

CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

THIS THE 24 DAY OF May 1996

Original Application No. 39 of 1992

HON. MR. JUSTICE B.C. SAKSENA, V.C. (J), Alld

HON. MR. R.K. AHOOJA, MEMBER (A)

Mr. S.K. Sharma, S/o Mr. Jagdish Ram
C-5D/77 C Janakpuri,
New Delhi

BY ADVOCATE SHRI B.T. KAUL

Applicant

Versus

1. Delhi Administration,
5-Alipur Road,
Delhi (through its Chief Secretary)
2. The Secretary (Irrigation & Floods)
Delhi Administration,
5/9-Underhill Road,
Delhi
3. Chief Engineer (Irrigation & Floods)
Delhi Administration,
4th Floor, ISBT Building,
Kashmere Gate,
Delhi.
4. Mr. V.P.S. Tomer, Asstt. Engineer
Irrigation & Floods,
Delhi Administration
Office of the Executive Engineer
Supplementary Drainage Division-II
L.M. Bund Office Complex
Shastri Nagar, Shadpara, Delhi

Respondents

BY ADVOCATE SHRI ~~BOG~~ SINGH for respondents
No. 1 to 3 and Ms Meenakshi for respondent no. 4.

O R D E R (Reserved)

JUSTICE B.C. SAKSENA, V.C.

This O.A. had been connected with O.A. No. 1456/91 S.D. Sharma and 10 Others Vs. Delhi Administration through its Chief Secretary and 2 others and had been heard alongwith the said connected O.A. Detailed orders have been passed in the connected O.A. Common issues arise in both the cases. One of the main questions raised in this OA also is that since no 1 Bcr

Direct Recruitment had been made during the period 1974 to 1980 the Quota-Rota Rule had broken down and accordingly it was wrongly resorted to ~~by~~ drawing up final seniority list dated 1.1.92 of the Asstt. Engineer(c)/ASW(c), Irrigation and Flood Control Department and L & B Department Delhi Administration.

2. This plea has been considered in detail in our order passed in the connected OA 1456/91 and it was held, in the present petition, that in view of the fact that in the 1973 Recruitment Rules no imperative quota had been provided for, if Direct Recruitment had not been made during the said period, since it could not be made, the Quota-Rota Rule cannot be said to have broken down. It would be relevant to note the relevant Recruitment Rules and other Rules.

3. In the year 1973 Recruitment Rules for the post of Asstt. Engineer(c) and Mechanical in the Flood Control Organisation, Development Commissioner's office, Planning and Development Cell and Housing Commissioner's office were framed. The method of Recruitment for the post of Asstt. Engineers Civil as laid down therein was as follows;

"By promotion failing which by transfer on deputation and failing by both by direct Recruitment 33 1/3%
By transfer on deputation failing which by Direct Recruitment 66 2/3%"

4. Subsequently by notification dated 21.8.1980 new Rules for Recruitment of the said posts of Asstt. Engineers(c) and Mechanical in various Department of the Delhi Administration were notified. Through this Rule following method of recruitment was laid down.

(12)

:: 3 ::

"50% by Promotion failing which
by transfer on deputation
50% by Direct Recruitment failing which
by transfer on deputation

5. Another rule reference to which is necessary is the Delhi Administration(Seniority) Rules 1965. These Rules were to apply all class II, class III and class IV officers of the Delhi Administration. The relevant provision in these rules is Rule 7 which reads as under:

7 relative seniority of Direct Recruits
and Promotees.

The relative seniority of direct recruits of promotees shall be determined according to the rotation of vacancies between direct recruits and promotees which shall be based on the percentage of vacancies reserved for direct recruitment and promotion respectively in the recruitment rules.

Note(1) There shall be maintained a roster based on the reservation of vacancies for direct recruitment and for promotion in the Recruitment: Rules where 75% of the vacancies are reserved for promotion and 25% for direct recruitment. Each direct recruit shall be ranked in seniority below three promotees. Where the percentage is 50% each, every direct recruit shall be ranked below

1 Recd

a promotee and the roster shall run as follows:

1. ~~Promotion~~
2. Direct Recruitment
3. Promotion
4. Direct Recruitment, and so on

Appointment shall be made in accordance with this roster and seniority will be determined accordingly.....

Note(2) A promotee shall not necessarily be placed over direct recruit. The relative seniority of a departmental promotee viz-a-viz a direct recruit depends on the starting point in the roster as determined by the Appointing authority. If the first point in the roster starts with a direct recruit, the relative order of seniority amongst the departmental promotees and direct recruits will be, first direct recruit followed by a departmental promotee and vice versa.

6. The applicant was initially appointed as Junior Engineer(Civil) in the Irrigation and Flood Department Delhi Administration on ~~20.4.65~~. According to the applicant he was promoted as Asstt. Engineer on 14.7.1979 after having been found suitable by a duly constituted Departmental Promotion Committee. Thus he pleads that his initial promotion had wrongly been shown on ad hoc ^{basis} without giving the reasons thereof. Copy of the order dated 10.5.79 is Annexure A3. It nowhere states that the said order of promotion have been made after having been found suitable by duly

(1X)

constituted Departmental Promotion Committee. On the contrary, the said order clearly stipulates that the said promotion is purely on ad hoc emergent basis for a period of six months or till further orders whichever is earlier. It also clearly stipulated that:

"the above appointment will not entitle the officers concerned for any regular appointment or seniority on these posts or to any other equivalent posts."

Subsequently by an order dated 5.7.80 the applicant was appointed to the temporary post of Asstt. Engineer(c) on regular basis and was placed on probation for a period of 2 years. This order ofcourse contains a recital that the promotion have been made on the recommendations of the Departmental Promotion Committee. In the light of these facts it is difficult to hold that the applicant is entitled to count his seniority from the date of his adhoc promotion though the applicant had ~~un~~ interruptedly continued to work till he was regularly promoted.

7. As noted by us in our order passed in the connected petition the Hon'ble Supreme Court in its judgment in K.C. Joshi Vs. union of India reported in 1993(24) ATC 545 has clearly laid down that the appointment must be according to rules and within the prescribed quota unless these conditions are satisfied appointment is to be treated as adhoc which cannot be counted for seniority. ~~xxxxxxxxxxxxxx~~ In the said decision it was also held that the corollary to proposition(A) laid down ⁱⁿ Direct Recruits class II Engineering Officers Association Vs. State of Maharashtra reported in 1990 SCC (L&S) 339 shall apply ~~Re~~

We therefore hold that the applicant ~~is~~ not entitled to count ~~his~~ ^{his} ad hoc services towards seniority.

8. The learned counsel for the applicant next submitted that in view of the fact that the applicant's date of regular appointment is 5.7.80 i.e. ~~1980~~ prior to the coming into force of the 1980 Recruitment Rules. ^{Recd} He was entitled to seniority position above Shri V.P.S. Tomer, respondent no.4, who was a direct recruit and his date of appointment is 7.1.82. The 1980 Recruitment Rules ^{were} notified by a notification dated 27.8.80. The material on record further shows that immediately after notification of the 1980 Recruitment Rules requisition was sent to the Union Public Service Commission for filling up 17 posts by way of Direct Recruitment. The selection was held in July 1981 and after completion of all the necessary formalities respondent no.4 ~~joined~~ joined on 7.1.82. In the seniority list dated 1.1.92 the applicant has been assigned seniority at sl.no.30 while the respondent no.4 has been assigned seniority at sl.no.29.

9. A detailed counter affidavit on behalf of the official respondents as also the private respondent no.4 has been filed to which the applicant has filed a rejoinder affidavit. The claim of the respondent no.4 is that he was entitled to assign ^{be ed} seniority even at a ^{Recd} higher place and his seniority should have been fixed with the promotees in 1979. We do not see any force ⁱⁿ ~~in~~ this claim. Evidently respondent no.4 was selected for appointment by Direct Recruitment on the basis of requisition which was issued subsequent to coming into force of 1980 Recruitment Rules. The rotation as

:: 7 ::

prescribed in the 1965 Seniority Rules came into force after imperative quota for both promotees and direct recruits were laid down in 1980 Rules. When the 1973 Rules held the field in view of the fact that no imperative quota for both the categories were laid down ~~been~~. We have ^{been} persuaded to hold, in our order passed in the connected OA, that keeping in view the provisions of 1973 Rules Direct Recruitment as not being possible ~~while~~ ^{adhering} to the other preferential modes indicated therein. We have held that the Quota Rota Rule had not broken down we had also taken note of decision of the Hon'ble Supreme Court reported in 1990(13) ATC 718 S.S. Sodhi Vs. State of Punjab and Others. The said decision clearly laid down that where more than one sources are for making appointment and rules specified order of preference the appointing authority must consider in accordance with that order. We had further noted in our order, in the aforesaid connected OA, that in the Seniority Rules 1965 in the first place a rotation was provided where the Recruitment Rules provided 75% vacancies as reserved for promotion and 25% for Direct Recruitment. This percentage was not provided for in the 1973 Recruitment Rules. ~~In~~ The second part the 1965 Seniority Rules ~~also~~ provided for rotation where the percentage is 50% ^{bel} each for direct recruitment and promotion in the Recruitment Rules and indicated the rotation and assignment of Seniority where such is the situation. In the 1980 Recruitment Rules for the first time clear cut 50% quota for Direct Recruitment and for promotion was laid down and accordingly we have held, which we reiterated in this order also, that the second part of the provision in the Seniority Rules 1965 came into play only after the notification of 1980 Recruitment

Rules. .

10. In the present case the respondent no.4 claims that since he had topped at the selection for Direct Recruitment he was entitled to be assigned seniority amongst promotees of 1979. For the reasons indicated hereinabove, we do not find any force in this submission. The interse seniority between the applicant and respondent no.4 needs modification. The applicant since his regular promotion was earlier to coming into force of the 1980 Recruitment Rules is entitled to seniority at sl.no.29 in the seniority list dated 1.1.92 while respondent no.4 may be placed at sl.no.30. A few other points have been urged which are not necessary to be decided. one of the point urged is that the tentative seniority list dated 1.6.1990 needs to be confirmed. Since a final seniority list has been issued that will hold the field and the question whether the tentative seniority list was correctly drawn up or otherwise need not be gone into. The other question that has been raised is that the respondent no.1 interested in benefitting the respondent no.4 and therefore the seniority list as on 1.1.92 had been issued and the tentative seniority list has been modified. On the material on record we are not satisfied that any such ~~xxxx~~ interest on the part of respondent no.1 can be said to have been made out.

11. To the extent hereinabove, the O.A. Succeeds and is allowed. Cost easy.

Roshan
MEMBER (A)

Bobaksew
VICE CHAIRMAN (J), Alld.