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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1200/88

NEW DELHI, this 26th day of November, 1993.

Hon'ble Shri C.J. Roy, Member (J)

Hon'ble Shri P.T.Thiruvengadam, Member (A)

1. Shri B.L. Kukreja
s/o Shri Hakim Bai, with
2. Shri S.B. Nanda,
s/o Shri C.R. Narula,
3. Shri V.N. Saharia
s/o Shri Shiv Narayan Mathur,
4. Shri J.A. Rizvi
s/o Shri S.A. Rizvi,
5. Shri A.K. Banerjee
s/o Shri K.K.Banerjee,
6. Shri A. Dutt,
s/o Shri A.C. Dutta,
7. Shri M.M. Singh,
s/o Shri Sant Singh,
8. Shri C.L. Kaul
s/o Shri J.N. Kaul,
9. Shri Lakhmir Singh
s/o Shri Udham Singh,
10. Shri I.D. Jain
s/o Shri T.C. Jain,
11. Shri P.R.S. Nair
s/o Shri P.N.R. Nair,
12. Shri R.C. Chawla,
s/o Shri Badri Nath Chawla,
13. Shri A.B. Roy
s/o Shri T.P. Roy
14. Shri R.P. Sharma
s/o Shri H.P. Sharma,
15. Shri J.R. Chaudhari
s/o late Shri S.C.Chaudhari, &
16. Shri B.K. Nandy
s/o Shri H.L. Nandy

all the above working
as Asstt. Engineer(Electrical)
Central Public Works Department
Nirman Bhavan, New Delhi

.. Applicants

By Shri D.P.Mukherjee &
Shri Manoj Chatterjee, Counsel

VERSUS

Union of India, through

1. Director General (Works)
Central Public Works Department
Nirman Bhavan, New Delhi

2. Secretary

Ministry of Urban Development
Nirman Bhavan, New Delhi

.. Respondents

By Shri M.L. Verma, Govt. Counsel

ORDER

(By Shri C.J. Roy, Hon'ble Member (J))

The above mentioned sixteen applicants have filed this application under Section 19 of the CAT Act, 1985, against the Order No.108 dated 25.4.86 passed by the Director General of Works, Central Public Works Department, and also the seniority list as well as supplementary seniority list in which the position of the seniority of the applicant is alleged to be wrongly shown. Brief facts of the case are that the applicants were originally appointed as Junior Engineers at various places and later on were promoted as Assistant Engineers(Electrical) during the period varying from December, 1972 to January, 1982 on ad hoc basis. They claim that they have put in continuous and uninterrupted service on officiating basis or otherwise as Assistant Engineer (Electrical) since the first date of promotion, have earned regular increments and also cleared the first stage of Efficiency Bar in due time, but after the IV Pay Commission Report, the second stage of Efficiency Bar does not come in the way in case of most of the applicants. They also allege that they have qualified in the prescribed examination in Accounts (3 papers) as per requirement of Section 4(16)(e) of the CPWD Manual Volume I containing staff/ establishment organisation office procedure.

2. The applicants further allege that they have been made to suffer by the circulation of the impugned order dated 25.4.86 as their relevant position in the seniority list is disturbed inasmuch as that a large number of incumbents who were promoted at a much subsequent date than the date of promotion of the applicants are finding place in the seniority list over and above the applicants. The applicants claim that they have put in more than 10 years of service as Assistant Engineer but they have been rendered ineligible to be considered for the next higher grade of Executive Engineer (Electrical) by not taking into account the so called continuous ad hoc/ officiating period of service from the original date of their promotion and thereby they are being deprived of their right of promotion to the higher post.

3. The applicants also allege that they have represented against this to the Respondents to give them their proper position in the list but since the respondents have failed to do so, the applicants felt aggrieved and have filed this OA questioning the seniority list and also the supplementary seniority list issued on 25.4.86. They question the action of the respondents in not treating the entire continuous officiating service rendered by each of the applicant against the post of Assistant Engineer(Electrical) and describe the seniority list as illegal, unreasonable, arbitrary, discriminatory and is liable to ^{be} quashed.

4. The respondents have filed their counter stating that the applicants have filed this OA at a belated stage and it is barred under Section 20 & 21 of the CAT Act and that it is also barred under doctrine of res judicata as the applicant's petition was dismissed as withdrawn in the Court of Delhi Judicature.

Further the respondents allege in their counter that in accordance with the Recruitment Rules, 1954, promotion to the grade of Assistant Engineer from Junior Engineer is made by selection from amongst the permanent junior engineers. In 1965, it was decided that promotion from the grade of Junior Engineer shall be 50% from the Degree holders. This aspect was challenged by certain officers viz. Shri M. Ramayya and others and the said quota was quashed by the Delhi High Court on the ground that these were not properly and effectively determined. Thereafter, the promotions were made by selection from amongst Junior Engineers without fixing any quota for any group. Against this, the degree-holder Junior Engineers represented to the Government for fixing percentage for them in the matter of promotion, after following a proper procedure. This was opposed by the Diploma-holder Junior Engineers. In order to resolve this, the respondents have formulated a promotional policy whereby promotion to the grade of Assistant Engineer may be made purely on ad hoc basis. Thus, the Junior Engineers have been promoted on ad hoc basis from time to time. They say that a relaxed standard has been adopted by them requiring for regular promotion and these promotions were supposed to be reviewed by a regularly constituted DPC in accordance with the Rules.

5. It is further alleged in the counter by the Respondents that as published in the official Gazette of India on 5.2.77, an amendment is sought to be incorporated inasmuch as that vacancies of Assistant Engineer may be filled by 50% by selection

from amongst Junior Engineers and 50% by limited departmental competitive examination through the UPSC. When the Government initially decided that all the posts filled on ad hoc basis since 1972 shall be treated as vacancies and that may be filled on regular basis in accordance with the amended Rules, some of the ad hoc promotees like Shri G.K.Bhaskaran and others filed a writ petition in the Delhi High Court contending that the Rules dated 5.2.77 were prospective in nature and they should not be applied to vacancies occurring prior to 5.2.77. They have also decided that vacancies filled on ad hoc basis prior to 5.2.77 shall be filled up in accordance with the Rules as they stood prior to 5.2.77, i.e. 100% by selection. An application was accordingly filed in the Delhi High Court on 11.4.85 by way of an affidavit, which is at Annexure R-III. It was, inter alia, submitted in the said application that regular year-wise panels will be prepared for 100% vacancies occurring prior to 5.2.77 and for 50% vacancies on or after 5.2.77, by following the procedure laid down in the DP&AR O.M.No.22011/3/76-Estt(D) dated 24.12.80. Then the application filed by Shri Bhaskaran and others was accordingly withdrawn.

6. The respondents claim that they convened meetings of regular DPC to consider regular promotion in the grade of Assistant Engineer in accordance with the procedure laid down in the said OM dated 24.12.80 and prepared panels for year-wise vacancies, the Junior Engineers

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(including those working on ad hoc basis) were arranged in the order of seniority in the grade of Junior Engineers and their merit as reflected by their service record as assessed. The panels have been prepared on the basis of comparative merit, thereby meaning, the respondents assert, that the seniority inter-se among among the regularly promoted is to be determined on the basis of merit. The supplementary seniority list was issued vide order No.30/18/85-ECI/22 dated 25.4.86, which was based on the year-wise panels. They further aver that in the seniority list, the officers from S.No.1 to 135 are those included in the regular panel for the vacancies till 4.2.77, the date on which the rules were amended. The officers included in the regular panels against 50% of the year-wise vacancies have been placed from Sl.No.136 onwards alternatively alongwith persons appointed through the limited departmental examination. They further aver that those included in the panel for the period prior to the last date of the year for which may 4.2.77 have been empanelled to have been assigned as deemed date of promotion. In the case of those empanelled for 50% of the vacancies on or after 5.2.77, the date of the order of promotion of the officers appointed from limited departmental examination and placed junior to the officers in question has been assigned as deemed date of promotion. They have also alleged in the counter that they have made it clear in the order of ad hoc promotion issued from time to time that the promotions are purely ad hoc and they will be reverted if they are not selected by the regular DPC. Therefore, they allege that the position that may have been assigned as ad hoc promotion no longer holds good once the regular panels have been prepared, seniority assigned as per the regular DPC and that will prevail.

7. The respondents further have asserted that the ad hoc promotions were made on relaxed standards and following this procedure, a junior person is not likely to supersede his senior even though the latter's service record might be inferior to the former. However they further assert that when the regular DPC is held, persons are considered strictly on the basis of merit and the more meritorious junior overtakes/supersedes less meritorious senior because the promotion from Junior Engineer to Assistant Engineer is on selection basis, i.e. seniority-cum-merit. They also allege that the applicants are not within the zone of consideration and they can not be considered for promotion to the post of Executive Engineer. They state that once a regular panel has been prepared and the seniority is assigned by the DPC, it will ~~be~~ prevail over the ad hoc promotees who are likely to be reverted if they are not selected in accordance with the merit by the DPC.

8. The respondents further reassert that the ad hoc promotions were only on seniority-cum-fitness basis. They contend that some candidates have even appeared twice in the list because these officers have qualified in the limited Departmental competitive examination and their names were also included in the panel prepared by the DPC. In the circumstances, the respondents deny the allegations made by the applicants and pray for the dismissal of the OA.

9. We have heard the learned counsel for the applicant Shri D.P. Mukherjee and Manoj Chatterjee, and the learned counsel for the respondents Shri M.L. Verma and perused the records.

10. The only issue to be considered is whether the ad hoc service rendered by the applicants should be taken into account for consideration of seniority as Assistant Engineer (Electrical). The contention of the applicants is that promotion on ad hoc basis was done by normal process and selection is applicable to regular promotion. This stand has not been accepted by the respondents who repeatedly stress that the ad hoc promotions were made purely on relaxed standards. The applicants however contended that even for ad-hoc promotions, there had been some supersession but the respondents argue that even with relaxed standards, supersessions are possible.

11. It was then argued that at the time of making a final panel in 1986, which was done for the first time after a gap of almost 13-14 years, ^{in some cases}, confidential reports pertaining to the period just prior to the DPC were taken into account, but it is the case of the respondents that the DPC proceedings were strictly based on the guidelines issued by the DP&AR's OM dated 24.10.80 and only the relevant cases were considered. The illustration given therein is as follows:

ILLUSTRATION: DPC meets in 1980. Number of vacancies in the year 1978 and 1979 were 8 and 7 respectively. It is proposed to fill also 9 more vacancies during 1980. There are 100 eligible officers:

Year	Panel for 1978	Panel for 1979	Panel for 1980
No. of vacancies	8	7	9
Field of choice	24	21	27
Take officers	1 to 24	7, 9 to 19, 21 to 29	7, 16 to 19, 21 to 42
DPC classified	Sl.No.0.20 as 'out- standing' & 7 & 15 'not fit' and rest 'very good'	Sl.No.7 as 'not yet fit' and rest 'very good'	No.40 is graded 'very good' and the rest as 'good'
Panel list will be	Sl.No.20, 1, 2, 3, 4, 5, 6 & 8.	Sl.No.9 to 15	
<u>Consolidated select list:</u>	Sl.No.20, 1 to 6, 8, 9 to 15, 40, 7, 16 to 19, 21 to 23.		

(c) for the purpose of evaluating the merit of the officers, the period of service of the officers for the purpose, of considering for inclusion in the panel relevant to any of the earlier years as contemplated in clause (b) above should be limited to the record that would have been available had the DPC met at the appropriate time; for instance, for preparing the panel relating to the vacancies of 1978, records of service of the officers only upto 1978 should be taken into account and not the subsequent ones. However, if on the date of actual DPC (1980 in the illustration) departmental proceedings are in progress and under the existing instruction sealed cover procedure is to be followed such procedure should be observed even if no such proceedings were in existence in the year to which the vacancy related (e.g. if in the illustration, in r/o officer No.6 empanelled against a 1978 vacancy even though the disciplinary proceedings were started only in 1980 (prior to DPC meeting), his name has to be kept in the sealed cover till the proceedings are finalised.

(d) While promotions will be made in the order of the consolidated select list, such promotion will have only prospective effect, even in cases where the vacancy related to an earlier year.

12. The applicants have relied on the direction of the Hon'ble Supreme Court in the case of Class II Engineers Association Vs. State of Maharashtra (1990(2) SC Case 715) relating to direct recruitment. We are convinced that the Supreme Court's directions were in the context of seniority dispute between two different groups namely direct recruits and promotees and the guidelines laid down will not be of direct application to this case, where the seniority dispute is amongst the promotees only. Still going by the principles laid down by the Supreme Court, we are convinced that the corollary of Principle A is equally applicable in this case. That states that where initial appointment is only ad-hoc and not according to rule, it is made as a ^{and} ^A stop gap arrangement and appointment on such basis can not be taken into account for consideration of seniority.

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13. The applicants were promoted on ad-hoc basis pending formalisation of a satisfactory promotion policy. The procedure adopted to consider them was on a mere relaxed standard than required for making regular promotion. In ~~one of~~ the promotion orders, it has been clearly stated that the concerned candidates were being promoted on ad-hoc basis only until further orders for a specified period (ranging from 6 months to one year) or till the date of next panel to be drawn by the DPC. It has also been added that if any one of them is not selected by the DPC for appointment to the grade of Assistant Engineer, he would be immediately reverted to the post of Junior Engineer.

14. It is well settled law that an ad-hoc or fortuitous appointment on a temporary or stop gap basis can not be taken into account for the purpose of seniority even if the appointee was qualified to hold the post on a regular basis, such temporary tenure hardly counts for seniority in any system of service jurisprudence.

15. It is unfortunate that the ad-hoc service continued for a quite a few years in a few cases but this had happened in ~~such~~ ^{the special} circumstances faced by the department in finalising the necessary recruitment rules for regular promotion.

16. In the circumstances, we feel that the ad-hoc service rendered by the applicants can not be taken for the purpose of seniority. The other points raised in the OA are not germane to the issue.

The OA is, therefore, dismissed. No costs.

P.T.Thiruvenkadam

(P.T.Thiruvenkadam)
Member (A)

C.J.Roy
(C.J. Roy)
Member (J) 26/11/93