

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

NEW DELHI, THIS THE ^{10/12} DAY OF SEPTEMBER, 1998.

HON'BLE MR. JUSTICE K.M. AGARWAL, CHAIRMAN
HON'BLE MR. R.K. AHOOJA, MEMBER (A)

O.A. No.769/1993.

1. Shri Sanjay Sharma
S/o Sh.T.N.Sharma,
Resident of 84G Pocket IV,
Mayur Vihar Phase I,
Delhi 110092.
2. Shri Sanjiva Mandilwar,
S/o Shri S.P.Mandilwar,
Resident of C-6A/293, LIG Flat,
Janakpur, New Delhi-110058.
3. Shri Pradeep Jindal,
S/o Sh. K.R.Jindal,
Resident of B/3/439 Paschim Vihar,
New Delhi 110063
4. Shri Yogendar Dembla,
S/o Late Sh. C.L.Dembla,
Resident of House No.1237,
Sector 9 Faridabad (Haryana)
5. Shri Sanjay Shrivastava,
S/o Sh.S.Shrivastava,
6J Fruit garden
Faridabad (Haryana)

(All working as Assistant Director
Central Electricity Authority,
Sewa Bhawan, R.K.Puram, New Delhi)

...Applicants

(BY ADVOCATE SHRI T.C.AGARWAL)

versus

UNION OF INDIA,

Through

1. Secretary,
Ministry of Energy,
(Dept. of Power)
Shram Sakti Bhawan
New Delhi.
2. Secretary,
Union Public Service Commission,
Dholpur House,
New Delhi.
3. The Chairman,
Central Electricity Authority,
Sewa Bhawan,
R.K.Puram,
New Delhi-110066.
4. K.K.Gupta

K.K.

27

5. O.P.Gupta-II
6. Dhani Ram
7. S.C.Anand
8. B.R.Singh
9. Jagat Prakash
10. R.C. Chopra
11. K.K.Singh
12. R.S.Gill
13. Ghan Shyam Dass
14. Nishit Mishra
15. Prabhat Gujral
16. Viswa Bandhu
17. Mahendra Kumar
18. S.S.Jolly
19. P.K.Jain-I
20. T.R. Oberoi
21. S.K.Bhatia
22. S.S.Kalsi
23. S.R.Datta
24. K.K.Chichra
25. M.S. Sahota
26. A.K.Sood
27. R.K.Nayyar-I
28. S.C.Tank
29. R.Arokiaswamy
30. N.V.Prasad
31. A.S.Seehra
32. B.P.Manu
33. Nikhil Das
34. G.P.Anand
35. K. Ramamurthy
36. S.N.Mohanty
37. J.S. Dua
38. R.N.Mathur
39. R.S. Chandha
40. Ram Dayal Jain
41. A.H.Kulkarni
42. Davinder Kumar Gilhotra
43. M.R.Jeevan
44. Mohd. Shamsur Ali
45. Jang Bahadur
46. S.C.Sharma
47. N.C.Bhardwaj
48. S.PremChander
49. S.Eswaran
50. D.V.Rangareddy
51. Ram Prakash
52. Sunil Kumar
53. H.S.Shankaraiah
54. Buddhadeb Sarkhel
55. Arvind Kumar Sood
56. C.S.Kasana
57. Animesh Bhattacharya

58. Parmanand
59. A.R.Krishnamurthy
60. A.K.Mittal
61. I.K.Nijawan
62. Deepak Kumar Malik
63. A.K.Bhatia
64. Inderjit Sharma

All working as Assistant Director/Adhoc
Deputy Director in the Central Electricity Authority
through the Chairman, Central Electricity Authority,
Sewa Bhawan, R.K.Puram, New Delhi. Respondents

Kr (BY ADVOCATE SHRI V.S.R. KRISHNA)

2. O.A. No.737/93 & MA No.2163/93, M.A. No.1711/97.

Shri Vijay S.Bisht
S/o Late Shri B.S. Bisht,
R/o Qr. 1247 Sector 8,
R.K.Puram, New Delhi.

24

Shri R.S.Dhillon
S/o Shri D.S.Chabhal
R/o E-1/11-A Vasant Vihar
New Delhi-110057.

Shri Sudesh K.Nehru
S/o Sh P.N.Nehru
working as Asstt. Director
Central Electricity Authority
Sewa Bhavan, R.K.Puram,
New Delhi.

Shri Sandeep Sehgal
S/o Sh.P.N.Sehgal
working as Asstt. Director
Central Electricity Authority
Sewa Bhavan, R.K.Puram,
New Delhi.

....Applicants

(BY ADVOCATE SHRI T.C. AGARWAL)

vs.

1. Union of India through
Secretary,
Ministry of Energy
(Department of Power)
Shram Sakti Bhavan
New Delhi.

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

....Respondents

(BY ADVOCATE SHRI RAJEEV BANSAL)

3. O.A. No.557/93.

Shri L.D. Papney
S/o Shri S.D.Papney
R/o 709, Sector 5,
R.K.Puram, New Delhi.

Shri A.K.Sood,
S/o Shri R.C.Sood,
R/o 17/18, Shakti Nagar
Delhi-7.

Shri R.D.Jain
S/o Shri R.N.Sahai Jain
R/o C-257, Vivek Vihar
Delhi-95.

Tm

Shri R.N.Mathur,
S/o Shri Anand Nath
R/o 109, Desh Bandu Apartments
Kalkaji
New Delhi-19

25

...Applicants.

(BY ADVOCATE SHRI C.L.KUMAR)

vs.

1. Secretary,
Ministry of Energy (Dept. of Power)
Shram Sakti Bhavan,
Rafi Marg,
New Delhi.
2. Chairman,
Central Electricity Authority,
Sewa Bhavan,
R.K.Puram,
New Delhi-110066.
3. Secretary,
Dept. of Personnel,
North Block,
New Delhi.
4. Secretary,
Union Public Service Commission,
Dholpur House
Shahjahan Road,
New Delhi.

....Respondents.

(BY ADVOCATE SHRI V.S.R.KRISHNA)

ORDER

JUSTICE K.M.AGARWAL:

In all these O.As, common relief claimed is for quashing the Seniority List of Officers in the grade of Assistant Director (Gr.I)/Assistant Executive Engineer as on 16.9.1991 issued by the Government of India, Central Electricity Authority, New Delhi vide their Memo No.3/5/91-Adm.I (CEA), dated 26.9.1991. The contents of this Memo would show that the Seniority List was provisional in nature and the Officers were asked to "check the Seniority List" and to bring to the notice of the Section Officer "errors & omissions....within 30 days from the date of issue of this memorandum." As provisional Seniority List admits of possible errors and omissions, it is immune from challenge, *but if any action is taken or promotion made on the basis of*

such provisional Seniority List, that action or promotion may be challenged. In O.As. 737/93 and 557/93 only the correctness of the provisional Seniority List is questioned and sought to be quashed. These O.As, therefore, deserve to be dismissed as misconceived. In O.A. 769/93, promotion of the respondents 4 to 64 on the basis of the provisional Seniority List has been questioned and a review D.P.C. has been asked for besides making a prayer for quashing the provisional Seniority List. It has, therefore, to be seen if the respondents 4 to 64 have been wrongly promoted on the basis of the provisional Seniority List, ignoring the claim of the applicants in O.A. No. 769/93.

2. Briefly stated, the applicants and the respondents 4 to 64 were recruited to the grade of Assistant Director Grade I in the Central Electricity Authority prior to August 1990 in accordance with the Central Power Engineering (Class I) Service Rules, 1965, (in short, the "Service Rules"). As provided in these Rules, vacancies were required to be filled up in the following proportion:

60 per cent : By direct recruitment;

25 per cent : By promotion; and

15 per cent : By deputation or transfer of service.

Sub-rule (1) of rule 30 of the Service Rules makes a provision for filling up 15 per cent vacancies in the said grade by deputation or transfer of service and sub-rule (5) thereof says:

"Every officer appointed under sub-rule (1) shall also be eligible, subject to the concurrence of his parent department, for appointment to any higher post in the Service along with other officers who may be recommended by the appropriate authority for appointment to such post on deputation or transfer under this part."

Sub-rule (6) of rule 30 says:

"If the number of officers referred to in clause (iii) of sub-rule (1) of rule 16, who are suitable for

appointment to the Service under this Part is not sufficient, the posts, referred to in sub-rule (1), may be filled by the departmental promotion in accordance with the provisions contained in Part IV of these rules and failing that by ad hoc advertisement and selection through the Service Commission in accordance with the provisions contained in Part VI of these rules."

Rules 30 and 31 are in Part V of the Service Rules. Rule 31 says:

"No officer appointed to the Service under this Part shall be eligible for substantive appointment to the Service."

The case of the applicants is that they were directly recruited against the 60 per cent vacancies fixed for direct recruits, whereas the respondents 4 to 64 were recruited against the 15 per cent quota fixed for the deputationists due to insufficient number of eligible deputationists and/or persons eligible for promotion by virtue of rule 30(6) of the Service Rules. They were, therefore, not entitled to any seniority over the applicants and/or to substantive appointments. The applicants also claimed that they were appointed against the posts available in the year 1984, whereas the respondents 4 to 64 were appointed against the posts which became available in subsequent year. They, therefore, claimed themselves to be senior to the respondents 4 to 64, besides alleging the latter's appointments to be against rota quota rules.

3. The official respondents are contesting the claim of the applicants by denying all material allegations against them by filing their counter.

4. After hearing the learned counsel for the contesting parties and perusing the record, we find that under rule 17 of the Service Rules, recruitment to 60 per cent of the various posts mentioned in the rule, including

For

28

those held by the applicants and the respondents 4 to 64, were to be made by a competitive examination to be held by the Service Commission. Under rule 25(1), recruitment by promotion to 25 per cent of the various posts mentioned in the rule, were to be made by selection from among officers working in the grade mentioned. Rule 24 prescribed the mode of promotion and sub-rule (3) thereof provided that:

"(3). In the event of suitable officers being not available for promotion against vacancies earmarked for them, the vacancies may be filled on deputation under Part V of these rules and failing that, by recruitment by ad hoc advertisement and selection through the Service Commission under Part VI of these rules."

Similarly under rule 30(1), 15 per cent of the various posts specified in the rule, were to be filled by appointment on deputation or transfer of the officers referred to in rule 16(1)(iii) in consultation with the Service Commission. Sub-rule (6) thereof provided that if the number of officers to be appointed on deputation or by transfer of the officers was not sufficient, the posts could be filled by departmental promotion in accordance with the provisions of Part IV of the rules, failing which, by ad hoc advertisement and selection through the Service Commission in accordance with the provisions of Part VI of the rules. No person eligible for promotion or for appointment on deputation to the grade under consideration has come up before us, complaining of violation of the quota rule under rule 25 or rule 30 of the Service Rules. It leads to the conclusion that sufficient number of candidates for promotion or for appointment on deputation were not available and, therefore, the posts reserved for promotees and deputationists under rules 25 and 30 were filled by adopting the method mentioned in rule 24(3) and rule 30(6) of the Service Rules. If the grievance of the

applicants was that quota rota rule was violated in making the appointments, it was for them to show yearwise vacancies and availability of candidates for filling up posts reserved under rules 25 and 30 of the said Rules. They failed to do so. On the contrary, they require the official respondents to notify yearwise vacancies and availability position of candidates for appointment by promotion or on deputation. They cannot be allowed to do so.

5. It is the case of the official respondents that inter se seniority of the various officers is fixed with reference to the date of nomination of candidates by the U.P.S.C. and the date of recommendation of D.P.C., treating the one recommended earlier as enblock senior. This is challenged by asserting that the candidates appointed under Part V of the Service Rules can get no seniority over the direct recruits, because under rule 31, no officer appointed to the Service under Part V is eligible for substantive appointment to the Service. The argument is misconceived and preposterous. The provision is only with reference to appointees on deputation. The provisions cannot be applied to promotees against the posts reserved for deputationists, if the promotion is in the contingency contemplated under sub-rule (6) of rule 30. Similarly they cannot be applied to direct recruits pursuant to ad hoc advertisement and selection through the Service Commission in the event of further contingency contemplated under rule 30(6). Similar procedure is prescribed in the contingency contemplated under rule 24(3) of the rules with reference to posts reserved for promotees. It is also to be noted that the appointments against posts reserved for promotees or deputationists by direct recruitment in the circumstances mentioned in rule 24(3) and rule 30(6), the candidates selected are not to be treated for appointment on ad hoc basis. Only selection is provided to be made on the basis of ad hoc advertisement for the posts to be filled under rule 24 (3) and rule 30(6). Ad

hoc advertisement has, thus, to be distinguished from ad hoc appointment. In the result, the argument to the contrary has no force and deserves to be rejected.

6. The argument that the applicants were appointed against the vacancies of 1984 and, therefore, they should get seniority over the respondents 4 to 64, has also to be rejected. When common Seniority List of direct recruits and promotees is prepared and when there is no specific provision in the rules as to the manner in which the Seniority List is to be prepared, the method adopted by the official respondents for preparation of Seniority List cannot be assailed. Further, on their own showing, the applicants as well as the respondents 4 to 64 were direct recruits. The only difference was that the applicants were directly recruited against 60 per cent quota reserved for them; whereas the respondents 4 to 64 were selected pursuant to selection against the posts reserved for deputationists, because candidates to be appointed on deputation or by promotion were not available. In the rules, there is no provision to treat such direct recruits pursuant to selections in the circumstances mentioned under rule 24(3) or under rule 30 (6) of the Service Rules differently from those recruited pursuant to provisions under rule 17 of the Service Rules.

7. Various authorities as mentioned in M.A. No.1711/97 were cited before us, but we think it is not necessary to discuss those authorities, because they do not indicate anything contrary to the view expressed by us.

8. For the foregoing reasons, we find no merit in these O.As and accordingly they are dismissed, but without any order as to costs. M.A. No.2163/93 for interim stay and
for

-10-

the other M.A. No.1711/97 for production of record filed in
O.A. No.737/93 shall be deemed to have been dismissed.

(K.M.AGARWAL)
CHAIRMAN

Take copy

PLC/CW

PLC/CW

(R.K.AHOOJA)
MEMBER (A)

PRITAM SINGH
Court
Central Adm. Tribunal
Prin. Secy.
Faridkot House, 1st, Delhi