

CENTRAL ADMINISTRATIVE TRIBUNAL, ALIAHABAD BENCH,
ALIAHABAD.

O.A.No.225 of 1987.

Division I Service Association (Promotee Cadres)
& othersApplicants.

Versus

Union of India & othersRespondents.

Hon'ble Mr. Justice U.C. Srivastava, V.C.

Hon'ble Mr. K. Obayya, A.M.

(By Hon'ble Mr. Justice U.C. Srivastava, V.C.)

The applicants, who were in service of Survey of India, have approached this tribunal for issue of writ of mandamus quashing the Officer Surveyor Recruitment Rules, 1983 dated 14.5.83 and also for a direction in the nature of mandamus quashing the combined seniority list of Group C dated 20.3.84 as contained in Annexure-5 directing the respondents to arrange pension of each of the five cadres in Group C in their cadre according to seniority and fix quota of each cadre of Group-C for promotion to Group B post of Officer Surveyors and make promotions accordingly as per O.M. dated 22.12.59 since the said rules were made and awarded.

2. The Department of Survey of India has five feeder cadres in Group C Division I, (Topographical Establishment) which are considered for promotion to Group B post of Officer Surveyor. The five cadres are :

- i) Surveyors
- ii) Scientific Assistants
- iii) Geodetic Computers
- iv) Survey Assistants and
- v) Draftman Division I.

3. In the Office Memorandum dated 22.12.59, general principles for determining seniority of various categories of persons employed in Central

Services were laid down and in the year 1950, the Surveyor General of India had issued a departmental order calling Circular order dated 1.8.50. Its rule 7 dealt with status and seniority of personnel in Division I service (Topographical Establishment) which provided that;

"Personnel in Division I covered by rule 4 and 5 and surveyors grade I will be of equal status. Seniority in each grade and as between the different trades in grade will be reckoned from the date of substantive appointment to the grade.

When two or more individuals are appointed to a grade from the same date, the seniority among the individuals is to be decided in the manner provided in the said circular."

4. The next promotion from the five feeder cadres in group-C Division I Service (Topographical Establishment) is to Group B post of Officer Surveyor and all the five feeder cadres are promotees for the said post. In the Recruitment Rules, 1962, it is provided that 'subject to availability of suitable persons, 50% of the vacancies in the Survey of India Class II service shall be filled by promotion by selection on merit from such of the Class III Division I (Topographical Establishment) personnel who have rendered a minimum period of three years service in that establishment and the Officers so-promoted shall remain on probation for a period of two years." As a result of meeting which took place on 11.3.82, it appears that the Rules, 1983 were published on 14th May, 1983 which modified the Class II Recruitment Rules, 1962 in regard to the promotion of persons from Group C posts to Group B posts of Officer Surveyor. All the posts of Officer Surveyors were made promotional in 1983 from 50% direct recruitment,

(13) A-2
4

50% by promotion of 1962 Rules. But two different criterions were adopted for fixing inter-se seniority during the period 1962 to date amongst the feeder cadres whereas the said departmental order Circular Order 436 remained unaltered. The grievance of the applicants is that in view of the determinant principles of 1959, the respondents were bound to fix Group C feeder cadre for promotion to Group B post of Officer Surveyor and had to make promotions accordingly and the Circular from 1962 to 1984 also stood modified by Rules 1959 and the Rules 1983 were not framed after following the principles and they were framed by the respondents on the request of Surveyors Association. By these rules, one cadre was created by the respondents under Item No. 9 by recruitment which is against the principle of equality and equity and as a matter of fact, proportionate recruitments should have been made to all the five group-C feeder cadres. The combined seniority list which is so-prepared in accordance with Rules, 1983, is discriminatory and against the principles of equality, equity and natural justice.

5. The respondents have opposed the claim of the applicants and have challenged the assertions made by them. It has been pointed out by the respondents that all feeder cadres from which promotions are made to group-B from one Class and one grade, out of these Survey Assistants and Draftsmen are promoted from the lower ranks namely Division II Establishment through Departmental Promotion Committee and two third posts among Surveyors are recruited directly whereas one third posts are filled by Limited Departmental Examination open to the employees in lower rank, namely Topographical

A-2
14

Division II Establishment and who have passed intermediate. All persons recruited as Surveyors whether directly or indirectly undergo two years training in all branches of Surveying, Geodetic Computers and Scientific Assistants are recruited through a competitive examination from amongst such of the Topographical Division II Employees who are graduates with Mathematics or physics and have put in not less than five years service in the Division II Establishment and there are different number of posts of feeder cadres in Division I staff (Surveyors-897 posts, Geodetic Computers-17 posts, Scientific Assistants-8 posts, Survey Assistants-304 posts and Draftsmen Division -207 posts) but the grade of all feeder cadre posts is one and no further classification can be made. The impugned seniority list has already been challenged by one A.G. Ethirajulu. He has also challenged the rational behind maintaining one seniority list and the Bangalore Bench upheld the seniority list vide its judgment dated 30.9.86 and held that only one seniority list should be maintained. Posts in different feeder cadres are created according to exigencies and necessity of the work in that cadre. As all posts in different cadres form one class, there is no justification in creating a quota for further promotion to Group B. As a matter of fact, in case any quota is created for different cadres or the fact that a person is in a particular cadre is taken into account while making promotion to Group B, then such a rule will be hit by Articles 14 and 16 of the Constitution. Different posts mentioned in paragraph under reply have been created from time to time according to the need of the work and has no relevancy for deciding the controversy. The rules which have

been framed in 1983, have been made in accordance with the suggestion of the Andhra Pradesh High Court made in Writ Appeal No.628 of 1976 and the mandatory directions contained in the order were followed and even if there is some conflict between the said rules and O.M. dated 22.12.59, the selection rules will be prevailing over the Executive Instructions of 1959. It is settled principle of law that whenever there is any conflict between the statutory rules and the executive instructions, it is the statutory rules which will prevail and not the Executive Instructions, although both can stand even side-by-side. If the statutory rules are silent on the particular point, it is Executive Instructions on the subject which govern the relation between the employer and employees and will decide the service conditions. In the instant case, in respect of the matter in issue, the rules having been framed or even amended subsequently, the O.M. of 1959 which laid down a particular rule of law, and was accepted as such and prevailed and is still prevailing, cannot go over or above the statutory rules and in case there is conflict, it is the statutory rules which will prevail. This also applies to the departmental surplus and the surplus will apply to the extent that they are not in conflict with the statutory rules. Thus, the rules cannot be said to be unreasonable. O.M. of 1959 speaks of direct recruitment and promotee and prescribes the mode how the promotion between the promotees and direct recruitment is to be regulated but it also does not prescribe any media that necessary in the feeder channel when all of them are to be promoted. There should be quota.

6. On behalf of the applicant, it was contended that the rules of 1983 have been framed

after following the principles as laid down by determinant principles for seniority and promotion and the rules are illegal and void. In the Counter-affidavit, it has been stated that the rules were framed in accordance with law and the contention that the rules were not framed by following the principles in this behalf is not correct. The Rules, 1983 are the rules which have been made under Article 309 of the Constitution of India and it cannot be said that the rules suffer from any illegality on this score. The plea that the rules were framed on the request of Surveyor Association only and for benefit of one feeder cadre, can also not be sustained merely because the Surveyor Association was consulted and the rules have been amended in the past and in the fitness of things, it was considered by the Rules Framers that the rules should be amended, it cannot be said that the rule framers were influenced by the Surveyor Association and it is because of this, the rules were framed. So far as the plea of non-providing of any quota system among the five feeder cadre which gives edge to a particular category, it is to be noticed that it was not obligatory to prescribe quota, although prescription of the quota for various feeder channel in order to avoid some conflict is generally desirable. They are rather members of Ist Class and have been treated as such and their pay scale and status are the same and their posts are also interchangeable. The post in every channel has been created according to the exigencies of work and subsequently more posts were created in other channels than that of Surveyor inasmuch as the Surveyors posts have increased five times and the posts of Surveyor

-7-

Assistant have increased ten times and the posts of Draftsman have increased 17 times. For the purpose of giving promotion to one who is better among all these persons if no quota system has been prescribed, it cannot be said that the decision in this behalf is arbitrary, discriminatory and violative of Articles 14 and 16 of Constitution of India.

7. Great stress was laid on the question of seniority and on behalf of the applicants it was extensively contended that there should not be one combined seniority list and the combined seniority list was challenged before the Bangalore Bench of the Central Administrative Tribunal in A.G. Ethrajulu's case. It is true that new rules of 1983 do not lay down the criteria about seniority determination and as such the respondents' pleas that it is in accordance with the rules that the seniority list was prepared, cannot be sustained. It may be that the seniority list was prepared in accordance with certain other criteria or the departmental circular but it could not have been prepared in accordance with the rules, 1983 which are silent on the point. The Division Bench of this tribunal in 'S.N. Jugreh Vs. Union of India & others' (O.A. No. 1050/88) and in other connected matters, the judgment of which has been delivered by one of us (Hon'ble Mr. K. Obayya, A.M.) held that the seniority list of the Feeder cadre placed before the DFC was not a proper list and it has no sanction under the new rules and the selections which existed prior to the notification of new rules have to be made under old rules if any instructions or practice followed in earlier selection and not under new rules which came

-8-

were accordingly quashed and the seniority list of the surveyor contained in Green List was also quashed and certain directions were given. In the above case, the challenge was to the seniority lists dated 29.1.85 and 11.2.65 and the seniority list notified on 1.1.86 and challenge was also that the seniority list of this feeder cadre was never finalised. The case is not squarely applicable to the facts of this case because here the dispute is larger than what was raised in that case. Here the dispute is regarding the combined seniority list of all feeder cadre and not the seniority list of one particular channel. The seniority list came for consideration before the Bangalore Bench of Central Administrative Tribunal in 'A.G. Ethirajulu's case in which a combined seniority list has been upheld and it was held that it is but and proper that a combined seniority list should be maintained and the same view has been taken by the Delhi High Court also the judgment of which has been placed on the record. According to the applicant, the seniority list is an illegal list and has been drawn in violation of the rules of seniority of 1959 according to which the seniority list was to be prepared. The combined seniority list has been drawn in pursuance of the directions given by the Andhra Pradesh High Court referred to above and the department was bound to give effect to the same. The criteria adopted was the date of substantive appointment in the ordinary grade in respect of feeder cadre and as a matter of fact, in the absence of any statutory rules, the criteria of continuous officiation or substantive appointment

to any grade is acceptable criteria which is being now followed.

8. It is not necessary for us to state the cases in this behalf but we are making reference to the case of 'M.B.Joshi & others Vs. Satish Kumar Pandey & others' 1992 SIR(5) 611 wherein it has been held that in the absence of any specific rules, it is the length of service which is to be counted from the date of substantive appointment and which determined the seniority. Even if it is accepted that the five different cadres are to be included in one seniority list and the posts are interchangeable and in the absence of any specific rules the seniority is also to be determined likewise. The criteria for the seniority determination which was thus adopted is a reasonable criteria. A reference has been made to the Administrative Order No. 436 of Survey of India, Para 7 of which reads as under:-

"Status and Seniority: Personnel in Division I covered by rules 4 and 5 and

Surveyors Grade I will be of equal status. Seniority in each grade and as between the different trades in Grade I will be reckoned from the date of substantive appointment to the grade when two or more individuals are appointed to a grade from the same date the seniority among the individuals will be as follows:-

1. When appointments are made by promotion from Division-II, the seniority will be in order of selection as decided by the DFC..
2. When appointments are made from among the trainees on classification, the seniority will be determined on merits by the Surveyor General."

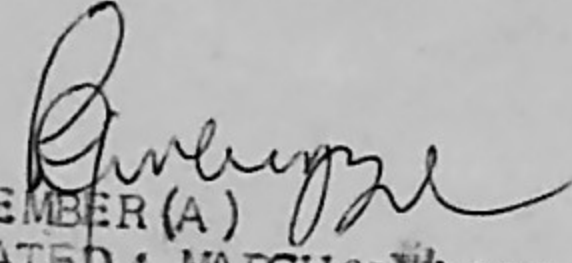
9. The above administrative order is quite justified and on this point we are in agreement

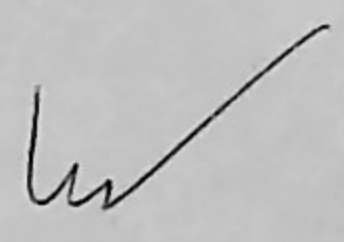
(20)

A-2
11

-10-

with what has been held in A.G. Ethirajulu's case by the Bangalore Bench of this Tribunal. Accordingly, in our opinion, the applicants have failed to make out any case for interference in granting reliefs claimed by them and the application deserves to be dismissed. Accordingly, it is dismissed. No order as to costs.


MEMBER (A)
DATED: MARCH 23, 1993
(ug)


VICE CHAIRMAN.