

(26)

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI

O.A./T.A. No. 2578/90 /19

Decided on: 2.7.96.

Pawan Kumar Jain ..... APPLICANT(S)  
(By Shri G.K. Agarwal) ..... Advocate)

VERSUS

UOI ..... RESPONDENTS  
(By Shri Shri M.K. Gupta ..... Advocate)

CO RAM

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

THE HON'BLE ~~SHRI S.R. ADIGE~~ / DR. A.V. EDAVALLI, MEMBER (J).

1. To be referred to the Reporter or not? Yes, ☒
2. Whether to be circulated to other Benches of the Tribunal? ☒

*S.R. Adige*  
(S.R. ADIGE)  
MEMBER (A).

CENTRAL ADMINISTRATIVE TRIBUNAL  
Principal Bench

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O.A. No.2578 of 1990

New Delhi, dated the 2<sup>nd</sup> July 1996

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

HON'BLE DR. A. VEDAVALLI, MEMBER (J)

Shri Pawan Kumar Jain,  
C/o Shri G.K. Aggarwal,  
G-82, Ashok Vihar-I,  
Delhi-110052. .... APPLICANT

(By Advocate: Shri G.K. Aggarwal)

VERSUS

Union of India through the  
Secretary,  
Ministry of Urban Development,  
Nirman Bhawan,  
New Delhi-110011. .... RESPONDENTS

(By Advocate: Shri M.K. Gupta)

JUDGMENT

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

In this application filed on 3.12.90  
Shri Pawan Kumar Jain has sought the following  
reliefs:

- (a) Quash entry at Sl. No.1063 in  
Annexure-2 dated 25.4.86 in  
respect of the Applicant as  
Assitant Engineer (Civil) in CPWD  
(CES Group 'B') and
- (b) Direct the respondent to treat the  
applicant for all purposes  
including promotion to higher  
grades, as regularly promoted  
AE(Civil) effective 21.2.77 (if  
not, effective 1.7.77) and
- (c) Direct the Respondent to promote  
the Applicant, if he made the  
grade, as Executive Engineer (C)

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and higher, retrospectively with arrears, etc. with 15% interest, on the basis of his seniority as AE (C) effective 21.2.77 (if not, effective 1.7.77).

2. Shortly stated the applicant who is a diploma holder in Civil Engineering was appointed as J.E.(C) in C.P.W.D. on 15.12.59. By C.P.W.D. Office Order No.78 dated 21.2.1977 (Annexure A-3) the applicant was promoted as AE(C) on ad hoc basis for a period not exceeding 12 months. Subsequently by C.P.W.D. Office Order No.330 dated 1.7.1977 (Annexure A-4) the applicant was promoted against 50% vacancies reserved for departmental candidates for promotion on merit-cum-seniority basis and was placed on probation for two years. The order stated that the inter-se seniority of the persons promoted on the basis of merit-cum-seniority, and those who were promoted on the basis of the results of LDCE would be decided later on. The applicant's name found mention at the S.No. 27 of that list. The order further stated that these promotions would be subject to the judgment of the Delhi High Court in the Writ Petition No.1618 of 1976 filed by Shri M.M. Bijani & Others. Thereafter by C.P.W.D. Office Order No.55 dated 25.1.1979 (Annexure A-5), the earlier order dated 1.7.1977 as well as the other orders were superseded, and a revised list of those JEs promoted as AEs on the basis of seniority-cum-merit, as well as on the basis of the results of the LDCE held

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by UPSC in July, 1978 was issued. The said order made it clear that these promotions would be subject to the decision of CWP NO.703 of 1978 filed in the Delhi High Court by Shri C.K. Bhaskaran and others and as well as CWP No.617 of 1976 filed by Shri M.M. Bijani and Others. Subsequently by C.P.W.D. Office Order No.341 of 16.6.1982 (Annexure A-6) the applicant was declared as having successfully completed the probationary period as on 25.1.1981. The applicant's case is that by respondents' order dated 25.4.1986 (Annexure A-2) his deemed date of regular promotion to the grade of AE has been fixed as 30.12.1983 by the respondents unilaterally and his representation has been arbitrarily rejected by respondents O.M. dated 2.5.1988 (Annexure A-1). His contention is that he should be treated as a regularly promoted AE w.e.f. 21.2.1977 or at least w.e.f. 1.7.1977.

3. Together with the O.A., a petition for condonation of delay was filed in which it was contended that on receipt of order dated 2.5.1988 rejecting his representation, he took legal ~~counsel~~ <sup>counsel</sup> and was advised to await the outcome of case No.T-235/1985 M.M. Bijani Vs. Union of India and that limitation would be 18 months from the date of the judgment. The applicant contends that he accepted that advice in good faith. He states that judgment in Bijani's case (Supra) was delivered on 9.6.1989 and this O.A. having been filed within 18 months of that date, is within limitation.

4. The respondents in their reply have challenged the O.A. both on grounds of limitation as well as on merits. They have strongly contended that the same is fit to be dismissed.

5. We have heard Shri G.K. Aggarwal for the applicant and Shri M.K. Gupta for the respondents. We have also considered the materials on record and given the matter our careful consideration.

6. At the outset we note that the impugned order against which the applicant has filed the O.A. which constitutes the cause of action is dated <sup>25.4</sup>25.4.1986 while the O.A. itself was filed on 3.12.1990, and it is, therefore, squarely hit by limitation under Section 21

A. T. Act. Even if the order dated 2.5.1988 (Annexure A-1) communicating rejection of the applicant's representation is taken as the date from which the cause of action arose, the provisions of Section 21 A.T. Act are attracted. The date of judgment in Bijani's case (9.6.1989) cannot be taken as the date from which the cause of action in the applicant's case arose because in Bhoop Singh Vs. U.O.I., JT 1992 (3) SC 322, the Hon'ble Supreme Court has held that the judgment/orders of the Court in other cases do not give or extend the cause of action which has to be reckoned from the actual date it arose, which in the present case is 25.4.1986, or at any rate 2.5.1988. Hence, this O.A. is squarely hit by limitation under Section 21 A.T. Act and is fit to be

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dismissed on this ground alone.

7. We have also examined the applicant's contention on merit.

8. The first question that arises is to establish the identity of the applicant beyond doubt because we notice that in respondents Office Order dated 25.1.1979 there are two persons with the same initials and surname, i.e., P.K. Jain shown, one at S.No.19 and the other at S.No. 61. ~~and~~ In fact the respondents, in their additional reply dated 11.12.1995 to the applicant's rejoinder to the respondents reply to applicant's M.A. No. 1125 of 1995, have stated that there were in fact 3 persons all with the same initials and surname, P.K. Jain viz. P.K. Jain Sl.No.765 of seniority list of JE's<sup>1974</sup> who expired on 7.11.1977; P.K. Jain Sl.No.1236 of that seniority list who retired on 12.7.35 and the present applicant Pawan Kumar Jain Sl.No.1772 of that list.

9. Proceeding further, we note that the order dated 21.2.1977 itself clearly stated that the applicant's promotion as AE was on a purely temporary and ad hoc basis, for a period not exceeding 12 months from the date he assumed the charge and would not confer upon him any right to continue on the post, or seniority in the grade and he might be reverted to the lower grade at any time without assigning any reasons. In this connection, the respondents have stated in their reply and this is not

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denied by the applicant in his rejoinder that his promotion as AE w.e.f. 21.2.1977 was a purely ad hoc and stop-gap arrangement, made in the administrative interest, pending formulation of a promotion policy which took into account the claims of the diploma holders as well as the degree holders amongst the JEs. That being so, the question of granting the applicant's seniority w.e.f. 21.2.1977 does not arise and the Hon'ble Supreme Court's ruling in Maharashtra State Direct Recruit Engineers' case 1990 (2) SC 715 cited by the applicant's counsel Shri G.K. Aggarwal does not assist the applicant.

10. It appears that consequent to the amendment to the Recruitment Rules on 5.2.1977 50% of the vacancies were required to be filled on the basis of merit-cum-seniority and the balance will be filled on the basis of a limited departmental competitive exam. (LDCE). The first such LDCE was to be scheduled in June, 1977 and meanwhile by the order dated 1.7.1977 amongst 50% vacancies reserved for promotion on merity-cum-seniority basis , 133 JEs were promoted as AEs.

10. Meanwhile, some of the ad hoc promotees namely Shri C.K. Bhaskaran and others filed a Writ Petition bearing No.703/78 in the Delhi High Court praying that the amendment to the Recruitment Rules which came into effect on

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5.2.1977 should not be applied to vacancies already filled up on ad hoc basis prior to that date, and also that those who were promoted on ad hoc basis be declared regularly promoted from the date of their initial promotion. The Delhi High Court passed an order on 9.11.78 that pending decision in the matter Government may fill up the vacancies, but no ad hoc promotee was to be reverted. Thereafter, by order dated 25.1.1979, a combined list of AEs was published including those promoted on the basis of seniority-cum-merit, as well as those promoted on the basis of LDCE in which applicant's name finds mention. It was made clear in that order that these appointments would be subject to the outcome of the decision in the Bhaskaran's case (Supra) as well as Bijani's case (Supra) filed in Delhi High Court. Subsequently upon further consideration, the respondents decided in August, 1983 that the amendment rules dated 5.2.1977 was to be applied only to the vacancies occurring on or after 5.2.1977 and not those occurring prior to that date. It was decided that vacancies to be filled on ad hoc basis prior to 5.2.1977 would be filled in accordance with the rules as they stood prior to that date, i.e., 100% by selection. An application was accordingly filed before the Delhi High Court on 11.4.1984, a copy of which is on record, in which it was submitted that the required panel would be prepared on 100% selection



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basis for vacancies prior to 5.2.1977 and on 1:1, selection; LDCE basis for annual vacancies after 5.2.1977 by following the procedure in DPAR O.M. dated 24.12.1980, upon which S/Shri Bhaskaran and Others withdrew the Writ Petition on 23.8.1985 by Delhi High Court orders of even date.

11. In the background of the above the respondents have stated that they convened the meetings of the review DPC to consider the required promotion of JE's in accordance with DPAR O.M. dated 24.12.1980 and prepared yearwise panels. In preparing these panels, the names of JEs, including those working on ad hoc basis were arranged in order of seniority and their merit as reflected in their service records as such. The impugned revised seniority list dated 25.4.1986 was, according to the respondents, based on those panels. In that list 136 vacancies arising upto 4.2.77 were filled by promoting JE's at Sl.Nos. 1 to 135 on the basis of seniority-cum-merit while vacancies from 5.2.1977 onwards were rotated between those promoted on seniority <sup>cum</sup> ~~in~~ merit, and those who were successful in the LDCE, on a 1:1 basis.

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12. In the additional replies dated 14.7.95 and 11.12.95 filed by the respondents, they have averred that in 1973, 126 vacancies became available against which 5 times that number was taken within the consideration zone and the last serial number considered for promotion by the DPC (on 100% basis) was No.1628. In 1974, no vacancy was available; but in 1975, 69 vacancies arose against which 5 times that No. came within the consideration zone and the last Sl.No. considered for promotion by the DPC (against on 100% basis) was No.1445. Similarly in 1976, 94 vacancies arose for which 3 times that No. came within the zone of consideration and the last serial No. so considered for promotion by the DPC (on 100% basis) was No.1446. For the year 1977 upto 4.2.77, 39 vacancies arose against which 3 times that No. was taken within the zone of consideration and the last serial No. considered for promotion by the DPC (on 100% basis) came to serial No.1261. From 5.2.77 onwards for that year the vacancies were rotated between seniority-cum-merit: LDCE on a 1:1 basis and the last serial No. so considered was No.1407. In 1978 no panel was prepared but in 1979, 111 vacancies became available against which 381 persons fell within the zone of consideration (after it was extended for SC/ST) and the last serial No. considered for promotion was No.1835 but as the last general candidate to be empanelled as No.1516, the applicant whose Sl.No.1772 was still too junior. In 1980, 27 vacancies arose against which

81 persons were considered, the last being sl. no. 1536. In 1981, 143 vacancies arose against which 429 persons were considered (after extending the zone of consideration for SC|ST), <sup>and</sup> The last person considered was No. 2138, but the last general category candidate to be empanelled was sl. no. 1701 and the applicant was still too junior. Similarly, in 1982, 27 vacancies arose against which 111 persons were considered (after extending the zone for SC/ST) and the last person considered was sl. no. 1874A but the last general category candidate to be empanelled was sl. no. 1739 and the applicant was still too junior. It was only in 1983 that against 51 vacancies, 156 persons were considered the last being no. 1988 and the last general candidate to be empanelled was sl. no. 1773 & it was in 1983 that the applicant was initially empanelled. These averments have not been challenged by the applicant by the production of any material to controvert the same.

13. However, we had wanted to further satisfy ourselves about the correctness of the averments made by the respondents as outlined in the paragraph above, and we had, therefore, called upon the respondents to produce the relevant DPC proceedings. The respondents have shown <sup>us</sup> ~~the~~ the relevant DPC proceedings and on perusing the same, we are satisfied that the averments made by the respondents and outlined in the preceeding paragraph are indeed correct. In that view, their action in assigning the applicant revised seniority as AE w.e.f. 1983 cannot be faulted.

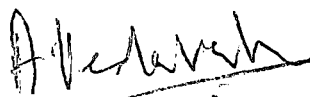


14. During hearing applicant's counsel Shri Aggarwal asserted that the Delhi High Court's directions dated 23.8.1985 in Bhaskaran's case had not been properly implemented. It was contended by him that the applicants promotion by virtue <sup>of</sup> the order dated 1.7.1977 would have remained unchanged, regardless of the outcome of Bhaskaran's case (supra) and the proper way to have implemented the judgement was to place those promoted on the basis of seniority-cum-merit en bloc above those promoted on the basis of LDCE. These contentions are without merit. The order dated 1.7.1977 was specifically superseded by respondents subsequent order dated 25.1.1979. If the applicant was aggrieved by order dted 25.1.79 by which the earlier order was superseded, he should have challenged the same in time, but he did not do so. The order dated 25.1.1979 was specifically made subject to the outcome of Bhaskaran's case (supra) and Bijani's case (supra). <sup>While</sup> neither party has pointed towards any direct fall out as a result of the judgement in Bijani's case, which according to the applicant was delivered on 9.6.89, the position in regard to Bhaskaran's case (supra) was that the Delhi High Court took note of respondents' submissions that in the background of the amendment to the recruitment rules effective from 5.2.1977, vacancies upto that date would be filled on 100% <sup>while</sup> seniority cum merit basis, / vacancies available thereafter would be filled by rotating the candidates eligible on seniority cum merit basis

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with those eligible on LDCE basis, in the ratio of 1:1 in accordance with the relevant rules and instructions on the subject for which purpose review DPCs would be held to prepare yearwise panels. It is on this undertaking that the Delhi High Court allowed Sh. Bhaskaran & others to withdraw their case and the respondents were called upon to implement their commitment expeditiously. The preceeding paragraphs make it clear that it is exactly this which the respondents have done, as a result of which the applicants seniority has been revised to 1983. During hearing Shri Aggarwal relied upon another ruling viz. P.S. Mahel vs. UOI 1984 (4) SCC 545, but in the facts and circumstances of this case as discussed above, this ruling does not advance the applicants' claim.

15. This OA, therefore, warrants no interference. It fails and is dismissed. No costs.



(Dr. A. Vedavalli)  
Member (J)



(S.R. Adige)  
Member (A)

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