

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 575/90

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DATE OF DECISION 4.12.1991

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Applicant (s)

Mr Abraham Vakkanal

Advocate for the Applicant (s)

Union of India ^{Versus} rep. by its
Secretary, Ministry of Respondent (s)
Communications, New Delhi-1
and others.

Mr NN Sugunapalan, Sr CGSC

Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. NV Krishnan, Administrative Member
and

The Hon'ble Mr. N. Dharmadan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? ✓
2. To be referred to the Reporter or not? ✓
3. Whether their Lordships wish to see the fair copy of the Judgement? ✓
4. To be circulated to all Benches of the Tribunal? ✓

JUDGEMENT

Shri NV Krishnan, A.M

In accordance with an earlier direction dated 24.6.88 of this Tribunal in OAK 319/87, the applicant's place in the seniority list of Assistant Engineers has been fixed at Sl.No.22A(i) and he is allowed to count service from 3.2.72 for the purpose of seniority. Yet, by the Annexure A2 communication, he has not been given all consequential benefits of promotion as Executive Engineer. His main grievance is that a number of persons junior to him are now countinuing as Executive Engineer (EE) whereas, the applicant has not yet been appointed as EE.

2 He also alleges that the department has failed to convene a meeting of the DPC for regular promotion to the Grade of EE (Civil) though the applicant was informed by the Annexure VI letter that

the Department has taken necessary action for conducting selection by the DPC.

3 It is in these circumstances, the applicant has prayed for the following reliefs.

" (a) to direct the respondents to immediately consider the applicant for promotion as Ex. Engineer in the ensuing DPC to be held very shortly, taking into account his refixed rank and seniority as Sl.No.22A(i) in the seniority list of AEs as allowed in AI judgment or to grant him adhoc promotion as EE on the very same basis, if adhoc promotion alone is being effected now.

(b) to declare that by virtue of AI judgment and A2 order refixing his rank as Sl.No.22A(i) in the seniority list of AEs., the applicant is entitled to be promoted as EE forthwith as 33 of his juniors are already holding the posts of EE on adhoc basis as per A-8 list.

(c) to direct the respondents that nothing shall stand in the way of implementing AI or giving the due benefits of it to the applicant, except a valid stay or reversal of that order by the Hon'ble Supreme Court."

4 In a rejoinder filed by him, the applicant has produced the Annexure 9 order dated 20.8.81 by which he was appointed on an officiating basis as EE (Civil) as a local arrangement for 90 days. He is aggrieved that unlike his juniors, he has not been given ad-hoc promotion.

5 The respondents have filed a reply in which the facts that the applicant's place in the grade of AE is at Sl.22A(i) and that a number of his juniors are working now as EEs on ad-hoc basis are admitted. Their main defence is that the existing seniority list on the basis of which ad-hoc promotions have been made has been ordered to be revised by different Courts and

many such cases are still pending before various Courts and Benches of the Central Administrative Tribunal. It is also stated that the 30 officials who are juniors to the applicant are only working in the Grade of EE (Civil) on an ad-hoc basis. Many of them have also approached the other Benches of the Central Administrative Tribunal to direct that the ad-hoc services rendered by them in the grade of Assistant Engineer (Civil) be counted for purposes of seniority in the grade of AE. It is because of these disputes that difficulties have arisen in granting regular promotions to the rank of EE. Another group of Assistant Engineers (Civil) claim seniority over some of those who are now working on an ad-hoc basis as EE (Civil) because they were senior to them in the grade of Junior Engineers (Civil). They have also approached various courts for remedy. It is contended that until such disputes are settled nothing can be said definitely about the seniority of any official. In order to resolve the various difficulties in finalising the seniority list, the Department has moved a petition before the Principal Bench of the Central Administrative Tribunal for transferring these cases to that Bench so as to obtain a final verdict.

6 For these reasons, it is urged the applicant is not entitled to any relief. On their part, the respondents have taken a decision not to consider any promotion from

the Grade of Assistant Engineer (Civil), till such time as the disputes over the seniority in the Grade of Assistant Engineer are settled once and for all.

7 The respondents state that according to the Recruitment Rules, promotion to the Grade of EE is made to the extent of 2/3rd vacancies from the feeder category of Assistant Executive Engineer (Civil) which is Class-I post. The remaining vacancies are filled by promotion of Assistant Engineer^s (Civil), like the applicant, who have rendered 8 years of service in the grade and passed the Departmental examinations. In 1978, Assistant Engineers with 8 years' regular service were not available. Hence, it was decided to promote officials on ad-hoc basis who had 6 years' of service. In 1978, the applicant did not have 6 years' of service as Assistant Engineer (Civil) as he was promoted ^u as AE only from 1974. Hence, he was not promoted. It is only later ^u than ~~that~~ a direction was issued by the Tribunal in OA 319/87 that the applicant should be treated as having been promoted as Assistant Engineer from 3.2.1972. It is admitted that there are vacancies in the grade of EE (Civil) earmarked for promotion by AE (Civil), but promotions have not been made because of disputes about seniority list.

8 The respondents have also stated that, by an interim order passed by the Jabalpur Bench of the Tribunal, the revision of the seniority list of Assistant Engineers

as ordered by the Calcutta Bench of the Tribunal has been stayed. In such a situation promotions cannot be granted either on an adhoc basis or a regular basis until the seniority disputes are settled.

9 We have heard the parties and given our anxious consideration to the rival contentions.

Admittedly, as a result of the orders in OA 319/87, to the applicant has been allowed count seniority as Assistant Engineer (Civil) from 3.2.72. It is also admitted that Assistant Engineers junior to him, with reference to this revised seniority, are now holding the posts of EE on the basis of ad-hoc promotions. Necessarily, the applicant being senior to them ^{as per} as a right to be considered for such ad-hoc promotion. There cannot be any manner of doubt that the applicant cannot be given stop gap charges for the periods of 90 days as has been done by the Annexure-9 order when his juniors are given adhoc promotions on the basis of which they continue as EE, even now. Further, the respondents have admitted in para-7 of their additional reply that vacancies exist for such promotions. Therefore, there is no reason why the applicant should not be promoted on an ad-hoc basis like his juniors.

10 We are aware of the problems which the respondents are facing due to the fact that different decisions have been received from the High Courts and

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Benches of the Tribunals. Perhaps, the respondents themselves are to blame for this state of affairs.

For, we notice that the only step they have taken is to approach the Principal Bench to have these applications transferred and decided there so that there should be a finality to the decision. If they were ^{to} they should have ~~gone to~~ moved the Hon'ble Chairman of the Central Administrative Tribunal to constitute a Larger Bench to decide the contentions ^{as} issues in the pending cases which alone will give finality to the decisions. Therefore, the difficulties faced by the Department should not stand in the way of the applicant getting his due.

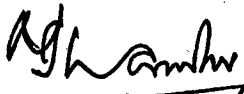
11 The applicant's grievance is genuine. Considering all aspects of the case, we feel that the interests of justice will be satisfied if we dispose of this application with a declaration that as long as any person, admitted by the Respondents to be junior to the applicant in the grade of Assistant Engineer (Civil), is holding a post of EE (Civil), on an adhoc basis, the applicant shall be entitled to be considered for such adhoc promotion and to continue as such. We do so and direct the respondents to consider the applicant also for adhoc promotion within one month from the date of receipt of this order, in case ^{any}

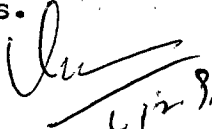
^{any} of his junior is presently holding a post of EE (Civil) on ad-hoc basis. ^{by}

12 In these circumstances, we do not find it further necessary to issue any ^{direction} regarding convening a DPC for considering regular selections for, ^{We hope} that would be done ^{by the Respondents} as soon as the issues relating to seniority are sorted out.

13 The application is disposed of as above.

There will be no order as to costs.


(N Dharmadan) 4.12.91
Judicial Member


(NV Krishnan)
Administrative Member

4-12-91