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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH.

Registration O.A. No. 736 of 1987

Shri P.S. Chauhan Applicant.

Versus

The Union of India and others Respondents.

Hon. Mr. Justice U.C. Srivastava, V.C.
Hon'ble Mr. A.B. Gorthi, Member(A)

(By Hon. Mr. A.B. Gorthi, Member(A))

The reliefs sought by the applicant in this case are that his seniority should be reckoned from the date of his promotion to the Group-B post of Assistant Hydrogeologist and that the orders of the respondents denying him the said benefits be quashed.

2. Shri P.S. Chauhan, the applicant joined the Central Ground Water Board as Senior Technical Assistant in 1976 and was promoted as Assistant Hydrogeologist on 23.10.1982. The recruitment to this higher post is through two sources; Direct Recruits, who qualify in the relevant examination conducted by the U.P.S.C. and promotees from the post of Senior Technical Assistant. The quota fixed by the recruitment rules was 66 2/3% for Direct Recruits and 33 1/3% for promotees. The applicant was eligible to be promoted and was duly approved by the Departmental Promotion Committee before he was promoted. He, therefore, claims his seniority from the date of his promotion. Although, the applicant cited 44 individuals in the array of the respondents, he has not furnished the details as to the dates on which they joined or were promoted as Assistant Hydrogeologist, nor did he furnish the seniority lists which he challenged.

3. The respondents refute the applicant's claim for seniority by stating that since there was considerable delay and the consequent short fall in the direct recruitment of the required number of candidates by the U.P.S.C., the applicant was promoted on a temporary basis far in excess of the quota allotted for promotees. The D.P.C. proceedings indicate that in 1982, there were 18 posts to be filled on promotion, but the applicant who was at Sl. No. 36 in the list of approved candidates was also promoted. Thus, it is obvious that the promotion of the applicant was against one of the vacancies meant for direct recruits of the year 1982 or prior to that period. The applicable rule of seniority as contained in Government of India, Ministry of Home Affairs O.M. No.9-11/55/RPS dt. 22.12.1959; para -6 is reproduced as below;

" Relative Seniority of Direct Recruits and promotees. The relative seniority of direct recruits and of promotees shall be determined according to the rotation of vacancies between direct recruits and promotees which shall be based on the quotas of vacancies reserved for direct recruitment and promotion respectively in the Recruitment Rules."

4. The respondents contended that keeping in view the quota prescribed in the recruitment rules and taking into account the number of direct recruits in whose case recommendations of U.P.S.C. had already been received, the seniority of promotees was correctly fixed in the ratio 1:2 between the promotees and the direct recruits. The seniority of the excess promotees including the applicant could not be fixed prior to 1986. In the year 1986, new seniority rules were introduced vide O.M. No. 35014/2/80-Estt. (D) dt. 7.2.1986 under which the system of keeping slots against the short fall of

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direct recruits or promotees was abolished. New system was introduced whereby, to the extent direct recruits were not available, the excess promotees would be bunched together at the bottom of the seniority list below the last position up to which it was possible to determine seniority by complying with the rotation of quotas. Accordingly, all the remaining promotees of 1982 ; whose seniority could not be fixed in accordance with the old principle ,were bunched together in accordance with the revised policy and placed properly in the seniority list.

5. The contention of the applicant is that promotees of 1982 including himself should have been shown along with or immediately below the 1982 batch of direct recruits, whereas, the respondents placed all the excess promotees of 1982 below all such direct recruits who were made available by the U.P.S.C. upto 7.2.1986.

6. The learned counsel for the applicant placed reliance on the judgment of the Hon'ble Supreme Court in A.N. Pathak Vs. Secretary to the Government, Ministry of Defence, A.I.R. 1977, S.C., 719, wherein it was observed as Under;

" We do not think it necessary to refer to the various decisions rendered by this court on this question. In the case of A. Janardhana Vs. Union of India, AIR 1983 SC 769, O.P. Singla Vs. Union of India (1985) 1a SCR 351: (AIR 1984 SC 11595) and in G.S. Lamba Vs. Union of India, AIR 1985 SC 1019, length of service was given due importance in dealing with promotions and seniority. In the case of Narender Chandha Vs. Union of India, to which one of us was a party, it was held that to treat continuous officiation of an officer as temporary would be arbitrary and violative of Arts.14 and 16

In G.K. Dudani Vs. S.D. Sharma, a three judge Bench of this court, Madon, J, speaking for the Bench approved the settled principle noted above. The promotees come into service, not by any fortuitous circumstances but they form an integral part of the regular cadre entitled to all benefits by the length of service.

.... The rules enabling the authorities to fill in vacancies for direct recruits as and when recruitment is made and thereby destroying the chances of promotion to those who are already in service cannot but be viewed with disfavour. If the authorities want to adhere to the rules strictly all that is necessary is to be prompt in making the direct recruitment. Delay in making appointments by direct recruitment should not visit the promotees with adverse consequences, denying them the benefits of their service."

7. The learned counsel for the respondent drew our attention to the case of A.N. Sahgal Vs. Rajey Ram Shiv Ram, AIR 1991, SC, 1406, wherein a somewhat contrary view was taken. In the said case, the following passage from the judgment in the case of V.B. Badami Vs. State of Mysore AIR, 1980 SC, 1561 was quoted with approval;

"In working out the quota rule, these principles are generally followed. First, where rules prescribed quota between direct recruits and promotees, confirmation or substantive appointment can only be in respect of clear vacancies in the permanent strength of the cadre. Second, confirmed persons are senior to those who are officiating. Third, as between persons appointed in officiating capacity, seniority is to be counted on the length of continuous service. Fourth, direct recruitment is possible only by competitive examination which is prescribed procedure under the rules. In promotional vacancies, the promotion is either by selection or on the principle of seniority-cum-merit, a promotion could be made in respect of a temporary post or for a specified period but a direct recruitment has generally to be

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made only in respect of clear permanent vacancy either existing or anticipated to arise at or about the period of probation is expected to be completed. Fifth, if promotions are made to vacancies in excess of the promotional quota, the promotions may not be totally illegal but would be irregular. The promotees cannot claim any right to hold the promotional posts unless the vacancies fall within their quota. If the promotees occupy any vacancies which are within the quota of direct recruits, when direct recruitment takes place the direct recruits will occupy vacancies within their quota. Promotees who were occupying the vacancies within the quota of direct recruits will either be reverted or they will be absorbed in the vacancies within their quota in the facts and circumstances of a case."

Whereas, in A.N. Pathak's case, the view taken is that promotees should not suffer ^{due to} the fluctuating availability of direct recruits or the inability of the Government to observe the quota-rota system strictly, the case of A.N. Sehgal lays down the logic that a promotees cannot have his cake and eat too, he cannot besides being promoted out of turn, claim advantage of it for the purpose of seniority and future promotion also. This vexed question has however been finally resolved by a Constitution Bench of the Hon'ble Supreme Court in the case of Direct Recruit Class-II Engineering Officers Association Vs. State of Maharashtra (1990) 2 SCC 715.

Having scanned the entire range of judicial pronouncements on the issue, the court summed up their observations, the relevant portions of which may be reproduced below;

" (a) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation.

The corollary of the above rule is that where

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the initial appointment is only adhoc and not according to rules and made as a stop-gap arrangement, the officiation in such post can-not be taken into account for considering the seniority."

"(c) When appointments are made from more than one source, it is permissible to fix the ratio for recruitment from the different sources, and if rules are framed in this regard they must ordinarily be followed strictly."

"(g) The quota for recruitment from the different sources may be prescribed by executive instructions, if the rules are silent on the subject."

"(j) The decision dealing with important questions concerning a particular service given after careful consideration should be respected rather than scrutinised for finding out any possible error. It is not in the interest of service to unsettle a settle position."

8. So far as the applicant in this case is concerned, it is clear from the D.P.C. proceedings that he was promoted in excess of the quota of 18 posts available for promotees in the year 1982, he being placed at Sl. No. 36 in the panel of candidates to be promoted. Not only he, but 17 others senior to him were also thus promoted beyond the stipulated quota. It is not the case of the respondents that they had given up the quota system of recruitment. The said system was being followed but due to the delay involved in the process of direct recruitment, usually there existed a time gap resulting in the availability of certain number of vacancies meant for direct recruits. Against such vacancies, departmental candidates were being promoted on a temporary basis and the same would be evident from the promotion order in respect of the applicant also. The respondents clarified this aspect even in their reply to the representations of the applicant and further stated that direct entry candidates for the year 1982 to 1986 whose selection process was already set in motion as also the departmental candidates promoted prior to 1986 were all

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placed in the seniority list strictly in accordance with the rules governing the subject prior to 1.3.1986.

In respect of the remaining promotees, i.e. those promoted in excess of the quota whose seniority could not be adjusted among the direct recruits prior to 1.3.1986, they all had to be bunched together and placed below the direct candidates of 1986 whose selection process had already been through prior to 1.3.1986.

9. In view of the aforesaid, this case is squarely governed by the corollary to clause (A) of the Hon'ble Supreme Court's conclusions referred to in para-7 above. There is also no doubt that the respondents have neither acted malafide nor displayed any lack of diligence either in the matter of observance of quota system of recruitment or in the application of rota system of seniority. Since a carefully considered decision was taken by the respondents in fixing the seniority of not only the applicant but also some others similarly placed and since the applicable rules were duly followed, we would not like to hold an inquisition to find out any latent error, particularly when none is patent.

10. In the result, the application deserves to be dismissed and we order accordingly. Parties to bear their own costs.

Prasagni
Member (A)

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Vice-Chairman.

Dated: 14.01.1992
(n.u.)