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CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH

NEW DELHI

O.A. NO. 1264/90

New Delhi, 9 September, 1994

CORAM :

THE HON'BLE MR. S. R. ADIGE, MEMBER (A)

THE HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J)

1. Shri R. S. Prasad,
R/O 48, Engineers' Enclave,
Pitampura, Delhi and
working as Chief Engineer,
Office of National Water
Development Agency,
New Delhi.
2. Shri O. P. Sehgal,
R/O S-87, Greater Kailash-II,
New Delhi and working as
Director (SG), Central Water
Commission, New Delhi.

... Applicants

By Advocate Shri Gyan Prakash

Versus

1. Union of India through
Secretary, Ministry of
Water Resources,
Shram Shakti Bhawan,
New Delhi.
2. Chairman, Central Water
Commission, Sewa Bhawan,
R.K.Puram, New Delhi.
3. Secretary, Deptt. of Personnel
& Training, North Block,
New Delhi.
4. Secretary, Union Public
Service Commission,
Shahjahan Road, New Delhi.
5. Shri G. C. Bhandari,
Suptd. Engineer (WM), Lok
Nayak Bhawan, New Delhi.
6. Shri M. S. Menon, Secretary,
C.W.C. Sewa Bhawan, R.K.Puram,
New Delhi-110066.
7. Shri V. Narayanan, Director
(Gates NW&S), Central Water
Commission, West Block No. II,
R.K.Puram, New Delhi-66.

... Respondents

By Advocates Shri Madhav Panikar on behalf of
Respondents 1 to 4, and Shri B. N. Singhvi, Sr.
Counsel with Shri S. S. Tiwari, Counsel, for
Respondents 5 to 7.

O R D E R

Shri S. R. Adige, Member (A) —

In this application Shri R. S. Prasad and Shri O. P. Sehgal have impugned two orders dated 15.12.1989 (Annexures A-1 & A-2) changing their seniority, and have prayed that their seniority as determined and notified on 1.1.1977 for the post of Deputy Director/Executive Engineer should be maintained and followed for all future promotions under the Central Water Engineering (Group 'A') Service.

2. The case of the applicants is that they were appointed as Assistant Director (corresponding to Assistant Executive Engineer/Research Officer) in the Central Water Commission on UPSC's recommendations on 9.1.1964 and 28.12.1963 respectively in the Junior Group 'A' Service (Rs.2200-4000), and were promoted as ad hoc Dy. Director/Executive Engineer (scale Rs. 3000-4500) on 24.10.1972 and 12.10.1972 respectively. Thereafter, on the basis of regularly constituted DPCs they were promoted in Junior Administrative Grade (JAG) (Ordinary) on 1.4.1986 and 3.2.1986 respectively and subsequently in the JAG (Selection Grade) (Rs.4500-5700) on 12.12.1986 and 1.9.1986 respectively. They state that by the two impugned orders dated 15.12.1989 the respondents have unilaterally changed the very date of appointment as Dy. Director/Executive Engineer and also lowered the seniority of the applicants vis-a-vis those who were junior to them. The impugned orders have changed the position of applicants as Dy. Director/Executive Engineer as under :-

*Change in dates of promotion as Dy. Director/E.E.
due to order dt. 15.12.89

	Original date of promotion as Dy. Dir./ Ex. En.	Revised Deemed date of promotion as per order dt. 15.12.89
Sh. R. S. Prasad	26.11.75	22.2.76
Sh. O. P. Sehgal	17.11.75	26.11.75
Dr. B. K. Mittal	27.12.75	16.3.76
	Original ran- king in seni- ority list of DD/EE as on 1.6.77	Revised ranking in seniority list of Dy. Dir/E.E. as on 1.6.77 as per order dt.15.12.82
Sh. R. S. Prasad	183	186
Sh. O. P. Sehgal	179	182
Dr. B. K. Mittal	184	188

3. The applicants allege that they have lost their seniority in the grade of Dy. Director/Ex. En. after 14 years, without knowing the reasons for the same, which is discriminatory, against natural justice and is barred by delay and laches, and violates Articles 14 and 16 of the Constitution.

4. Respondent No.4, UPSC, have filed their reply in which they have contested the O.A. They have stated that the application is barred under the doctrine of res sub-judice as O.A. No. 408/87 has already been sub-judice in the Tribunal, in which the applicants have been impleaded as parties. They state that in 1963, the UPSC recommended 36 candidates for appointment as Asstt. Director/Asstt. Ex. En. in C.W.C. These names were forwarded by UPSC in three lots. The seniority of the candidates had not been fixed correctly according to order of merit but was drawn up according to the order in which their names were

recommended. However, the above error was rectified in the seniority list drawn up on 8.11.1978 in the grade of AD/AEE. However, prior to 8.11.1978, a DPC was held on 9.9.1974 for preparing a panel for promotion from the grade of AD/AEE to the grade of DD/EE. They contend that the post of DD/EE is a non-selection post and promotion is made on the basis of seniority-cum-fitness. A panel of 60 names was prepared by the DPC which included the names of the officers who were appointed to the grade of AD/AEE on the basis of the UPSC's recommendations of 1963. As the inter-se seniority in the grade of AD/AEE was not fixed correctly on 9.9.1974 when the DPC met, their inter-se position in the panel for promotion as DD/EE also suffered from the infirmity of promotions not having been made in the correct seniority order. The affected persons represented to C.W.C. in October-November, 1983 regarding wrong fixation of their seniority in the grade of DD/EE, and it was conceded that the seniority of the applicants and other similarly placed officers would require revision. Meanwhile, the panel proposed by the DPC in its 9.9.1974 meeting for promotion to the grade of DD/EE was challenged separately in O.A. No. 12/85, and eventually it was decided that the review DPC of 9.9.1974 be held after the decision of the Tribunal in O.A. No. 12/85 became available. Meanwhile, as the affected officers were not being given their due seniority in the grade of DD/EE they filed another O.A. bearing No. 408/87 before the Tribunal, in reply to which the respondents agreed to revise the seniority in the grade of AD/AEE and to hold a review DPC for giving applicants in O.A. 408/87 their due seniority in the grade of DD/EE.

5. Respondent No. 5, Shri G. C. Bhandari, Assistant Engineer, has also filed his reply in which he has pointed out that in compliance with the judgment of the Delhi High Court in W.P. No. 878/68 and 1214/70, the seniority list of officers in the grade of AD/AEE in C.W.C. was revised as on 8.11.1978. It has been stated that the said revised seniority list showing respondent No.5 as senior to the applicants was nowhere challenged by them, and instead the applicants have been making misleading statements that their seniority has been altered after 14 years without giving them any opportunity to show cause against the same. It is stated that in the said writ petition before the Delhi High Court these applicants as well as the respondents were parties, and the seniority list as on 8.11.1978 of AEs was published in compliance with the Delhi High Court's directives to the C.W.C. in which respondent No. 5 was shown at sl. No. 220 while the applicants were shown at sl. Nos. 222 and 232. It is stated that by way of consequential relief, respondent No.5 was deprived of the benefits of the restored seniority while the applicants enjoyed their old seniority and continued to be shown as senior to respondent No.5. When he failed to get consequential benefits as directed by the Delhi High Court, he filed O.A. No. 408/87 in which the applicants herein were respondents 3 and 4 respectively. In that O.A. while the applicants resisted the claim of respondent No.5, the Union of India and the C.W.C. sworn in an affidavit on 24.8.87 admitting that the C.W.C. had committed a mistake by not giving benefits to respondent No.5 and made a statement that review DPC would be constituted shortly

to consider his claim. It is claimed that the applicants had also filed their reply in that O.A. on 19.11.1987 and in that reply also they did not challenge the seniority list as on 8.11.1978. It is stated that pursuant to the said affidavit filed by the Union of India and C.W.C., respondent No.5 was given his due seniority by the impugned orders and notional promotion to the grade of DD by assigning deemed dates. Similarly, the seniority list as on 1.6.1977 was also re-arranged as per the directives of the Delhi High Court.

6. We have heard Shri Gyan Prakash for the applicant, Shri Madhav Panikar for the official respondents and Shri B. N. Singhvi, sr. counsel with Shri S. S. Tiwari, for respondents 5, 6 and 7.

7. We have given the matter our careful consideration. There is little doubt that the grievance of the applicants actually stems from the judgment of the Delhi High Court in writ petition nos. 878/68 and 1214/70 resulting in the revision of the seniority list as on 8.11.1978. The review DPC meeting and the issue of the two impugned orders dated 15.12.1989 is only the logical outcome of the revision in the seniority list and in implementation thereof. The applicants are stated to have been parties in w.p. No. 878/68 and 1214/70 and in that event they should have voiced their grievance in the appropriate forum at that stage itself. Shri Gyan Prakash argued during hearing that the DPC proceedings were incomplete and, therefore, null and void, because the UPSC's Member under whose chairmanship the meeting was to have been

held, was not present and his signatures were not obtained on the minutes. Shri Gyan Prakash, however, admitted that no such averment has been made in the pleadings and this argument advanced was entirely outside the pleadings. We do not consider it proper to make an inquiry into a matter which according to the applicants' own averment lies wholly outside the pleadings.

8. What we are being asked to do, in short, is to set aside action taken by the respondents based on the judgment of the Delhi High Court dated 19.8.1977 in W.P. No. 878/68 and 1214/70. No such action would be warranted in law on our part, and under the circumstances, this application fails and is dismissed. No costs.

Lakshmi Swaminathan
(Mrs. Lakshmi Swaminathan)
Member (J)

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(S. R. Adige)
Member (J)

/as/