

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No. 140/1998

Tuesday, this the 21st day of August, 2001.

CORAM

HON'BLE MR A.M. SIVADAS, JUDICIAL MEMBER
HON'BLE MR G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

K.P. Ramanandan, S/o K.P. Kunhi Raman,
Superintending Surveyor of Works (Electrical),
Telecom Electrical Circle, Chennai,
[Now working as Superintending Engineer (Electrical),
Postal Electrical Circle, Bangalore.]

Applicant

[By Advocate Mr P.V. Mohanan]

Vs.

1. Union of India rep.by its Secretary,
Ministry of Communications,
Department of Telecommunication, New Delhi.
2. The Assistant Director General (CW),
Telecom Commission,
Department of Telecommunication,
Sanchar Bhavan, New Delhi.
3. Chief Engineer (Electrical),
Department of Telecommunication,
(Kerala-Karnataka Zone),
Corporative Golden Jubilee Building,
Trivandrum-1.
4. A.K. Gupta,
Superintending Engineer (Electrical),
Telecom Electrical Circle,
Chandigarh.
5. S.C. Verma,
Superintending Engineer, M.T.N.L.,
Bombay.
6. U.N. Rai,
Superintending Engineer (Electrical),
Telecom Electrical Circle,
Chandigarh.
7. A.K. Gupta-II,
Superintending Engineer,
Director, B.S. Electrical, ALTTC,
Guziabad.
8. S.N. Pandey,
Superintending Engineer (Electrical),
SSW New Delhi, DOT New Delhi.

Respondents

[By Advocate Mr P.Vijayakumar, ACGSC for R 1-3]

The application having been heard on 17.7.2001, the
Tribunal delivered the following order on 21.8.2001.

O R D E R

HON'BLE MR A.M. SIVADAS, JUDICIAL MEMBER

Applicant seeks the following reliefs:

"(i) To call for the records leading to Annexure A-15 and set aside the same in so far as the applicant has not been included as Rank No.6 in the seniority list of Executive Engineer (Electrical) in between G.R. Panday (95031) Serial No.5 and Gupta A.K. (95015) Serial No.6.

(ii) To direct the respondents 1 and 2 to regularize the appointment of the applicant as Superintending Engineer (Electrical) and include in the seniority list of Superintending Engineer (Electrical).

(iii) To direct the respondents No.1 and 2 to promote the applicant as Superintending Engineer (Electrical) with retrospective effect from the date on which Panday G.R. is promoted as Superintending Engineer (Electrical) with all consequential benefits.

(iv) To declare that the applicant is eligible for arrears of pay and allowances in the category of Executive Engineer (Electrical) with effect from 1.6.1984.

(v) To declare that the applicant is senior to respondents No.4 to 8 in the category of Superintending Engineer (Electrical).

(vi) To direct the respondents 1 and 2 to consider the promotion of the applicant as Chief Engineer (Electrical).

(vii) Any other appropriate order or direction as this Hon'ble Tribunal deem fit in the interest of justice.

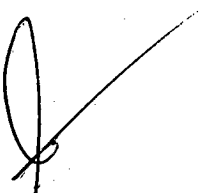
(viii) To call for the records leading to Annexure A17 and A18 in so far as it gives promotion to the applicant to the category of Executive Engineer (Electrical) with effect from 1.9.1989 and placing the applicant as rank No.18 and 53 respectively.

(ix) To declare that the applicant is deemed promoted in the category of Executive Engineer (Electrical) on regular basis with effect from 1.6.1984 with all consequential benefits including seniority and promotion to the higher grade.

(x) To direct the respondents to place the applicant as Rank No.1 and Annexure A17 and Rank No.2 in Annexure A18 below Shri T.N.Mishra and above Shri M.K. Shanmugham in Annexure A18."

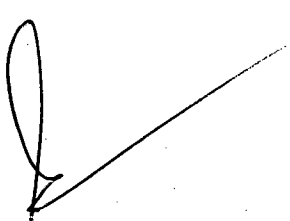
2. Applicant has been working as Superintending Engineer (Electrical)/Superintending Surveyor of Works (Electrical) in the scale of Rs.3700-5000 with effect from 7.11.1994. He is in overall planning-in-charge of Southern Zone comprising of the State of Kerala, Tamil Nadu, Pondichery, Karnataka and Andhra Pradesh. He is a member of Scheduled Caste. He appeared in

the "Combined Engineering Service Examination held in the year 1977" conducted by the Union Public Service Commission. In the matter of promotion to the cadre of Executive Engineer (Electrical), 40 point roster for promotion was made applicable. From 1975 there were adequate number of vacancies in the Department, remained unfilled. 1977 batch candidates were promoted as Executive Engineer (Electrical) in the year 1985 as per A1. Incumbents viz., A.K. Gupta, S.N. Panday, S.N. Mishra, A.K. Jain and P.K. Panigrahi in A1 are 1977 batch. No SC/ST candidates was promoted as Executive Engineer (Electrical) during this period in spite of the vacancies that were set apart for them and the applicant was qualified in the year 1984. He was promoted as Executive Engineer (Electrical) on 1.9.1989 granting seniority in the category of Assistant Engineer (Electrical) with effect from 1977. As per order dated 28.10.92, in relaxation of recruitment rules, he was deemed to have been appointed as Executive Engineer (Electrical) with effect from 1.6.1984 until further orders against a reserved vacancy set apart for SC/ST. By order dated 7.11.1994, he was promoted as Superintending Engineer on ad hoc basis. As per the Recruitment Rules, the post of Superintending Engineer is to be filled by promoting Executive Engineer having 5 years of service in the pay scale of Rs.3000-4500 or equivalent. He was thus eligible to be promoted as Superintending Engineer in the year 1989. It is discernible from the promotion of A.K. Gupta (I) to the category of Superintending Engineer by order dated 22.5.1992, U.N. Rai and A.K. Gupta (II) by order dated 22.5.1993 and also the promotion of A.K. Jain, S.N. Mishra, and P.K. Panigrahi by order dated 2.5.1994 that there were vacancies of Superintending Engineer during the years 1989 and 1992. He was thus entitled to be promoted as Superintending Engineer with effect from 1992, the date on which his immediate junior A.K.

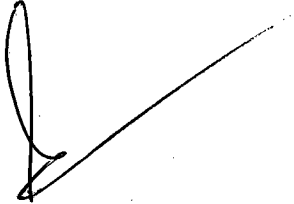


Gupta (I) was promoted. A15 is the seniority list of Group A Officers upto 30.4.1997. Applicant is ranked as Sl.No.11 in the category of Executive Engineer and the date of regularization is shown as 1.6.1984. Respondents 4 to 8 though regularized as Executive Engineer on 12.9.1985 are ranked at Sl. No. 5 to 10. He is entitled to be included as Sl. No.6 just below G.R. Panday and above A.K. Gupta (I) [Sl.No.6]. He was regularized in the post of Executive Engineer (Electrical) with effect from 1.6.1984 and thus his seniority is to be reckoned from that date in the category of Executive Engineer (Electrical). Respondents 4 to 8 have been promoted as Executive Engineer (Electrical) from 12.9.1985. Their seniority can be reckoned only with effect from that date. He is arbitrarily discriminated. It is settled law that the seniority is to be counted from the date of appointment to the cadre. A17, the list of incumbents for regular promotion to the grade of Executive Engineer and A18, the seniority list in the grade of Executive Engineer (Electrical) are illegal.

3. Official respondents resist the O.A. contending that this O.A. is not maintainable before this Bench of the Tribunal for the reason that the applicant is not working within the jurisdiction of this Bench of the Tribunal. A15 is not a seniority list. It is an extract from the "Blue Book" issued by the department. It is basically a compilation of the staff numbers allotted to all Group-A Officers of the department. Among other entries in the book, there is an item under the caption seniority number just to indicate the tentative relative seniority of an officer in the current grade and this may change due to various reasons. Applicant belongs to the grade of AE (E) (Class II Direct Recruits) and the officers above whom seniority is claimed by the applicant are from AEE(E) stream (Class I Direct Recruits). Applicant who is

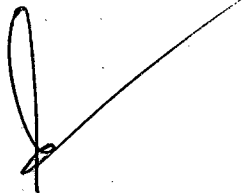


holding the post of SE(E) on ad hoc basis cannot claim promotion to the grade of Chief Engineer (E) for which statutory rule prescribe a minimum of 5 years regular service in the grade of SE (E) as the eligible criteria. His seniority in the feeder category of Group (B) AE(E) was again revised on 9.1.98 in compliance with the direction of the Apex Court in its judgment dated 8.7.97 in CA Nos. 3207-3210/95. On this account, necessity arose for the review of the regular appointment of Group-B Officers made to the grade of EE(E) based on the earlier DPCs held in 1992, 1995 and 1997. On account of the revision of seniority list in the AE(E) grade, the position of the applicant has undergone change. Based on the Review DPC, revised orders were issued (A17). In accordance with the judgment of the Apex Court in CA No.5086/94 and CA No.3018/97, the seniority list in the grade of EE(E) was finalized as per A18. A18 seniority list has been upheld by the Principal Bench of the Tribunal. In the Combined Engineering Service Examination 1977, conducted by the UPSC candidates who were placed on the top of the merit list were selected in Group-A category and those who do not come within the standards prescribed for Group-A were selected to Group-B category. The claim of the applicant who belongs to 1977 Group -B service that he should be placed senior to the officers belonging to Group-A category of the same batch cannot be sustained. Vacancies as per roster point applicable to SC/ST have been duly notified and the vacancies of that particular year have been filled up among the eligible SC/ST officers. As per DOP&T OM No.1/12/67-Estt(C) dated 11.7.68 amended from time to time, for promotions from Group-B to Group-A by selection method, there shall be no carry forward of reservations from year to year in the event of an adequate number of SC/ST candidates not being available in any particular year.



4. Official Respondents inter alia contended that this O.A. is not maintainable before this Bench of the Tribunal for the reason that the applicant is not working under the jurisdiction of this Bench of the Tribunal. Applicant says that he is working as Superintending Engineer (Electrical), Circle Headquarters at Bangalore, having jurisdiction over Kerala, Tamil Nadu, Karnataka, Orissa, West Bengal, Sikkim, Assam, Arunachal Pradesh, Nagaland, Manipur, Tripura, Mizoram and Meghalaya. So, it is the admitted case of the applicant that he is having the Headquarters at Bangalore.

5. As per Rule 6 of the CAT (Procedure) Rules, an application shall ordinarily be filed by the applicant with the Registrar of the Bench within whose jurisdiction, the applicant is posted for the time being or the cause of action, wholly or in part, has arisen, subject to the provisos. Provisos are not attracted in this case. When the applicant says that he is having his Headquarters at Bangalore, he is posted at Bangalore for the time being. As far as the cause of action is concerned, though A15 is issued from Trivandrum, it is not actually that the applicant gets a cause of action on the basis that it is issued from Trivandrum for the reason that what is stated therein is that "please find enclosed herewith a list of Group-A Officers (corrected upto 30th April, 1997) which is extracted from the Blue book issued by DOT vide above referred letter." So, the Blue book is issued by the DOT and that is issued not from Trivandrum. From A15 it is only indicating what is contained in the Blue book issued by DOT not from Trivandrum. A17 another impugned order is issued from New Delhi. So also, other impugned order A18. So, the cause of action either wholly or in part has not arisen within the jurisdiction of this Bench of the Tribunal.

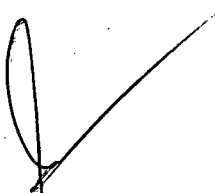


6. Learned counsel appearing for the applicant drew our attention to the ruling in Nripendra Krishna Roy Vs. Union of India and others [(1988) 8 ATC 602]. There is stated thus:

"3. Counsel for the respondents raised a preliminary objection as to the jurisdiction of this Bench of the Tribunal to deal with this matter. It was submitted that as respondents 1 and 2 are at New Delhi and respondents 3 to 5 are at Nagpur, the application cannot be entertained by this Bench of the Tribunal. It was also pointed out that the order of termination was issued by the Central Board of Direct Taxes, New Delhi. We do not think that it is open to the respondents to raise this objection at this stage. On 13.7.1987 when this application came up for admission, the Senior Standing Counsel was also heard and it was after hearing both the sides that the application was admitted. Thereafter, the respondents have filed detailed reply on merits and the matter has come up before us today for final hearing. In the circumstances, we overrule the preliminary objection raised by the respondents."

7. It seems that there was no specific plea of bar of jurisdiction raised in the reply statement and the objection as to the want of jurisdiction was raised across the bar.

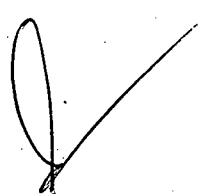
8. The general rule is that consent cannot give jurisdiction, and want of jurisdiction cannot be waived. Objection to jurisdiction may be taken at any stage of the proceedings provided there are materials on the record to sustain it [Ramani V. Narayanaswami (1924) 47 Mad. L.J.192]. The question of jurisdiction can be raised even before filing a reply statement or by the Court itself even if it is not raised by the respondents (Anil Kumar V. Manasnath, 1975 A.C. 293). In any event in the Court of first instance, the objection as to jurisdiction can be taken at any time before the final order. That being the position, the objection raised by the respondents that this Bench of the Tribunal has no jurisdiction to hear this O.A. is to be upheld.



9. This O.A. is thus liable to be dismissed on this count alone.

10. We will consider on merits also.

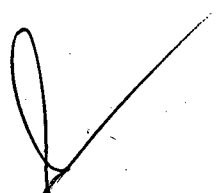
11. It is the admitted case of the applicant that he joined as AE (E) and that he was promoted to the category of EE (E) with effect from 1.6.1984 against a reserved vacancy set apart for SC/ST for the year 1984. He is a member of SC. As per A12, he was promoted as Superintending Engineer on ad hoc basis for a period of six months. According to applicant, he having been promoted with effect from 1.6.1984 as Executive Engineer, he is entitled to get his seniority fixed just below G.R. Panday (promoted in 1982) and above A.K. Gupta (promoted in 1985) and entitled to get arrears of pay from 1.6.1984. S.K. Bhucclar (promoted on 13.11.1987 as Executive Engineer) and A.K. Gupta (I), the 4th respondent, filed a review application No.R.A.52/93 in TAK No.773/87. The review application was dismissed. Though respondents 4 to 8 were promoted as Executive Engineers in the year 1985, and the applicant was promoted with effect from 1.6.1984, admittedly all of them belong to the same batch. However, the applicant was promoted only against a reservation quota. Respondents 4 to 8 were recruited in the year 1977 in Group-A, while the applicant was only recruited in Group-B. Private respondents were in Feeder Cadre Group-A, while the applicant was only in Feeder Cadre Group-B as borne out by A18. Official Respondents have specifically stated in the reply statement that the officers mentioned in para 4.2 of the O.A. were recruited as AEE(E), Group-A whereas, the applicant was recruited as AE(E), Group-B through the same examination and that candidates who placed on the top of the merit list get selected in Group-A category and those who do not come within the standards prescribed for



Group-A get selected in Group-B. It is further stated by the official respondents that the claim of the applicant who belongs to the 1977 Group-B service that he should be placed senior to the officers belonging to Group-A category of the same batch, cannot be sustained.


12. In A18 the applicant is shown at Sl.No.53. In A17, he is at Sl.No.18. Applicant seeks to direct the respondents to place him as Rank No.1 in A17 and Rank No.2 in A18 below T.N. Mishra and above M.K. Shanmugham. A17 and A18 seniority lists have been upheld by the Principal Bench of the Tribunal in O.A.1833/2000 with O.A.2119/2000 (R4). According to applicant, R4 has no bearing to this case. From R4 it is clearly seen that the first applicant therein joined in the Department of Telecommunication as Assistant Engineer in the year 1979 and the second applicant in the year 1977 on the basis of the Competitive Examination conducted by the UPSC in the year 1977. Applicant herein also stand on the identical footing as the applicants in R4 order.

13. According to applicant, A15 is the seniority list of Group-A Officers (corrected upto 30th April, 1997) and he is ranked at Sl.No.11 in the category of Executive Engineer. According to applicant, he is to be placed at Sl.No.6 just below G.R. Panday and the 4th respondent, but he is superseded by the private respondents. At this juncture, it is relevant to note that respondents have clearly stated that A15 is not a seniority list, that it is an extract from the Blue book issued by the department, that among other entries in the Blue book there is an item under the caption seniority number just to indicate the tentative relative seniority of officers of the current grade and this may change due to various reasons, that there it is clearly indicated that the seniority number as



shown against the officers are provisional and subject to change, and that R1 is the copy of Blue book. From R1 it is clearly seen that A15 is not a true copy. It is only a portion and that portion is also not a true copy of that portion of R1. In R1, against certain names, star marks are shown. What star marks indicate is clearly shown in the last page of R1. Double star marks, as per R1, indicate that "seniority is provisional and subject to change" and single star mark indicates "deemed date of DPC and is subject to change". A party who approaches the Tribunal and produces annexures should necessarily produce the true copies and it is not enough to simply certify as a true copy without being a true copy. In A15, not only it does not contain the Blue book in its entirety but the star marks are also conspicuously absent. From R1 it is seen that against the name of the applicant, there is a star mark. It indicates the "deemed date of DPC and is subject to change". That aspect is suppressed by the applicant.

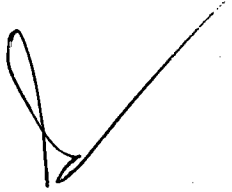
14. In the rejoinder it is stated that it is discernible from R1 that no incumbent belonging to SC is placed above the applicant and therefore, the applicant need not challenge the revised seniority list of Assistant Engineers (Electrical) dated 9.1.1998 (R2). In R2, the applicant is ranked at sl.No.24. Official respondents have stated that a fresh seniority list in the grade of Assistant Engineers (Electrical) was issued on 9.1.98 in accordance with the direction of the Supreme Court and all promotions made from the grade of Assistant Engineer (Electrical) to the grade of Executive Engineer (Electrical) against the vacancies from the year 1977 till the date including the promotion of the applicant) have to be reviewed based on the seniority list.



15. The stand of the applicant that he need not challenge R2 since as per A15 (R1), no incumbent belonging to SC is placed above him cannot be accepted since R1 (A15) is not a seniority list. How the seniority of the applicant has gone much below amongst Group-B officers is explained by the official respondents in paras 5 and 6 of the reply statement dated 19.2.2001.

16. One of the grounds raised is that the applicant was regularized to the post of EE(E) with effect from 1.6.1984 and thus his seniority is to be reckoned from that date in the category of EE, that respondents 4 to 8 were promoted as EE(E) with effect from 12.9.85 and so their seniority can be reckoned only from 12.9.85. From R3 judgment of the Apex Court in Civil Appeal No.5086/94 it is clearly seen that there are two channels of recruitment. The relevant recruitment rules and promotions to the post of EE are to be made from two categories viz., AEE (Class-I) with 5 years' regular service on seniority-cum-fitness basis (non-selection) in the 2/3rd quota and the other being AE (Class II) with 8 years' regular service on seniority-cum-merit basis (selection method) in the 1/3rd quota selection being made by the DPC with a Member of the UPSC as Chairman. Applicant admittedly was initially recruited as an Assistant Engineer and not as an AEE and he was promoted as Executive Engineer in the reserved quota. Respondents 4 to 8 were initially recruited as AEE and they belong to the same batch to which the applicant belongs.

17. Another ground raised by the applicant is that seniority is to be counted from the date of appointment to the cadre. In R4, para 12 reads thus:



"12. Learned counsel for the applicants placing strong reliance upon the rules 6 and 9, submit that as per sub rule (1) of Rule 6 the applicants having become members of the service in 1988, their length of service should be the only determinative factor to fix their seniority and hence they cannot be shown as juniors to AEEs who were appointed in 1998, ten years later. They add that as per sub rule (1) of 9, their seniority as obtaining on the date of the commencement of the 1994 rules should be maintained. But if we closely examine the rules, it becomes clear that the membership of the service has no relevance for seniority. As per sub rule (2), the regular service shall count only for the purpose of probation, qualifying service for promotion, confirmation and pension in the service. But, it does not count for seniority. As to how the seniority should be determined is shown in Rule 9. Sub rule (1) of Rule 9 would appear to support the applicants argument. But proviso to sub rule (1) clearly states that the seniority of any member which has not been finally determined on the date of the commencement of the rules shall be fixed as per the rules applicable prior to the commencement of the 1994 rules, governing the fixation of seniority. Hence, there seniority has to be fixed as per the 'Note' which specified the method of determination of seniority is now substituted in rule 9 of 1994 rules. As the applicants' seniority was not finalized in 1992 and 1995, list being only provisional, the same was fixed in the impugned seniority list. The applicants cannot claim benefit of seniority in the light of their regular appointments in 1988."

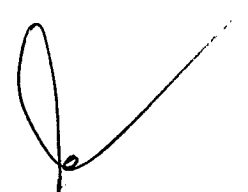
18. R4 is against A18 herein. In R4 it is further held that:

"Seniority cannot be scrutinised by any contingency and it was to be determined according to the rotation of the vacancies reserved for the them. Thus though the promotion of the applicants in 1988 was in accordance with this 'Note' and thus was a regular promotion, but their seniority was rightly determined in accordance with the rules, in the impugned seniority list rotating them as per that quota, which was not the cause in 1992 and 1995 seniority lists."

19. A18 seniority list was not interfered as per R4.

20. What is the legal position applicable in this case is laid down in Ajit Singh and others Vs. The State of Punjab and others [AIR 1999 SC 3471]. There it has been held:

"91. Where, before 1.3.96, i.e., the date of Ajit Singh's judgment, at the Level 3, there were reserved candidates who reached there earlier and also senior



general candidates who reached there later, (but before the reserved candidate was promoted to Level 4) and when in spite of the fact that the senior general candidate had to be treated as senior at Level 3 (in view of Ajit Singh), the reserved candidate is further promoted to level 4 - without considering the fact that the senior general candidate was also available at Level 3 - then, after 1.3.96, it becomes necessary to review the promotion of the reserved candidate to Level 4 and reconsider the same (without causing reversion to the reserved candidate who reached Level 4 before 1.3.96). As and when the senior reserved (general) candidate is later promoted to Level 4, the seniority at Level 4 has also to be refixed on the basis of when the reserved candidate at Level 3 would have got his normal promotion, treating him as junior to the senior general candidate at Level 3. Chander Pal V. State of Haryana (1997) 10 SCC 474 has to be understood in the manner stated above."

21. In the light of the said ruling, the applicant is not entitled to any relief.

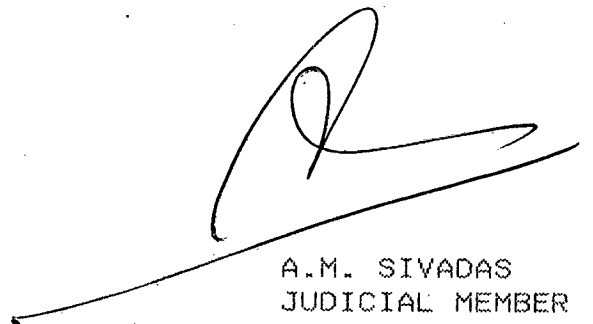
22. Accordingly, the Original Application is dismissed. No costs.

Dated the 21st of August, 2001.



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

P



A.M. SIVADAS
JUDICIAL MEMBER

List of Annexures referred to in this order

- A-12: True copy of Order No.2-3/93-CWG dt. 7.11.94 issued by the 2nd respondent.
- A-15: True copy of Proceedings No.10(02)/1997 CEE/PVM/125 dated 9.10.97 issued by the 3rd respondent.
- A-17: True copy of Proceedings No.3-3/98 EW dated 9.8.2000 issued by the 1st respondent.
- A-18: True copy of Proceedings No.26-1/2000 EW dated 16.8.2001 issued by the 1st respondent.
- R-1: Copy of "Blue Book" of Group-A Officers.
- R-2: O.M. No.33-1/97-EW dated 9.1.98, Revised Seniority List in the Grade of Assistant Engineer (E).