their seniority and some of the persons who are junior to them have been shown above them. The name of the applicant No. 1 at Serial No. 11 that of applicant No. 2 at Serial No. 13 that of applicant No. 3, 4, 5 and 6 at Serial Nos. 14, 15, 16 and 17 respectively of the aforesaid seniority list. The applicants, therefore, challenged the Memo. dated 11.1.1989 by which the provisional seniority list was circulated among all the working architects. The applicants made representations but not getting any reply, they jointly filed this application in July 1989 and prayed that the seniority list as circulated by the Memo dated 11.1.1989 be quashed and that the period which the applicants spent on the post of Architect on adhoc basis with effect from 20.2.1980 preceeding their regular appointment with effect from 9.4.1984 be considered for giving them seniority in the grade and the seniority list be revised in accordance with the decision and

and principles and law laid down by the Hon'ble Supreme Court. They should also be granted the consequential benefits in the event of the grant of the reliefs as said above.

2. The respondents in their reply opposed the grant of the relief. They stated that there were no rules before 1973 and the rules for recruitment for various posts in Architectural discipline and R&T Civil Wing were published in the year 1973. The lowest gazetted post is ~~of~~ ^{the} Assistant Architect and the next promotional post is Architect. The officers who have put in 8 years of regular service in the grade of Assistant Architect are eligible for consideration for promotion as Architect. If suitable candidates are not available for promotion the post can also be filled up by direct recruitment. Since the applicants were promoted to the grade of Assistant Architect in the year 1975 and thereafter they can only be eligible for only promotion on completion of 8 years of service in the grade in the year 1983. The meeting of the DPC held in 1984 considered the promotion in the grade of Architect on regular basis and on the basis of selection recommended the applicants for regular appointment and the same has been accepted. The Officers who were recruited directly through Union Public Service Commission in the year 1983-84 have naturally ^{been} placed senior to the applicants.

3. It is further contended by the respondents that the applicants were promoted from the lower cadre to Assistant Architect in the year 1971-72 only on adhoc post. The seniority list of Assistant

Architect was circulated on 7.6.1978 which had never been challenged or neither any representation was made showing the position of the applicant in the grade of Assistant Architect. Where they have been shown as regular appointee to the grade of Asstt. Architect from the year 1975 and therefore after a decade it is not open to them to challenge that position in the seniority list when they have already been promoted to the next higher grade of Architect.

4. It is not disputed that the applicants were given adhoc promotion to the post of Architect in the year 1980. None of the applicants had completed a statutory requirement of 8 years regular service in the grade at that relevant time. It is not possible to promote a person on regular basis without attaining full eligibility for the purpose. In view of the above facts ^{in the counter reply} it is stated that the application be dismissed as devoid of merit. We have heard the learned counsel for the applicant and also perused the rejoinder in which the applicants have reiterated the averments made in the application though basic facts replied by the respondents in the counter have not been disputed.

5. The first contention of the learned counsel is that since they have been working since 1980 without any break continuously having not been reverted any time till they were regularised in 1984, for all purposes their length of service in Architect be counted from that date. We failed to appreciate this contention. The learned counsel has rightly conceded that the seniority list of Assistant Architects

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circulated in the year 1978 has not been challenged. In that seniority list the position of the applicants in the grade of Assistant Architect showing their regular appointment is with effect from 1975 and thereafter (Annexure A II P 34). When a fact is not challenged at the relevant time and also no relief in that regard has been prayed in the present original application, the Tribunal cannot make out a case for the applicants. It is a fact that there were no recruitment rules for the post of Assistant Architect when the applicants were given promotion to that post in the year 1971, 1972. The recruitment rules came in vogue only in the year 1973 and enforced thereafter. Normally the length of service in the absence of the recruitment rules determines the seniority in the particular grade. The appointment letter of the applicants as Assistant Architect has not been filed. The respondents in their counter have stated that the applicants were appointed only on adhoc basis as Assistant Architect in the year 1971-72. When this fact was specifically taken as a defence by the respondents in the rejoinder the applicants were expected to throw light on their initial appointment as Assistant Architect. They have not done so in spite of the opportunity of rejoinder available to them. The contention of the respondents, therefore, has to be accepted that the applicants were appointed as Assistant Architect ^{on regular basis} with effect from December 1975 and thereafter. In view of this fact that the applicants have not challenged the seniority

list of Assistant Architect made known to them as early as in the year 1978 and further not assailed that seniority list, either by a representation administratively nor seeking a judicial review earlier or in this original application, now the Tribunal cannot give them ^{benefit of that} period for which they ~~aspire~~ aspire. The adhoc period, therefore, they have put in the post of Assistant Architect cannot be taken into account for counting their tenure of service in the post of Assistant Architect.

6. When one issue has been decided that the applicants are regular appointee as Assistant Architect with effect from November 1975 onwards then the recruitment rules which came into force in 1973 have to be given effect to in letter and spirit both. There is no challenge to the recruitment rules. The recruitment rules provides 8 years regular service in the feeder grade of Assistant Architect. The service rendered by the applicants only after regular appointment by the DPC can only be counted as eligible service for promotion to the post of Architect. In view of this the applicants qualifies for being considered for regular appointment only after December 1983 and thereafter. The recruitment rules also provides that when the mode of recruitment by promotion fails, in that event the direct recruit^{ment} has to be observed. The applicants qualified as said above in November 1983. The respondents, therefore, resorted to direct recruitment and certain direct recruits have joined on substantive post of Architect. Those recruitment rules- direct recruits who have joined according to the recruitment rules on substantive posts cannot be placed junior to the

applicants who have been regularised in their appointment of Architect after a DPC was held in the year 1984. The applicants therefore cannot have any grudge on this. None of the applicants was eligible according to the recruitment rules for regular appointment as Architects prior to November 1983. The respondents have only followed the rules which are statutory in nature.

7. We have gone through the impugned seniority list circulated by memo dated 11.1.1989 and we find that there are certain appointees of 1983 and 1984. The date of regular appointment in the grade is shown as April 1985. However, the learned counsel for the applicant at the time when the judgement was being dictated has shown a order by the respondents dated 25.5.1985 whereby it is said that they have been given regular appointment with effect from 9.4.1984. This document cannot be verified at this stage when the date of regular appointment of the applicants in the grade is given as 9.4.1985. Be that as it may, the seniority list vis-a-vis direct recruitment cannot be interferred with unless those who are likely to be effected are not also made parties before us. The application^{was} filed in April 1989 and till 1994 the position vis-a-vis the seniority list, we have gone through the change by subsequent promotion if any. No picture has been depicted before us for all this period. However, the learned counsel has placed reliance on the case of A. Janardhan reported in AIR 1983 P 769 and certain other decisions of CAT reported

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in 1988 Vol. 2 ATLT CAT Short Notes 48 B.K.S Saga Ram V. Union of India and others. In the case of A. Janardhan at least one of the direct recruits was a party. The principle of natural justice lays down that no person should be condemned unheard. A party who is not before us cannot be placed in a disadvantageous position for no fault. The applicants should have impleaded them if they wanted any relief against those persons.

8. In view of the above facts and circumstances we find no merit in the application and the same is dismissed.

S.R. Adige
(S.R. Adige)
Member (A)

J.P. Sharma
(J.P. Sharma)
Member (J)

Mittal