

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

10

C.A. No. 221/90

New Delhi, this the 22nd day of July, 1994.

HON'BLE SHRI C.J.RUY, MEMBER (J)

HON'BLE SHRI P.T.THIRUVENGADAM, MEMBER (A)

Shri S.K.Gupta
s/o late Shri JN Gupta
Staff Officer Grade II
Engineer-in-Chief Branch,
Rajaji Marg, Kashmir House,
New Delhi.

..Applicant.

(By Shri Shyam Moorjani, Advocate)

Vs.

1. Union of India, through:

The Secretary,
Ministry of Defence, South Block,
New Delhi.

2. Engineer-in-Chief,

Army Headquarters,
Kashmir House, Rajaji Marg,
New Delhi.

..Respondents

(By Shri V.S.R.Krishna, Advocate)

ORDER

HON'BLE SHRI C.J.RUY, MEMBER (J)

The applicant entered service as Assistant Executive Engineer (AEE) in class I in Military Engineering Service on 13 April 1968 on selection through Engineering Services Examination conducted by the Union Public Service Commission in the year 1966. The next avenue of promotion to the applicant is to the post of Executive Engineer. It is the applicant's case that he was selected by a Departmental Promotion Committee and promoted in the year 1978 as Executive Engineer. The applicant concedes that his promotion as Executive Engineer effected in the year 1978 was based on the 1974 seniority list of AEEs. This list was challenged in the Supreme Court and was quashed in the case of

A. Janardhana Vs. Union of India reported in AIR 1983 SC 769. The Departmental Promotion Committee met again and found the applicant suitable for the grade of Executive Engineer as per letter issued by the Engineer-in-Chief Branch No.A/41023/1/85/EIR dated 13-6-86 (An.A2 of DA), wherein the applicant figures at Sl.No.102. Seniority list of Executive Engineers was issued by the respondents vide their notification dated 16-3-1988 (An.A3 of DA) and the applicant has a grievance that in this impugned seniority list persons junior to him having lesser length of service have been placed above him. Against this, the applicant submitted an appeal on 5-8-1988 and there was no response. Hence he filed this O.4. claiming reliefs, as under.

"In view of the facts mentioned in para 4 above, the applicant prays that this Hon'ble Tribunal may be pleased to issue an order or direction quashing the seniority list issued by the 2nd respondent in No.A/41022/1/88/EIR(O) dated 16-3-88 and promotions made on above basis and published vide No. A/41022/1/88/EIR(O) dated 23-12-88 and direct the respondents to draw seniority list again based on length of service in the grade of Executive Engineer and make promotions based on this revised seniority list and promote the applicant to the post of Superintending Engineer by including his name in accordance with his seniority based on continuous length of service, and award all such consequential and incidental benefits including seniority and emoluments as would accrue to him from the date of vacancy in higher grade and pass such other orders or further orders as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case."

2. The main ground advanced by the learned counsel for the applicant is that the operative portion of the Hon'ble Supreme Courts orders in the case of A. Janardhana Vs. U.O.I & Ors. directed re-adjustment of promotions made consequent to the quashing of the seniority list of A.E.Es issued on 14-6-74. He further stated that 're-adjustment' would not indicate that the promotion ordered for the applicant in 1978 ~~is~~ based on the Departmental Promotion Committee which had met then stands nullified. In other words, the applicant should be given the benefit of regular promotion from 1978 itself and if any adjustments have to be made by the ^{the} in virtue of revision/seniority list, such beneficiaries could -- take a march over the applicant but should not in any way affect his regular continuous working from the year 1978. To appreciate the contention of the 1d. counsel for the applicant, we reproduce below paras 37 and 39 of the Hon'ble Supreme Courts' orders quoted above supra:

"37.- Appellant had also sought a direction for quashing the panel for promotion dated January 13, 1975 of 102 officers included in E-in-Cs Proceedings No.65020/EE/74/EIR on the ground that the panel for promotion is drawn up on the basis of impugned seniority list, in which the appellant and several similarly situated AEE promoted way back in 1962 onwards did not find their place and were therefore not treated as being within the zone of selection. This relief must follow as a necessary corollary because once 1974 seniority list is quashed and consequently a declaration is being made that 1963 and 1967 seniority lists were valid and cannot be set at naught by principles of seniority determined in 1974, any panel drawn up on the basis of the

invalid seniority must fall and must be quashed."

x x x

"39.- Accordingly, this appeal must succeed and is hereby allowed. The judgment of the High Court dated May 15/17, 1979 is set aside and the writ petition filed by the appellant in the High Court to the extent herein indicated is accepted. Let a writ of certiorari be issued quashing and setting aside the seniority list dated June 14, 1974. It is further hereby declared that the seniority lists of 1963 and 1967/68 were valid and hold the field till 1969 and their revision can be made in respect of members who joined service after 1969 and the period subsequent to 1969. The panel for promotion in respect of 102 officers included in E-in-C's proceedings No.65020/EE/74/EIR dated Jan 13, 1975 is quashed and set aside. All the promotions given subsequent to the filing of the petition in the High Court are subject to this decision and must be readjusted by drawing up a fresh panel for promotion keeping in view the 1963 and 1967/68 seniority list of AEE in the light of the observations contained in this judgment."

3. From a perusal of the above, we are convinced that any panel which had been formed based on the seniority list of 1974 should be held to be invalid. Accordingly the promotion made to the applicant in 1978 utilising the 1974 seniority list has been correctly held to be invalid by the respondents and hence he was reconsidered in the Review Departmental Promotion Committee held subsequently in the year 1985. The service rendered by the applicant as Executive Engineer from the year 1978

till 1982 (the year against which the applicant was selected for promotion to the grade of EE years etc.) based on his grading, vacancies over the should be deemed as adhoc service. It cannot count for seniority. It is an accepted position in law that the period of officiating service will not count for seniority, if the officiating service is due to the appointment not made in accordance with the rules. Thus we do not see any force in the main contention that the service rendered by the applicant between 1978 and 1982 should be reckoned for seniority in the post of Executive Engineer.

4. The respondents in the reply have brought out the background to the issue of the impugned seniority list of Executive Engineers in 1988 consequent to the orders of Hon'ble Supreme Court in the case of A. Janardhana Vs. U.G.I. A review D.P.C was constituted in the year 1985 and 1986 for reviewing the promotions made based on 1974 seniority list for AEEs. This Review DPC took into account the factors pertaining to the various years for which the earlier DPCs had been held and which panels had become invalid consequent to the orders of Hon'ble Supreme Court. The Supreme Court had held that the seniority list of 14-6-74 is quashed and declared that the seniority lists of 1963 and 1967/68 are valid and hold the field till 1969 and further promotions were to be made keeping in view only these valid seniority lists. The applicant by virtue of his seniority in the grade of AEE and the grading awarded to him by the DPC was selected for promotion to the grade of EEE against the vacancies pertaining to the year 1982. The officers shown senior to the applicant in the seniority list of EE are those who had either been selected

for promotion to the grade of EE by an earlier DPC or had the higher positions in the panel pertaining to the DPC held in 1986. The contention of the respondents is that the seniority of the applicant has been correctly fixed in the grade of EE in accordance with his position in the panel vide which he was selected for promotion to the grade of EE. The applicant cannot claim seniority over those who are senior to him in the panel in which his name had been included. We also note that the proceedings of the Review DPC have not been challenged by the applicant.

5. We are satisfied with the action taken by the respondents in pursuance of the orders of the Hon'ble Supreme Court in A.Janardhana Vs. U.O.I and we see no reason to fault the same. Once the seniority list of 16-3-88 has been based on the Review DPCs, further promotion to the post of Superintending Engineers would be in accordance with this list.

6. In the circumstances the U.A. is dismissed as being devoid of merit. No costs.

P. T. Thiruvenkadam
22/7/88
(P.T.THIRUVENGADAM)
Member (A)

22/7/88
(C.J.ROY)
Member (J)