

CENTRAL ADMINISTRATIVE TRIBUNAL
JAMMU BENCH, JAMMU

Pronounced on: This 28th day of May 2021

Hon'ble Mr. Rakesh Sagar Jain, Member – J
Hon'ble Mr. Anand Mathur, Member – A

T.A. No. 062/5864/2020

Ghulam Ahmad Mir

Versus

State of J&K and ors

c/w

T.A. No. 062/5865/2020

Ghulam Ahmad Mir

Versus

State of J&K and ors

c/w

TA No. 62/5821/2020

Ghulam Ahmad Mir

Versus

State of J&K and ors

c/w

TA No. 5852/2020

Ghulam Ahmad Mir

Versus

State of J&K and ors

c/w

TA No. 62/5852/2020

Ghulam Ahmad Mir

Versus

State of J&K and ors

(Details of the Parties given in Annexure - I)

Mr. J.A.Kawoosa, Advocate for applicant.

Mr. Amit Gupta, AAG/ Mr. Azhar Ul Amin, advocate for respondents.

O R D E R

Per Rakesh Sagar Jain, Member (J)

1. The following petitions filed by applicant Ghulam Ahmad Mir involve dispute regarding promotion to the posts at various level of Engineers in the Electrical department. The petitions have been clubbed together, as per, order dated 28.05.2019 of the Hon'ble High Court:
 - i. TA No. 62/5864/2020 (SWP No. 731/2018)
 - ii. TA No. 62/5865/2020 (SWP No. 1630/2018)
 - iii. TA No. 62/5821/2020 (SWP No. 2084/2018)
 - iv. TA No. 62/5852/2020 (SWP No. 178/2019)
 - v. TA No. 62/5818/2020 (SWP No. 427/2019)

TA No. 5864/2020 (SWP No. 731/2018)

1. A bird eye view of career progress of applicant is as below:

- 1) Applicant falling in ST category was appointed as Junior Engineer (Electric) in 1988;
- 2) Promoted as Assistant Engineer and regularised w.e.f. 01.12.1991 figuring at Serial No. 408 in seniority list dated 05.01.2001;
- 3) Promoted on temporary basis as Assistant Executive Engineer (Electric) subject to DPC vide order dated 30.01.2001;
- 4) Promoted as I/C Executive Engineer in own pay and grade pending clearance by DPC vide order dated 20.04.2007 figuring at serial No. 21;
- 5) Placed as I/C Superintending Engineer (Electric) vide order dated 09.02.2011 pending clearance by DPC;
- 6) Post of S.E Generation Leh held by applicant was upgraded as Chief Engineer (Generation Ladakh) vide order dated 03.06.2011 and he was directed to hold charge of said upgraded post;
- 7) Respondent No. 4 (Showkat Ahmad Banday) junior of applicant has been promoted as I/C Chief Engineer vide order dated 22.12.2017;
- 8) Similarly, juniors of applicant have been promoted as I/C Chief Engineer vide Government Order No. 176- PDD of 2013 dated 24.07.2013 and that the Government is also processing the case of his juniors for promotion as I/C Chief Engineer and sought their ACRs vide letter dated 23.03.2018.

2. So, the applicant challenges the promotion of his juniors who have been promoted as I/C Chief Engineer. He seeks the following reliefs:
 - a) Quashment of order dated 22.12.2017 whereby respondent No. 4 (Showkat Ahmad Bandy) junior of applicant has been promoted as I/C Chief Engineer
 - b) Promote applicant as I/C Chief Engineer from date respondent No. 4 has been promoted as I/C Chief Engineer
 - c) Not to supersede the applicant by promoting his juniors as I/C Chief Engineer
 - d) Confirm the various promotions of the applicant
 - e) Till applicant is confirmed, the respondents to pay him the salary as was being given to regular Engineers.

3. Respondent No. 1 and 2 in their objections have averred that in terms of PSC communication No. PSC/DPC/PDD/14/2000–AEE dated 29.01.2003, respondent No. 4 (Showkat Ahmad Bandy) has been regularised as AE w.e.f. 01.12.1992 whereas applicant has been regularised as AE w.e.f. 01.12.1994, as such, respondent No. 4 is senior to the applicant. The officers placed as I/C chief Engineer vide order dated 24.07.2013 were regularised as AE w.e.f. 01.12.1987 prior to regularisation of applicant as AE w.e.f. 01.12.1994. Therefore, applicant being junior, as per, his date of confirmation as Assistant Engineer could not be considered against the post of Chief Engineer so far.

4. It is the case of Respondent No. 1 and 2 that applicant Ghulam Ahmad Mir (ST) was regularized as Assistant Engineer (Electric) w.e.f. 01.12.1991, as per, Government Order No. 10-PDD of 2001 dated 05.01.2001 but the applicant was later on pushed down by the PSC and

regularized w.e.f. 01.12.1994 as clarified by the J&K PSC vide their communication No. PSC/DPC/PDD/14/2000/AEE dated 29.01.2003, since the slots meant for ST category were already utilized.

TA No. 62/5865/2020

1. Applicant's case is that in order to deny the promotion to the applicant to the Post of Chief Engineer and also to defeat the order passed by this Tribunal, the respondents issued a Tentative Seniority List of Assistant Engineers vide endorsement No. PDD/HRM/05/17(AE) dated 01.06.2018, after lapse of 17 years from the date of final seniority list of Assistant Engineers and the applicant's date of confirmation has been deliberately shown as 01.12.1994 instead of 01.12.1991. In the tentative seniority list, the respondents have relied upon Communication No. PSC/DPC/PDD/14/2000/AEE dated 29.01.2003 of J&K PSC, wherein applicant has been shown to have been cleared as Assistant Engineer w.e.f., 01.12.1994 instead of 01.12.1991. That applicant has filed objections dated 19.06.2018 against the said tentative seniority list of Assistant Engineers (Electric) which are yet to be considered by the respondents. Even so, as per, the applicant, the respondents have no right to rely upon the communication of the PSC after a lapse of 17 years. Since, all the promotions after the final seniority list dated 05.01.2001 pertaining to the Assistant Engineers is final and all promotions since 2001 are being made on the basis of the said final seniority list.
2. Hence, the present petition seeking quashment of Communication No. PSC/DPC/PDD/14/2000/AEE dated 29.01.2003 of J&K PSC and make promotions to the post of I/C Chief Engineers in accordance to final seniority list of AE (Electric) issued vide Government order no. 10-PDD of 2001 dated 05.01.2001.

TA No. 62/5821/2020

1. Applicant challenges the order dated 21.08.2018 whereby private respondents No. 5 to 12 despite being junior to the applicant have been placed as I/C Chief Engineers (Electric) and vide order dated 21.08.2018 given the charge of post of Chief Engineer, Electric Maintenance & Rural Electrification Wing Kashmir in addition to his own duties and to direct the respondents to promote the applicant as Incharge Chief Engineer being senior most I/C Superintending Engineer from the date his juniors have been promoted.

TA No. 62/5852/2020

1. Applicant seeks quashment of the order dated 26.11.2018 whereby respondent no. 4 has been placed as I/C Chief Engineer (E) in his own grade and pay and 03.01.2019 whereby respondent no. 4, 5 and 6 have been placed as I/C Chief Engineers at various postings. Applicant also seeks a direction to the respondents to promote him as I/C Chief Engineer from the date his juniors have been promoted.

TA No. 62/5818/2020

1. Applicant in the present petition has challenged Government Order dated 29.01.2019 whereby the case of the applicant regarding the communication no. PSC/DPC/PDD/14/2000/AEE dated 29.01.2003 pushing down the applicant and regularizing him w.e.f. 01.12.1994 instead of 01.12.1991 has been upheld and his prayer for promotion as being senior to other officers has been rejected.
2. The relevant portion of the impugned order is quoted as below:-

“Whereas, Shri Ghulam Ahmad Mir presently working as I/c Superintending Engineer, EM&RE Circle PDD Leh was initially appointed as Junior Engineer (Electric) vide Government Order

No. 67-PDD of 1988 dated 16.03.1988 and thereafter placed as I/c Assistant Engineer (E) vide Government Order No. 193-PDD of 1996 dated 24.06.1996. He was further placed as I/C Assistant Executive Engineer (E) vide Government Order No. 423-PDD of 2020 dated 30.01.2000 & Executive Engineer vide Government Order No. 108-PDD of 2007 dated 20.04.2007.

And whereas, as per seniority list issued vide Government Order No. 10-PDD of 2001 dated 05.01.2001, Shri G.A. Mir was figuring at serial No. 408 and regularized as Assistant Engineer (Electric) w.e.f., 01.12.1991 but later on J&KPSC vide their communication No. PSC/DPC/PDD/14/2000/AE dated 29.01.2003 intimated that slot meant for ST category was already utilized for other eligible candidate who was figuring ahead of him in the seniority, as such, Shri G.A. Mir was regularized on a different date & pushed down in the seniority list.”

“And whereas, the case has been examined and it has found that petitioner was initially figuring at s. No. 408 in the Seniority list issued vide Government Order No. 10-PDD of 2001 dated 05.01.2001, however, his regularization as Assistant Engineer was fixed by the Public Services Commission/Departmental Promotion Committee as 01.12.1991. But later on the J&KPSC vide their communication No. PSC/DPC/PDD/14/2000/AEE dated 29.01.2003 pushed down the petitioner and regularized him w.e.f., 01.12.1994 instead of 01.12.1991 on the ground that slot given to petitioner for regularization as AE w.e.f. 01.12.1991 was already given to some other eligible candidate senior to him, as such, the seniority of Shri G.A. Mir got changed.

And whereas, the mandate of regularization/fixation of dates for holding posts substantively exclusively rests with the PSC/DPC

and is binding on the Government Departments, as such, the claim of petition is dehors of rules. The department cannot over rule the recommendations of the PSC/DPC whereby his date of regularization has been changed and made junior to several AEs; And whereas, recently, some eligible Engineers who have been placed as I/C Chief Engineers are direct recruit Assistant Engineers w.e.f, 03.sic.1994 while as the petitioner has been regularized as AE w.e.f., 01.12.1994, therefore, his contention in above titled writ petitions that his juniors have been placed as I/c Chief Engineers is totally misconceived and not based on factual grounds of the case; which does not commensurate which the relevant records/date of confirmation of the petitioner as AE(E) in the Department. Now, therefore, in compliance of above directions of the Hon'ble Court, the case of petitioner namely Shri Ghulam Ahmad Mir, I/C Superintending Engineer, EM&RE Circle PDD, Leh has been considered and found devoid of any merit, and hence rejected."

Nature of the dispute involved in the present T.A.s

- 1) As per seniority list issued vide Government Order No. 10-PDD of 2001 dated 05.01.2001, applicant Ghulam Ahmad Mir was figuring at serial No. 408 and regularized as Assistant Engineer (Electric) w.e.f., 01.12.1991 but later on, J&KPSC vide communication No. PSC/DPC/PDD/14/2000/AE dated 29.01.2003 intimated that slot meant for ST category was already utilized for other eligible candidate who was figuring ahead of the applicant in the seniority. Hence, applicant was regularized w.e.f., 01.12.1994 instead of 01.12.1991 on the ground that slot given to applicant for regularization as Assistant Engineer w.e.f. 01.12.1991 was already/previously given to some other eligible candidate, senior to him, as such, the seniority of applicant G.A. Mir was

pushed down in the seniority list. Applicant has challenged the downgrading of his seniority from 1991 to 1994 and the other respondents being promoted prior to the applicant in violation of rules. However, respondents aver that the downgrading of applicant and seniority of respondents has been rightly considered by the Government, as per, rules.

- 2) During the course of arguments, learned AAG had submitted that he adopts the counter affidavit filed in T.A. No. 5865/2020 in other T.A.s wherein counter affidavits have not been filed.
- 3) A contention was raised by applicant that his seniority was fixed and regularized as Assistant Engineer (Electric) w.e.f. 01.12.1991 and thereafter he was granted further promotions on such seniority and therefore, at this stage, his seniority cannot be pushed down w.e.f. 01.12.1994.
- 4) Learned A.A.G. for the respondents submitted that the seniority of applicant was pushed since the slot meant for SC category was already given to his senior, as such, the seniority of applicant was pushed down. Once, the error was corrected, consequences were bound to follow. The fact of further promotion earned by the applicant in the meantime to the higher posts would be irrelevant as he had no claim for regularization as A.E. (Electric) w.e.f. 01.12.1991 but from w.e.f. 01.12.1994 in the first place, in terms of his merit in the seniority list, as such, his seniority got pushed down.
- 5) It was further submitted by learned AAG and rightly so, that undoubtedly, applicant was regularized and substantively promoted as Assistant Engineer (Electrical). However, thereafter, all promotions have been made on Incharge/temporary basis and on stop gap basis in own pay

and grade with charge allowance as admissible, subject to review and approval of the DPC/PSC and subject to any pending litigation and so, does not create any right, interest or equity in future promotions as and when to be considered on substantive basis through DPC/PSC.

- 6) An objection was taken by the learned counsel for applicant that once the department has given the promotion to the applicant, it cannot afterward correct the promotion even if the promotion was in violation of rules. However, learned AAG while countering the argument of applicant placed reliance upon *Union of India Vs. Narender Singh*, (2008) 2 SCC 750 wherein the Hon'ble Apex Court held that:

“28. It is true that the mistake was of the Department and the respondent was promoted though he was not eligible and qualified. But, we cannot countenance the submission of the respondent that the mistake cannot be corrected. Mistakes are mistakes and they can always be corrected by following due process of law. In *Indian Council of Agricultural Research v/s T.K.Suryanarayanan*, (1997) 6 SCC 766, it was held that if erroneous promotion is given by wrongly interpreting the rules, the employer cannot be prevented from applying the rules rightly and in correcting the mistake. It may cause hardship to the employees but a court of law cannot ignore Statutory Rules.

29. As observed by us, Statutory Rules provide for passing of Departmental Examination and the Authorities were right in not relaxing the said condition and no fault can be found with the Authorities in insisting for the requirement of law. In the circumstances, the action of the Authorities of correcting the mistake cannot be faulted.”

- 7) It is submitted by Learned AAG that in view of the emphatic ruling of the Hon'ble Apex Court, the respondents are fully justified in correcting the mistake, if any, made by it in promotion of an official and if an official had been erroneously granted appointment/promotion against an SC post which was legitimately due to a person higher in the merit list but erroneously denied the seniority, the consequences would inevitably follow once the error is corrected. The person/s higher in the merit list in the SC category above the said official would be granted the SC post and, therefore, there would be no option but to revert the official in such circumstances.
- 8) Looking to the facts and circumstances of the T.A.s and the settled law, respondents are under an obligation to correct the situation if the applicant has been wrongly given a promotion adversely to the person who is higher in seniority and actually entitled to such seniority/promotion before the applicant. In the present case, respondents would be well within their jurisdiction and power to rectify their action if they have erroneously regularized the services of the applicant as Assistant Engineer w.e.f. 01.12.1991 instead of 01.12.1994.
- 9) However, true it is that before such an action is taken and a person is actually reverted, he must be given an opportunity to show cause why the proposed action should not be taken. He may be able to satisfy the Authorities that there was no such mistake. But even otherwise, principles of natural justice and fair play require giving of such opportunity to him. Once the respondents intended to reduce the position of the applicant to his detriment, it is obligatory on their part to put him on notice. We note two aspects. If the reduction in rank or reversion is by way of any penal

action, departmental inquiry is required to be conducted. If, on the other hand, the inquiry or examination is as regards the administrative steps, without attributing any malice or misconduct to the applicant, it would be sufficient, if a notice, duly indicating the relevant facts and the proposed action, is issued. In the instant case, it seems that the impugned action of changing the date of regularization of service of applicant from 01.12.1991 to 0.12.1994 was taken unilaterally on facts which could have been shown by the appellant to be incorrect, but this chance never came, as the applicant, at no stage, was informed of the action which the respondents intended to take against him and such a course of action cannot be sustained in law being passed in violation of the principles of natural justice and prescribed procedure.

- 10) The action taken against the applicant on the basis of the impugned Government order No. 28–PDD of 2019 dated 29.01.2019 deserve to be set aside on the ground that it is unreasoned and non-speaking. Learned counsel for applicant drew our attention to the impugned order, demonstrating the cryptic manner in which it has been worded, being non-speaking and un-reasoned in nature. We have perused the impugned order impugned Government order No. 28–PDD of 2019 dated 29.01.2019. It has been passed in a very cursory and casual manner, without giving the entire factual background for assigning any clear reasons.
- 11) Respondents are required under law to consider entire matter contained in the representation, in the right perspective, and then to pass speaking and reasoned order to decide the grievance of the applicant, which is totally lacking in the present case. Respondents in the impugned order have taken a general view of the nature of the dispute and failed to give

detailed facts and reasons for deciding against the applicant or downgrading his seniority. The impugned order is lacking details. We may refer to *M/s Kranti Associates Pvt. Ltd. Vs. Sh. Masood Ahmed Khan*, 2010 (4) RCR (Civil) 600 (SC), wherein the Hon'ble Apex Court held that "Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process."

- 12) Therefore, it is held that the impugned Government order No. 28–PDD of 2019 dated 29.01.2019 is cryptic, brief, non-reasoned and cannot legally be sustained. The ratio of law laid down by the Hon'ble Apex Court in the indicated judgments is, *mutatis mutandis*, applicable to the instant controversy, and is the complete answer to the problem in hand.
- 13) Learned counsel for applicant during the arguments referred to:
 - (1) *State of Uttaranchal v/s Sri Shiv Charan*, 2013 (12) SCC 179 to submit that claim put forth by respondents is a stale claim. However, the facts of the present do not show the action of the Government to rectify the seniority erroneously granted to be a dead and stale claim.
 - (2) *A.J. Fernandis v/s The Divisional Manager, South Central Railway*, 2001 (1) SCC 240. In this case, the challenge to the promotion was held to be delayed. However, in the present case, no challenge is made by a colleague to the promotion of respondent. The Government is rectifying the error, soon after made by it in the promotion process and in the shortest time.
 - (3) *Dr. Akshya Kumar Bisoi V/S All India Institute Of Medical Sciences*, AIR 2018 SC 1022 wherein it was observed that relief would unsettle the inter se seniority between the petitioners over twelve years. However, in the present case,

the applicant was promoted as Assistant Engineer and regularised w.e.f. 01.12.1991 in seniority list dated 05.01.2001. The error was noticed soon thereafter and rectified by the PSC vide its communication No. PSC/DPC/PDD/14/2000/AE dated 29.01.2003. So, it cannot be said in the instant case that there was delay in rectifying the situation.

- 14) We, therefore, allow the T.A.s and set aside the impugned Government order No. 28 – PDD of 2019 dated 29.01.2019. However, the stand of Government is that seniority was wrongly accorded to the applicant which needs to be corrected. The Government in view of the law laid down by the Hon'ble Apex Court has the right to correct the promotion erroneously given to the applicant but only after giving an opportunity of being heard to the applicant. Therefore, the respondents shall give a notice to the applicant for downgrading his seniority in terms of Order No. PSC/DPC/PDD/14/2000/AR dated 29.01.2003 issued by the Public Service Commission and pass the final order strictly in accordance with law, after taking into account, the explanation that the applicant may submit. This exercise should be completed within one month from the date of receipt of a certified copy of this order and thereafter the Government would be at liberty to make the promotions in accordance with rules.
- 15) There shall be no order as to costs.

(ANAND MATHUR)
MEMBER (A)

(RAKESH SAGAR JAIN)
MEMBER (J)

Arun/-

ANNEXURE-I**CENTRAL ADMINISTRATIVE TRIBUNAL
JAMMU BENCH, JAMMU****T.A. No. 62/5818/2020**

Gh. Ahmad Mir Aged 56 years, S/o Daulat Ali Mir, R/o Drass Kargil

.....Applicant

(Advocate: Mr. J A Kawoosa)

Versus

1. State of Jammu & Kashmir through Chief Secretary Civil Sectt Srinagar/Jammu.
2. Commissioner/Secretary to Government, Power Development Department, Civil Sectt Srinagar/Jammu.
3. Mr. Hirdesh Kumar Singh, Commissioner/Secretary to Government, Power Development Department, Civil Sectt, Srinagar/Jammu

.....Respondents

(Advocate: Mr. Amit Gupta, Additional Advocate General)

T.A. No. 62/5821/2020

Gh. Ahmad Mir Aged 56 years, S/o Daulat Ali Mir, R/o Drass Kargil

.....Applicant

(Advocate: Mr. J A Kawoosa)

Versus

1. State of Jammu & Kashmir, through Commissioner/Secretary to Government, Power Development Department, Civil Sectt. Srinagar/Jammu.
2. Mr. Hirdesh Kumar Singh, Commissioner/Secretary to Government, Power Development Department, Civil Sectt, Srinagar/Jammu.
3. Additional Secretary to Govt. HRM Power Development Department, Civil Sectt. Srinagar/Jammu.
4. Jammu & Kashmir Public Service Commission, Srinagar/Jammu through its Secretary.
5. Mr. Sunil Kumar Gupta, I/C Chief Engineer, Procurement & Material Management Wing J&K Srinagar/Jammu.

6. Mr. Manhar Gupta, I/C Chief Engineer Generation (PDC)/Electric Maintenance and Rural Electrification Wing Leh.
7. Mr. Bashir Ahmad Dar, I/C Chief Engineer presently I/C Secretary (Technical) Power Development Department J&K Srinagar/Jammu.
8. Ms. Roheela Wani I/C Chief Engineer Chenab Valley Power Project Ltd (CVPPL), Jammu.
9. Mr. Naseer Ahmad Khan, I/C Chief Engineer Project Wing Kashmir.
10. Mr. Javaid Yousuf Dar, I/C Chief Engineer System & Operation Wing Kashmir.
11. Mr. Ashwani Kumar Sachdeva, I/C Chief Engineer, Commercial & Survey Wing J&K Srinagar/Jammu.
12. Mr. Sudhir Kumar Gupta, I/C Chief Engineer Electric Maintenance & Rural Electrification Wing Jammu.
13. Mr. Hashmat Yousuf Qazi I/C Superintending Engineer, Electric Maintenance & Rural Electrification Circle-I Srinagar.

.....Respondents

(Advocate: Mr. Amit Gupta, Additional Advocate General)

T.A. No. 62/5852/2020

Gh. Ahmad Mir Aged 56 years, S/o Daulat Ali Mir, R/o Drass Kargil

.....Applicant

(Advocate: Mr. J A Kawoosa)

Versus

1. State of Jammu & Kashmir through Chief Secretary Civil Sectt Srinagar/Jammu.
2. Commissioner/Secretary to Government, Power Development Department, Civil Sectt Srinagar/Jammu..
3. Mr. Hirdesh Kumar, Commissioner/Secretary to Government, Power Development Department, Civil Sectt Srinagar/Jammu.
4. Mr. Fayaz Ahmad Beigh, I/C Chief Engineer Generation Wing, JKSPDC Kashmir.
5. Mr. Ajaz Ahmad Dar, I/C Chief Engineer, EM&RE/Generation Leh.
6. Mr. Archana Gupta, I/C Chief Engineer, Planning and Design Wing J&K Jammu/Srinagar.

.....Respondents

(Advocate: Mr. Amit Gupta, Additional Advocate General)

T.A. No. 62/5864/2020

Gh. Ahmad Mir Aged 56 years, S/o Daulat Ali Mir, R/o Drass Kargil

.....Applicant

(Advocate: Mr. J A Kawoosa)

Versus

1. State of Jammu & Kashmir through Commissioner/Secretary to Government, Power Development Department, Civil Sectt. Srinagar/Jammu.
2. Additional Secretary to Govt, HRM Power Development Department Civil Sectt. Srinagar/Jammu.
3. Jammu & Kashmir Public Service Commission, Srinagar/Jammu through its Secretary.
4. Sh. Showkat Ahmad Banday, Incharge Chief Engineer Procurement and Material Management PDD J&K Jammu.

.....Respondents

(Advocate: Mr. Amit Gupta, Additional Advocate General)

T.A. No. 62/5865/2020

Gh. Ahmad Mir Aged 56 years, S/o Daulat Ali Mir, R/o Drass Kargil

.....Applicant

(Advocate: Mr. J A Kawoosa)

Versus

1. State of Jammu & Kashmir through Chief Secretary Government of J&K, Civil Secretariat Srinagar/Jammu.
2. Commissioner/Secretary to Government, Power Development Department, Civil Sectt Srinagar/Jammu.
3. Additional Secretary to Govt, HRM Power Development Department Civil Sectt. Srinagar/Jammu.
4. Jammu & Kashmir Public Service Commission, Srinagar/Jammu through its Secretary.

.....Respondents

(Advocate: Mr. Amit Gupta, Additional Advocate General)