CENTRAL ADMINISTRATIVE TRIBUNAL
Principal Bench

(18)

New Delhi, dated the 18th December 1997

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE Mrs. LAKSHMI SWAMINATHAN, MEMBER (J)

O.A. No. 2236 of 1992

Santosh Kumar,
S/o Shri Shanti Prasad,
Director,
Central Elec. Authority,
R/o 91, Aravali Apartments,
Alaknanda,
Kalkaji,
New Delhi-110019. ... APPLICANT

(By Advocate: Shri J.C. Singhal)

VERSUS

1. Union of India through
Secretary,
Ministry of Power,
Shram Shakti Bhawan,
New Delhi-110001.

2. Chairman,
Central Electricity Authority,
Sewa Bhawan,
R.K. Puram,
New Delhi-110066.

3. Dr. Subrata Mukhopadhyay,
Superintending Engineer,
Northern Regional Electricity Board,
CEA, Katwaria Sarai,
New Delhi-110016. ... RESPONDENTS

(By Advocates: Shri S.M. Arif for Official Respondents
Shri K.T. Anantharaman for Pvt. Respdt. No.3)

O.A. No. 2237 of 1992

A.K. Kapur,
S/o Shri Kailash Narain Kapur,
Dy. General Manager,
National Power Transmission Corporation,
(on deputation from the post of
Director,
Central Elec. Authority)
R/o A-55, East of Kailash,
New Delhi-110065. ... APPLICANT

(By Advocate: Shri J.C. Singhal)

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3. Dr. Subrata Mukhopadhyay,
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Northern Regional Electricity Board,
Central Electricity Authority,
Katwaria Sarai,
New Delhi-110016. ... RESPONDENTS

(By Advocates: Shri S.M. Arif for
R-1 & 2
Shri K.T. Anantharaman for
R-3

O.A. No. 2238 of 1992

R.K. Jain,
S/o Shri T.C. Jain,
Director,
Central Electricity Authority,
R/o B-11/189, Dev Nagar,
New Delhi-110005. ... APPLICANT

(By Advocate: Shri J.C. Singhal)

VERSUS

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Central Electricity Authority,
Katwaria Sarai,
New Delhi-110016. ... RESPONDENTS

(By Advocates: Shri Harvir Singh proxy
counsel for Mrs. P.K.Gupta
for R-1 & 2
Shri K.T.Anantharaman
for R-3

JUDGMENT

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

As these three O.As involve common question of law and fact they are being disposed of by this common judgment.

2. Applicants impugn the induction of Respondent No.3 into C.P.E.S. and his placement at Serial No.9 in the C.E.A. seniority list of officers in the grade of Director/Superintending Engineer (E&M) (Rs.3700-5000) as on 10.4.92 in which applicants feature at Sl. No.12, 27 and 28 (Annexure A-2).

3. Applicants were recruited into the CPES (Group 'A') on the basis of the Combined Engineering Service Exam. conducted by UPSC after open advertisement in different years, and began service as Asst. Director/A.E.E. In due course they were promoted as Director (Ordinary Grade). They were governed by the CPES (Group 'A') Service Rules, 1965.

4. UPSC advertised for the post of Systems Engineer on 24.8.82 and consequent to Respondent No.3's selection against the advertised post he was offered the post of Systems Engineer vide Memo. dated 21.5.83, which he joined on 16.9.83. The said post of System Engineer is a General Central Service Group A Gazetted post as is clear from the C.E.A. (Group A & Group B Posts) Recruitment (Amendment) Rules, 1979 (Annexure A-5).

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5. Applicants were confirmed after successful completion of 2 years probation in due course. Respondent No.3 also successfully completed two years probation on 16.9.85 (refer Power Ministry's letter dated 25.11.93 taken on record) and was duly confirmed w.e.f. 1.4.88 (refer Power Ministry's letter dated 25.11.93 taken on record).

6. By Notification No. GSR 720 (E) dated 20.8.90 the CPES (Group A) Service Rules, 1990 came into effect. The preamble stated as follows:

> " In exercise of the powers conferred by the proviso to Article 309 of the Constitution and in supersession of the Central Power Engineering (Group A) Service Rules, 1965 and the Central Electricity Authority (Group A & Group B Posts) Recruitment Rules, 1978, in so far as they relate to the posts of Systems Engineer, Deputy Systems Engineer, Asst. Systems Engineer, Dy. Director (Editor), Indian Interpreter and Chief Engineer, Thermal Construction Monitoring Chief Engineer, Systems Construction Monitoring except as respects things done or omitted to be done, the President hereby makes the following rules, namely:-
>
> 1. Short Title and comencement -- (1) These rules may be called the Central Power Engineering (Group A) Service Rules, 1990.
>
> (2) They shall come into force on the date of their publication in the official Gazette."

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7. In other words, both the CPES (Group A) Service Rules, 1965 which governed the applicants, as well as the CEA (Group A & Group B Posts) Recruitment Rules, 1978 which governed Respondent No.3 were superceded by the CPES (Group A) Service Rules, 1990 which came into force on the date of their Notification i.e. 20.8.90 vide Rule 1(2) of those Rules.

8. Under Rule 2(1) of these Rules, "Service" has been defined as the CPE (Group A) Service constituted under Rule 3 and Rule 3(1) state that on and from the date of commencement of these Rules there shall be constituted a service known as the CPE (Group A) Service consisting of persons appointed under Rules 6,7 and 8, which Rule 3(2) states that all duty posts included in the service shall be classified as duty posts. Rule 6 relating to the initial constitution of the service runs as follows:

> " (1) All existing officers holding (Group A) duty posts on regular basis in the Central Power Engineering (Group A) Service on the date of commencement of these rules, shall be members of the Service in the respective grades.
>
> (2) The regular continuous service of officers referred to sub-rule (1) before the commencement of these rules shall count for the purpose of probation, qualifying service for promotion, confirmation and pension in the Service.
>
> (3) To the extent the Controlling Authority is not able to fill the authorised regular strength of various grades in accordance with the provisions of this rule, the same shall be filled in accordance with the provisions of Rules 7 & 8."

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9. We have heard Shri Singhal for applicants, and Shri Arif, and Shri Harvir Singh proxy counsel for Mrs. P.K. Gupta, for official respondents. Shri Anantharaman appeared for the Respondent No.3 and was also heard.

10. Shri Singhal has argued that o-nly those persons belonging to CPES (Group A) Rules, 1965 are members of the CPES constituted under the 1990 Rules, and no other person occupying any other post outside the CPES cadre or belonging to any other service have been given this right. Any other persons so appointed to the CPES constituted under the 1990 Rules can be members of the service only from the date of entering into the cadre. It is contended that even if it is presumed that Respondent No.3 was regularly appointed to CPES constituted under the 1990 Rules he cannot claim seniority prior to the date of rules by which the post of Systems Engineer was encadred in CPES. Support in this connection is sought from extracts of the Hand Book of Establishment Matters published by DOPT (Annexure A-9). It is argued that applicants were promoted to Selection Grade on 31.12.87 and 7.3.90 while Respondent No.3 was promoted to S.G. only on 21.8.90 and therefore could not rank senior to them. The filling up of the post of

Systems Engineer, occuring in Schedule I of the 1990 Rules by R-3, who is described as an 'outsider', has been termed arbitrary and illogical, and it has been argued that if it is contended that R-3 was appointed under Rule 8 of the 1990 Rules, even that is illegal as the post was never advertised. It has also been stoutly contended by Shri Singhal that encadrement of some isolated posts classified under General Central Service Group A Gazetted, such as that of Systems Engineer held by applicant in the CPES under the 1990 Rules, cannot be called a merger of the service, and even if it is a merger of service, it is a merger of posts and not of persons holding the posts. It is also contended that the qualification for the post of Systems Engineer against which R-3 was working included those with Masters Degree other than in Engineering, and under the circumstance how could that post be encadred in CPES. It is also contended that by placing R-3 above the applicants in the seniority list, without giving them an opportunity to show cause, the principles of natural justice have been violated.

11. We have given the matter our careful consideration. In this connection we have also called for the departmental file No. A-11016/1/90/Admn.I, dealing with the applicant's case, from which it is clear that consequent to the encadrement of the post of Systems Engineer in CPE (Group A) Service as a result of the CPE (Group A) Service Rules being notified on 20.8.90, Respondents have invoked the provisions of Rule 4(2)(c) of the aforesaid Rules, to determine the applicants' seniority. In fact this is the position that the Respondents have also taken in their reply.

12. Shri Singhal has pointed out that Rule 4(2)(c) refers to appointment of an officer in a duty post included in the service under Rule 4(2)(b), and Rule 4(2)(b) refers to inclusion/exclusion of duty posts other than those already included in Schedule I on the date of commencement of the Rules. He has argued that as the post of Systems Engineer already stood included in Schedule I on the date of commencement of the Rules, in accordance with Rule 4(1), and was not subsequently included in Schedule I after the commencement of the Rules in accordance with Rule 4(2)(b), Rule 4(2)(c) would have no application.

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13. In this connection we see merit in Shri Anantharaman's contention that the relevant Rule which will be applicable is infact Rule 6(1), which has been extracted in Para 8 above. Rule 6(1) provides

> " All existing officers holding (Group A) duty posts on regular basis in the CPE (Group A) Service on the date of commencement of these Rules, shall be members of the Service in the respective grades."

Admittedly, the post of Systems Engineer was a duty post included in ScheduleIof the CPE (Group A) Service Rules, 1990 on the date those Rules were notified on 20.8.90, and being a duty post included in the CPE (Group A) Service it was a Group 'A' post in accordance with the Rule 3(2). It is not denied that R-3 was holding the aforesaid post of Systems Engineer on regular basis on 20.8.90 which was the date of commencement of CPE (Group A) Service Rules, and he must, therefore, be held to be a member of the CPE (Group A) Service on that date. In fact the claim of applicants to be members of the CPE (Group A) Service, in accordance with the CPE (Group A) Service Rules, 1990 as notified on 20.8.90 is no better and no worse than that of Respondent No.3, and it is by the same notification of 20.8.90 that the applicants as well as R-3 became members of CPE (Group A) Service. Merely because the applicants were

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members of the CPE (Group A) Service notified by the 1965 Rules, does not give them any superior claim over R-3 to be members of the CPE (Group A) Service now notified on 20.8.90. This is because by the aforesaid notification of 20.8.90 the earlier service rules namely CPE (Group A) Rules, 1965 as well as the CPE (Group A & B Posts) Recruitment Rules stood superseded and there was a merger of identities in the new CPE (Group A) Service notified on 20.8.90. Merely because posts in the CPE (Group A) Service as notified by the 1965 Rules were large in number compared to the post of Systems Engineer, Dy. Systems Engineer, etc., does not mean that the applicants will retain their original identity as member of the CPE (Group A) Service after the coming into effect of 1990 Rules. Hence we are unable to accept Shri Singhal's contention that only those persons belonging to CPE (Group A) Service, 1965 are members of the CPES constituted under the 1990 Rules and none others. We must hold that consequent to notification dated 20.8.90 and supersession of the earlier Rules, applicants as well as R-3 become members of the CPE (Group A) Service constituted by the CPE (Group A) Service Rules, 1990 w.e.f. 20.8.90 and in such a situation their inter se seniority will have to be determined in accordance with the general principles governing the merger of two cadres.

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14. In this connection the Gujarat High Court's judgment in S.D. Sharma Vs. State of Gujarat 1977 (2) SLR 505 has held that when two services governed by two different constitutions or service conditions are integrated, the question of fixation of seniority always arises and for that purpose the criteria of the total length of continuous service in the respective service for the purpose of fixing the seniority does not offend Article 16 of the Constitution.

15. Again in Reserve Bank of India Vs. S.N. Paliwal 1976 (2) SLR 774 the Hon'ble Supreme Court has held that the competent authority can lay down any reasonable rule for determining the seniority and the Court is not competent to strike down unless the same is found to be arbitrary or irrational. In the same judgment it has been held that where employees of a non-clerical cadre were fitted into a clerical cadre and new rules for determining the seniority of these new entrants vis-a-vis those already in the clerical cadre are framed, there could be no question of giving an opportunity to make representation against the same.

16. In the present case, it is clear that R-3 was a member of the CPES on 20.8.90 in terms of Rule 6(1), and his seniority had to be determined in accordance with Rule 9(3) of the aforesaid Rules in consultation with the UPSC, which Respondents in fact did.

17. The question then arises whether the fact that the Respondents invoked the provision of Rules 4(2)(c) of the aforesaid Rules would warrant our interference. In this connection Shri Anantharaman has invited our attention to the Hon'ble Supreme Court's ruling in Kishun Singh & Anr. Vs. State of Bihar: JT 1993 (1) SC 173 which though pronounced in a different context, has reiterated the settled principle that once it is found that the power exists, the exercise of power in a wrong provision will not render the order illegal or invalid.

18. Our attention has also been invited to the seniority list of Director/SE as on 10.4.92 (Ann. A-2). That list shows that while R-3 was regularly appointed to the grade of Director/SE on 16.8.83 that applicants were appointed to that grade on 30.4.84, 20.11.84 and 4.2.85 respectively. Clearly therefore on the basis of the length of continuous regular service in the grade, R-3 is entitled to be considered senior to the applicants, and the fact that the applicant was granted selection grade on 21.8.90 vide Respondents' order dated 19.7.92 (Annexure A-10) does not change that position.

19. Shri Singhal has relied upon the Hon'ble Supreme Court's judgment in State of Bihar Vs. A.S. Nath AIR 1991 SC 1244, that relates to a case involving inter se seniority of promotees and Direct Recruits and has no application to the facts of the present case.

20. It is also extremely relevant to note that the 1990 Rules themselves, which have the protection of Article 309 of the Constitution have no where been impugned by the applicants.

21. In the result the O.As warrant no inteference. They are dismissed. No costs.

22. Let a copy of this judgment be place in each case record.

(Mrs. LAKSHMI SWAMINATHAN) Member (J)

(S.R. ADIGE) Vice Chairman (A)

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