

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

Original Application No.1413 of 1993.

Allahabad, this the 25 day of May, 2006.

Hon'ble Mr. K.B.S. Rajan, Member (J)
Hon'ble Mr. A.K. Singh, Member (A)

Sri Vinod Baboo Sharma aged about 51 years son of late Sri Krishna Murari Lal, resident of Chief Engineer, Air Force Office, Bamrauli, Allahabad, posted as Superintendent B/R Grade 1, M.E.S. No.466137.

...Applicant.

(By Advocates : Col. Ashok Kumar/ Sri B.P.Srivastava)

Versus

1. Union of India, through the Secretary Ministry of Defence, New Delhi.
2. Engineer in Chief Army Headquarters, Rajaji Marg, Kashmiri House, Defence Headquarters New Delhi.-11.

...Respondents.

(By Advocates:Shri S. Chaturvedi/Sri P Mathur)

O R D E R

By Hon'ble Mr. K.B.S. Rajan, Member (J)

Seniority is the dispute in this case. The settled law on the subject is that a settled matter cannot be unsettled. In this regard, it is apt to quote the ruling of the Apex Court in the case of **Govt. of A.P. v. M.A. Kareem, 1991 Supp (2) SCC 183**, wherein it has been held -

"9. Besides the above infirmities there are two other important considerations which weigh heavily against the respondents. The petition before the Tribunal was filed by the respondents after a period of 13 years of their initial appointment in the Chief Office, during which period many orders consistent with the terms of service as indicated in the Memorandum Annexure 'A' must have been passed in favour of the other incumbents of the service. The courts and

tribunals should be slow in disturbing the settled affairs in a service for such a long period."

2. Now the facts capsule as contained in the O.A., are that the petitioner was appointed as Superintendent B/R grade II in the Military Engineering Services Department w.e.f. 14th December, 1963 and was posted at Ranchi. For the promotion of the next higher post of Superintendent B/R Grade 1 candidate has to pass MES procedure examination in the year 1965. The petitioner was promoted as Superintendent B/R grade 1 w.e.f. 12.8.83 on adhoc basis and since then he has been continuously holding the aforesaid post. He was allowed to cross the efficiency bar by part II order dated 2nd December 1985. The petitioner's increment fell due from 12th August 1985 and as such his E.B. was allowed to be crossed w.e.f. 1st August 1985. The petitioner was made permanent w.e.f. 1st April 1975 on the post of B/R grade II. Previously there were four commands and at present there are five commands. An employee of one command can be transferred to the other command but the appointing authority of B/R grade II and B/R grade 1 are commandwise. Petitioner is giving the details of the persons who were juniors to the petitioner and yet they were promoted as Superintendent B/R grade 1 earlier then the petitioner.

"M.E.S NO.21073 Sri Suresh Chandra Gupta who originally appointed as Superintendent B/R grade II on 22.2.64 by the Chief Engineer Central Command, Lucknow and promoted as Superintendent B/R grade 1 on 16.2.66 by the Chief Engineer Eastern Command and being the parent Command at Chief Engineer Central Command, Lucknow."

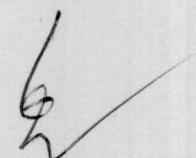
As the previous promotions to the Superintendent B/R grade I were controlled at Command level, therefore, the aforesaid juniors were although appointed by the Central Command got promotion in Eastern Command and after their promotion they

were again transferred to Centre Command in Eastern Command they got quick promotion, whereas the Central Command had not promoted the B/R grade II although the vacancies were existing and those vacancies were filed up by the persons who were declared surplus by other commands.

3. The respondents have contested the OA and their version is as under:

(I) Seniority of Supd. B/R Cde 1 drawn and circulated vide respondent letter dated April 93 was as per *seriatim* of select Panel drawn by the DPC which is in accordance with General Principles laid down in determining seniority in selection grade post on promotion. The applicant's position in the select panel drawn by DPC for promotion to Supdt. B/R Cde I was below MES 4000037 Sri Mahesh Chander Saxena and above MES/102300 Sri Desai Ashok Kumar Ramnik Lal. Accordingly as per the position assigned to the petitioner in the select panel drawn by the DPC, the applicant's name has been placed at Sl. NO.351 in the seniority list below Sri Mahesh Chander Saxena and above Sri Desai Ashok Kumar Ramnik Lal.

(II) Applicant was initially appointed in the grade of Supdt. B/R Cde. I on adhoc basis w.e.f 12 August 83. All adhoc appointees have been considered in a properly constituted DPC as per the provisions of recruitment Rules in 1985 for regular promotion. The DPC which held in 1985 had drawn yearwise panel for 1982, 1983 and 1984 and the applicant was selected for 1983



vacancy and placed in the select panel below Sri Mahesh Chander Saxena and above Sri Desai Ashok Kumar Ramnik Lal.

- (III) Normally subordinate staff who are on command based seniority transferred from one command to another command only in exceptional and special circumstances of compassionate grounds and to liquidate surplus.
- (IV) The petitioner is raising the issue which had taken place more than two decades ago in this para Chief Engineer Command being the appointing authority for the post of Supdt. B/R Gde. I DPCs for promotions to the post were also held on command wise similar to other categories for the vacancies available in that command based on command seniority. Persons selected for promotion by DPC held irrespective command were adjusted in the same command on their promotion and not transferred to other commands. All eligible candidates who had fallen into the zone of consideration depending upon the number of vacancies were considered by the DPC for drawing select panel.
- (V) Next promotion, DPC draw a select panel to the required number of vacancies available candidates as per the zone of consideration laid down in DPC Rules.
- (VI) It is not denied DPCs continue to be held in Chief Engineer Command level due to the reasons as brought in reply to proceeding para.
- (VII)  CE Central command was formed earlier and areas under Eastern Section was under the command and

control of CE Central Command. Subsequently separate CE Eastern Command was formed. As a result of which separate subordinate cadre was created for Eastern Command by transferring volunteers including others from CE Central Command. The persons who went to Eastern Command thus borne on the seniority roll of that command. DPCs were held up till 1974 based on command seniority are individuals were promoted against the vacancies available in each command. Under the circumstances the promotions which were made on the command seniority about 20 years back the petitioner cannot challenge now at this belated stage. The petitioner also could have volunteered to Eastern Command like his counterparts for battlement.

- (VIII) DPC which was held in 1985 and panel issued in April 1985 was a consolidated panel after conducting yearwise DPC for 1982, 1983 and 1984.
- (IX) No junior persons have been promoted to Supdt. B/R Cde I earlier than him after 1974 when DPC were held in an integrated All India Seniority List. The petitioner will be promoted to next higher grade according to his turn. The petitioner should not compare his case with those promoted in other command based on combined seniority more than two decades ago. Similar issues which were raised by similar petitioner in different CATs had already been dismissed on the ground of limitation.
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4. Arguments were heard and the documents perused. It is the case of the applicant that there was a single command called Eastern Command, centered at Lucknow, which later on was bifurcated into two, i.e. Eastern Command with Headquarters at Calcutta (now Kolkata) and Central Command at Lucknow. At the time of such bifurcation, no options were called for and the department had, on their own whims and fancies, transferred persons to Calcutta. This has unduly affected the career prospects of the applicant as in so far as promotion from B/R II to B/R 1 is concerned, the same is within the Command and this has resulted in those who were earlier junior to the applicant and transferred to Calcutta being promoted to the grade of BR 1 earlier than the applicant. The applicant was, however promoted at a later date. This has consequent chain reaction, in that seniority in the grade of B/R 1 is on all India and posting is also on all India basis. Thus, those juniors who had been transferred as B/R II to Calcutta after having got their promotion, have come over to Lucknow as B/R I and they are now senior in that grade. As such, in order to render justice, the applicant claims that he should also be treated to have been promoted in the grade of B/R I along with his erstwhile juniors who had been transferred to Calcutta and his seniority in that grade should be refixed, by advancing the same from 351 to 13.

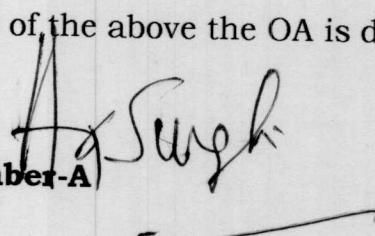
5. The bifurcation of the Command took place as early as in early 70s. True, option ought to have been called for at that time. That would have ensured that those who had not chosen to shift to Eastern Command at Calcutta would be precluded

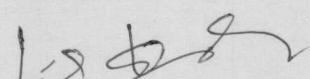
from challenging the comparatively earlier promotion in that Command. But it cannot be that the departmental authorities would have calculated as to whom the creation of new command would benefit by way of accelerated promotion. After all, when they shifted some B/R II to Calcutta, the same was at random and had the applicant volunteered, he too would have been promoted along with others. When a bifurcation takes place and such a transfer occurs, what is to be seen is only whether the action on the part of the respondents is not accentuated by malafide. In the case of *Reserve Bank of India v. C.N. Sahasranaman*, 1986 Supp SCC 143 the Apex Court has held as under: -

"It has to be borne in mind that in service jurisprudence there cannot be any service rule which would satisfy each and every employee and its constitutionality has to be judged by considering whether it is fair, reasonable and does justice to the majority of the employees and fortunes of some individuals is not the touchstone.

The above dictum applies in all the squares to the present case. The applicant on the basis of the seniority published in 1993 cannot claim promotion at the lower grade effective from 1974 or so. That amounts to unsettling the settled things.

6. In view of the above the OA is dismissed. No cost.


Member-A


Member-J

Manish/-