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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH
DEHLI

O.A.NO.172 OF 1986.

DATE OF DECISION 1-8-1991.

Shri Gulab Choudhary

.. Applicant.

Vs.

Union of India.

.. Respondent.

CORAM: Hon'ble Mr. G.Sreedharan Nair, Vice-Chairman(J)
Hon'ble Mr. S. Gurusankaran, Member (A)

None for the applicant.

Shri P.H.Ramchandani, Sr.Counsel for the
respondent.

S. Gurusankaran:

JUDGMENT

The applicant's case is that he entered the Survey of India as a direct recruit through the Union Public Service Commission in Class-I (Group-A) Service on 14-4-1966 and was appointed as Deputy Superintending Surveyor. He was assigned a certain seniority among the Survey of India Junior Scale Group-A Officers. Later in the years 1967 and 1968 about 21 army Officers belonging to the Corps of Engineers were brought on deputation to the Survey of India from amongst the volunteers without any selection through the U.P.S.C. The applicant was promoted to the post of Superintending Surveyor on 18-5-1974 and the officers who were brought from the Corps of Engineers were also promoted to the post of Superintending Surveyor in due course. Since the promotion from Deputy Superintending Surveyor (Junior Grade) to Superintending Surveyor (Senior Grade) was not through selection it did not hurt the applicant. Subsequently, the large number of officers from the corps of Engineers have been promoted from the post of Superintending Surveyor as Deputy Director through selection by the Departmental Promotion Committee constituted

22

to consider the promotion of civilian officers. However, the applicant has not been brought within the zone of consideration, because all these officers from the Corps of Engineers, who were brought in at a much later date in the same grade as the applicant, that is, Deputy Superintending Surveyor, were shown enblock seniors to the applicant. The applicant contends that if the 21 officers from the Corps of Engineers had not been given seniority over the applicant, he would have come within the zone of consideration both in 1982 when the DPC met to fill up 12 vacancies and again to fill up 6 vacancies. The applicant has stated that he had a right to be considered for promotion prior to the officers from the Corps of Engineers, who were brought into the department at a later date. The applicant has sought the following reliefs:

(i) The promotion of all these Corps of Engineer Officers who were brought in Survey of India later than the petitioner in the same grade (as Dy. Superintending Surveyor), from the post of Superintending Surveyor to the post of Deputy Director be set aside. and no further civil promotion should be given to these Corps of Engineer Officers in Survey of India. Further, on the date of his appointment as Deputy Superintending Surveyor i.e., on 14-4-1966 the petitioner had been assigned a certain seniority, which could not be disturbed by bringing candidates from other sources as this violated the fundamental (service) right of the petitioner guaranteed to him under Art. 14 and 16 of the Constitution.

That in accordance with the judgment delivered by the Hon'ble Supreme Court in COL. A.S. IYER AND OTHERS v. V. BALASUBRAMANYAM AND OTHERS (AIR 1980 SC 452), the Corps of Engineer Officers in Survey of India continued to be the members of the Armed Forces and that they did not become the members of Survey of India service. Therefore, they could not be considered for promotion in Survey of India posts as this is violation of Army Act, army being a distinct service.



(ii) The respondent - Union of India should be directed not to make the combined seniority list of the Corps of Engineers Officers in Survey of India along with the applicant because in view of the holding of the Hon'ble Supreme Court in Col.A.S.Iyer's case vide AIR 1980 SC 452 the civilian and army officers in Survey of India are two separate classes of employees and that they do not get fused into one common service".

2. The respondents have resisted the claim of the applicant. They have taken a preliminary objection stating that the applicant has not furnished full details as to against which particular order of the Government he is claiming relief. They have further stated that if the grievance of the applicant is against his non-promotion, then all those persons, who would be affected adversely if his prayer is granted, should have been impleaded as necessary parties. The respondents have also submitted that the application is barred by limitation. Even otherwise, the application cannot be entertained since he has not exhausted all the remedies available to him. The respondents have clarified that the 21 Army Officers from the Corps of Engineers were not brought on deputation to the Survey of India, but they were recruited into the Survey of India in pursuance of the provisions contained in Rule 11 of the Survey of India (Recruitment from Corps of Engineer Officers) Rules 1950 (hereinafter referred to as the Rules) and were appointed as Deputy Superintending Surveyors. The Selection in their cases by the U.P.S.C. was not involved. They have added that the fixation of inter-se seniority between the civilian officers like the applicant and the Army Officers was made in accordance with the provisions contained in Rule 5 of the Rules and Rule 22 of the Survey of India Group 'A' (Recruitment) Rules, 1960. Accordingly

23

21 officers from the Corps of Engineers were ranked senior to the applicant. Since the method of promotion to the post of Superintending Surveyor is on the basis of seniority-cum-fitness, the officers on promotion in the grade of Superintending Surveyor are assigned seniority as provided in Rule 5 of the Rules. A parallel provision is also there in para 5 of Appendix-I of the Survey of India Group 'A' (Recruitment) Rules, 1960. The respondents have also stated that the promotion from the grade of Superintending Surveyor to the next higher grade of Deputy Director is through selection in accordance with the provisions contained in Rule 5-A(6) of the Rules and para 2(6) of Appendix-I to the Survey of India Group 'A' Recruitment Rules, 1960. In the three DPCs convened on 24-2-1982, 1-7-82 and 15-6-1983 for 12, 7 and 6 vacancies respectively, officers falling in the zone of consideration equal to three times of vacancies were considered and the applicant did not fall within the zone of consideration. The respondents have pointed out that the validity of the Recruitment Rules referred to above have already been upheld by the Supreme Court of India in Iyer's (supra) and as such it is not open to the applicant to agitate the constitutionality of these Rules, in this application.

3. The main grounds raised in the application / the applicant referred to the decision of the Supreme Court of India in Iyer's case (supra) and urged that the officers from the Corps of Engineers in Survey of India continued to be members of the Armed Forces and they did not become the members of the Survey of India. (i) It was also urged that as held by the Supreme Court in Iyer's case (supra) the respondents should not have maintained a combined seniority list of Corps of Engineer Officers and the directly recruited civilians.

L - J

4. Learned counsel for the respondents pointed out the seniority has been fixed strictly as per the Rules and the selections have also been made strictly thereto on the basis of the seniority assigned to both the civilian and the Army Officers. He stressed that the Supreme Court in its judgment in Iyer's case (supra) had given no direction to the Government to maintain separate seniority lists and it has upheld the preparation of the combined seniority list.

5. We have heard the counsel for the respondents and perused the records. The applicant was not present. The preliminary objections raised by the respondents in their reply have been rightly not pressed during the arguments. What is being assailed by the applicant is the basic principles of assigning seniority to the Officers from the Army and preparing a combined seniority list for both the civilian and army officers. Hence, the questions of limitation and impleading the concerned army officers as necessary parties are not relevant. We find that in the reliefs sought for by the applicant, he has not prayed for quashing any of the Rules. We have gone through the judgment of the Hon'ble Supreme Court in Iyer's case (supra), and observe that they have found no unconstitutionality in the Rules. They have also recommended maintaining of separate seniority lists for the directly recruited civilian officers and the Army Officers recruited from the Corps of Engineers. In fact in para 64 of that judgment the Supreme Court have observed as under:

The Counsel has not

".....The Learned Attorney General stated, with a view to silence the grievance of the respondents, that for promotions beyond Superintending Surveyor, even officiating S.S are considered. It is not right to contend, he said, that only on confirmation they are considered for promotion as Deputy Directors. Indeed, the learned Attorney General pointed out that many Deputy Directors have been only officiating S.Ss. We

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accept this as correct. If the officiating SSs are also included for higher promotion based on merit the wind of inequity is, pro tanto, taken out of the civilian sails".

The applicant has also not alleged that the selections conducted by the DPCs are in any way contrary to the provisions of the Rules. Even though in the relief claimed he has prayed that the Army Officers recruited from the Corps of Engineers could not be considered for promotion in Survey of India posts as this is violation of Army Act, army being a distinctive service, we do not propose to go into this question, since he has not laid any grounds to strike down any provisions made in the Rules. Since the constitutionality of any of the specific Rules has not been questioned and the Rules have been followed correctly by the respondents both in assigning seniority as well as the selection to the post of Deputy Director through DPC, we do not find any merit in the application.

6. In view of the above, the application is dismissed.

hawkins 1-8-1991
MEMBER (A)

swj
1-8-1991
VICE-CHAIRMAN