

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

(8)

O.A. No. 262 1986
T.A. No.

DATE OF DECISION 16.10.1987

Satnam Singh and others Petitioner s

Mr. H. M. Singh, Advocate for the Petitioner(s)

Versus

The Central Electricity Authority Respondents
and others

Mr. P. H. Ramchandani, Esq. Advocate for the Respondent(s)
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Mr. D. K. Kapoor, Advocate for other respondents

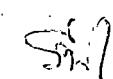
CORAM :

The Hon'ble Mr. S.P. MUKERJI, ADMINISTRATIVE MEMBER

The Hon'ble Mr. G. SREEDHARAN NAIR, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether to be circulated to all Benches - Yes/no


(G. SREEDHARAN NAIR)
JUDICIAL MEMBER


(S.P. MUKERJI)
ADMINISTRATIVE MEMBER

FINAL ORDER

(9)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH:NEW DELHI

Original Application No. 262 of 1986

Satnam Singh and others .. Applicants

-Vs,-

The Central Electricity
Authority and others .. Respondents

Counsel for the applicants .. Shri H.M.Singh
Advocate

Counsel for respondents 1 .. Shri P.H.Ramchandani,
to 3 Advocate

Counsel for other respondents .. Mr.D.K.Kapoor,
Advocate

CORAM: Hon'ble Mr.S.P.MUKERJI, ADMINISTRATIVE MEMBER
and

Hon'ble Mr.G.SREEDHARAN NAIR, JUDICIAL MEMBER

(Order pronounced by Hon'ble Mr.G.SREEDHARAN NAIR,
JUDICIAL MEMBER
on 16.10.1987)

This application reveals a
the peculiar situation wherein the Central
Electricity Authority (for short the 'CEA'),
with a view to provide better promotional
avenues for the departmental candidates in
the matter of recruitment to the post of draftsman
decided to enhance the quota of promotion from
25%, as fixed in the existing recruitment
rules made in the year 1961, to 50%, and to
make necessary amendment to the recruitment
rules, issued orders in the year 1964, with
the approval of the Ministry of Home Affairs,
to make further recruitment according to the
above mode and effected recruitment accordingly,
but after a period of 17 years decided to
relegate to the 1961 rules, and has chosen to
revert persons who were ~~approximately~~ promoted
and who had been continuously working in the
higher grade for years together. The applicants
are five such promotees who had been promoted
to the cadre of Junior Draftsman and even to
the next higher cadre of senior Draftsman.

The facts in brief are as follows:-

The Central Water and Power Commission

(Power Wing) Non-Ministerial posts (Class-III)

Recruitment Rules, 1961, provided that the posts of junior Draftsmen is to be filled up by direct recruitment to the extent of 75% and by promotion regarding 25%. Tracers, Ferro Printers/ Blue Printers who have completed at least three years of continuous service and who have qualified in the departmental examination for the post of junior Draftsmen were eligible to be promoted. According to the draft recruitment rules for Class -III (Non-Ministerial posts) in the Water Wing of the Central Water and Power Commission, posts of junior Draftsmen were to be filled up by direct recruitment to the extent of 66 2/3% and the rest by promotion. As it was felt that there should be a uniform method of recruitment and that the improvement in the promotional opportunities of those in the Power Wing is to be made, it was decided that

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in both the wings the quota for direct recruitment and for promotion shall be made 50 per cent for each. It was decided to amend the recruitment rules of 1961 accordingly, and in the meanwhile on 2.12.1964, an administrative memorandum ~~enable~~ was issued to effect recruitment, wherein it was provided that appointment to the post of junior Draftsman will be by direct recruitment to the extent of 50 per cent and the other 50 per cent is to be filled up from departmental candidates. Regarding the latter, 1/3rd was set apart for departmental candidates possessing diploma in draftsman ^{ship} and the balance 2/3rd was set apart for promotion of eligible departmental candidates in the grade of Tracers, Ferro Printers/Blue Printers. There was a writ petition in the High Court of Delhi in Civil Writ No.1219 of 1970 filed by four Tracers who were promoted to the cadre of junior Draftsmen in the year 1968. They challenged their position

in the seniority list of junior

Draftsmen on the ground that they

were eligible to be promoted earlier.

It was urged by them that being diploma

holders, though they were entitled to

be considered out of the special quota

of 1/3rd of the 50 per cent set apart

for promotion, at the same time they

were also eligible to be considered

against the remaining 2/3rd quota, as well,

along with the non-diploma holders. This

plea was found against by the High Court.

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However, the objection raised by them to

the seniority list in so far as it clubbed

the diploma holders with non-diploma

holders was found to be genuine and hence

the said seniority list was quashed.

The Central Water and Power Commission

and the Union of India, the respondents 1 and 2

in the petition, were directed to frame

rules for
the statutory/recruitment if they were

not yet framed till then. This direction

was given in view of the fact that a proper seniority list could not be prepared without statutory rules of recruitment. The High Court took note of the fact that the administrative decision of the year 1964 was taken on the basis of the draft rules. It was observed in the judgement that an agreed formula may be attempted to ^{be} thrashed out, whereby the interests of both groups are protected in view of the unique situation.

A meeting was held on 4.11.1982 to arrive at an agreed solution, but it did not yield any positive result. Thereupon, CCP 78 of 1985 was filed by the petitioners in the writ petition alleging that Govt. had acted contrary to the directions in the judgement. The ground urged was that the seniority lists have been published reverting to the 1961 rules. However, it was

held that there was no contempt.

It was observed that ¹⁵ direction for framing the statutory rules was given on the assumption that the ^{parties} authorities to the writ petition can agree on certain formula. At the same time, it was indicated in the order that the interest of persons who had been promoted on the basis of ¹⁵ administrative instructions has to be safeguarded.

Having reverted to the 1961 rules, orders have been passed reverting the applicants. These orders are challenged by them as arbitrary, illegal and violative of Articles 14 and 16 of the Constitution. It is pointed out that direct recruits have been ~~promised~~ permitted to score a clear march over them and that the benefit of service rendered by them for a number of years has been denied. It is also urged that the decision arrived at ¹⁵ the meeting held on 4.11.1982 to revert ~~to~~ to the 1961 rules, with retrospective operation, is

/8/

illegal and that the seniority list prepared on the basis of that decision cannot be sustained.

In the reply filed by respondents 1 and 2, it is contended that though the administrative instructions issued in the year 1964 were acted upon, as it was considered by the High Court as erroneous, since they had not been incorporated into the rules, and as the administrative instructions had been declared as null and void and Govt. was given right to proceed in the matter as it deemed proper in case no agreement is arrived at between the parties, the action of the respondents cannot be assailed as they are only "corollaries in implementation of a decision and direction given by the Delhi High Court". It is also stressed that promotion of the applicants had only been on ad hoc basis and as such, they have no right for regularisation and are not competent to challenge the orders of reversion.

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A reply has also been filed on behalf of respondents 6 to 8 and certain other respondents, all of them being direct recruits. They have challenged that the instructions dt. 1.12.1964 cannot override the provisions of the statutory rules of 1961 and as the entire action of the respondents 1 and 2 has been taken on the basis of the latter and as the same has been upheld by the Delhi High Court, the challenge in the ~~maintainable~~ application is not ~~applicable~~. According to them, the promotion of these applicants not being in conformity with the statutory rules, had necessarily to be set aside following which they had to be reverted.

Though a strenuous attempt was made by the counsel for the respondents to support the impugned action of the respondents, on a careful consideration of the matter we are of the view that the action cannot ^{have} ~~our seal~~ of approval.

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The Central Water and Power Commission as well as the Govt. of India were convinced that better promotional avenues have to be opened to the Tracers, Ferro Printers/Blue Printers in the Power Wing of the Commission in the matter of promotion to the cadre of junior Draftsmen. It was on that account that a decision was taken to amend the statutory rules, in the year 1964, so as to raise the quota of promotion also to 50 per cent. It was subsequently decided to amend the recruitment rules accordingly for which a draft was also prepared. Pending publication of the amended rules, as promotions had to be made, executive instructions were duly issued under which the quota of promotion was enhanced to 50 per cent. This was done in December 1964. Thereafter promotions were made on that basis and that too on a regular basis after the constitution of the Departmental Promotion Committee (for short 'DPC')
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and on the basis of its recommendations.

Though there is a statement in the reply

filed by respondents 1 and 2 that the

promotion was only on ad hoc basis, a

order

perusal of the promotion in respect of

the second applicant had revealed that it

was made on a regular basis, being directed to be

on probation for a period of two years from

the date of promotion. It is not in dispute

that all the five applicants have been

promoted to the cadre of junior Draftsman

and some of them even to the next higher

Senior
cadre of draftsman, senior draftsman and

that they had been working in the said

capacity. They have been reverted by the

impugned orders passed in the year 1985.

are stated to

These orders have been passed on the basis

of the decision of the respondents 1 and 2

to revert to the 1961 rules under which the

quota for promotion is only 25 per cent. The

only ground on which this decision is stated

to have been taken is the filing of the writ petition

before the High Court of Delhi by four junior

/12/

Draftsmen, in Civil Writ No.1219 of 1970 and the decision therein. We have carefully perused the judgement of the Delhi High Court in the said writ petition and have also analysed the circumstances ^{under} which that petition happened to be filed. After doing so, we have no hesitation to hold that the respondents 1 and 2 cannot take shelter under the said judgement for the action that is impugned.

As was pointed out earlier, while enhancing the quota of promotion for the departmental candidates to 50 per cent, it was also provided that out of that 50 per cent 1/3rd shall be by appointment of departmental candidates, possessing diploma in draftsmanship and the remaining 2/3rd by promotion of eligible departmental candidates in the grade of Tracers, Ferro Printers/Blue Printers, with three years of service. The petitioners before the High Court were diploma holders, and they secured their promotion out of the 1/3rd set apart for them. The claim put forth by them in the writ

8-

petition was that they were eligible to be considered out of the remaining 2/3rd as well and as such they should have been promoted earlier. Thus it is clear that the dispute in the writ petition was purely as between the departmental candidates, and those possessing diploma in draftsman^{ship} and the others. It is to be emphasised that the direct recruits did not come into the picture at all and the reduction of the quota for direct recruitment was not at all in issue. So much so, the pendency of the writ petition or the decision therein, cannot at all have any bearing on the promotion of the departmental candidates that was made, giving them a quota of 50 per cent. We are emphasising this aspect because it was submitted on behalf of the respondents 1 and 2 that though the recruitment rules of 1961 were decided to be amended by enhancing the quota for promotion it was not done as the matter was ~~under~~ sub-judice in the aforesaid writ petition. This submission does not deserve acceptance. In this context, it is also to be

pointed out that the decision to enhance the quota was taken in the year 1964. The writ petition was filed before the High Court of Delhi only in the year 1970. There is no satisfactory explanation as to why the amendments were not actually made and published during this period. It is also significant to note that in pursuance of the decision, executive instructions were issued in that behalf and DPCs were constituted, and based on their recommendations, promotions were being made during this period. During the pendency of the writ petition before the High Court as well, promotions were continued to be made, though no DPC was constituted.

In the writ petition, the claim of the petitioners that they are entitled to be considered for promotion even from the 2/3rd of the 50 per cent was found against them. However, as the impugned seniority list was prepared clubbing together the diploma holders and the non-diploma holders, the seniority list was set aside and a fresh

seniority list was directed to be prepared.

Respondents 1 and 2 have contended that the administrative instructions issued in the year 1964 were declared to be null and void by the aforesaid judgement, and it is urged as one of the grounds for reverting to the 1961 rules. On going through the judgement we are not able to find any such declaration. On the contrary, it has been pointed out in the judgement that the administrative decision was taken apparently on the basis of the draft rules and that it is a matter of regret that no amendment was effected in the statutory rules to incorporate the said decision. The High Court had clearly stated that the decision taken in 1964 was a solemn decision in terms of the draft rules and was implemented by the Commission and that once the Commission took a decision in 1964 to assign further quota to diploma holders separately, the Commission again could not look back to 1961 rules. It was

on account of this ~~background~~ backdrop that the respondents 1 and 2 were directed by the judgement to frame statutory rules of recruitment as early as possible if they had not been framed till then. As such, it is clear that the High Court was also in favour of accepting the decision to enhance the quota in respect of promotion, and had only pointed out that the amendment to the statutory rules incorporating this decision had to be issued soon. The attempt to revert to 1961 rules after taking note of this decision was not approved ~~expressed~~ by the High Court.

Much reliance was placed by the counsel for the respondents on the observation that "A solution lies in thrashing out an agreed formula, whereby interests of these groups are protected in this unique situation obtaining in the Commission". It was submitted that at the meeting held on 4.11.1982, it was not possible to arrive at an agreed formula and hence the decision to revert to the 1961 rules

/17/

was arrived at. In case, it was not possible to arrive at an agreed formula, as regards the dispute between the diploma holders and the non-diploma holders, what should have been done was to do away with the reservation of the 1/3rd out of 50 per cent for diploma holders and to treat all the departmental candidates on a par. At any rate because it was not possible to arrive at an agreed formula as between the two groups, we are not able to comprehend while the wholesome scheme of providing ~~as~~ a quota of 50 per cent in the matter of promotion of departmental candidates as such, ~~as~~ as formulated as a result of the conviction on the part of the Central Water and Power Commission and the Govt. of India that better promotional opportunities have to be afforded to the departmental candidates - was done away with and it was decided to revert to the 1961 rules, retrospectively, without

due regard to the fact ^{that} during the period of 17 years, executive instructions were acted upon and promotions had been made to the extent of 50%.

The counsel for the respondents placed considerable reliance on the subsequent order of the High Court dt. 17.5.1985 passed on a contempt petition moved by the writ petitioners wherein they alleged that the decision of respondents 1 and 2 to revert to the 1961 rules amounts to contempt as it is violative of the directions in the decision on the writ petition. It is true the High Court held that there is no contempt committed by the Central Water and Power Commission. But that does not mean that the present applicants are precluded from urging the claim that has been made. In the order on the contempt petition, the High Court has clearly stated that directions had been given in the writ petition that statutory rules incorporating the 1964 administrative instructions should be issued

by the Govt. immediately. It is also seen from the order that the submission of the petitioners therein that since the administrative instructions were followed from 1964 to 1981 and on that basis promotions were made, the immediate effect of the decision of the Commission would be to revert some of the petitioners to lower posts which would mean loss of considerable service in the promotional posts, was found to be on merit, and it was pointed out that "not only that it would be contrary to the principles of equity, but the resultant prejudice has its roots in the Commission's own decision to follow the administrative instructions for 17 years and that persons who were promoted on the basis of the said administrative instructions cannot be now left in lurch by reversal of the decision". In view of the above, merely because it was found

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/20/

that no contempt as such was committed by the Commission, the respondents 1 and 2 cannot support their action.

It follows ~~that~~ ^{that} the plea of the respondents 1 and 2 that what has been done is only a corollary to the implementation of the ~~decision~~ decision of the direction given by the High Court of Delhi in the writ petition ~~cannot be accepted~~

In Narendra Chaddha and others - Vs. - Union of India (AIR 1986-SC - 638), the Supreme Court has held that when an officer has worked for a long period for nearly 15 to 20 years in a post and had never been reverted, it cannot be held that the officer's continuous officiation was a merely temporary or local or a stop-gap arrangement even though the order of appointment state ~~may~~ ^{so} ~~exist~~ Hence there is no merit in the plea of the respondents 1 and 2 that the promotion of these applicants was only on an ad hoc basis and as such they are not entitled to relief. In the aforesaid decision, the

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/21/

Supreme Court proceeded to lay down
that in such circumstances the entire
period of officiation has to be counted
for seniority and that any other view
would be arbitrary and violative of Art.14
and 16(1) of the Constitution because the
temporary service in the post in question
is not for a short period intended to meet
some emergent or unforeseen circumstances.

In K.N.Misra and others - Vs.- Union
of India and others (ATR 1986 (2)-CAT 270) this
Bench of the Tribunal has laid down that the
benefit of the long period of service would
accrue to all promotees who continuously
officiated against long term vacancies and that
the continuous period of officiation would have to
be reckoned for determining seniority.

It is not in dispute that by the
decision of the respondents 1 and 2, persons
who have been recruited direct have been able
to steal a march over the promotees in the

/22/

matter of seniority. In A.Janardana - Vs. -

Union of India (AIR 1983-Supreme Court - 769),

the Supreme Court has held that "a direct

recruit who comes into service after the

promotee was already unconditionally and

without reservation promoted and whose 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 and 16 of the

Constitution".

It is submitted by counsel for the

respondents 1 and 2 that the promotion of

these applicants is invalid ~~and is~~ ^{as being} opposed to

1961 statutory rules and as such they cannot

assail the orders of reversion. We are afraid

that it is not open to the respondents 1 and 2

to advance this plea in support of their action.

This is not a case where by a inadvertance or

oversight, a promotion has been made in respect

of one or two employees, in violation of the

rules. On the contrary, this is a case where to enhance the promotion quota a ~~wanton~~ decision was taken by the respondents 1 and 2 to amend the existing recruitment rules and in that behalf executive instructions so that were issued till the draft amendment was finalised, promotions could be made based on the same. The question is whether such orders of promotion made deliberately and consciously, and when they have been allowed to be in force for years together allowing the promotees to work in the promoted post continuously and even granting promotion to the next higher cadre, can it be said ^{to be} invalid little and as such to be set aside on the short ground that they they are based only on executive instructions. The answer has to be in the negative.

In the result, the impugned orders reverting the applicants are hereby quashed. The applicants shall be given their due seniority

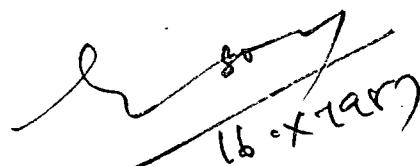
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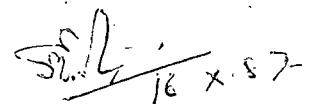
/24/

in the seniority list of junior Draftsmen
on the basis of their promotion, in the light
of this order.

The application is allowed as above.


16.X.87

(G.SREEDHARAN NAIR)
JUDICIAL MEMBER


16.X.87

(S.P.MUKERJI)
ADMINISTRATIVE MEMBER

16.10.1987

Index:yes/no

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