

OA 31/06

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCHO.A No.31 / 2006

Thursday, this the 31st day of January, 2008

CORAM

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

HON'BLE MRS O.P.SOSAMMA, ADMINISTRATIVE MEMBER

K.Ramachandran,
S/o K Kesavan,
Assistant Engineer,
Doordarshan Kendra,
Trivandrum-43.Applicant

(By Advocate Mr TC Govindaswamy)

1. Union of India represented by
the Secretary to Government of India,
Ministry of Information & Broadcasting,
New Delhi.
2. The Director General,
All India Radio,
Akashvani Bhawan,
New Delhi..Respondents

(By Advocate Mrs Aysha Youseff, ACGSC.)

This application having been finally heard on 17.1.2008, the Tribunal on 31.01.08
delivered the following:

ORDER**HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER**

The applicant is presently working as an Assistant Engineer in the scale of
pay Rs.7500-12000(Revised) at the Doordarshan Kendra, Trivandrum. He is a
member of the Scheduled Caste community, entered service as an Engineering
Assistant on 18.10.1978 in the pay scale of Rs.700-900 (revised to Rs.2000-
3200 and Rs.6500-10500) and later was promoted as Senior Engineering

Assistant with effect from 30.3.1987 in the pre-revised scale of Rs.2375-3500. His allegation is that he was not considered for promotion in preference to his juniors as per the Annexure A-2 seniority list of Engineering Assistants as on 1.6.1988 issued vide Memorandum No.26/3/88-S dated 26.7.1988. He has, therefore, sought a declaration from this Tribunal that the non-feasance on the part of the respondents to consider him for promotion as Senior Engineering Assistant, Assistant Engineer and Assistant Station Engineer in the light of the aforesaid Annexure A-2 seniority list in preference to his juniors is totally arbitrary, discriminatory and unconstitutional. He had also sought a direction to the respondents to revise the applicant's date of promotion as Senior Engineering Assistant and Assistant Engineer on par with his juniors in Annexure A-2 seniority list and to grant him all consequential benefits, arising therefrom and also for further promotion as Assistant Engineer, Station Engineer etc. based on the revised date of entry as Assistant Engineer.

2. The applicant has filed this O.A. relying upon the order of the Madras Bench of this Tribunal dated 14.5.1987 in T.A.No.377/1986 in the case of **All India Radio & Television Centre v. Union of India and others** (Annexure A-1). The said application was filed by the Association for the issuance of certiorari/writ mandamus calling for the records relating to the seniority list of Engineering Assistants as on 1.4.1982 in the South Zone communicated by the Chief Engineer, South Zone, All India Radio and to quash the same. They have also sought a direction to the respondents to consider the promotion of the members of the petitioner's Association to the post of Senior Engineering Assistant after refixing their seniority according to law. While disposing of the said O.A. the Tribunal held that the seniority of Engineering Assistant as on 1.4.1982 in respect of South Zone needs revision and ordered accordingly to effect the revision. The reasoning for such revision as indicated in the order is



reproduced hereunder:

"It has been admitted by both the sides that 100 point roster has to be followed for recruitment of EAs and a 40 point roster for promotion of EAs to SEAs. The question remaining to be decided is, after making the selections for the post of EAs and SEAs whether the respondent has to make the appointments in accordance with the respective roster points with the serial order of appointments itself becoming the seniority list or whether the roster merely serves the purpose of determining the percentages for reservation while appointments have to be made in the order of merit as reflected in the select list. In the O.M of the Department of Personnel issued on 24.5.1974 it has been brought out that rosters are intended to be an aid for determining the number of vacancies to be reserved and it is not for determining seniority. This is incorporated in para 4.8 of the Brochure on Reservation of SC & ST in services. The O.M. Specifically states that:

"After determining the number of reserved vacancies on the basis of the roster, the names of the selected candidates both general as well as those belonging to Scheduled Caste/Scheduled Tribes are arranged in the order of their inter-se merit. Since in the case of direct recruitment through examination, generally all the selected candidates are appointed simultaneously, the question as to in which order appointments should be made against reserved vacancies, will not arise normally. However, a case has come to the notice of this Department in which all the candidates selected for appointment by direct recruitment through examination could not be appointed at the same time and offers of appointment were sent to a few candidates only, without however taking into account the reservations for Scheduled Castes and Scheduled Tribes which would have become due separately in those appointments. The remaining candidates were appointed in subsequent batches. As a result, some of the Scheduled Castes/Scheduled Tribes candidates who should have been appointed in the first batch itself were appointed in the second batch. Where all appointments through examination for direct recruitment cannot be made simultaneously, the correct procedure would be to determine the number of vacancies to be reserved for Scheduled Castes and Scheduled Tributes separately according to the roster in each batch of appointments and to make appointment of the required number of general and Schedule Castes/Scheduled Tribes candidate sin the batch."

The above mentioned procedure though stated to be applicable for direct recruitment through examination, should have equal applicability for direct recruitment through any other process of selection as long as there is a distinct element of selection and merit rating. What stands out clear is that once there is a selection, the order of merit will govern seniority and not the point in the roster though the roster itself is to be followed for the purpose of ensuring that the percentage of reservation is kept up. If it happens that persons selected for appointment for Engineering Assistants are not all appointed at the same time but in different batches, then the appropriate procedure is that for every such batch appointed, the arrangements of the list should be such that it should include the required number of SC

candidates warranted by the reservation as per the roster. It has not been made clear by the 4th respondent s to whether in these recruitments as Engineering Assistants, after the selection is made the appointments are made as a single batch or whether such appointments took place in different instalments or in different batches. If the appointments had actually been made in different instalments or batches, then the seniority in the cadre of EAs will need revision to the extent warranted in the OM No.10/52/73-Estt(SC/ST) dated 24.5.74 issued by the Department of Personnel. The respondents are therefore directed to consider this aspect and follow the principle that where all appointments for direct recruitment cannot be made simultaneously, the correct procedure would be to determine the number of vacancies to be reserved for Scheduled Castes and Scheduled Tribes separately according to the roster in each batch of appointments and to make appointment of the required number of general and Scheduled Castes/Scheduled Tribes candidates in that batch."

3. According to the applicant, it was on the basis of the aforesaid orders of the Madras Bench that the Annexure A-2 seniority list of Engineering Assistant as on 1.6.1988 was issued by the respondents vide Memorandum dated 26.7.1988. The applicant's name appeared at Sl.No.216 of the said list. The officials concerned were directed to make representations, if any, before 19.8.1988 and if no such representations are received, seniority list was to be presumed as correct and final and the DPC would be convened to the effect promotions from EAS to SEA based on the said seniority. The applicant, submitted that he had made many representations against the said seniority list but there were no response from the respondents. He sent a final representation on 22.11.2005 addressed to the 2nd respondent copy of which has been annexed as Annexure A-3 with this O.A. but the respondents were going ahead with promoting his juniors as Assistant Station Engineer.

4. In the reply statement filed by the respondents on 5.4.2007, they have submitted that the applicant had joined as Engineering Assistant on 18.10.1978 as an SC candidate. In accordance with the Recruitment Rules for promotion to



the post of Senior Engineering Assistant at least 3 years' approved service in the grade Engineering Assistant was required. Thus, he became eligible to be considered for promotion as Senior Engineering Assistant only from 18.10.1982. As the promotion could be given only on availability of vacancies, he had to wait for his turn. Accordingly, he was promoted as Senior Engineering Assistant vide Annexure R-2 letter dated 22.12.1986 along with his seniors Shri Malleshwara Rao and Shri B Prakasha Rao and he joined on that post on 30.3.1987. While Shri Malleshwara Rao and Shri Prakasha Rao had joined as Engineering Assistants prior to him on 20.6.1978 and 18.7.1978 respectively, the applicant had joined only on 18.10.1978. Similarly, Senior Engineering Assistant with 3 years regular service in the grade failing which Senior Engineering Assistant with 8 years combined regular service in the grades of Senior Engineering Assistant and Engineer Assistant are eligible for promotion to the post of Assistant Engineer. The applicant was accordingly promoted to the post of Assistant Engineer with effect from 19.7.1991 after completion of 3 years service in the grade of Senior Engineering Assistant on the basis of seniority-cum-fitness. As far as promotion to the post of Assistant Station Engineer was concerned, prior to 1989, Diploma holders were also eligible. However, with the amendment in the Recruitment Rules in 1989, Degree in the Engineering from a recognised University was made one of the essential qualifications for promotion to that post. Since the applicant was only a Diploma holder, his channel for promotion ended with the post of AE. Therefore, they have submitted that his contention that he was not considered for promotion to the post of Assistant Station Engineer was without any merit and the same is to be rejected. They have also submitted that even if it is assumed for the sake of argument that he could have have got his promotion to the post of AE immediately after putting 8 years of mandatory regular service as per rules, he could become eligible for promotion as AE only in 1987 and as Assistant Station Engineer in 1990. Even then, he

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would not have been considered for promotion to the post of Assistant Station Engineer because the qualification bar has already come in his way in the year 1989. They have also submitted that the Annexure A-2 seniority list of Engineering Assistant dated 26.7.1988 itself was superseded by Annexure R-3 seniority list of Engineering Assistants as on 1.6.1988 issued vide memorandum dated 22.3.1989 and in the said memorandum also objections/representations were invited, if any, from persons who are adversely affected. Since the applicant had already been promoted as Senior Engineering Assistant on 30.3.1987, his name did not appear in the said revised list. However, in the seniority list of Senior Engineering Assistant issued on 7.5.1987, the applicant's name was shown as 205 as he was promoted to that post on 30.3.1987. Again in the subsequent Annexure R-4 seniority list of Senior Engineering Assistant as on 1.1.1990 issued on 12.4.1990, his name was included at Sl.No.57. He was later promoted as AE with effect from 19.7.1991.

5. By the rejoinder filed on 26.6.2006, the applicant produced Annexure A-4 copy of the relevant pages of Annexure A-2 seniority list dated 26.7.1988 to show many of his juniors in the cadre of Engineering Assistant were promoted as Senior Engineering Assistant and even as AEs prior to his promotion to the said post. He has also alleged that the respondents have never published seniority list of Senior Engineering Assistant or AE, and the applicant was not in a position to find out the dates of promotion of his juniors. By the second rejoinder, the applicant filed a copy of complete seniority list dated 26.7.1988 (Annexure A-4) and submitted that since Annexure A-1 order of the Madras Bench dated 14.5.1987 was issued after issuing of Annexure R-1 and R-2, their right to be considered for promotion on par with their juniors arose only after the issuance of Annexure A-2 seniority list dated 26.7.1988. He has also denied the contention of the respondents that the Annexure A-2 seniority list was



superseded by Annexure R-2 seniority list. According to the applicant, the crux of the issue is the as per Annexure A-1 order of the Tribunal, the seniority list of Engineering Assistant as on 1.4.1982 was to be revised. According to the applicant, the respondents have not revised the Annexure A-2 seniority list of Engineering Assistant at any stage. If the respondents had revised the seniority list as directed by the Madras Bench, the applicant would have been entitled to the relief prayed for in this O.A.

6. We have heard Shri TC Govindaswamy for applicant and Smt Aysha Youseff, ACGSC for respondents. First of all, it is seen that the relief sought by the applicant is for promotion as Senior Engineering Assistant, Assistant Engineer and Assistant Station Engineer on the basis of the Annexure A-2 seniority list of Engineering Assistants as on 1.6.1988 issued by the 5th respondent vide Memorandum dated 26.7.1988. The applicant has filed the present O.A only on 17.1.2006 i.e. After 18 years. Though the applicant has stated in the O.A that he had made many representations against the said seniority list immediately after the issuance of the same, he has not produced even single representation submitted by him except the copy of the Annexure A-3 representation dated 22.11.2005 sent to the 2nd respondent after a period of over 17 years. Thereafter, he has filed the present O.A on 17.1.2006. Even if the submission of the applicant that he had made many representations against Annexure A-2 order is taken as true, there is no justification for him to wait for almost 18 years to approach this Tribunal claiming the relief arising out of the said seniority list. Therefore, this O.A is badly hit by limitation and it deserved to be dismissed on this ground alone at the threshold. However, in the interest of justice, we have gone into the merit of the case also. In the Annexure A-2 seniority list, the applicants' position is at Sl.No.216. His senior SC candidates Shri Malleswara Rao and Shri B Prakasha Rao are at Sl.No.207 200

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respectively. In accordance with the Recruitment Rules for promotion to the post of Senior Engineer Assistant, at least 3 years approved service in the grade of Engineering Assistant was required. On availability of vacancy, he along with his seniors were promoted to the post of Senior Engineering Assistant vide Annexure R-2 letter dated 22.12.1986. None of juniors have been promoted as Senior Engineering Assistant in their turn before he was promoted. Again, according to the Recruitment Rules, he got the next promotion as Assistant Engineer in his turn with effect from 19.7.1991. For the post of Assistant Station Manager, he is not eligible as he does not possess the required educational qualifications, viz, Degree in Engineering from a recognised University. Therefore, the applicant has no valid case on merits also. In the result, O.A is dismissed both on merit and on limitation. There shall be no order as to costs.

Dated, the 31st January, 2008.



O.P.SOSAMMA
ADMINISTRATIVE MEMBER



GEORGE PARACKEN
JUDICIAL MEMBER

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