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Central Administrative Tribunal
Principal Bench: New Delhi

OA No.1996/88

New Delhi this the 5 Day of August, 1994.

Sh. N.V. Krishnan, Vice-Chairman (A)
Sh. C.J. Roy, Member (J)

Surendra Singh,
Assistant Station Engineer,
High Power Transmitters,
All India Radio,
Kingsway Camp,
Delhi-110 009.

...Applicant

(By Advocate Sh. M.C. Juneja)

Versus

1. Union of India through
Secretary, Ministry of
Information & Broadcasting,
Shastri Bhawan,
New Delhi.
2. Director General,
All India Radio,
Akashwani Bhawan,
Sansad Marg,
New Delhi.

...Respondents

(By Senior Counsel Sh. P.H. Ramchandani)

ORDER

Hon'ble Mr. N.V. Krishnan:-

The grievance of the applicant is in respect of the revised seniority list of Assistant Engineers issued on 8.6.88 (Annexure A-10) and the memo dated 22.9.88 (Annexure A-1) which, by implication rejects all representation against that seniority list. The main ground of challenge is that neither the principle of quota rota as between the direct recruits and promotees nor the principle of continuance officiation has been followed, in fixing the seniority of persons at serial No.107 and thereafter in the Annexure A-10 list.

2. The facts of the case are not in dispute and can be briefly stated.
 - 2.1 The applicant joined All India Radio as a Shift Assistant on 2.6.61. He was promoted to officiate as

Assistant Engineer on ad hoc basis by the order dated 23.5.73 (Annexure A-2). He assumed charge on 2.7.73 (Annexure A-3). By the order dated 19.9.74 (Annexure A-4) the applicant, along with a number of others, were promoted to officiate as Assistant Engineers on regular basis from 27.2.74.

2.2 The cadre of Assistant Engineers is filled up by direct recruits and promotion in the ratio of 2:3.

2.3 A seniority list of 361 Assistant Engineers in the All India Radio as on 1.12.76 was published on 1.1.77 (Annexure A-5). That was based on the quota rota rule of 2:3. The name of the applicant is at serial No.237. Note-2 to the seniority list states that the seniority of AEs from serial No.247 to serial No.355 is provisional and that it will undergo a change after direct recruits recommended on the basis of the results of the Engineering Services Examination, 1975 join the department. Note-3 also states that the AEs from serial No.256 to serial No.361 have been appointed to that cadre only on ad hoc basis and they will be regularised as and when recommended by the DPC.

2.4 One T.R. Mehta, who was regularised along with the applicant by the Annexure A-4 order and who is at serial No.104 in the Annexure A-5 seniority list, filed writ petition NO.491/77 in the High Court of Delhi to quash this seniority list to the extent it determined his seniority ^{and} to declare that he stood promoted regularly as Assistant Engineer w.e.f. 12.10.70, i.e., from the date of his first promotion.

2.5 That writ petition was transferred to this Tribunal and renumbered as T-326/85. It was disposed of by the judgement dated 14.5.87 (Annexure A-7). The Tribunal noted that the promotion as A.E. of T.R. Mehta and others were made when there were no statutory recruitment rules. Their promotions were made in the light of

administrative instructions. Recruitment rules under Article 309 were published only on 30.8.72. The respondents applied the provisions of those rules (i.e. selection method) for the regularisation of Sh. T.R. Mehta and others, though they have been recruited before the rules were issued. Accordingly the DPC applied the principles of selection and, on that basis, T.R. Mehta was assigned seniority at serial No.104. This was disapproved by the Tribunal, which came to the conclusion that the Recruitment Rules of 1972 cannot be applied to regularise the recruitment made in 1970. However, as the recruitment made in 1970 was only ad hoc, it held that it should be regularised after a Departmental Promotion Committee considered the case of the applicant and others similarly placed for regular promotion as on 12.10.70 and such other dates when vacancies existed. The Tribunal, therefore, passed the following orders:-

"8. In the light of our above discussion, we make the following orders and directions:-

(i) We direct respondents 1 to 3 to consider the case of the applicant for regular promotion to the cadre of Assistant Engineer as on 12.10.1970 in accordance with the Recruitment Rules or orders that were then in force, promote him if he is found suitable for regular promotion as on that date and if he is so promoted, extend to him all the consequential benefits flowing from the same.

(ii) We direct respondents 1 to 3 to consider the cases of other eligible officers also for promotion to the cadre of Assistant Engineer from the dates of their respective ad-hoc promotions, and pass appropriate orders as the circumstances justify in their cases."

2.6 A contempt petition filed in T-326/85 was disposed of on 21.12.87 (Annexure A-8) with the following directions:-

"Under the circumstances, we direct the respondents to hold a D.P.C. to consider the cases of all the Senior Engineering Assistants who were eligible as on the dates when the petitioners and the interveners were promoted on ad hoc basis for regular promotion as Assistant Engineers on the basis of Seniority-cum-Fitness and minimum period of service as prescribed in the above U.Os. The respondents shall comply with this direction and submit a report of the selection thus made, within two months. It is made clear that the D.P.C. shall consider the petitioners alongwith others as in 1970 as per our original judgment dated 14.5.1987."

2.7 In view of this direction, the case of T.R. Mehta and others similarly placed were considered by the respondents and by the Annexure A-9 order dated 30.3.88/4.4.88, 103 officers, including T.R. Mehta who were promoted by orders issued before 31.8.72 when the 1972 Recruitment rules came into force, were regularised from different dates. T.R. Mehta was regularised from 12.10.1970 and his name is at S.No.16. It is also to be noted that about 8 persons junior to the applicant in the Annexure A-5 seniority list were also regularised.

2.8 Consequently, the Annexure A-5 seniority list as on 1.12.76 published earlier had to be recast. Accordingly, a revised seniority list was issued with memo dated 8.6.88 (Annexure A-10) and objections were invited.

2.9 The name of the applicant was placed in this seniority list at serial No.245. Being aggrieved by the position assigned to him, he submitted the following

representation on 22.8.86 (Annexure A-11):-

- "1. The seniority list issued vide D.G. Order cited above is wrong.
2. The rules issued by Govt. for interlacing between promotee AEs and direct recruit AEs in 1972 (Under which direct recruit AEs were recruited) have not been followed, as at number of places direct recruit AEs have been bunched together after fixation of seniority of 103 AEs as per judgement of CAT.
3. If the rules are not to be followed then the only logical method of fixing the seniority should have been length of service in the cadre. This will give justice to all.
4. Therefore when Govt. has decided not to follow rules, you are requested to fix seniority as per length of service in cadre and issue a fresh seniority list."

2.10 These representations were considered and finally the memo dated 22.9.88 was issued (Annexure A-1) which is impugned in this OA. It is reproduced as follows:-

"In pursuance of the directions given by the Hon'ble Central Administrative Tribunal in their orders dated 14.5.87 and 21.12.87 in the case of Sh. T.R.Mehta and others, the case of 103 AEs who were appointed on ad-hoc basis before the notification of AIR Class I and Class II Engineering Posts (recruitment rules) on 30.8.1972 were reviewed by DPC for regular promotions and fresh panels drawn. On the basis of the ranking in these panels, these 103 AEs have been placed en-block senior to all the AEs who were appointed after the notification of 1972 Recruitment Rules. The seniority list issued in 1977 has, however, been updated on the basis of the seniority lists issued after 1977 as per foot note No.2 and 3 of the seniority lists issued on 11.1.77 to include all the AEs appointed prior to the issue of Ministry of I&B's notification No.GSR/488(E) dated 7.7.82 in amendment of 1972 Recruitment Rules for A.Es."

3. It is in this circumstance that this O.A. has been filed. Para 6(c) of the OA highlights his grievance. ^{(d) and (e)} and it is reproduced below:-

"c) The original seniority list at Annexure A-5 having been drawn on the principle of quota-rot as clarified by Respondent No.2 in his circular dated 22/23.3.77 at Annexure A-6, mentioned in sub-para 6.7 above, lifting up of 103 persons in the redrawn seniority list without changing the inter-se positions of others on the principle of quota-rota as obtained on 1.12.76, has made the redrawn seniority list, more than 2 Direct Recruits (DRs) appear continuously while in accordance with their quota of 40%, they should be 2 only after every 3 DPs (Departmental promotees):-

S.Nos.	Total continuous Numbers of DRs.	Number of preceeding promotees.
111 to 116	6	1
118 to 123	6	1
130 to 133	4	1
135 to 138	4	1
144 to 149	6	1
151 to 154	4	1
173 to 178	6	2
180 to 187	8	1
195 to 202	8	1
208 to 211	4	1

The principle of quota-rota is thus not followed in the redrawn seniority list.

d) The redrawn seniority list also does not observe the principle of continuous service in the grade including the period of ad-hoc service rendered before appointment on regular basis.

e) The redrawn seniority list is thus based on no principle at all".

It is on these grounds that he seeks a direction to quash the Annexure A-10 seniority list from serial No.107 onwards and to direct the redetermination of seniority either on the principle of length of service in the grade or on the principle of quota rota and grant consequential benefits.

4. The respondents have filed a reply resisting this claim. It is pointed out that the Annexure A-10 seniority list flows directly as a consequence of implementing the earlier judgement of the Tribunal in the case of T.R. Mehta (Annexure A-7) and the Annexure A-8 order in the CCP.

5. We have heard the learned counsel for the parties. The following facts stand out very clearly.

- i) The applicant had no grievance in respect of the Annexure A-5 seniority list which followed the principle of quota rota as between the promotees and direct recruits.
- ii) The applicant has also no grievance against the Annexure A-9 order granting regularisation to 103 AEs in pursuance of the judgement in T.R. Mehta's case (Annexure A-7).
- iii) The applicant has also no grievance against the Annexure A-1 order dated 20.2.1988 extracted in para 2.9 above in so far as it communicates the decision that the 103 persons referred to in Annexure A-9 have been placed enbloc senior to all AEs who were appointed after the notification of the Recruitment Rules of 1972.

6. What the department did was to carry out changes in the Annexure A-5 list in order to revise it. The 103 persons (i.e. Mehta & Others) were placed at serial No.4 to 106 of the Annexure A-5 seniority list. Their names in that seniority list shown earlier at other places were deleted. These modifications resulted in the Annexure A-10 seniority list. The respondents did not disturb the inter-se- relative seniority of the other persons whose names are mentioned in the Annexure A-5, i.e., other than the 103 persons, and their relative positions were left intact.

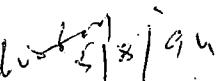
7. The result of this operation is that a number of direct recruits are bunched together at different places giving the impression that quota rota rule has not been followed. For, the promotee complement, associated with these direct recruits, have not been placed en bloc at serial No.4 to 106.

8. The applicant has no case at all that, other than the 103 beneficiaries of the judgement of the Tribunal in T.R. Mehta's case, any person who was junior to him in the Annexure A-5 seniority list, has now been placed above him in the Annexure A-10 seniority list.

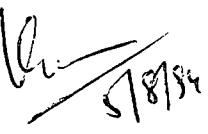
9. We are of the view that all these changes and consequences are the direct result of implementing the judgement in T.R. Mehta's case (Annexure A-7 and A-8). The apparent deficiencies noted by the applicant in the seniority list as mentioned in sub para 'c' of para 6.12 of the O.A. is due to this reason. We notice that the persons at serial No.111 to 116 in Annexure A-10, about whom it is complained that they are a bunch of direct recruits without a complement of 9 promotees, were earlier placed at serial No.12, 13, 17, 18, 22, 23 in the Annexure A-5 seniority list on the basis of the quota rota rule. The persons at serial No.14 to 16 and 19 to 21 are promotees who are the beneficiaries of T.R. Mehta's judgement. Their names have been taken away from these positions and their places are at serial No. 8,9,11,12, 69 and 13 respectively in the Annexure A-10. It is clear that the revised seniority list is fully consistent with the directions given by the Tribunal earlier. We are

also of the view that the Annexure A-7 and Annexure A-8 orders of the Tribunal authorised the respondents to consider the case of T.R. Mehta and ^{similarly} ~~suitably~~ placed persons (103 as in Annexure A-9) and to refix their seniority. Respondents were not authorised to effect changes in the relative inter-se-seniority of the others shown in the Annexure A-5 list. Their places have been kept intact in the Annexure A-10 list. Therefore, the applicant cannot have any grievance. If he had any grievance on this count, he should have filed review against the Annexure A-7 judgement. It is not open to him to challenge the Annexure A-10 seniority list in this O.A. if he has no complaint either against the decision of the Tribunal or against the Annexure A-9 order. The Annexure A-10 seniority list is purely a consequential product.

10. The judgement of this Tribunal in OA-663/86 (Annexure A.13) is irrelevant and does not advance the applicant's case in any way. This being the case, we find no merit in this O.A. and it is dismissed. No costs.


(C.J. Roy)
Member (J)

'Sanju'


(N.V. Krishnan)
Vice-Chairman