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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

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Regn. No. OA 665 of 1988

Date of decision: 7.6.1991

P.N.D. Modi

Applicant

Vs.

Union of India

Respondents

PRESENT

Shri D.C. Vohra, counsel for the applicant.

Shri P.H. Ramchandani, counsel for respondents 1 to 3.

Shri Ashok Mahajan, counsel for respondents 25 & 26.

None for other respondents.

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

Hon'ble Shri P.C. Jain, Member (A).

(Judgment of the Bench delivered by Hon'ble Justice Shri Ram Pal Singh, Vice-Chairman (J).)

J U D G M E N T

By means of this Original Application, filed under Section 19 of the Administrative Tribunals Act, 1985 (hereinafter referred as 'Act'), the applicant has claimed relief for quashing the Office Order dated 21.12.87 (Annex. A-13) purporting to absorb the applicant as Assistant Engineer (C) with effect from 10.12.71 and also fixing his seniority in the grade of Assistant Engineer with effect from that date. The applicant has further claimed relief for issuing of a direction to respondent Nos. 1 and 2 for treating the applicant to have been permanently absorbed for all purposes in the P&T Department with effect from 1.7.63 and to refix his seniority on the post of Assistant Engineer (C) after taking into account the continuous period of service rendered by him on that post with effect from 21.5.64 and to grant all consequential benefits to him.

2. Briefly, the facts giving rise to this application are, that, prior to July 1, 1963, the designing and construction of buildings of Posts & Telegraph Department continued to be looked after and

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executed by the P&T Wing of the C.P.W.D. By a Presidential Notification dated 4.5.63, a separate Civil Engineering Wing was constituted in the P&T Department. The Chief Engineer of the C.P.W.D. issued order to the effect that all the posts forming part of the P&T Wing in the C.P.W.D. shall stand transferred from the C.P.W.D. and the same shall be part of the establishment of the newly created Civil Engineering Wing of the P&T with effect from 1.7.1963. Incumbents of those posts were directed to exercise their option for joining the P&T service or to continue in the C.P.W.D. The applicant who had initially joined service in the C.P.W.D. on 10.12.55, was working as Junior Engineer in the P&T Wing of the C.P.W.D. On the establishment of the Civil Engineering Wing of the P&T Department, the applicant was also transferred alongwith other similarly placed employees to the P&T Department with effect from 1.7.63 and since then he has been working there in that Department. While working in the P&T Department, the applicant was promoted to the post of Assistant Engineer in his parent department, namely, the C.P.W.D. by an order dated 20.5.64 and pursuant to his promotion he was promoted on ad hoc basis on an equivalent post of Assistant Engineer Surveyor of Works (C) in the P&T Department on 21.5.64. While working on that post, he was promoted as Executive Engineer (C) in October 1978. Though the applicant and other employees had been transferred from the C.P.W.D. to the P & T Department, but no formal orders for their absorption had been issued, instead the P&T authorities treated the applicant on deputation and for that reason they proposed his repatriation to his parent department i.e. C.P.W.D. The applicant and the other affected employees filed a Writ Petition No. 1457/74 before the High Court of Delhi challenging the proposed order of repatriation on the ground that they had been duly absorbed in the P&T Department and they could not be repatriated. Their contention was contested by the department mainly on the ground that the petitioners in the Writ Petition including the applicant had failed to exercise their option. Therefore, no formal order for their absorption in the P&T Department had been issued and they continued to be on deputation, therefore, liable to be repatriated to their parent department. A learned Single

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Judge of the High Court, allowed the Writ Petition holding that the applicant and others who were petitioners in the Writ Petition stood absorbed in the P&T Department and they could not be repatriated to C.P.W.D. Appeal against the order of the learned Single Judge failed before the Division Bench and the Special Leave Petition before the Supreme Court was also dismissed. Consequently, the order of the learned Single Judge became final.

3. The High Court had held that the applicant stood absorbed in the P&T Department but no formal orders had been issued by the Department nor his seniority was determined treating him to be permanent incumbent in the P&T Department. In 1986, a provisional seniority list of Assistant Engineer (C) was circulated inviting objections. In that list, the applicant was shown junior to many others who had joined the Department much later in time. The applicant filed objections but without any success. On the applicant's representation, he was informed that the Government had decided to absorb him in the P&T Department as Junior Engineer (C) with effect from 1.7.63 and as Assistant Engineer (C) with effect from 10.12.71. The applicant was further informed that his name would be inserted at Serial No. 21 (B) in the seniority list of Assistant Engineers. In spite of applicant's protest and objections, the order of the Government was not modified. Hence, this petition.

4. The applicant's main contention has been that once he was absorbed in the P&T Department with effect from 1.7.63, he became entitled to the seniority and promotion in the P&T Department and there was no question of any further order of absorption with effect from 10.12.71. It is contended on behalf of the applicant that since his promotion on 21.5.64 as Assistant Engineer, he had been working on that post in the P&T Department and later he was regularised on that post. Therefore, he was entitled to his seniority as Assistant Engineer. It is urged that the respondents acted arbitrarily in ignoring his promotion, in treating the applicant to have been promoted as Assistant Engineer with effect from 10.12.71. It is further pleaded that as a result of the impugned orders, the applicant has been deprived of the benefit of length of service rendered by him

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on the post of Assistant Engineer (C) in the P&T Department for the period 1964 to 1971 as a result of which a number of persons who joined the service much later in time have been made senior to him.

5. The respondents have contested the applicant's claim, firstly, on the ground that in the absence of any option exercised by the applicant, he could not be treated as permanently absorbed in the P&T Department with effect from 1.7.63. It was further pleaded that the Delhi High Court while allowing the Writ Petition filed by the applicant had absorbed him in the P&T Department, but it did not indicate any date of absorption. It is further contended that the applicant was promoted to the post of Assistant Engineer by the C.P.W.D. and not by the authorities of the P&T Department and that promotion was on ad hoc basis. The applicant's promotion to the post of Assistant Engineer in the P&T Department was regularised in 1978 with effect from 1971 as on that date the Minister took decision for the applicant's permanent absorption in the P&T Department.

6. There is no dispute that the applicant had all along been working in the P&T Department with effect from 1.7.63. In 1963, the Civil Engineering Wing of the P&T Department was bifurcated from the C.P.W.D. At that stage, the applicant was working as Junior Engineer and he was also transferred to the newly created Wing of the P&T Department. His claim for being permanently absorbed was accepted by the High Court judgment, which has become final, as a result of which the applicant stood absorbed in the P&T Department as Junior Engineer with effect from 1.7.63. Thereafter, it was not open to the respondent-authorities to fix any other date for the applicant's absorption. While working as Junior Engineer, the applicant was promoted to the post of Assistant Engineer in 1964 on ad hoc basis. There is no dispute that ever since his promotion, the applicant continued to work on that post in the P&T Department itself and he was regularised on that post with effect from 1971.

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If that be so, the respondents cannot overlook these facts in determining his length of service on the post of Assistant Engineer. There appears to be no justification for having two different dates of absorption by the respondent-authorities as they have tried to do in this case. Once the applicant was absorbed as Junior Engineer with effect from 1.7.63, there was no further necessity to pass any further order for his absorption in the P&T Department. Since the applicant had been absorbed with effect from 1.7.63 in the P&T Department, there was no justification to treat the applicant to have been absorbed with effect from 10.12.71, the date on which the Minister passed orders for his regularisation as Assistant Engineer. The applicant's promotion to the post of Assistant Engineer has not been shown to be irregular or against any Rules. In the absence of Rules, the promotion of Junior Engineer to the post of Assistant Engineer in the P&T Department was regulated by executive instructions and all promotions were made on ad hoc basis. The applicant was qualified and he possessed the requisite experience for promotion to the post of Assistant Engineer. The respondents have failed to place any material before us to show that the applicant was not entitled to promotion and that his promotion as Assistant Engineer in 1964 was made in violation of any statutory rules or executive instructions. In this view of the matter, the applicant's promotion to the post of Assistant Engineer with effect from 21.5.64 could not be ignored.

7. The respondents have contended that since the applicant's services were transferred to P&T Department from C.P.W.D. as Junior Engineer on 1.7.63, he is not entitled to seniority over the directly recruited Class II officers. In this connection, it is pleaded that in the absence of recruitment rules, the applicant has been promoted to the post of Assistant Engineer on ad hoc basis as he had put in eight years of regular service but after the framing of recruitment Rules in the year 1976, the applicant who was working on ad hoc basis on the post of Assistant Engineer was regularised in 1978. Therefore, the applicant is not entitled to seniority on the post of Assistant

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Engineer with effect from the date of his promotion to that post. This contention is devoid of any merit.

8. Once an employee having requisite qualification and experience laid down by the Rules or administrative instructions is promoted to higher post on ad hoc basis and without following the procedure laid down by the Rules, but if he continues to hold the post uninterruptedly till the regularisation of his service in accordance with the Rules, he would be entitled to the benefit of the period of service he rendered on that post on ad hoc or officiating basis. The concept of ad hoc appointment or promotion of employees contemplates that the appointment or promotion is not made in accordance with the procedure laid down by the Rules or by the administrative instruction, but if the incumbent fulfils the necessary qualifications and eligibility criteria and while working continuously on that post, he is regularised on that post, his regularisation would relate back to the date of his initial appointment. In Narender Chadha vs. Union of India (1986 (2) SCC page 157), it was held by the Supreme Court that where officers were promoted without following the procedure prescribed in the Rules and they worked continuously for long periods without being reverted, then their period of continuous officiation should be counted for seniority and if that period is ignored, it would be arbitrary and violative of Articles 14 and 16 of the Constitution. The applicant's case is again fully covered by the decision of the Constitution Bench of the Supreme Court in Direct Recruit Class II Engineering Officers Association vs. State of Maharashtra & Ors. (1990 (2) SCC page 715) under the heading (B) at page 745 of the report, the Supreme Court has held:

"if the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted."

9. Applying the principle laid down by the Supreme Court, it is clear that the applicant had been promoted to the post of Assistant Engineer on 21.5.64 and he continued to hold that post uninter-

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ruptedly till the regularisation of his service in accordance with the rules which were framed in 1976, the period during which the applicant continued to hold the post of Assistant Engineer on ad hoc/officiating basis, will be counted for the purpose of fixing his seniority in the cadre of Assistant Engineers.

10. The respondents, as usual, raised preliminary objections to the maintainability of the application on the ground of limitation and also on the ground of estoppel. We find no merit in either of these contentions. As regards limitation, we find that the cause of action for this O.A. arose on 21.12.87, the date on which his claim was rejected by the respondent-authorities and the present application was filed in April, 1988 well within time. As regards the plea of estoppel, it is founded on a letter alleged to have been addressed by the applicant to the Secretary, Communications, Government of India, Sanchar Bhawan. In that letter, the applicant is alleged to have agreed for his seniority being determined on the post of Assistant Engineer with effect from 10.12.71. It is urged that in view of the consent given by the applicant to respondent No.2, he is not entitled to maintain this O.A. on the principle of estoppel. We find no merit in this submission. The alleged letter had been given by the applicant with a view to avoid any litigation but since the respondents did not accept any of his claim, the applicant was forced to take legal proceedings. Moreover, he had withdrawn his consent before the impugned order was passed. In view of these facts, the plea of estoppel is not applicable as the respondents did not change their position to their prejudice acting on the alleged letter. Both the preliminary objections are, therefore, rejected. The other preliminary objection by the respondents is that this Application is hit by the Doctrine of Resjudicata. Firstly, the subject of this O.A. was not decided by the judgment of the High Court. Secondly, the respondents have not placed any material on record which may form the basis of their objection. In the absence of any basis, we conclude that the present O.A. is not hit by the Doctrine of Resjudicata.

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11. In the result, we hold that the applicant is entitled to his seniority in the cadre of Assistant Engineers with effect from the date of his initial appointment to that post, namely, 21.5.64 and he is further entitled to all the consequential benefits arising out of his absorption and fixation of his seniority. We, accordingly, allow the application and quash the order dated 21.12.87 (Annexure A-13) and direct the Respondent Nos. 1 and 2 to treat the applicant to have been permanently absorbed in the P&T Department with effect from 1.7.1963 and to fix his seniority to the post of Assistant Engineer (C) with reference to his promotion on 21.5.64. His seniority will accordingly be reflected in the cadre of Assistant Engineers and in higher cadres as above. For further promotions; his revised seniority will be taken into account. Promotions already made need not be disturbed. As regards monetary benefits in consequence of the revised seniority, he will be entitled to the same only for the period from three years prior to the date of filing this O.A. which is 15.4.1988.

There will be no orders as to costs.

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(P.C. JAIN) 7/4/591

MEMBER (A)

Ram Pal Singh
(RAM PAL SINGH)

VICE-CHAIRMAN (J)