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Reserved

Central Administrative Tribunal, Allahabad Bench, Allahabad.
Registration T.A.No. 639 of 1987 (C.Misc.Writ Petition
No. 8930 of 1983)

Vidya Bhushan Petitioner

Vs.

Union of India and 3
others Respondents.

Hon. D.S.Misra, AM
Hon. G.S.Sharma, JM

(By Hon. G.S.Sharma, JM)

This is a writ petition under Article 226 of the Constitution of India and has been received from the High Court of Judicature at Allahabad u/s.29 of the Administrative Tribunals Act XIII of 1985.

2. The undisputed facts of this case are that the petitioner was selected as Assistant Executive Engineer by the Union Public Service Commission (for short Commission) on the basis of the Engineering Service Examination held in 1960 and on his appointment on this post, he had joined the Military Engineering Service (for short MES) on 16.8.1962. The respondent nos. 3 and 4 were similarly selected by the Commission in the Engineering Service Examination conducted by it in 1961 and they had joined their service on 15.1.1963 and 12.2.1963 respectively in the same Department. The respondent nos. 3 and 4 were thus one batch junior to the petitioner and in the seniority list of 1963 of the Assistant Engineers issued by the Department, the petitioner was also shown senior to them at sl.no.345 and respondent nos. 3 and 4 were shown at sl.nos. 536 and 573 respectively. The services of the respondent nos. 3 and 4 were made permanent w.e.f. 15.1.1966 and 12.2.1966 respectively while the

petitioner was confirmed w.e.f the due date 19.9.1964 by an order dated 4.9.1971. Treating the respondent nos. 3 and 4 senior to the petitioner on the ground that the petitioner was still temporary, they were promoted as Executive Engineers (for short EE) in the year 1968. On the representation of the petitioner, he was promoted as EE in 1975.

3. In the seniority list of 1967, the petitioner was shown at sl.no. 491 and respondent nos. 3 and 4 were shown at sl.nos. 116 and 119 respectively. In the seniority list of 1968, the petitioner was shown at sl.no.135 and respondent no.3 was shown at sl.no.449 but the name of the respondent no.4 was not mentioned in this list at all. Again in the seniority list of 1973 of the Assistant Engineers the petitioner was shown senior to the respondent nos. 3 and 4 as they were shown at sl.nos. 97,103 and 107 respectively. However, in the seniority list of EEs for the year 1977, the petitioner was again shown junior to the respondent nos. 3 and 4 against which the petitioner made a representation to the respondent nos. 1 and 2 but he received no reply. The respondent nos. 3 and 4 were thereafter promoted as Superintending Engineer (for short SE) ignoring the petitioner.

4. The grievance of the petitioner is that his service record is not in any way adverse in comparision to the respondent nos. 3 and 4 and he having joined the service earlier than them, he should rank senior to them in accordance with rule 3(i) of the Military Engineering Service Class I (Recruitment, Promotion and Seniority) Rules, 1949 (hereinafter referred to as the Service Rules of 1949).

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It has been further alleged that in the case of A.Janardhan Vs. Union of India (A.I.R. 1983 S.C-769), in which there was a dispute regarding seniority between the direct recruits and the promotee engineers of this Department, the Hon'ble Supreme Court in its judgment dated 26.4.1983 had laid down certain principles for determining the seniority in the MES but the respondents did not revise the seniority of the petitioner even after this decision despite his representations. He accordingly filed the present petition in July 1983 for a direction to the respondent nos. 1 and 2 to treat the petitioner senior to the respondent nos. 3 and 4 and after revising his seniority in accordance with rules grant him all consequential benefits on the basis of his seniority.

5. The petition has been contested on behalf of the respondent nos. 1 and 2. In the counter affidavit filed on their behalf by the Commander Works Engineers, Bareilly it has been stated that the petitioner was recruited against a temporary vacancy while the respondent nos. 3 and 4 were recruited against the permanent vacancies and according to the Ministry of Defence Memo No.10(1)/60/D (APPTS.) dated 11.3.1965, permanent officers of a grade ranked en bloc senior to the temporary officers and as such the seniority list in 1967-68 was drawn on the basis of general principles of seniority and as the respondent nos. 3 and 4 were appointed against permanent vacancies and were confirmed at that time, they were placed above the petitioner who was not confirmed till that date. The respondent nos. 3 and 4 were not AEs in 1968 and as such the name of the respondent no.3 was shown in the seniority list of 1968 by mistake and there was no question of including the name of the respondent no.4 in the said list. Regarding the delay in the promotion of the petitioner, it was stated in the counter affidavit that the seniority of the promotees is fixed in

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the order of position decided in the panel of Departmental Promotion Committee. Officers selected in the earlier DPCs are treated senior to those selected for promotion in the subsequent DPCs. As the respondent nos. 3 and 4 were selected for promotion as EEs in the DPC held in March 1968 and the petitioner, though considered by the DPC, could not be selected with reference to his position in the seniority list. As the respondent nos. 3 and 4 were promoted as EEs earlier than the petitioner, they were shown above him in the seniority list of EEs in the year 1977. The seniority list of Asstt. Engineers in 1967-68 was based on the general principles of seniority and they were upheld by the Hon'ble Supreme Court in the case of A.Janardhan (Supra). The representations made by the petitioner for redetermining his seniority could not be decided because of the pendency of the Court cases and before the case of the petitioner could be re-examined in the light of the decision in the case of A.Janardhan (Supra) he filed this writ petition and the matter again became subjudice. An EE becomes eligible for promotion as SE after completion of 7 years service in the grade of EE, and therefore, the petitioner could not be considered by the DPC in January 1981 when the respondent nos. 3 and 4 were considered as he had not completed the requisite service of 7 years by that time. In the case of A.Janardhan (Supra) their Lordships of the Hon'ble Supreme Court had decided the seniority list drawn in 1973 and the panel issued in 1975 and had upheld the seniority list of 1963 and 1967-68 and it is doubtful whether the petitioner is entitled to any benefit on the basis of the judgment in the said case. The dispute of seniority raised by the petitioner relates to 20 years back and it would disturb the settled position of the cadre and as such, he is not entitled to any revision of seniority.

6. The petitioner has filed a detailed rejoinder affidavit and it has been stated therein that the petitioner and respondent nos. 3 and 4 were appointed as probationers and the question of the posts being permanent or temporary was hardly relevant and the respondent nos. 3 and 4 did not acquire any right to the post before their confirmation in 1966. The ^{of} Service Rules/1949 clearly lay down that the direct recruits of an earlier examination will rank above those recruited through a subsequent examination and as such, the respondent nos. 3 and 4 could not be considered senior to the petitioner. The petitioner having been confirmed w.e.f. 19.9.1964, the delay in making the confirmation cannot obliterate the fact that he is a permanent officer w.e.f. 1964 and thus senior to the respondent nos. 3 and 4 even on this ground who were confirmed in 1966. The respondent nos. 3 and 4 were also confirmed at a later date i.e. 13.9.1967 w.e.f. 1966 and they were not confirmed at the time the seniority list of 1967 was issued. The length of service is the only criteria for seniority and according to the 1963 seniority list upheld by the Hon'ble Supreme Court, the petitioner is senior to the respondent nos. 3 and 4. The seniority of the petitioner having been wrongly determined by the respondent nos. 1 and 2 and they having further delayed the disposal of his representations against seniority, the petitioner cannot be deprived of his legitimate rights on account of the delay alleged by the respondents and the petitioner is entitled to the reliefs claimed.

7. The petitioner also filed a supplementary rejoinder affidavit in which it was stated that the Service Rules of 1949 do not differentiate between a temporary officer and a permanent officer. In the case of A. Janardhan (Supra)

it was held that once the recruitment is legal and valid, there is no difference between holders of permanent post and temporary post. The explanation provided below para 2 of the annexure to the general principles issued under the Memo No.10(1)/60/D (Appls.) dated 11.3.1965 states that for the purposes of these principles persons who are confirmed retrospectively w.e.f. a date earlier than the issue of these general principles and persons appointed on probation to a permanent post in a grade prior to the issue of these general principles shall be considered permanent officers of the grade. Thus, according to these general principles also, the petitioner has to be deemed to be a permanent officer w.e.f. 1964 and on the basis of the same the respondent nos. 3 and 4 could not be ranked senior to him. In the case of A.Janardhan (Supra), the Hon'ble Supreme Court had held that the seniority list of 1963 and 1967 are good. What they meant was that the basis upon which those lists were prepared was good. The Hon'ble Supreme Court had thus upheld the list on the basis of principle of seniority and it cannot be said that the factual mistakes committed in the preparation of the said list cannot be looked into or corrected.

8. Written arguments were filed on behalf of the petitioner in this case. We have very carefully examined the record in the light of the submissions made on behalf of the parties in their arguments. Most of the facts of this case are undisputed. The respondent nos. 3 and 4 did not put in appearance in this case and their employers, i.e. respondent nos. 1 and 2 have either specifically admitted or did not choose to dispute the fact that the petitioner is one batch senior to the respondent nos. 3 and 4 and in the seniority list of Asstt. Engineers he was shown senior to the respondent nos. 3 and 4. It has also not been disputed on behalf of the petitioner that he was appointed against a temporary vacancy and the respondent nos. 3 and 4 were appointed against permanent vacancies. On account of the difference in the nature of their vacancy, the respondent

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nos. 3 and 4 were confirmed on the completion of their period of 2 years w.e.f. 1960 while the petitioner was confirmed, though w.e.f. due date retrospectively, vide order dated 4.9.1971, copy annexure 1 to the petitioner. There is also no dispute in this case about the fact that the respondent nos. 3 and 4 were promoted as EEs much before the petitioner in 1968 while the petitioner was promoted in 1975. Undisputedly the respondent nos. 3 and 4 were further promoted as SE but the petitioner was not considered for this promotion. The contesting respondents have further not disputed the fact that on merits he or his record is in no way inferior in comparision to that of the respondent nos. 3 and 4. The only explanation of the respondent nos. 1 and 2 for the delay in the promotion of the petitioner, as stated in paras 12 and 15 of the counter affidavit, is that for the promotion of the EEs, the petitioner was considered with respondent nos. 3 and 4 by the DPC but with reference to his position in the seniority list, he could not be selected. It thus follows from this admission that though the petitioner was otherwise fit for promotion, he could not be promoted as he was shown junior in the seniority list and the sufficient number of vacancies to include his name on the basis of seniority was not available. For the delay in promotion to the post of SE, their explanation is that the requisite service of 7 years in the cadre of EE was not completed by the petitioner when the DPC was held in Jan. 1981 for considering the promotion of the respondent nos. 3 and 4 and others for the post of SE.

9. In view of the undisputed facts as stated above, the only question arising for determination in this case is whether the criteria adopted by the respondent nos. 1 and 2 for determining the inter se seniority of the petitioner and respondent nos. 3 and 4 in 1967 and 1968 was correct. In other words, it has to be seen whether according to the general principles, as contained in Ministry of Defence Memo dated 11.3.1965, the petitioner could be placed below the respondent

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nos. 3 and 4 in the order of seniority on account of his being a temporary or unconfirmed Asstt. Engineer. The petitioner has quoted the relevant extract of the Memo dated 11.3.1965 in his supplementary rejoinder and according to the explanation given below para 2 of the annexure, it has been provided that the persons who are confirmed retrospectively w.e.f a date earlier ~~the issue of~~ that these general principles shall be considered permanent officers in the grade. The respondents have not disputed the correctness of this provision as quoted by the petitioner. Therefore, there appears to be no doubt in accepting the contention that even on the basis of this Memo, after his confirmation with retrospective effect from 1964, he has to be considered as a permanent Asstt. Engineer and on the basis of these general principles, the petitioner cannot be placed below the respondents nos. 3 and 4 atleast after the date of notification of his confirmation in 1971. According to the Service Rules of 1949, the petitioner and respondent nos. 3 and 4 all being direct recruits, the petitioner having been recruited in the earlier examination shall rank ^{senior and is entitled to be placed} above the respondent nos. 3 and 4 recruited in the subsequent examination. It is relevant to point out that the respondent nos. 1 and 2 did not see any ground to deny the confirmation to the petitioner with the due date and ~~even~~ in the absence of any provision in Memo dated 11.3.1965, the petitioner should be deemed to be a permanent A.E. from 1964 and the respondent nos. 3 and 4 having been confirmed about 2 years thereafter in 1966 they could not rank senior to the petitioner. It is not shown by the contesting respondents that the delay in his confirmation was due to any ~~fault~~ ^{fault} on his part. The respondent nos. 1 and 2 thus themselves being responsible for this delay and on their decision to confirm him with effect from the due date, the petitioner cannot be denied the legitimate seniority to which he became entitled after his confirmation and other consequential benefits.

AM

10. The contention of the respondent nos. 1 and 2 has been that in the case of A.Janardhan (Supra), the Hon'ble Supreme Court confirmed the seniority list of 1967-68 and the petitioner having been shown junior to the respondent nos. 3 and 4 in these lists now cannot ask to recast these seniority lists. The stand of the petitioner in this connection is that in the case of A.Janardhan (Supra) the dispute of seniority was between the direct recruits and the promotees and there was no dispute inter se the direct recruits. The Hon'ble Supreme Court, therefore, had not examined the question of inter ^{se} seniority of the direct recruits themselves on the basis of the facts of individual cases and merely because the seniority lists of 1967 and 1968 were up-held by the Hon'ble Supreme Court, the respondent nos. 1 and 2 cannot deny the due seniority to the petitioner.

11. We have very carefully studied the decision of the Hon'ble Supreme Court in the case of A.Janardhan (Supra) and find that the contention raised on behalf of the petitioner is not without substance. The inter se seniority of the direct recruits in the MES was under challenge or scrutiny before the Hon'ble Supreme Court and the Hon'ble Supreme Court was concerned in that case only with regard to the inter se seniority of the direct recruits and the promotees. Therefore, the respondent nos. 1 and 2 cannot take the shelter under the said decision for not redetermining the seniority of the petitioner according to law.

12. In Haryana State Electricity Board Vs. State of Punjab and Haryana (A.I.R. 1974 S.C.-1806), the Hon'ble Supreme Court had considered the question of delay and laches in filing the writ petition for redetermination of seniority and consequential benefits and it was held that as the petitioner had

been making representations and moving the appropriate authorities at all stages, he could not be denied the benefit of seniority on the ground of delay. Coming to the facts of this case, it appears that after the issue of office Memo dated 11.3.1965, the petitioner was rightly or wrongly under the impression that he was rightly superseded in the matter of promotion to the post of EE in 1968 and that is why he does not seem to have made any representation regarding his seniority or non-promotion till he was confirmed in 1971 with retrospective effect. In the seniority list of 1973 prepared after the confirmation of the petitioner, he was shown above the respondent nos. 3 and 4 as stated in para 8 of the petition and admitted in para 10 of the counter affidavit. The petitioner, therefore, seems to have made his representation against his non-promotion and seniority perhaps for the first time on 9.1.1973, copy annexure 7 to the petition. Even after this representation, the respondents delayed the promotion of the petitioner for more than 2 years. After 1973, the petitioner made certain other representations which the respondents admittedly did not dispose of on account of the pending cases regarding seniority in the various Courts. We are, therefore, of the view that the petitioner cannot be much blamed for the delay on his part as up to the date of confirmation in 1971 he could hardly achieve anything by making representations etc.

13. Having carefully considered all the relevant facts in the light of the decisions of the Hon'ble Supreme Court, we are of the view that the petitioner is entitled to his due seniority to be determined on the basis of the length of service and the year of recruitment and he should, therefore, be placed above the respondent nos. 3 and 4 in the seniority list for the reasons already stated above. Regard-

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ing his promotion and other benefits, we are of the view that the petitioner is entitled to the notional fixation of his pay in the rank of EE from the date(s) the respondent nos. 3 and 4 were promoted but he will not be entitled to the difference in the arrears of pay of the two posts upto 4.9.1971, the date of the notification regarding his confirmation. From the date of this notification the petitioner shall be entitled to the difference in the pay up to the date of his promotion as EE. The petitioner is further entitled for being considered for his promotion as SE from the date (s) the respondent nos. 3 and 4 were promoted to this post and on being found suitable for the same he will be entitled to such promotion with all consequential benefits including the arrears of pay. The respondents 1 and 2 are directed to arrange for a review D.P.C. for this purpose within a period of three months from the date of the receipt of this order.

14. The petition is accordingly disposed of without any order as to costs.

Endorsement
MEMBER (J)

Blamey
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MEMBER (A)

Dated: 2.3.1989
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