

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

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7/4/92

Regn. No. OA. 355/89

Centrl Engineering Service Class II & Ors.

Applicants

Dr. D.C. Vohra, counsel for the applicants.

vs.

Union of India

Respondents

Shri M.L. Verma, counsel for the respondents.

CORAM

Hon'ble Mr. Justice Ram Pal Singh, Vice-Chairman (J).

Hon'ble MR. I.P. Gupta, Member (A).

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? *Yes.*
3. Whether their Lordships wish to see the fair copy of the judgment?
4. To be circulated to all Benches of the Tribunal? *X*

(Judgment of the Bench by Hon'ble Shri I.P.Gupta,
Member (A))

J U D G M E N T

In this application filed under Section 19 of the Administrative Tribunals Act of 1985, the applicant I Association (Central Engineering Services Class II (Direct Recruits) Association) is said to represent about 200-odd members including applicants 2 to 15, who had been recruited directly as Asstt. Engineers Class II on the results of a competitive examination held by the Respondent No. 3, and were subsequently promoted as Executive Engineers and they have been continuously officiating on the higher posts for 10 years or so. For promotion to the Grade of Executive Engineers, there is a quota laid down for the applicants and for Asstt. Executive Engineers who are also recruited directly by the Respondent No. 3 against Class I posts. On account of the insufficient recruitment of AEEs and consequently their insufficient promotion to the Grade of EEs, the Respondent No.2 has been resorting to the other source viz. the AEs, but the applicants 2 to 15 and their similarly placed colleagues

have been omitted from the seniority list of 23.7.84, on an interpretation of the Hon'ble Supreme Court judgment in the case of P.S. Mahal & Ors. v. Union of India & Ors.

2. The case of the applicants is that the respondent No. 2 has been assigning higher seniority to the later AEE-promotees to the Grade of EEs, even when the AEE-promotees to the Grade of EEs, such as the applicants 2 to 15 and their similarly placed colleagues have been continuously officiating against the posts of EEs for 10 years or so since their regular appointment as EEs during the years 1979 to 1982. This has been done to give an ante-dated seniority to the AEE-Class I promotees to the Grade of EEs through a system of carry-forward of vacancies.

3. Moreover, the Respondent No.2 has power to relax the rules and has been even changing its quota rule from time to time (it has been reduced from 75:25 during 1949-1955 to ~~66~~2/3:33-1/3 during 1955-72 to the present ratio of 50:50 since 1972) because the AEEs do not join the service in sufficient numbers. All appointments to the post of EE are termed ad hoc, whether these are of AEEs or of AEs. The denial of seniority on the basis of continuous officiation to the AE-promotees in the Grade of EEs is thus violative of equality clauses of the Constitution, according to applicants.

4. The seniority and promotion of the applicants 2 to 15 and all the similarly placed colleagues of the said applicants are governed by the following Rules and amendments thereto issued by the Respondent Union of India in its gazette notifications and in exercise of powers conferred on it by the proviso to Article 309 of the Constitution:

Date	Title of the Rules or amendment thereto	Class/Grade of the Service
21.5.54	Central Engineering Service Class II Recruitment Rules	Class II Asstt. Engineers (Civil)
21.5.54	Central Electrical Engineering Class II Recruitment Rules	Class II Asstt. Engineers (Electrical)
5.6.54	Central Engineering Service Class I Recruitment Rules	Class I Asstt. Executive Engineers (Civil)

- 5.6.54 Central Electrical Engineering Service Class I Recruitment Rules Class I Asstt. Executive Engineers (Electrical)
- 8.6.76 Executive Engineers Central Engineering and Central Electrical Engineering Service Group A (Regulation of Seniority) Rules, 1976. Class II Asstt. Engineers and Class I Asstt. Executive Engineers promotion to the Grade of Executive Engineers.
- 19.3.82 CPWD Asstt. Engineers (Central Engg Service & Central Electrical Engg Service) Group B (Confirmation & Seniority) Amendment Rules, 1982. Class II Asstt. Engineers (Civil) and Asstt. Engineers (Electrical).

5. The Rules provide:-

(1) Quota of AEEs and AEs for promotion to the posts of EEs as 75%/25% which was altered with retrospective effect from 7.9.55 from 75% to 66-2/3% and from 1.4.72 till date the quota is 50:50.

(2) An Asstt. Engineer was eligible for promotion to Grade of Executive Engineer if he has rendered three years service in a permanent or temporary capacity as an Assistant Engineer. Rule 23(4) in Part IV of the Rules even provided that ~~it~~ shall not be necessary to consult the Commission, under this rule, in the case of any person, if the Commission has been consulted in connection with his temporary promotion to the Service.

6. During the month of December, 1982, the Respondent No. 2 finalised the Seniority Lists of Asstt. Engineers (Civil) and Asstt. Engineers (Electrical) in the Central Engineering Service Group-B of the C.P.W.D. Although ready since since October, 1982, the two lists were finally issued on 11.12.82 and 27.12.82, wherein the placement of the applicants in the matter of the seniority was finalised.

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7. The CPWD (Respondent No.2) issued the revised seniority of EEs (Civil and Electrical) on 23.7.84. The learned counsel for the applicant contends that the respondents continued with the rotational rule of seniority even when the quota system had broken down.

8. A revised seniority list of EEs in the light of the judgment dated 23.5.84 of the Supreme Court in the case of P.S. Mahal & Others Versus Union of India [AIR 1984 SC 1291] drawn up by CPWD (Respondent 2) was circulated on 23.7.84 (Annexure-E) for inviting representations. The O.M. of 23.7.84 mentioned, inter alia that -

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- (c) The vacancies as determined above, from year to year have been allocated as per quota by following a continuous roster.
- (d) After allocation of the vacancies according to the quota, the persons promoted from the two sources have been fitted against them. While doing so the inter-se seniority of each group as determined by the DPC at the time of selection has been maintained. The persons promoted in excess of their quota in a particular year have been pushed down to later years for absorption within their quota.
- (e) In case the initial regular promotion of either an Assistant Executive Engineer or an Assistant Engineer is within his quota, such date of regular promotion has been counted for reckoning seniority between the two groups.
- (f) In case an Assistant Executive Engineer or Assistant Engineer promoted in excess of his quota has been pushed down to subsequent year(s), the date of regular promotion for reckoning seniority shall be the date of the vacancy falling in his quota in which he is absorbed. This, however, is subject to the reservation that if an Assistant Engineer promoted to the grade of Executive Engineer is confirmed in the lower grade after his regular promotion within his quota his seniority shall be determined with reference to the date of subsequent confirmation in Class II.
- (g) The seniority inter-se of the Assistant Executive Engineers and Assistant Engineers thus adjusted in their respective quota has been fixed on the basis of length of service i.e. in the order of date of regular promotion as determined.

This is subject to the exception that where an officer junior in the panel has been promoted within his quota on a date earlier to

the date of regular promotion of his senior in the same panel, the seniority of the latter shall be determined from the date of promotion of the former. This has been done in order not to upset the panel seniority assigned by the DPC.

- (h) Some of the officers promoted from the rank of Assistant Engineers have not yet been confirmed in the lower grade. The seniority assigned to such persons is subject to their eventual confirmation for which orders shall be issued in due course.
- (i) The promotion of some of the officers promoted from the grade of Assistant Engineers was ad-hoc due to the seniority in the grade of Assistant Engineers being in dispute. The seniority lists of Assistant Engineers are in the process of finalisation and all such promotions shall be reviewed by regularly constituted DPC. The seniority assigned to such persons is subject to their ad-hoc promotions being regularised. In the event of their being found unsuitable for regular promotion they will have to yield their places in the seniority list to regularly promoted incumbents.
- (j) The promotions of some of the Assistant Executive Engineers to the grade of Executive Engineers from 1976 onwards was also termed ad-hoc because they had not completed the prescribed period of eligibility on the date of promotion. The orders of their regularisation from the dates of completion of eligibility period shall be issued separately. In their cases the seniority has been counted from the date of completion of eligibility period.
- (k) The seniority of Shri D.N.Bhargawa an ex-ECO appointed to the grade of Assistant Executive Engineers is subject to the writ petition filed by him in Punjab & Haryana High Court.

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9. It has been contended that the final seniority list after consideration of objections has not been finalised yet. In the seniority list circulated on 23.7.84, while AEEs promoted as EEs upto 83 & 84 have been included, the AEs, promoted as EE between 1979 and 1983 have not been included.

10. The arguments of the learned counsel for the applicant are -

- (i) The judgment in P.S.Mahal's case has been misinterpreted and the respondents have been continuing with rotational rule even when the quota had broken down.

The vacancies carried forward between 1950-83 in the quota allocable to AEEs (Civil) was 178 and 1511 in respect of AEEs (Electrical) between

1949-83.

(ii) The relaxation provision in the Rules was introduced on 19.3.82 which reads as follows :

"7. Relaxation of the provisions of the rules in cases of undue hardship.

- When the Government is satisfied that the operation of any of these rules causes or is likely to cause undue hardship to any class or group of the members of the service, it may after recording the reasons for so doing and notwithstanding anything contained in these rules, deal, in consultation with the Commission, with the cases of such class or group of members, in such manner as may appear to be just and equitable."

(iii) The seniority is also being linked with confirmation despite averment in para(g) of para 10;

(iv) The applicants were regularly promoted from dates ranging between 79 & 83. They were said to have been promoted on ad-hoc basis simply because the promotions, according to respondents, were not within prescribed quota; but the quota system had broken down. Even AEEs were also promoted on ad-hoc basis only. The promotion of AEs was against long term vacancies by following due procedure;

(v) The carry forward of the vacancies for an indefinite period is neither legal nor justified on the basis of the Rules;

(vi) Several representations were made by the Association of Central Engg. Service Class II and applicants between August, 1984 and November, 1988 but there was no response. Individual representations were again made by the Secretary of the Association and

by applicants between April '88 to Nov. '88 when replies dated 14.9.88 and 10.1.89 rejecting the pleas of the applicants were issued;

(vii) In a meeting of the Association with CPWD authorities on 7.11.88, the Director of Admn., CPWD explained the position of the seniority list dated 23.7.84 and the said that CPWD was awaiting the outcome of a meeting of Jt. Secretary, Ministry of Urban Development with representatives of Ministries of Law & Department of Personnel and added that it would be better for the Association to take up the matter with the Government since this was a matter of change of RRs. Representations were accordingly made to Government of India.

11. The learned counsel quoted several case laws laid down by the Supreme Court to prove his contention that there has been enormous deviation from the quota rule and therefore the quota rule should be taken as having broken down. Further since 'a relaxation provision' came in the Rules in 19.3.82, the quota system which had broken down should be deemed to have been relaxed and therefore the seniority on promotion of two categories should be fixed from the dates of continuous officiation in the grade of EE, irrespective of the quota system. Further the quota of 50 : 50 was fixed from 1.4.72 for a period of 7 years and there was no order for its continuance.

12. The relief sought by the applicants is that the seniority list of 23.7.84 be quashed and the applicants assigned seniority on the basis of continuous officiation in the grade of EE and given all consequential benefits.

13. The learned counsel for the respondents contended that -

(i) The case is barred by limitation since it challenges the seniority list of 1984 by an application filed

in February, 1989. Matters like one's position in the seniority, after having been settled for once should not be liable to be reopened after lapse of many years at the instance of the party who has during the intervening period chosen to keep quiet [1987 (1) ATLT (SC) 129 - KR Mudgal Vs. R.P.Singh] . The settled question of seniority should not be unsettled as this causes administrative complications.

(ii) The seniority list of 23.7.84 is based on correct interpretation of the Supreme Court's Judgment in the case of P.S.Mahal;

(iii) The seniority list in the feeder cadre of Assistant Engineers has been under dispute for a number of years and since the seniority was not finalised, promotions as EE were ad-hoc. The names of the applicants are not figuring in the seniority list of July, 1984, as they have not been absorbed in their quota upto 1984, the year upto which the seniority list pertains. The promotions of AEs were also ad hoc because they were in excess of the vacancies in their quota. AEEs were promoted on ad-hoc basis if they were promoted before the eligibility period.

14. Let the question of limitation be discussed first. The learned counsel for the applicant quoted the case of Mukhedeo Prasad Vs. Union of India & Others (Calcutta Bench) ATR 1988 (2) CAT 22 where it was held that the bar of limitation should be taken at the time of admission of the application and not afterwards. Again in the case of M.K.Janjadiya Vs. Union of India & Others (Ahmedabad Bench I 1991(3) CAT 593 it was observed as follows:-

"The order does not say that the application

is admitted subject to limitation. We, therefore, do not deem it necessary to go into the question of limitation at this juncture with the observation that the respondents' objection on proceeding of limitation has substance. We will proceed to decide the case on merits.

15. The aforesaid observations apart, we find in this case that the seniority list of 23.7.84 has been ~~xxx~~ challenged. That list is, however, provisional and is for inviting objections to settle the seniority, which remained unsettled till the filing of the application on 14.2.89. Further, though continued representations would not help the applicant in overcoming the bar of limitation, yet the fact remains that replies were received by the applicants by communications dated 14.9.88 and 10.1.89 only rejecting the pleas of the applicants and the applications were filed within one year of rejection.

16. We shall, therefore proceed to deal with the case on merits. But by the same token we would also like to observe that the impugned seniority list of 23.7.84 was yet to be settled in the light of objections. Further while rejecting by OM dated 14.9.88 the plea of the applicants for regular promotion as EE and computing seniority in the grade from the date of their application the respondents intimated (Annexure-O-1) that -

(i) The orders of confirmation in the grade of Assistant Engineers appointed/promoted upto 1964 have already been issued. The case of confirmation of remaining officers are being processed.

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(ii) A seniority list of Assistant Engineers based on the amended rules was issued in December, 1982. The said seniority have been declared as final subject to confirmations being made. But the promotees Assistant Engineers have again represented to the Committee on subordinate Legislation of Rajya Sabha against the 1982 seniority list stating that the said list has affected them adversely. The Committee had recommended that the Government should

reconsider the matter again. Keeping in view the observations made by the Committee the proposal is under consideration for further amendment of the Rules of 1982. In view of the above it had not been possible to regularise the ad-hoc promotions of Ex.Engineers since 1973. Action to regularise the ad-hoc promotions shall be taken up after a decision is taken on the question of further revision of seniority list of Assistant Engineers. The ad-hoc promotions ~~in the~~ ^{grade} of Asstt.Ex.Engineers were made not because of any dispute in their seniority but because they were appointed before completion of prescribed eligibility period. Regularisation of such Asstt. Executive Engineers from the date of their completion of eligibility service is in order.

(iii) So far as the seniority in the grade of Executive Engineers is concerned, the Supreme Court while deciding a Writ Petition challenging the seniority list of Ex.Engineers also laid down the broad principles on the basis of which the seniority list was to be re-drawn. The seniority list of Ex.Engineers has been drawn according to the Judgement of the Supreme Court in the case of P.S.Mahal Vs. Union of India. The question of fixation of seniority between Assistant Engineers & Assistant Executive Engineers has already been considered by the Supreme Court but the Court did not think it fit to quash the quota. The Supreme Court had directed that the seniority between Assistant Engineer & Assistant Ex.Engineers shall be fixed by length of service provided the promotion is within the quota. The contention of Shri J.S. Yadav for fixing his seniority from the date of his appointment cannot therefore be accepted."

17. Thus, it is seen that the provisional seniority list of 23.7.84 is not a settled one and the respondents were still looking into various aspects. Therefore, it would not be proper for us to say at this stage whether the impugned seniority list of 23.7.84 should be quashed or not.

18. However, since the question of misinterpretation or correct interpretation of the Judgement of the Supreme Court in the case of P.S. Mahal has been raised by the learned counsels for the applicant and for the respondents and since that judgement has also been referred to both in the provisional seniority list of 23.7.84 and in the O.M. dated

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14.9.1988 rejecting the representations of the applicants, we make some observations in consideration of various pronouncements by Hon'ble Supreme Court in cases relating to quota and quota-quota for being kept in view by the respondents in determining the seniority after giving due opportunity to the affected persons to represent, but before doing so we wish to discuss some important aspects put forward by the learned counsel for the applicants.

19. The learned counsel for the applicants had ^{argued} ~~agreed~~ verably that if the rule of seniority is inextricably inter-twisted with the quota rule and there is ^{enormous} ~~enormous~~ deviation from the quota rule, it would be unjust, inequitable and unfair to give effect to the quota rule (G.S.Lamba vs. Union of India A.R. 1985 S.C. 1019) Further he had argued that in case of Direct Recruits Class II Engg. Officers Association vs. State of Maharashtra (A.I.R. 1990 S.C. 1607) it was observed by the Hon'ble Supreme Court that where the quota rule had broken down and the appointments were made from one source in excess of the quota but after following the procedure prescribed by the rules for appointments, the appointees should not be pushed down below the appointees from the other source inducted in the service at a later date and where the rules permitted the authorities to relax the provisions relating to quota ordinarily a presumption should be raised that there was such a relaxation where there was a deviation from the quota rule.

20. The decisions of the Hon'ble Supreme Court as above are to be seen in the context of the facts of the concerned case. In G.S.Lamba's case

recruitment through one source viz. promotion was made in excess of quota for years. Promotions were, however, not made on ad hoc basis. There was no recruitment from other sources for years. The observations of Hon'ble Supreme Court in the case of Direct Recruit Class II Engg. Officers Association are discussed later.

21. The legal position is well settled that it would be open to Government to provide for recruitment to a service from more than one source and to reserve quota for each source. It would also be open to Government to provide seniority rule related to rotation of vacancies. Where rota rule of seniority is inter-linked with quota rule of recruitment, and if the latter is unreasonably departed from and breaks down under its own weight, it would be unfair and unjust to give effect to the rota rule of seniority. In the case of A. Janardhana vs. Union of India (A.I.R. 1983 S.C. 786) the Hon'ble Supreme Court observed as follows :

"It is therefore time to clearly initiate a proposition that a direct recruit who comes into service after the promotee was already unconditionally and without reservation promoted (emphasis ours) and where promotion is not shown to be invalid or illegal according to relevant statutory or non-statutory rules should not be permitted by any principle of seniority to ~~score~~ march over a promotee because that itself being arbitrary would be violative of Articles 14 & 16."

22. The following observations, as referred to in para 18 are accordingly made :

- (1) It would be open to the Government to provide for recruitment to a service from more than one source and to reserve quota for each source.

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In this connection the following observations of the Constitution Bench of the Supreme Court laid down the following criteria amongst others in its judgment in the case of Direct Recruits Class II Engineering Officer's Association Vs. The State of Maharashtra (A.I.R. 1990 S.C. 1607 = J.T. 1990 S.C. 264 = 1990 (2) S.C.C. 715) :

When appointments are made from more than source it is permissible to fix the ratio for recruitment from different sources, and if rules are framed in this regard, they must ordinarily be followed strictly. The quota may be prescribed by executive instructions if the rules are silent.

- (2) Seniority between D.Rs and promotees regularly (emphasis ~~and~~) promoted within their respective quota must be determined by the length of continuous officiation in the grade of E.E subject to the qualification that in case of A.Es the length of continuous officiation shall be reckoned from the date when their promotion is regularised by absorption within their lawful quota - P.S.Mahal's case (P.S.Mahal & Ors. Vs. U.O.I. & Ors. A.I.R. 1984 S.C. 1291 Para 37).
- (3) To elucidate (2) above, it may be mentioned that if 'A' (Assistant Engineer) was promoted in 1956 as Executive Engineer but outside the quota and was promoted within his lawful quota since 1962, he would rank senior to A.Es promoted much later than 1962 within their quota.
- (4) The observations in (2) & (3) are based on the case of P.S.Mahal where the Hon'ble Supreme Court had also mentioned that there can be no doubt that the failure to recruit Assistant Executive Engineers in sufficient numbers was responsible for gross distortion in the cadre of Executive Engineers over the years.
- (5) All other factors being equal, continuous officiation in a non-fortuitous vacancy (emphasis ~~ours~~) ought to receive due recognition in determining rules of seniority as between persons recruited from different sources, so long as they belong to the same cadre, discharge
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similar functions and bear similar responsibilities (S.B. Patwardhan Vs. State of Maharashtra (A.I.R. 1977 S.C. 2068) This further supports the view taken in (2) & (3) above.

(6) When promotions of incumbents belonging to one source made in excess of their own quota and utilising the quota of the incumbents belonging to another source, such promotees only officiate in the promotional post and when subsequently the incumbents of the second source are promoted, the former promotees will either be reverted or will be absorbed in vacancies within their quota. The period of officiation outside the quota will not be counted (Awadh Pal Singh & Ors. Vs. State of Bihar & Ors. - 1990 S.C.C. (3) 294).

(7) If an Officer had been promoted within his quota, then it would be the date of his promotion and not the date of confirmation which would be relevant for the Officer's seniority, but where the Officer is promoted in excess of his quota, his seniority would arise when a vacancy in his quota becomes available (D.R. Association Vs. State of Maharashtra A.I.R. 1990 S.C. 1607).

The above principle will, however, be subject to one reservation namely if an Assistant Engineer before his confirmation in Class II was appointed to officiate in Class I in the grade of Executive Engineer, although within his quota, his seniority will count only from the date of his confirmation in Class II as permanent Assistant Engineering notwithstanding his earlier officiating appointment as Executive Engineer (A.K. Subraman Vs. Union of India - A.I.R. 1975 S.C. 483). A confirmation should not however be delayed and should have taken place from due dates according to rules, subject to consideration of fitness on completion of probation according to rules.

(8) Doubtless there was gross distortion in the cadre of Executive Engineers over the years because of failure

to recruit Assistant Executive Engineers in sufficient numbers and it was in this context that observations as at (2) above were in P.S. Mahal's case (elucidated at No. (3) above). As observed further by the Hon'ble Supreme Court in Direct Recruit Class II Engg. Officer's Association that 'The rules fixing the quota of appointees from two sources are meant to be followed. But if it becomes impracticable to act upon, it is no use insisting that the authorities must continue to give effect to it. There is no sense in asking the performance of something which has become impossible. Of course, the Government before departing from the rule must make every effort to respect it and only when it ceases to be feasible to enforce, that it has to be ignored.'

The point for consideration in this case is whether the quota rule has failed. Distortions had no doubt developed, as observed in P.S. Mahal's case but it cannot be said that the performance of quota system had become impossible. Deficiencies kept on growing by cumulative total but recruitments were made to the posts of Assistant Executive Engineers almost every year. As mentioned in para 36 of P.S. Mahal's case the Government deliberately, it appeared, resorted to policy of under recruitment of Assistant Executive Engineers, keeping in view the promotion prospects of Class I Jr. Scale Officers. The respondents had been reducing the percentages allocable to Assistant Executive Engineers from 75 per cent to 50 per cent. It is for respondents to consider whether the percentage has to be further reduced taking the totality of circumstances in view and not for us to give any direction. It is in the context of distortions in quota that the rota rule was relaxed and continuous officiation in promoted post within lawful quota was made the determining factor in P.S. Mahal's case. The promotion of the applicants was made on ad hoc basis without prejudice to regular

appointments on the basis of seniority list when finalised and ^{was} also not within quota. It can not therefore be said that promotions were made after following the procedure prescribed by the rules. It is only when appointed in a regular manner and within quota that a promotee Assistant Engineer to the post of Executive Engineer cannot be pushed down below the appointees from the other source inducted in the service at a later date.

- (9) Each quota has to be worked independently on its own force. It cannot be said that promotion quota for Assistant Engineer can be filled only to the extent of direct recruitment quota of Assistant Executive Engineer filled. The hopes and aspirations of promotees can not be related to availability - or non-availability of direct recruits to fill their quota.

23. With the observations made from ^{para} 17 onwards, ^{cl} the case is disposed of with no order as to costs.

I.P. Gupta
(I.P. GUPTA),
ADMINISTRATIVE MEMBER.

Ram Pal Singh
(RAM PAL SINGH),
VICE CHAIRMAN (J).