

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.549/01

Wednesday this the 1st day of August 2007

C O R A M :

**HON'BLE MRS.SATHI NAIR, VICE CHAIRMAN
HON'BLE DR.K.B.S.RAJAN, JUDICIAL MEMBER**

Jahir Huzane,
S/o.M.Mohammed Sali,
Assistant Surveyor of Works (Civil),
Civil Construction Wing, All India Radio,
Kakkanad P.O., Kochi – 30.

...Applicant

(By Advocate Mr.Vinod Chandran K)

Versus

1. Union of India represented by its Secretary,
Ministry of Information & Broadcasting, New Delhi.
2. Director General,
Prasar Bharathi,
(Broadcasting Corporation of India),
All India Radio, Parliament Street,
New Delhi – 110 001.
3. Chief Engineer (Civil),
Broadcasting Corporation of India,
Civil Construction Wing,
Prasar Bharathi, All India Radio,
6th Floor, Soochana Bhavan,
C.G.O.Complex, New Delhi – 3.
4. Superintending Engineer,
Office of the Superintendent Engineer (Civil),
Civil Construction Wing,
Prasar Bharathi, All India Radio,
Chelpauk, Chennai – 5.
5. Executive Engineer (Civil),
Office of the Executive Engineer (Civil),
Civil Construction Wing,
Prasar Bharathi, All India Radio,
Kakkanad P.O., Kochi – 30.

6. Nahar Singh,
Assistant Engineer (Civil),
Prasar Bharathi, All India Radio.
7. Raj Kumar,
Assistant Engineer (Civil),
Prasar Bharathi, All India Radio.
8. Anokhey Lal,
Assistant Engineer (Civil),
Prasar Bharathi, All India Radio.
9. Rakesh Kumar,
Assistant Engineer (Civil),
Prasar Bharathi, All India Radio.
10. Ashok Kumar,
Assistant Engineer (Civil),
Prasar Bharathi, All India Radio.
11. Ajab Singh,
Assistant Engineer (Civil),
Prasar Bharathi, All India Radio.
12. A.S.Maley,
Assistant Engineer (Civil),
Prasar Bharathi, All India Radio.
13. George Tirkey,
Assistant Engineer (Civil),
Prasar Bharathi, All India Radio.
14. M.L.Dagla,
Assistant Engineer (Civil),
Prasar Bharathi, All India Radio.
15. G.L.Varma,
Assistant Engineer (Civil),
Prasar Bharathi, All India Radio.
16. Tophan Lal Meena,
Assistant Engineer (Civil),
Prasar Bharathi, All India Radio.
17. P.K.Agarwal,
Assistant Engineer (Civil),
Prasar Bharathi, All India Radio.

...Respondents

(By Advocate Mr.T.P.M.Ibrahim Khan,SCGSC [R1-5]
& Mr.P.K.Agarwal [R17])

This application having been heard on 1st August 2007 the Tribunal on the same day delivered the following :-

ORDER

HON'BLE MRS.SATHI NAIR, VICE CHAIRMAN

This O.A has been filed by the applicant who is working as an Assistant Surveyor of Works (Civil) in the grade of Assistant Engineer in the Broadcasting Corporation of India, All India Radio at its Civil Construction Wing, Kakkanad, Kochi, seeking the following reliefs :-

1. To call for the records leading to Annexure A-5, Annexure A-6 and Annexure A-7 and set aside the same.
2. Declare that the 5 years experience in the grade of *Junior Engineers (Civil) prescribed for graduate engineers* for being eligible to be considered for promotion to the grade of Assistant Engineers (Civil) ought to be counted from the date of acquisition of the graduate/degree qualification.
3. Declare that the applicant in any case ought not to be reverted since his juniors as per Annexure A-3 and Annexure A-4 seniority list are retained in the higher cadre.

2. The facts submitted by the applicant in brief are :- The applicant is a diploma holder in Civil Engineering and was appointed as a Junior Engineer in All India Radio in the year 1982. The minimum educational qualification for recruitment to the cadre of Junior Engineers was a Diploma in Electrical or Civil Engineering. Persons with the qualification of a degree in the above branches of engineering were also eligible to be appointed as Junior Engineers. Earlier under the rules applicable then, the cadre of Junior Engineers (Group C) was the feeder category for promotion to the

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cadre of Assistant Engineers (Group B). Further, regardless of their educational qualifications a Junior Engineer was eligible to be considered as an Assistant Engineer on acquiring 8 years of service in the feeder category. In 1988 the recruitment rules were amended and the ratio for filling up the posts of Assistant Engineers was shown as 60% by promotion of Junior Engineers, failing which by transfer on deputation and failing both by direct recruitment and the balance 40% by direct recruitment through Union Public Service Commission. The rules were further amended by the said notification and for promotion to the category of Assistant Engineers minimum service required in the cadre of Junior Engineers was decided as 5 years for Engineering Graduates and 8 years for Diploma holders thus making a classification between degree and diploma holders. The said classification was challenged by a series of applications before the Administrative Tribunals all over India. The challenge made against the amendment was negated by the Delhi Bench of the Tribunal in O.A.764 of 1988 in 1991.

3. In 1994, the applicant along with a few others was considered for promotion based on the amended regulations and by order No.A 12011/1/94-CWI/205 dated 30.3.1994 was promoted to the cadre of Assistant Engineer (Civil) on an ad hoc basis. Subsequently the Calcutta Bench of the Central Administrative Tribunal in O.A.1078/89 upheld the amendment to the rules. However in O.A.1078/89 it was held that in considering the qualifying service for those diploma holders in the cadre of Junior Engineers who acquired the qualification of degree in Engineering

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while in service, the minimum eligibility period for promotion should be counted only after the date of acquisition of degree. On the basis of the said order Departmental Promotion Committees were held and by order No.A-32014/1/95-CWI dated 27.6.1995 (Annexure A-2), 110 persons were confirmed in the cadre of Assistant Engineers. The applicant is serial No.90 in Annexure A-2 order. As stated in Annexure A-2 order the Special Leave Petition filed against the order of the Central Administrative Tribunal, Calcutta Bench before the Hon'ble Supreme Court by the Union of India was also dismissed.

4. In the year 1996 a seniority list as on 1.1.1996 in the cadre of Assistant Engineers (Civil) in the Civil Construction Wing, All India Radio was published by the 3rd respondent. The respondents 8 to 16 are juniors to the applicant whose serial number is 277 as shown in Annexure A-4 seniority list. While matters stood thus the applicant was served with an order dated 22.6.2001 reverting him to the cadre of Junior Engineer (Civil) by the 5th respondent. The said order was issued by the 5th respondent in pursuance to an order issued by the 3rd respondent. It is submitted that Annexure A-6 order seeks to revert 17 Assistant Engineers (Civil) to the cadre of Junior Engineers (Civil). Purportedly the above order has been passed in pursuance to an order of the Principal Bench, Central Administrative Tribunal, New Delhi in O.A.1638/95 filed by one Shri.P.K.Agarwal. The applicant was not a party in the above O.A before the Central Administrative Tribunal, New Delhi. However the applicant has impleaded the said Shri.P.K.Agarwal as the 17th respondent in a

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representative capacity. Annexure A-6 order has been passed reverting 17 Assistant Engineers to accommodate 25 Junior Engineers who are to be promoted as Assistant Engineers in pursuance to the order in O.A.1638/95 referred to above.

5. The applicant has further submitted that the entire issue with respect to the classification of Diploma and Graduate Engineers and the consideration of Diploma holders who subsequently acquired graduate qualification while in service was settled by the dismissal of the Special Leave Petition filed against the order in O.A.1078/89 referred to in Annexure A-2. Without prejudice to his claims the applicant also submits that it is clear from Annexure A-6 and Annexure A-7 orders that for accommodating 25 Assistant Engineers only 17 persons need be reverted and there is already in existence 8 vacancies in the cadre of Assistant Engineers, hence reversion has to be effected only with respect to 17 persons. While resorting to reversion it is a well settled principle of law that juniors ought to be reverted. However, Annexure A-6 order has been passed without any reference to the seniority list at Annexure A-4. Respondents 8 to 16 are admittedly juniors of the applicant and they have been retained in the cadre of Assistant Engineers.

6. In brief, the case of the applicant is :- the reversion of the applicant while retaining his juniors in any event is illegal and arbitrary. Further Annexure A-2 order is final in so much as the challenge made against the order of the Central Administrative Tribunal Calcutta Bench in

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O.A.1078/89 was negated by the Hon'ble Supreme Court. The applicant's promotion as confirmed by Annexure A-2 order has become final and the applicant is not liable to be reverted to a junior post that too overlooking his juniors.

7. The applicant has challenged Annexure A-5, Annexure A-6 and Annexure A-7 orders. Annexure A-5 order is issued by the 5th respondent reverting the applicant to the cadre of Junior Engineer and has been issued in pursuance of the Annexure A-6 order issued by the 3rd respondent reverting 17 Assistant Engineers to the cadre of Junior Engineers in which the applicant is found at Serial No.6. Annexure A-6 order emanates from Annexure A-7 order of the 3rd respondent restoring the promotion of 25 Assistant Engineers and is purportedly issued in pursuance of order of the Principal Bench of the C.A.T in O.A.1638/95. Thus all the three impugned orders are consequential in nature.

8. The applicant has challenged the action of the respondents in reverting him from the post of Assistant Engineer to the post of Junior Engineer and promoting his juniors as arbitrary and unsustainable mainly on the ground that the entire issue with regard to the classification of diploma and graduate engineers and the consideration of diploma holders who subsequently acquired graduate qualification while in service had been already settled by dismissal of the SLP filed against the order of the Calcutta Bench in O.A.1078/89. He has also challenged his reversion on the ground that in order to implement Annexure A-7 order only 17 persons

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have to be reverted and at present there are 20 persons in the cadre of Assistant Engineers junior to the applicant and therefore his reversion retaining persons junior to him in any case is discriminatory. It was also urged that the applicant is not a party to the proceedings before the Principal Bench. The applicant has also in a representative capacity included the applicant in O.A.1638/95 before the C.A.T, Principal Bench, as a party respondent in this O.A.

9. The official respondents 1-5 have filed a reply statement tracing the history of the litigation starting from the O.A.1078/89 before the Calcutta Bench. The respondents have submitted that the Full Bench of the Principal Bench of C.A.T in its judgment dated 6.12.1999 had maintained that the Calcutta Bench has erred in taking the view that 5 years should commence after the acquisition of the degree. The Full Bench has also made a significant observation that the dismissal of the SLP in limine by a non speaking order does not justify any inference that, by necessary implication, the contentions raised in the SLP on the merits of the case have been rejected by the Supreme Court. It was subsequently that the Principal Bench in O.A.1638/95 had directed the respondents to restore the applicant therein as an Assistant Engineer following the Full Bench observation and thereby the respondents had implemented the order subject to the ultimate outcome of the appeal against the Full Bench order awaiting disposal in the Delhi High Court. It was considering the fact that the sanctioned strength in the grade of Assistant Engineers is 268 which is reduced to 241 after effecting the

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10% economy cut and since the Ministry of Finance has recommended a strength of only 162, the Department had to resort to reversion in order to implement the order of the Principal Bench.

10. Respondent 17 has filed a separate reply statement. He has pointed out that the applicant in the present OA was a party to O.A.2055/95 as respondent No.19 before the Principal Bench, C.A.T, New Delhi. The order in O.A.1638/95 is a consequential judgment to the Full Bench judgment in O.A.2055/95. Hence the applicant cannot claim that he was not aware of the orders of the Principal Bench as he was not impleaded therein.

11. The applicant has filed a rejoinder pointing out that the Principal Bench of the C.A.T., New Delhi had in another application O.A.1636/01 themselves stayed the reversion order produced as Annexure A-6 in the present O.A. and the department itself has issued a letter dated 10.8.2001 to all its formations that the salaries of the reverted Assistant Engineers would continue to be drawn in the pay scale applicable to them prior to 19.6.2001. Therefore it has been submitted by the applicant that there is no rationale in the claim of the respondents that the interim stay needs to be vacated in respect of the applicant.

12. After the pleadings were completed it was brought to the notice of this Court on 6.6.2003 that the order impugned in this O.A which was on the basis of an order of the Principal Bench of the C.A.T which had been



confirmed by the Hon'ble High Court of Delhi, had been stayed by the Hon'ble Supreme Court in SLP No.14493/02. A copy of the order dated 24.1.2003 was produced before us and on that basis the case was kept pending. Further it was pointed out that the SLP was posted in January 2006. When the matter came up again on 21.2.2006, the learned SCGSC was directed to ascertain the latest position. On 26.4.2006, on submission made by the counsel for the applicant the case was adjourned sine die with the condition that as soon as the decision from the Apex Court is known to them the parties may bring it to our notice. When the matter came up on 1.8.2007, counsel for the applicant submitted that though the SLP referred to earlier in this case was still pending before the Hon'ble Supreme Court, in SLP No.9239/02 along with Civil Appeal No.4104/02 decided an identical issue by order dated 17.4.2007 and that in the light of this law laid down by the Supreme Court the applicant's case can be allowed subject of course to the further orders in the SLP No.14493/02 pertaining to the respondents' department in this case. Learned SCGSC also agrees with the course of action suggested in the light of the Hon'ble Supreme Court's order now produced before us.

13. In a nutshell, the subject matter of the dispute is whether the 5 years regular service prescribed in the Recruitment Rules for promotion to the grade of Assistant Engineers in respect of diploma engineers who acquired the graduate qualification later should be counted from the date of acquiring the degree or otherwise. In the instant case the controversy has arisen in the case of Assistant Engineers working in the Civil Construction

Wing of All India Radio. In the case now brought to our notice in SLP No.9239/02 the controversy is in respect of Junior Engineers and Assistant Engineers who are diploma holders and graduates in the matter of requirement of the differential service experience for promotion to the higher cadre of Assistant Engineer and Executive Engineer in the Delhi Development Authority which had undergone various stages of litigation. The Division Bench of the Delhi High Court on 12.2.1992 held that 3 years experience required for degree holder eligibility quota had to be considered after acquiring the degree. The Department issued a final seniority list of graduate Junior Engineers (Civil) indicating their placement as per eligibility for promotion as Assistant Engineers. Several Writ Petitions came to be filed in the High Court of Delhi questioning this seniority list. Thereafter on 12.3.2001 the Division Bench of the Delhi High Court referred the Civil Writ Petitions with some other petitions for a decision by a Bench of three Judges in view of the fact that it felt that the earlier decision of the High Court dated 12.2.1992 in Slum Wing Delhi Development Authority Graduate Engineers Association (Regd.) & Others Vs. D.D.A & Others (supra) which followed the decision of this Court in N.Suresh Nathan and Another Vs. Union of India and Others (supra), required to be reconsidered as N.Suresh Nathan's case had not been subsequently followed by the Apex Court in other cases like M.B.Joshi and Others Vs. Satish Kumar Pandey and Others, 1993 Supp. (2) SCC 419; D.Stephen Joseph Vs. Union of India and Others, (1997) 4 SCC 753 etc. Accordingly the matter was placed before the Full Bench of the Delhi High Court which held that for determining past service, diploma and degree holders are at

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par and the matter was remitted back to the Division Bench. The judgment of the Division Bench of the High Court has come up before the Hon'ble Supreme Court in this SLP and after taking into account the observations made by the Apex Court in all its earlier judgments on the same issue and after discussing the scope and ambit of the factual position in all the above cases the Hon'ble Apex Court has come to the following conclusion in its order extracted under :-

After having an overall consideration of the relevant rules, we are of the view that the service experience required for promotion from the post of Junior Engineer to the post of Assistant Engineer by a degree holder in the limited quota of degree holder Junior Engineers cannot be equated with the service rendered as a diploma holder nor can be substituted for service rendered as a degree holder. When the claim is made from a fixed quota, the condition necessary for becoming eligible for promotion has to be complied with. The 25% specific quota is fixed for degree holder Junior Engineers with the experience of three years. Thus on a plain reading the experience so required would be as a degree holder Junior Engineer, 25% quota for promotion under the rule is assigned to degree holder Junior Engineers with three years' experience, whereas for diploma holder Junior Engineers eight years' experience is the requirement in their 25% quota. Educational qualification along with number of years of service was recognised as conferring eligibility for promotion in the respective quota fixed for graduates and diploma holders. There is watertight compartment for graduate Junior Engineers and Diploma holder Junior Engineers. They are entitled for promotion in their respective quotas. Neither a diploma holder Junior Engineer could claim promotion in the quota of degree holders because he has completed three years of service nor can a degree holder Junior Engineer make any claim for promotion quota fixed for diploma holder Junior Engineers. Fixation of different quota for promotion from different channels of degree holders and diploma holders itself indicates that service required for promotion is an essential eligibility criterion along with degree or diploma, which is service rendered as a degree hold in the present case. The particular years of service being the cumulative requirement with certain educational qualification providing for promotional avenue within the specified quota cannot be anything but the service rendered as a degree holder and not

as a diploma holder. The service experience as an eligibility criterion cannot be read to be any other thing because this quota is specifically made for the degree holder Junior Engineers. As a necessary corollary, we are of the view that the diploma holder Junior Engineers who have obtained a Degree in Engineering during the tenure of service, would be required to complete three years' service on the post after having obtained a degree to become eligible for promotion to the higher post if they claim the promotion in the channel of degree holder Junior Engineer, there being a quota fixed for graduate Junior Engineers and diploma holder Junior Engineers for promotion to the post of Assistant Engineers.

For the above reasons, the appeals are allowed and the impugned judgment of the High Court is set aside. The Writ Petitions shall now be decided by the Division Bench of the High Court in accordance with law laid down herein. The Writ Petitions, which were transferred to, and registered as Transferred Cases in this Court, shall also be sent back to the High Court for their decision in accordance with law.

14. It may be recalled here that when the identical issue under challenge in the instant case was before the C.A.T., Calcutta Bench which was the beginning of the litigation, it had taken exactly the same view. However this view of the C.A.T., Calcutta Bench was held to be 'per incuriam' by the Full Bench in O.A.2055/95 relying on the decision of the Supreme Court in M.B.Joshi's case and D Stephen Joseph's case. The Calcutta Bench had relied on the Apex Court observations in N Suresh Nathan's case (1992 Suppl. 1 SCC 584). Now by this judgment of the Supreme Court in SLP No.9239/02 discussed above, the Supreme Court has upheld its earlier view in Suresh Nathan's case. The later order passed by the Principal Bench in O.A.1638/95 and other orders referred to by the respondents following the order of the Full Bench cannot be said to have any independent existence and follow the ratio of the Full Bench judgment only. It is seen that the respondents have based the impugned orders on these

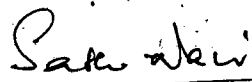
judgments, however observing that the orders are subject to the final outcome of the appeal pending before the High Court and now Supreme Court. In fact in the judgment in O.A.1638/95 itself it has been mentioned that the directions will be subject to the outcome of the appeal filed against the Full Bench order dated 6.12.1999 awaiting disposal in the Delhi High Court with a further direction that this fact should be mentioned in the orders itself. Respondents instead of implementing the judgment with reference to the sole applicant in that O.A has chosen to make reversions which they now justify on the ground that the strength of the establishment had to be reduced after effecting economy cut. When the Full Bench judgment was still under challenge and the controversy having not been settled finally, the respondents should not have resorted to promotions on the basis of the orders of the C.A.T in different Benches particularly when the seniority of the officers had to be determined at the all India level. Now that the Hon'ble Supreme Court itself has stayed the operation of the orders of the Full Bench the consequential orders issued by the respondents also have to be kept in abeyance and the interim orders granted by this Tribunal in this case would have to be continued.

15. The applicant's main prayer is for a declaration that the 5 years experience in the grade of Junior Engineer prescribed for graduate engineers ought to be counted from the date of acquisition of the degree qualification. Now by virtue of this judgment referred to supra, the Supreme Court has clearly laid down the law in this regard. No further declaration by this Tribunal on this issue is called for and hence it is

considered that this part of the relief prayed for would fall within the ambit of the order of the Supreme Court. Regarding the applicant's reversion and related prayer, as already discussed above, the interim order staying the reversion shall continue till the matter is settled and the SLP disposed of by the Supreme Court. We are of the view that it is not necessary to keep this case pending before us in the light of the legal position that has emerged now. The respondents have to take a decision in the light of the final outcome of the SLP No.14493/02 in the Supreme Court. The O.A is disposed of accordingly taking note of the legal position in Civil Appeal No.4104 of 2002, with the consent of parties.

(Dated the 1st day of August 2007)


K.B.S.RAJAN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN

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