

## NOTES OF THE REGISTRY

## ORDERS OF THE TRIBUNAL

M.A.NO. 64 of 1999  
(Arising out of OA NO. 589 of 1998)

ORDER DATED 08-03-1999.

Respondents 4, 5, 6, 8, 17, 19, 22, 23, 27, 29 and 30 of Original Application No. 589/98 filed this Miscellaneous Application No. 64/99 challenging the maintainability of this Original Application.

2. We have heard the rival contentions of the learned counsels for both sides, including learned Senior Standing Counsel appearing for the Departmental Respondents, who, supporting the contention of the private Respondents, submitted that this Original Application is premature.

3. This Original Application (589/98), OA No. 438/98 and the disposed of Original Application No. 221/96 center round the controversy in regard to the inter-se-seniority of officer surveyors under Respondent Nos. 1 and 2. Applicant Bhagirathi Mohapatra of this Original Application No. 589/98 along with five others preferred Original Application No. 221/96 which was disposed of on 4-5-98. The operative part of the judgment in OA No. 221/96 is as follows:

14. In this case, the LDCE appointees were not available in 1985 against the DPC promotees because the examination was not held even though persons were qualified for taking the said examination. Therefore, in this case, the applicants must be shown in between 1985 DPC appointees according to the roster point.

15. The contention of the Respondents that they can not be shown in the seniority list on a date prior to the date of their appointment as Officer Surveyors is belied by their own averments that these LDCE recruits of 1987 have been assigned their position amongst the DPC appointees of 1986. If they have been given already one year's advantage, presumably because examination could not be held, there is no

reason why recruitment roster should not be worked out in this case and the applicants should be made to suffer thereby.

17. This matter of fixing of seniority according to recruitment roster alongwith DPC appointees of earlier year will have to be done only for LDCE examinees of 1986 who were appointed in 1987. In the subsequent LDC examinations, this situation would not arise. xx xx.

19. In the result, therefore, the Original Application is allowed in part in terms of the directions and observations made above. There would be no order as to costs".

Applicant Bhagirathi Mhapatra and others, who preferred this disposed of Original Application are LDCE promotees in the feeder cadre for promotion to the post of Officer Surveyors. Two Officer Surveyors not implemented in the disposed of Original Application No. 221/96 preferred Original Application No. 438/98 impleading applicants and the Departmental Respondents in OA No. 221/96 as Respondents for a direction to the Departmental Respondents not to fix inter-se-seniority of Respondents 2 to 8 (Applicants in OA No. 221/96) and other LDCE promotees of the year 1987 alongwith then and other DPC promotees of the year 1985. In other words, the prayer is to the effect that direction of this Bench in OA No. 221/96 is not binding on them and the Department should not act upon the direction of this Bench. There was prayer for interim relief in OA No. 438/98. After hearing learned counsels for both sides, including the learned counsel for the present applicant in OA No. 539/98, and taking into consideration the submission of learned Senior Standing Counsel (Central) ~~the submission of learned Senior~~ Standing Counsel (Central) ~~es~~, that pursuant to the direction in OA No. 221/96 provisional seniority list would be drawn up and circulated among all the employees

and that thereafter, seniority list would be finalised this Bench in an elaborate order dated 2.9.98 directed that the seniority list so prepared will be circulated among all the employees and this would be treated as provisional seniority list awaiting objections, if any, from the persons affected thereby.

Pursuant to this order dated 2.9.98, the Department in order dated 12.9.98 treated the seniority list as provisional seniority list and directed circulation of the list among the concerned officers for objections, if any to ~~which~~ reach within one month thereafter. This order has been annexed as Annexure-2 in OA No. 589/98. This provisional seniority list consists of lists of 202 officers. OA No. 589/98 has been filed on 6.11.1998 for a direction to the Departmental Respondents to prepare the correct seniority list in accordance with the judgment in OA No. 221/96.

4. with this background, challenge ~~of us to the~~ maintainability of OA No. 589/98 ~~has been~~ made in this MA is to be considered. Annexure-2 to OA No. 589/98 is treated as provisional seniority list pursuant to the direction of this Bench in order dated 2.9.98 passed in OA No. 438/98. There is no dispute in this regard. Annexure-2 itself reveals that objections, if any from any of the officers ~~has been~~ invited to reach within one month and thereafter, final seniority list will be drawn up.

5. Shri K. C. Mahungu, learned counsel for the Respondents, in this MA contends that the cause of action, if any, would arise only after publication of the final seniority list and in fact, the prayer made in this OA No. 589/98 has been complied with in the final order passed in OA No. 221/96. Of course, ~~on~~ the prayer

portion of this OA, there has been a prayer for a direction to the Departmental Respondents to prepare the correct seniority list as per the judgment in OA No.221/96. But the fact remains, the list under Annexure-2, is a provisional seniority list. If, the applicant Shri Bhagirathi Mohapatra is having any grievance about the placement in the provisional seniority list, he has the remedy to approach the Departmental Authorities for necessary correction. In fact, the Departmental Authorities have also invited objections, if any from the concerned officers for consideration, of publication of final seniority list. We are, therefore, inclined to agree with the contentions of Shri Kanungo and Shri A.K. Bose, learned Senior Standing Counsel that this OA 589/98 is premature.

Section 20(1) of the Administrative Tribunal's Act, 1985 is clear on this point. Sub section 1 lays down that a Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to the redressal of grievances. In fact the Department had given them choice of submitting objections, if any to the provisional seniority list under Annexure-2. It is only after objection if any is made to the concerned authority and is negatived by the authority, cause of action for filing an application of this nature, would arise.

It has been made clear by the Full Bench of the Central Administrative Tribunal, Hyderabad in the case of B. PARAMESHWARA RAO VRS THE DIVISIONAL ENGINEER, TELECOMMUNICATIONS ELURU AND ANOTHER reported

Order dt. 8.3.99

A copy of order may be given to both counsels.

10.3.99

Received  
10.3.99  
S.O. (J)

Received  
a copy  
of the order  
dt. 8.3.99  
on behalf of S. Narasimham  
10/3/99.

Received copy  
of the order dt. 8.3.99  
on behalf of S. Narasimham  
10/3/99.

Delip Kumar  
10.3.99.

in Full Bench Judgments of CAT (1989-91), Vol. II, at page 250 that the expression 'ordinarily' in section 20(1) of the Act, connotes a discretionary power which has to be exercised in rare and exceptional cases and not usually or casually. Issue involved in this OA is not a rare and exceptional case. In fact, the Department has to deal with this issue before publication of the final seniority list. If proceeding in this application is allowed to continue further, the Department would not be in a position to implement the interim order dated 2.9.98 in OA No. 438/98.

6. We have also carefully considered the decision of the Hon'ble Apex Court in J.S. Parihar Vs. Ganpat Duggar reported in AIR 1997 SC 113 cited at the time of hearing. This decision, in our view is no way relevant to the issue involved in this MA. In that decision, in a Contempt case, the Apex Court observed that the seniority list prepared by the Government on the basis of the direction issued by a Court, even if, not in conformity with the directions, can not be considered to be wilful violation of the directions because the parties <sup>can</sup> have availed the opportunity of judicial review. So the scope of this decision is entirely different.

7. For the reasons discussed above, we hold that this OA No. 589/98 being prematured is not maintainable, and is accordingly dismissed. MA 64/99 is allowed. No costs.

Somnath Som  
(SOMNATH SOM)  
VICE-CHAIRMAN  
8.3.99

(G. NARASIMHAM)  
MEMBER (JUDICIAL)