



**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Common Orders in O.A. Nos.290/07, 813/06 & 841/06

Thrusday, this the 11th day of October, 2007

C O R A M :

**HON'BLE MRS.SATHI NAIR, VICE CHAIRMAN
HON'BLE DR. KBS RAJAN, JUDICIAL MEMBER**

O.A.No. 290/07:

1. CPWD Junior Engineers' Association (India)
represented by Girish Kumar A.G.,
Junior Engineer (Civil)
attached to the Cochin Central Division
of the Central Public Works Department,
Kendriya Bhavan, Kakkanad, Ernakulam,
residing at "GOKUL SREE", Kothakulangara,
Angamaly P.O., Ernakulam District.
2. R.MOHANADAS,
Junior Engineer (Civil)
attached to the Cochin Central Division
of the Central Public Works Department,
Kendriya Bhavan, Kakkanad, Ernakulam,
residing at "KRISHNA KRIPA", NO.IX/201,
M.V.Paul Road, Kusumagiri P.O.,
Kakkanad, Kochi-682 030.

: Applicants

(By Advocate Shri TC Govindaswamy)

Vs.

1. Union of India, represented b y
the Secretary to the Government of India,
Ministry of Urban Development & Poverty Alleviation,
Nirman Bhawan, NEW DELHI.
2. The Secretary to the Government of India,
Department of Personnel & Training,
Central Secretariat, NEW DELHI.
3. The Director General of Works,
Central Public Works Department,
Nirman Bhawan, NEW DELHI.

4. The Additional Director General (Training),
Central Public Works Department,
Room No.329-A, B-Wing,
Nirman Bhawan, NEW DELHI- 110 011. : Respondents

(By Advocate Shri TPM Ibrahim Khan, SCGSC)

O.A. No. 813/06 :

1. S.SURESHKUMAR,
Junior Engineer (Electrical)
Office of the PWD Kozhikode,
Central Electrical Sub Division,
Central PWD Kozhikode,
Residing at Central Revenue Quarters,
Beach Road, Kozhikode.
2. VINOD R.,
Junior Engineer (Civil)
Office of the Assistant Engineer
Civil Construction Sub Division,
Central Public Works Department, Kozhikode,
Residing at Central Revenue Quarters,
Beach Road, Kozhikode-32.
3. G.SAJIKUMAR,
Junior Engineer (Civil), Central PWD,
Kendriya Bhavan, Kakkanad, Kochi-37,
residing at Sreelayam,
Kizhakkekara Road,
Thrikkakara, Kochi-21.
4. CHANDRAN ZACHARIAS,
Junior Engineer (Electrical),
Central PWD, Kendriya Bhavan,
Kakkanad, Kochi-37, residing at :
New Kawdiar Gardens, Trivandrum. : Applicants

(By Advocate Shri K.Jaju Babu)

Vs.

1. Union of India, represented by
the Secretary to the Government of India,
Ministry of Urban Development & Poverty Alleviation,
Nirman Bhawan, NEW DELHI.

2. The Secretary to the Government of India,
Department of Personnel & Training,
Central Secretariat, NEW DELHI.
3. The Additional Director General (Training),
Central PWD, Room No.329-A, B,
Nirmal Bhawan, NEW DELHI- 110 011.
4. S.V.JAYASANKAR,
Junior Engineer (Civil),
Kottayam Central Sub Division IV,
Central Public Works Department, **Kollam**.
5. SRI.K.P.BASHEER,
Senior Engineer (Electrical),
Central Electrical Sub Division,
Central PWD, **Kozhikode**.

: Respondents

(By Advocate Shri TPM Ibrahim Khan, SCGSC (R.1-3))
(By Advocate Shri P.K.Ramkumar (R4))

O.A. No. 841/06 :

1. S.N.SAJEEV,
Junior Engineer (Civil),
Office of the Assistant Engineer (Civil),
Calicut Central Sub Division No.I.,
Central Public Works Department, Calicut,
residing at : "VISHWA HINDU BHAWAN"
Achuthan School Road, Thali, Calicut.
2. PAUL THOMAS K,
Junior Engineer (Electrical),
Office of the Assistant Engineer (Electrical),
Central Public Works Department,
CR Building, IS Press Road, Cochin-18,
residing at : "KILUCKAN HOUSE"
Naduvattom, Neeleeswaram P.O.,
Kalady (Via), Ernakulam District.

: Applicants

(By Advocate Shri TC Govindaswamy)

Vs.

1. Union of India, represented by
the Secretary to the Government of India,
Ministry of Urban Development & Poverty Alleviation,
Nirman Bhawan, NEW DELHI.

2. The Secretary to the Government of India,
Department of Personnel & Training,
Central Secretariat, NEW DELHI.
3. The Director General of Works,
Central Public Works Department,
Nirman Bhawan, NEW DELHI.
4. The Additional Director General (Training),
Central Public Works Department,
Room No.329-A, B-Wing,
Nirman Bhawan, NEW DELHI- 110 011.
5. SHRI V.D. DILEEP KUMAR,
Junior Engineer (Electrical),
Peringon Central Electrical Sub Division,
Peringon, KANNUR.
6. SHRI K.SHRINIVASA RAO,
Junior Engineer (Civil),
Central Civil Sub Division, KOTTAYAM. : Respondents

(By Advocate Shri P.S.Biju, ACGSC (R.1-4))
(By Advocate Shri Cherian Varghese (R.5&6))

The applications having been heard on 13.9.2007
the Tribunal on 11.10.07 delivered the following:

ORDER

HON'BLE DR. KBS RAJAN, JUDICIAL MEMBER

The above three O.As are dealt with together as the issue is common in all the cases. For the purpose of reference, however, OA No. 290/07 is taken as the pilot case.

2. The 1st applicant is an Association represented by its President of Southern Region, and the 2nd applicant who is an Member of the 1st applicant Association, is a Junior Engineer (Civil). The applicants are aggrieved by an order from the office of the 2nd respondent, directing that the past service of the junior Engineers

(Civil) & (Electrical) of All India Radio, re-deployed in the CPWD, may be counted for the purpose of appearing in a Limited Departmental Competitive Examination (LDCE in short) for promotion to the post of Assistant Engineers (Civil) & (Electrical) in the CPWD. Applicants are also aggrieved by a Notice dated 7.11.2006, inviting applications for LDCE from among the eligible Junior Engineers, for filling up the vacancies of Assistant Engineers (Civil) & (Electrical) for the period from 2002 to 2007 vide Annexure A2. The applicants are aggrieved by the Note (I) below para 3 which reads, "the Junior Engineers (C&E) who joined CPWD from AIR through Surplus Cell of DOPT are also allowed to appear in LDCE-2006, subject to the condition that they have rendered requisite qualifying service of four years including the All India Radio on or before 1st January, four years preceding to the year of consideration of vacancies".

3. 116 Junior Engineers (Civil) and 45 Junior Engineers (Electrical) were rendered surplus in the All India Radio and, they were re-deployed in the CPWD, vide Annexure A-4 and Annexure A-5.

4. As a matter of fact, specific undertaking was taken from each of the surplus Junior Engineers of the All India Radio before their re-deployment in CPWD that they would not claim their past service for the purpose of seniority or for the purpose of promotion. The question whether surplus employees re-deployed in the CPWD can count their past services for the purpose of seniority or promotion was considered by the Hon'ble Supreme Court in Union of India & Others Vs. K.Savithri & Others, reported in 1998 SCC (L&S) 1134. The Hon'ble Supreme Court was pleased to observe as follows:

"9. The service conditions of the re-deployed employees under the Rules being governed by the provisions in the Rules as well as the instructions issued from the Government of India from time to time and in view of the clear and unambiguous language in para 11.1 of the instructions referred to above, the conclusion is irresistible that the past services of the re-deployed staff cannot be counted for seniority in new organisation".

The Hon'ble Supreme Court again observed in para 10 as follows:

"10. Coming now to the question whether the said past services can be counted as experience for promotion, it appears that under the Recruitment Rules for various posts in All India Radio.....In that view of the matter, since the past services of re-deployed surplus employee cannot be counted for his seniority in the new organisation, equally the past experience also would not count as the so-called past services rendered will not be service in the grade".

5. Again the Hon'ble Supreme Court considered an identical issue in Superintending Engineer & others Vs. A Sankariah (AIR 2003 SC 4698). In this case also, the Hon'ble Supreme Court took a categorical view that upon re-deployment, such re-deployed staff would be treated as fresh entrants in the new organisation and such re-deployed staff cannot count their past service either for the purpose of seniority or for the purpose of promotion. Thus, none of the re-deployed Junior Engineers of the All India Radio, covered by Annexures A4 and A5 would be entitled to be considered for the vacancies notified in Annexure A2. These employees had joined the CPWD only during January 2003 and they would be completing the 4 years period only in Jan, 2007 and, therefore, they could be considered only for the vacancies for the years 2008-2009 and thereafter. The applicants had taken up the matter with the departmental officials with the fond hope that the respondents would abide by at least the declaration of law rendered

by the Hon'ble Supreme Court. However, the respondents are taking a adamant stand that they would go ahead with the examination as proposed and that the same would be conducted.

6. The respondents have filed a reply statement contending that the O.A. is devoid of merit.

7.1. In the Argument note filed by the official respondents it is stated as under:

(a) The fundamental question involved in this case is as to whether the redeployed persons from the department of All India Radio are entitled for counting their past service for the purpose of fulfilling the eligibility in appearance the Department test and for pension. The said position has been settled in Original Application No.608/2000 by which the Hon'ble Tribunal has held that the redeployed employees are entitled to have their past service counted for the purpose of pension and for eligibility for appearing for Departmental Test.

(b) Accordingly the Annexure A1 order of the Department of Personnel and Training, which is the Nodal Ministry for service matters, is fully valid and as such the order is to be upheld. So the undertaking given by the redeployed employees will ^{not} be a bar for considering their past service for pension and minimum eligibility for appearing in the Departmental test. The said position have been affirmed by the Hon'ble Supreme Court of India in Civil Appeal No.3093/98 (Diwjan Chandra Sarkar Vs. Union of India) 1999(2) SCC 119 judgement dated 15.12.1998 and held that the

redeployed employees are entitled to reckon pre-redeployment service to grant Time Bound Promotion Pension, eligibility for appearing in the examination for promotion etc. These two decisions are subsequent to Annexure A-9 judgement produced by the applicant.

(c) In the above two cases, the Apex Court had chronologically held that the past service in the previous Department can be considered for the purpose of eligibility to appear in the Departmental Examination and pension. Besides, the Apex Court in Union of India vs. M Mathuvannam 2006 SCC (L&S), had affirmed the above position stating that "the transferred employees to postal service get the service benefit arising out of that service except seniority in postal service in the appropriate category (1/2007 Swamy's News (03))". So the Annexure A-1 letter issued by the Department of Personnel and Training is fully valid. The points have been clearly illustrated in the Additional reply statement filed by the respondents on 11.9.2007 in O.A. 813/2006. So the above O.A. is liable to be dismissed by this Tribunal.

7.2. In the argument note submitted on behalf of the 4th respondent in O.A. No. 813/06, it is stated that :

(a) He was initially appointed as Junior Engineer (Electrical) in regular service in All India Radio by Direct recruitment on 4.4.1989. Junior Engineers became surplus as per CCS (Redeployment of Surplus Staff) Rules 1990. When the 1966 scheme was revised on 1st April 1989 in the

Preamble of the revised scheme (produced in R4(b)) it is specifically stated that:

“It is the considered view of the government that it will be contrary to the concepts of personal management that improvements in administrative and financial management should affect the continuity of service of the affected employees, particularly as the Government would be losing the benefit of their valuable experience if they were to lose their jobs.”

Therefore it is in public interest, experienced hands are accommodated in needy departments.

(b) Rule 11 -- explains the benefit of past service after redeployment :

“The only condition imposed is that the past service should not count for seniority. Rule 11.4 says that the appointment will be treated as appointment by transfer in public interest.....”

(c) Respondents have more than 14 years of regular service as Junior Engineer in the previous Department. That service shall not be wiped away as per various decisions of the Apex Court. Therefore, the respondents are eligible to appear in the competitive exam reckoning their earlier service in AIR also LDCE is not a qualifying examination. It is to select best hands by competitive examination.

(d) In Dwijan Chandra Sarkar's case, Hon'ble Supreme Court held that seniority and eligibility are different since transfer is in public interest. This decision was relied in three other decisions; Renu Mallick Vs. Union of India (1994(1) SCC 3731), Scientific Adviser for Reksha Manthri Vs. V.M. Joseph (1998 (5) SCC 305 and in A.P. State Electricity Board Vs. R.

Parthasarathi (1998 (9) SCC 425). The Hon'ble Apex Court held that "past service should be counted for the limited purpose of eligibility of qualifying services for higher grade and time bound promotion.

(e) In another decision in Vimala Kumari Vs. Union of India relying on 1994 26 ATC 602 (Renu Mallik Vs. Union of India) and 1999 2 SCC 119 (Dwijan Chandra Sarkar Vs. Union of India and others this Hon'ble Tribunal on 31.7.2000 held that "the entire service rendered in the previous department would be counted for qualifying service for pension, eligibility for appearing in the examination for promotion etc."

7.3. Similar arguments have been raised by other private respondents in O.A. No. 841/2006 as well.

8. Thus, the question is whether the redeployed individuals could be considered as one fulfilling the requisite condition for competing in the LDCE?

9. A look at the provisions would be relevant at this juncture. Column 12 of the schedule to the Recruitment Rules deals with the requisite condition. It reads, *"Fifty percent by Limited Departmental Competitive Examination to be conducted by the Central Public Works Department, Training Institute or any other institution duly recognized by the Central Government or State Government open to Junior Engineers (Civil) with four years service in the grade."*

10. An identical issue has occurred with reference to All India Radio, in respect of redeployed surplus clerks before the Apex Court in the case of **Union of India v. K. Savitri, (1998) 4 SCC 358**. The brief facts in that case are that the respondents were the employees in the office of the Rehabilitation and

Reclamation Organisation having joined the said organisation in February 1987. They became surplus in the parent organisation and thereafter under the provisions of the Rules were appointed in All India Radio on different dates. In drawing up the seniority list of the employees in All India Radio as their past services were not taken into account and their experience in the parent organisation was not taken as the requisite experience required for promotion in All India Radio, they approached the Central Administrative Tribunal by filing different OAs. The Administrative Tribunal having allowed those OAs and having held that the past services rendered in the parent organisation would count for the purpose of seniority as well as experience the Union of India has come up in appeals. After referring to the facts of the case and certain Rule position, the Apex Court has held as under:-

*10. Coming now to the question whether the said past services can be counted as experience for promotion, it appears that under the Recruitment Rules for various posts in All India Radio called the All India Radio (Class III Posts) Recruitment Rules, 1964 (hereinafter referred to as "the Recruitment Rules") as amended from time to time the post of Head Clerk is filled up by promotion to the extent of 50% from amongst the Clerk Grade II/Clerk Grade I/Stenographer with a minimum of five years of service in the grades on the basis of a qualifying departmental examination and the criteria for promotion is seniority-cum-fitness. In that view of the matter, since the past services of redeployed surplus employee cannot be counted for his seniority in the new organisation, **equally the past experience also would not count as the so-called past services rendered will not be service in the grade.** Similarly, for promotion to Clerk Grade I which is made on the basis of seniority-cum-fitness from amongst the Clerks Grade II five years of service in the grade is required for being considered for promotion. Obviously, therefore, an employee should have five years of experience in Clerk Grade II of All India Radio after being redeployed under the Rules in order to be eligible for being considered for promotion. The Tribunal, therefore, was wholly in error in directing that the past services of the employees should be counted for granting them the benefit of seniority and experience for promotion in All India Radio. In the aforesaid premises, the impugned orders of the Central Administrative Tribunal, Cuttack Bench, in Original Applications*

Nos. 160, 161 and 163 of 1993 are set aside and those OAs are dismissed and these appeals are allowed but in the circumstances there will be no order as to costs. (emphasis supplied)

11. Again, in **Union of India v. G.R.K. Sharma, (1998) 6 SCC 186,**

referring to the above decision, the Apex Court has held as under:-

*"The question for consideration is whether the past service rendered by an employee under the redeployment scheme can at all be counted for the purpose of his experience for being considered for promotion to the post of Upper Division Clerk.The promotion to the post of Upper Division Clerk from Lower Division is governed by a statutory rule framed in exercise of powers under proviso to Article 309 of the Constitution, called the Security Printing Press Recruitment Rules, 1985. Under the said Rule, for being eligible for consideration for promotion, the requirement is Lower Division Clerk with regular service of eight years in the grade. Admittedly, the respondent had not served for eight years as a Lower Division Clerk in the organisation in which he was brought by way of redeployment.we are of the considered opinion that a redeployed employee who has been posted in the Printing Press must render eight years of service as a Lower Division Clerk in the Printing Press so as to be eligible for being considered for promotion to Upper Division Clerk. **The expression 'regular service of eight years in the grade' would connote rendering eight years of service in the organisation to which he has been appointed.** In a somewhat similar situation, this Court has considered similar expression in the case of *Union of India v. K. Savitri* where it has been held that the past service of redeployed surplus employee cannot be counted for his seniority in the new organisation and equally, the past experience also would not count as the so-called past service rendered will not be service in the grade. The aforesaid decision interpreting the similar expression 'service in the grade' would equally apply in the present case where the statutory rule also uses the expression 'regular service of eight years in the grade'. (emphasis supplied)".*

12. Again in **Superintending Engineer v. A. Sankariah, (2003) 11 SCC**

641, the Apex Court has held as under:-

"....in the policy framed for the redeployment of the surplus staff, it was made clear that the redeployed staff in the new department would be treated as a fresh entrant and the service rendered by him

in the previous department would not be counted towards seniority. Appointment on deployment was to be treated as on transfer only for specified purposes like transfer TA, joining time, joining-time pay, leave and pension only."

13. Respondents, both the official as well as private, relied upon certain decisions including the decision in the case of *Dwijen Chandra Sarkar v. Union of India*, (1999) 2 SCC 119 to hammer home their point that past service could be counted for promotion purpose. In fact, in the above case what was discussed was the spirit behind 'time bound promotion'. The Apex Court has held in that case as under:-

11 . However, the position in regard to 'time-bound' promotions is different. Where there are a large number of employees in any department and where the employees are not likely to get their promotion in the near future because of their comparatively low position in the seniority list, the Government has found it necessary that in order to remove frustration, the employees are to be given a higher grade in terms of emoluments while retaining them in the same category. This is what is generally known as the time-bound promotion. Such a time-bound promotion does not affect the normal seniority of those higher up.

12 . If that be the true purpose of a time-bound promotion which is meant to relieve frustration on account of stagnation, it cannot be said that the Government wanted to deprive the appellants who were brought into the P&T Department in public interest of the benefit of a higher grade. The frustration on account of stagnation is a common factor not only of those already in the P&T Department but also of those who are administratively transferred by the Government from the Rehabilitation Department to the P&T Department. The Government while imposing an eligibility condition of 16 years service in the grade for being entitled to time-bound promotion, is not intending to benefit only one section of employees in the category and deny it to another section of employees in the same category. The common factor for all these employees is that they have remained in the same grade for 16 years without promotions. The said period is a term of eligibility for obtaining a financial benefit of a higher grade. (emphasis supplied)

14. In the case in hand, the private respondents would become eligible to appear for the limited departmental competitive examination once they put in four years service in the grade of Junior Engineers in the present organization. As such, they cannot be said to belong to that category which was discussed in the case of 'Dwijen Chandra Sarkar'. Again, the decision of the Apex Court in the case of *Renu Mullick v. Union of India*, (1994) 1 SCC 373, was also relied upon by the respondents. Here again, it is to be kept in mind that the appellant therein belonged to the same customs and central excise department and her move is from one Collectorate to another and seniority is maintained on collectorate basis. The Apex court has in that case held as under:-

There is no indication, whatsoever, in the Rule that the service period of 5 years and 13 years is not applicable to an officer who has been transferred from one collectorate to another on his own request. On the plain language of the Rule the appellant, having served the department for more than 5 years as UDC and also having completed 13 years composite service as UDC and LDC including 2 years minimum service as UDC, was eligible to be considered for promotion to the post of Inspector.

Thus, the above case is also distinguishable.

15. In view of the above, the OAs succeed. It is declared that the surplus staff of the Junior Engineers of the All India Radio, redeployed in the CPWD are not entitled to count their past service, either for the purpose of seniority or for the purpose of promotion under the limited departmental competitive examination quota. Consequently, Note I below para 3 of Annexure A-2 is hereby quashed and set aside. It is, however, made clear that in case the redeployed junior engineers have completed the requisite years of service, they may be permitted for

promotions in respect of those vacancies which have occurred after their completion of the minimum years of service.

16. Under the above circumstances, there shall be no orders as to cost.

Dated, the 11th October, 2007.

DR. KBS RAJAN
JUDICIAL MEMBER

SATHI NAIR
VICE CHAIRMAN