

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O.A No.217/90 and OA No.413/90

DATE OF DECISION

23.7.1991

In O.A 217/90

T.H.Bhaskaran

Applicant

M/s.M.C.Sen, A.V.M.Salahuddin
Sreelal N.Warrior

Advocates for the Applicant

vs.

Engineer in-Chief, Army Head Quarters, Kashmir House, Respondents
D.H.Q., P.O. New Delhi-110 011 and 2 others

Mr.V.V.Sidharthan, ACGSC

Advocate for the Respondents

In O.A 413/90

U.V.Appukutty & 11 others

Applicant

M/s.Govind Bharathan,
K.Sreehari Rao

Advocate for the Applicants

vs.

The Union of India, Respondents
represented by its Secretary,
Ministry of Defence, New Delhi and 4 others

Mr.C.Kochunni Nair

Advocate for the Respondents

CORAM

THE HON'BLE MR.S.P.MUKERJI, VICE CHAIRMAN

THE HON'BLE MR.A.V.HARIDASAN, JUDICIAL MEMBER

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

JUDGMENT

(Hon'ble Shri S.P.Mukerji, Vice Chairman)

Since common questions of law, facts and reliefs are involved

in the two Original Applications listed above, they are being disposed of by a common judgment as follows.

2. The applicants in these applications had been appointed after an all India selection process as Superintendent, Bridges and Roads Grade II (in short 'Superintendent B/R Grade II) in the Military Engineering Service under the Engineer-in-Chief, Army Head Quarters, New Delhi in various years during 1960s.

They were holding Diploma in Civil Engineering and had passed the procedural examination and were eligible for next promotion as Superintendent B/R Grade I. They were all ²² posted in the Southern Command where, according to them, the Departmental Promotion Committee for promotion to the cadre of Superintendent B/R Grade I did not meet for years, as a result of which they could get promotion after ten, fifteen and twenty years in the Southern Command. Their grievance is that in other Commands especially the Eastern and Northern, where DPCs have been meeting regularly, persons junior to them as Superintendent B/R Grade II and with lesser service got promotion as Superintendent B/R Grade I much earlier and some of these juniors after promotion were posted in the Southern Command over the heads of their seniors who were still in the lower Grade II. The Recruitment Rules known as the Military Engineering Services (Non Industrial Class III and Class IV posts) Recruitment Rules, 1970 (hereinafter known as 'the Rules') were framed in 1970 (Annexure B in OA 413/90) and even after the promulgation of these rules promotions from Grade II to Grade I were continued to be made at the Command level based on the Command seniority. Apart from the heartburning caused by their juniors being promoted earlier in other Commands and transferred to the Southern Command over their heads, the applicants' grievances ^{were} still compounded and exacerbated by the fact that in 1979 or thereabout, the respondents decided to have an ^{all-}India seniority list of Superintendent B/R Grade I by merger of the Command seniority lists. As a result of this

.3.

persons who are junior to the applicants in Grade II and had lesser service but had been promoted earlier in the other Commands to Grade I were shown way above them. This has jeopardised their ^(applicants') prospects of promotion and service conditions for ^{the} higher posts of Assistant Engineers. Their further grievance is that the all India seniority list of Grade I was issued by the Engineer in-Chief's Branch on 2.3.1987, but the list which was circulated were both incomplete as well as truncated. For instance, several columns in the seniority list giving the dates of promotion etc. were missing and some of the applicants' names did not appear in the truncated list received in their office. This also deprived the applicants of making proper representations and raising objections against the seniority given to them. The Association of the applicants later managed to get a complete copy of the all-India seniority list consisting of 164 closely typed pages which revealed many having juniors from the point of view of entry into the service/being given higher seniority because of their earlier promotion to Grade I in other Commands. Because of this seniority list, the applicants' names could not be included in the panel for promotion to Assistant Engineer B/R. Some of them have been given officiating promotion as Assistant Engineers. The applicants in O.A 413/90 moved this Tribunal in three applications No.OA 456, 494 and 498 of 1989. The Tribunal disposed of these applications directing the applicants to file representations against their seniority in the all-India seniority list within one month and directed the respondents to dispose of their representations within two months. The Tribunal gave the applicants therein the liberty to approach the appropriate legal forum if they were aggrieved by the outcome

of their representations(Annexure-G). By the impugned order at Annexure-A in O.A 413/90 their representations were rejected. The applicants in that case have now moved this Tribunal against the rejection of their representations.

3. The applicant in O.A 217/90 who was not a party to the aforesaid three applications but was similarly situated like the applicants in the other case(OA 413/90)also filed repeated representations against this seniority in the all-India list. But his representations have not been responded to so far. The applicant feels that his representations also will meet with the same fate as of the applicants in O.A 413/90 by the impugned order dated 2.12.1989 at Annexure-A. The applicants in both these applications have prayed that the impugned order dated 22.12.89 at Annexure-A in both the case files should be set aside and the respondents directed to revise the all-India seniority list on the basis of their date of joining service as Superintendent B/R Grade II with all consequential benefits. Their further prayer is that the vacancies in the post of Assistant Engineers in the Military Engineering Service should be filled up on the basis of the revised seniority list as prayed for.

4. The respondents have strongly opposed any revision of the all-India seniority list of Superintendent B/R I/Surveyor Assistant Grade I on the basis of the length of service and date of initial appointment in the lower feeder Grade II. Urging that seniority in the higher grade to which promotions were made on the basis of screening and/or selection cannot be fixed on the basis of dates of appointment in the lower Grade II. This will be treating unequals as equals and violative of Articles 14 and 16 of the Constitution.

They have stated that in 1970 a decision was taken to prepare an integrated all India seniority list of Superintendent B/R I when it was decided to promote by selection through DPC Grade I Superintendents to the posts of Superintendent B/R I Charge Holders on an all-India basis. This necessitated preparation of an all India seniority list of Superintendent B/R I. Since 1970 the all-India seniority list of Superintendent B/R Grade I was being prepared on the basis of date of appointment to Grade I. The applicants should have raised objection at that time. In 1977 when the post of Superintendent B/R I Charge Holder was upgraded as Assistant Engineer Gazetted Class II, the post of Superintendent B/R I became the post immediately below the officer's level in Group C and accordingly promotion to Grade I Superintendent's cadre had to be made from the cadre of Superintendent Grade II on an all India basis. The name of the applicant in O.A 217/90 appeared in the all India seniority list of Grade II in 1978 but the applicant did not represent against the delay in his promotion as Superintendent Grade I. The respondents have explained that prior to 1978 DPCs for promotion from Grade II to Grade I Superintendent met at the Command level on the basis of Command seniority list and promotions were dependent upon the availability of vacancies in particular Command. If the DPCs in the Southern Command did not meet regularly, the applicants should have raised this point at an appropriate time, but not at this late stage. They have further argued that Superintendent Grade II and Grade I have all-India service liability, but that cannot give them claim of promotion in other Commands. They have referred to the cases of Mates

and other lower categories where also in spite of transfer liability on an all India basis, their promotion and seniority are on a Command basis. They have clarified that Superintendent B/R Grade II are recruited "locally and not on all-India basis through a common test etc. Merely having an all India transfer liability does not confer all India seniority". So long as promotion from Superintendent II to Superintendent I were on Command basis till 1978 seniority of the individuals as Superintendent II within the Command was relevant and promotions made in another Command from another Command seniority list was not relevant. During that period it was not necessary to circulate seniority list of one Command to another Command. They have averred that till 1978 no individual of any Command was transferred to other Command on his promotion as Superintendent B/R Grade I and have stated that in fact individuals on their promotion as Superintendent B/R I were adjusted against the vacancies of the Commands to which they belonged and not against the vacancies of other Commands as alleged by the applicants. Even after 1978 promotions were made against the Command vacancies and transfers are made to other Commands only in case of non-availability of vacancies in the parent Command. Inter-command postings of Grade II and Grade I are carried out in special circumstances of job requirement, compassionate grounds and to liquidate surpluses. They have indicated that if eligible promotees are available within the Command those vacancies are not filled up by inducting incumbents from outside.

5. As regards the contention of the applicants that their adhoc service in Grade I prior to their regularisation should be taken into account for seniority in that grade, the respondents have stated that whereas regular promotions were made on the basis of seniority cum merit adhoc promotions were made on the basis of seniority subject to fitness and accordingly adhoc service in Grade I cannot be taken into account for seniority. They have referred to the Supreme Court judgment in Delhi Water Supply and Sewage Disposal Committee case and a Tribunal's judgments in support of their arguments. The respondents have corrected the impugned order dated 22.12.89 at Annexure-A by stating that it was prior to 1978 and not prior to 1970 that promotions were conducted from Grade II to Grade I at the Command level. The respondents have further contended that since the impugned order was signed on behalf of the Engineer-in-Chief, the order being without competence as alleged by the applicants, does not hold water. The respondents however conceded that before the passing of the impugned order, the applicants in O.A 413/90 were not given a personal hearing as the respondents did not feel it necessary.

6. In the rejoinder the applicant in O.A 217/90 has argued that just because the DPC in the Southern Command did not meet regularly between 1969 and 1980 he cannot be deprived of his seniority in favour of junior persons in other Commands. As the seniority list was not properly circulated, the application cannot be considered to be time-barred. Since the promotions

and transfers in other Commands were not circulated, it was not possible for the applicant to challenge the same. He has further argued that since Superintendent B/R Grade II were recruited through examination and interview on an all India basis and had all India service liability, they could not be promoted and then transferred on a Command basis.

7. We have heard the arguments of the learned counsel for all the parties and gone through the documents carefully. More or less similar applications were filed by a number of Superintendents B/R Grade I working in the Northern Command of the Military Engineering Service seeking earlier promotion as Superintendent B/R Grade I and consequential benefit of seniority and further promotions. These applications No.OA 251/88 to OA 256/88, OA 501/89 to OA 506/89 and OA 588, 591, 972 of 1988 were disposed of by the Chandigarh Bench of this Tribunal by their judgment dated 26.4.1989 by a Division Bench presided over by Mr.Justice K.S.Puttuswamy, Vice Chairman. In those applications, on the question of limitation, that Bench found that even though the all India seniority list was published in July, 1987, the applicants therein could not challenge the promotions and supersessions which had taken place on a Commandwise basis in 1967, 1971, 1972 and even thereafter till 1983. It was held that since the cause of action had arisen well before 1982 those cannot be reopened on the basis of the seniority list which has to reflect the pre-existing position. The following observations made

by the Division Bench in that case will be relevant:-

" All the supersessions and non-promotions of the applicants had been done while they were working in one or the other Command, on the basis of common seniority or treating the Command as a separate and distinct entity for all purposes. this position appears to have been modified from 1977 onwards, but that modification, in our view, has really no relevance to decide on the supersessions or non-promotions of the applicants at any rate prior to 1.11.1982.

On 21.3.87 the All India Seniority list of Supdt B/R Gde-I was prepared by the Engineer-in-Chief and circulated to all concerned is not in dispute. The seniority list only reflects the pre-existing positions of appointments and promotions made earlier with reference to a particular date i.e. normally chosen for preparation of a seniority list. A seniority list, as such, does not normally determine the rights of the parties. At any rate, a seniority list does not undo the earlier supersessions and non-promotions of officials in a department. From this, it follows that in cases of supersessions and non-promotions as in the present cases, no reliance can be placed on a later seniority list published, reflecting the earlier positions of the officials. On any view, we find it difficult to hold that limitation in these cases should be computed from July 1987 when the seniority list dated 21.3.1987 was circulated to the applicants. Every one of the rulings relied upon by Shri Mahajan do not lend support to his contentions urged before us.

As held by us earlier, in reality and in substance, the cause of action to challenge their supersessions and non-promotions in 1967, 1971 and 1972 and all well before 1.11.1982 their rights or grievances if any, or their supersessions and non-promotions, arose to the applicants on the dates they were so superseded or not-promoted and others against whom they are now claiming reliefs were promoted on those occasions. Whether this claim is within the jurisdiction of this Tribunal or not is no longer res integra. In VK Mehra's case, the matter has been set at rest by the Principal Bench. In that case, Justice K. Madhava Reddy, Chairman, speaking for the Bench expressed thus:-

"2. This Tribunal has jurisdiction to entertain the the grievances of a petition in respect of orders made prior to constitution of Tribunal only if it was made within three years immediately preceding its constitution. This Tribunal was constituted on 1.11.85. The impugned order is dated 22.5.1981 which is beyond three years of the constitution of the Tribunal. The petitioner states that he had made oral representation and appeals to his "Seniors". Obviously what he means is that he preferred an appeal to the superior authorities orally. We do not find any provision in the service Rules for making any oral representation. That apart, there is nothing in the record to show that an oral representation at any time before or after 1.11.82 was made. The Administrative Tribunals Act does not vest any power or authority to take cognizance of a grievance arising out of an order made prior

21

to 1.11.82. The petitioner requests that the delay in filing this application be condoned. But the question is not at all one of condoning the delay in filing the petition. It is a question of the Tribunal having jurisdiction to entertain a petition in respect of grievance arising prior to 1.11.1982."

The Chandigarh Bench relied upon another judgment of the Principal Bench

to which one of us was a party in O.A 696/88 decided on 26 July 1988

and observed as follows:-

"In Satish Kumar Sharma's case, a Division Bench of the Principal Bench consisting of Hon'ble Mr.PK Kartha, Vice Chairman and Hon'ble Mr.SP Mukerji,AM(as he then was) were dealing with a similar claim made before them. In dismissing that application, the Division Bench expressed thus:

"We have heard the arguments of the learned counsel for the applicant and gone through the documents carefully. In this application dated 10.4.88 the applicant has challenged certain promotions made by the respondents to 'the grade of Superintendent Gde I during Jul/Aug, 1972 when, according to him, his juniors were promoted but he was not. He was ultimately promoted to Grade-I in 1980. He has himself quoted from the respondents letter at Annexure A4 rejecting his representation that he was not considered for selection but others were judged to be better by the DPC and hence the supersession. Apart from the fact that we cannot question the selection made by the DPC when no malafides or irregularities on the face of record have been indicated, we are disinclined to re-open the promotions made 16 years ago. In PS Sade Sivaswamy vs. State of Tamil Nadu AIR 1974 SC 227 the Supreme Court observed that delayed and stale cases need not be entertained so as to unsettle the settled matters. In SS Mogha vs. Union of India and others AIR 1981 SC 1495 the Supreme Court indicated that promotions cannot be challenged 10 or 11 years after the same were made without satisfactory explanation for delay. Similar views were expressed by that Court in Trilok Chand Moti Chand and others vs. H.Munshi,AIR 1970 SC 898 and Rabinder Nath Bose and others vs. Union of India and oithers, AIR 1970 SC 470.

2. Apart from the case being stale, the application suffers from the bar of limitation also. The representation was rejected by the respondents on 3.9.1986 and his further representation of 9th Oct, 1986 was rejected on 19.10.87 (Annexure A-6) indicating that in view of the decision of 3rd Sept 1986 no further action reconsidering the case was called for. The present application has been

21

filed more than a year after the representation was rejected on merits on 3.9.1986. It has been held by the Supreme Court in Gian Singh Mann vs. High Court of Punjab and Haryana AIR 1980 SC 1894 that a stale or delayed case cannot be entertained on the ground that a number of representations were made and the delay cannot be overlooked merely because successive representations had been made.

3. Under the circumstances, we see no merit in the application and reject the same under Section 19(3) of the Administrative Tribunals Act, 1985.

On the foregoing discussion, we hold that these applications are beyond the jurisdiction of this Tribunal or are clearly barred by time and are liable to be dismissed on that ground."

It has been stated by the respondents in the case before us that the all India seniority list of Superintendent B/R Grade I was being prepared since 1970 and that of Superintendent B/R Grade II since 1978 and that the name of the applicant in O.A 217/90 appeared in the list, but the applicant did not represent against the delay in his promotion as Superintendent B/R Grade I. The applicants before us, cannot therefore, challenge the promotions made on a Commandwise basis in other Commands several years ago, nor can they seek revision of the seniority list of 1987 which is based on such Commandwise promotions. Agreeing with respect with the dictum enunciated by the Chandigarh Bench of the Tribunal, we are convinced that this Tribunal has no jurisdiction to reopen supersessions or promotions made more than 3 years before the constitution of the Tribunal. The respondents have categorically stated that inter Command transfers were made in exceptional circumstances and in public interest. As regards Commandwise promotions, this is a matter entirely within the domain of executive policy not amenable to judicial intervention. In the Director, Lift Irrigation Corporation Ltd. & Ors vs. Pravat Kiran Mohanty and Ors,

22

Judgements Today 1991(1) SC 430, it was held by the Supreme Court that amalgamation of cadre by administrative policy cannot be challenged unless there is a case of mala fide or arbitrariness and that chances of promotion cannot be protected in such cases. In State of Mysore vs. G.N.Purohit, 1967 SLR 753 relying upon another Supreme Court ruling in State of Orissa vs. Durga Charan Das, AIR 1966 SC 1547, it was held that preparation of a Statewise seniority list instead of Districtwise seniority list, cannot be held to be invalid merely on the ground that this would affect chances of promotion. A Full Bench of this Tribunal in R.S.Chimni and others vs. Union of India and others (page 277 - Full Bench Judgments of Central Administrative Tribunals (1986-1989) published by Bahri Brothers, Delhi) held that the Government has a right to reorganise its cadres. Thus we are fully convinced that the respondents cannot be faulted in taking a decision to prepare an all India seniority list of Superintendent B/R Grade I in 1970 for promotion to the post of Superintendent Charge Holders on an all India basis and again to prepare an all India seniority list of Superintendent B/R Grade II from 1977 onwards for promotion to the cadre of Superintendent B/R Grade I.

8. The plea of the applicants that the seniority in the cadre of Superintendent B/R Grade I should be based on seniority in the feeder cadre of Superintendent B/R Grade II is against all canons of service jurisprudence so far as fixation of seniority in a cadre of particular level is concerned. Since Superintendent B/R Grade II is the lower feeder category

2

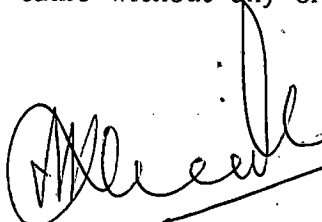
from which promotions to Grade I are not automatic, but through a process of screening and selection, service in the feeder category cannot be taken into account for seniority in the higher cadre. It will be futile to cite the innumerable rulings given by the Supreme Court and other Courts to the effect that normally seniority in a cadre or grade is determined by the length of service in that grade. As regards counting of adhoc service for the purpose of seniority it was held by the Supreme Court in Masood Akhtar Khan and others vs. State of Madhya Pradesh and others, 1990(2) SCALE 142, that if the initial appointment is not made in accordance with the rules even though one is subsequently regularised, the adhoc service will not count for seniority. In one of the latest rulings in the Direct Recruit Class-II Engineering Officers' Association and others vs. State of Maharashtra and others, AIR 1990 SC 1607, the Constitution Bench of the Supreme Court inter alia held that where the initial appointment is only adhoc and not according to the rules and made as a stop-gap arrangement, the officiation in such posts cannot be taken into account for considering seniority. The learned counsel for the applicants, however, has referred to the further observations made by that Bench in which it was stated that "if the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted". In the instant case the applicants were appointed

to Superintendent B/R Grade I on an adhoc basis by not following the substance of the rules, ^{as} the respondents have clarified that whereas in accordance with the Recruitment Rules promotions are to be made on the basis of merit cum seniority, the adhoc promotions of the applicants were made on the basis of seniority subject to fitness. Since there has been ^{substantive provisions of} violation of the Recruitment Rules in the adhoc promotion of the applicants, the ruling of the Constitution Bench as relied upon by the applicants' learned counsel which applies only to procedural violations, will not apply to the applicants' cases. Further, that ruling was given in the context of adhoc promotions which continued for 5 to 15 years followed by regularisation. Such a circumstance does not obtain in the case of the applicants before us. The Constitution Bench in the aforesaid case observed as follows:-

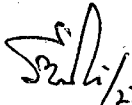
" In Narender Chadha v. Union of India ,(1986)1 SCR 211:(AIR 1986 SC 638) the officers were promoted although without following the procedure prescribed under the rules, but they continuously worked for long periods of nearly 15-20 years on the posts without being reverted. The period of their continuous officiation was directed to be counted for seniority as it was held that any other view would be arbitrary and violative of articles 14 and 16. There is considerable force in this view also. We, therefore, confirm the principle of counting towards seniority the period of continuous officiation following an appointment made in accordance with the rules prescribed for regular substantive appointments in the service."

The Constitution Bench further held that "if an appointment is made by way of stop-gap arrangement, without considering the claims of all the eligible available persons and without following the rules of appointment, the experience on such appointment cannot be equated with the experience of a regular appointee, because of the qualitative difference in the appointment.

9. In the conspectus of facts and circumstances, as discussed above, we see no force in the aforesaid two applications and dismiss the same without any order as to costs.


(A.V. Haridasan)
Judicial Member

23/7/91


(S.P. Mukerji)
Vice Chairman

23.7.91

n.j.j