

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM

O. A. No.  
XXXXXXX

399/ 19889

DATE OF DECISION 20.7.1990

R.Radhakrishnan

Applicant (s)

M/s. N.Sugathan & K.M Paulose Advocate for the Applicant (s)

Versus

Union of India, represented by the Secretary, Ministry of Communications, Sanchar Bhavan, New Delhi and another

Mr.P.Santhosh Kumar, ACGSC — Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. N.V KRISHNAN, ADMINISTRATIVE MEMBER

&

The Hon'ble Mr. N.DHARMADAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yeo*
2. To be referred to the Reporter or not? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. To be circulated to all Benches of the Tribunal? *No*

JUDGEMENT

HON'BLE SHRI N.DHARMADAN, JUDICIAL MEMBER

The applicant who is presently working as Junior Telecom Officer, Alwaye, filed this application under Section 19 of the Administrative Tribunals Act, 1985 for the issue of a writ of mandamus directing the respondents 1 and 2 to promote/appoint him to the post of TES Group B with effect from the date prior to the date of promotion of any person who passed the qualifying Departmental Examination subsequent to 1978 and adjust his seniority accordingly with all consequential benefits with effect from that date.

2. The case of the applicant is that promotion to the grade of Assistant Engineer will have to be made by selection of

2/2  
1/1

the best men available in the lower grade in terms of  
Rule 206 of Chapter VII of the P&T Manual, Vol.IV.

Rule 206 is extracted below:-

"206(1) All Junior Engineers recruited after the first January, 1989 under the new system after serving for 5 years in Engineering Branch may be permitted to appear at the Departmental Qualifying Examination, which will be held from time to time in the subjects time enumerated below, provided they have a good record. This qualifying examination is intended to test the general ability of Junior Engineers and their knowledge in the latest developments in Telegraphy and Telephony. A pass in this examination is an essential condition for promotion to Telegraph Engineering and Wireless Service, Group 'B'.

(2) Promotion to the T.E.& W.S., Group 'B' will be made according to the principle of seniority-cum-fitness but the Junior Engineers who pass the qualifying examination earlier will rank senior as a group to those who pass the examination on subsequent occasions, i.e. officials who passed the examination held in 1956 will rank as en block senior to those who passed in 1957. Their seniority inter se will, however, be according to their seniority in the cadre of Junior Engineers".

3. According to the applicant he passed the Departmental qualifying examination held in 1978 and he became fully qualified to be considered for promotion cadre of one of the to the TES Group B and posted in the vacancies that arose after 1978. But the Department has been making promotion from qualified Junior Engineers contrary to the aforesaid provision contained in the P&T Manual.

4. Some of the Junior Engineers who passed the Departmental qualifying examination in 1974 approached the High Court of Allahabad, Lucknow Bench, relying on the aforesaid Rule 206. The High Court after hearing

the parties, allowed those writ petitions by judgment dated 20.2.1985 holding that in view of Rule 206, those who qualified in the examination earlier were entitled to be promoted prior to the promotion of those who qualified after them. The High Court also directed that the seniority be adjusted accordingly and they shall be paid pay and allowances with effect from the said date. The Government of India filed SLP before the Supreme Court of India against the said judgment. But it was dismissed by order dated 6.4.1986.

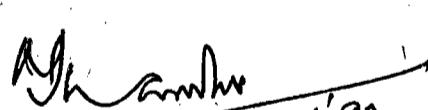
5. Immediately after getting all details and information of the above legal proceedings, Annexure A3 representation was submitted by the applicant before the respondents, but it has not been disposed of. Hence the applicant approached this Tribunal invoking the jurisdiction under Section 19 of the Administrative Tribunals Act, 1985. The respondents have not filed any counter affidavit that in this case in view of the fact the matter is covered by the judgment of the High Court of Allahabad.

6. Today when the matter was taken up for hearing, it was submitted at the bar that the same question was considered by this Bench also in O.A.K 112/88. This Tribunal granted the identical relief prayed for by the applicant in similar circumstances. The learned counsel for the respondents did not dispute the same. He has also not made any attempt to distinguish the judgment,

nor has he canvassed the correctness of the judgment.

Under these circumstances, we dispose of this application applying the judgment rendered by this Tribunal in O.A.K 112/88.

7. In the result we hold that the applicant who passed the Departmental qualifying examination in 1978 is entitled to be promoted to the post of TES Group B on a date prior to the date of promotion of any person who passed the Departmental qualifying examination subsequent to the date of passing of the examination by the applicant in 1978 and that the respondents shall adjust his seniority accordingly with reference to that date. The respondents shall also pay to the applicant his pay and allowances in accordance with the fixation of his seniority as per the above direction with effect from the said date. This application is allowed. There will be no order as to costs.

  
(N.DHARMADAN)  
JUDICIAL MEMBER

20.7.90.

  
(N.V KRISHNAN)  
ADMINISTRATIVE MEMBER

n.j.j

3.5.91

(16)

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CCP 35/91 in OA 399/89

NVK & ND

Mr N Sugathan for the applicant in the CCP  
Mr K Prabhakaran, ACGSC for the respondents, by proxy.

Heard. Mr K Prabhakaran, ACGSC enters appearance for the respondents in the CCP. He prays for time to file a statement.

Having heard the counsel we are of the view that let notice be issued to the respondents as mentioned in the CCP. The respondent's counsel is directed to file a statement on or before 30.5.91.

Let the case be listed for hearing on 30.5.91.

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*h*

3.5.91

30.5.91

(31)

NVK & ND

Mr N Sugathan for the applicant in the CCP.  
Mr K Prabhakaran, ACGSC for the respondents.

*Ph 31/5  
Mr. D.C.P.*  
*Ph*  
*FILED  
JULY 1991*  
*Ph*  
*Ph*  
*Ph*

The learned counsel for the petitioner submits that the respondents have since complied with the judgment dated 20.7.90 at Annexure P1 and accordingly, the CCP is closed.

*h*  
30.5.91

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

R.A. 62/91 in  
O.A. No. 399/89

C.A. No.

190

DATE OF DECISION 12.11.91

Union of India represented by <sup>Applicant(s)</sup>  
the Secretary, Ministry of Communications  
Sanchar Bhavan, New Delhi and another

Mr. K. Prabhakaran Advocate for the Applicant (s)

Versus

R. Radhakrishnan Respondent (s)

Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. N. V. KRISHNAN, ADMINISTRATIVE MEMBER

The Hon'ble Mr. N. DHARMADAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? *Y*
2. To be referred to the Reporter or not? *NO*
3. Whether their Lordships wish to see the fair copy of the Judgement? *NO*
4. To be circulated to all Benches of the Tribunal? *NO*

JUDGEMENT

MR. N. DHARMADAN, JUDICIAL MEMBER

The review application is at the instance of the respondents in the original application who had not filed any reply statement traversing the contentions of the applicant in this case.

2. When the case came up for final hearing both sides agreed that this case is covered by the judgment of this Tribunal in O.A.K. 112/88. No attempt was made by the learned counsel for the respondents either to distinguish the judgment or to point out additional facts which are now stated in this review application.

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3. Under these circumstances, the review application cannot be entertained. It is only to be rejected. Accordingly, it is dismissed.

  
12/11/91  
(N. Dharmadan)  
Judicial Member

4. I have seen the views of my learned Brother. Though I am also a party to the judgment, I have since felt that the judgment rendered by the Ernakulam Bench of the Tribunal in two or three cases, including O.A.K. 172/88 following the decision of the Allahabad High Court requires reconsideration. That is being done in a batch of cases which are pending. That does not mean that I can agree to a review of the decision rendered in this case. I see from the proceedings dated 5.7.90 that it was Shri P. Santhosh Kumar, the learned ACGSC appearing for the respondent who submitted that this case can be disposed of on the basis of the judgment in the earlier case O.A. 112/88. That being the case, the original respondents cannot now raise any objection to that judgment which was passed based on their consent and suggestion.

5. That apart, it appears that the order was communicated on 20.8.90. There is an M.P. for condoning delay. That does not explain the delay properly.

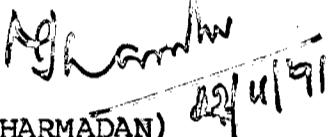
6. Hence on both grounds the review petition deserves to be dismissed.

7. Hence, I agree with my learned brother's decision that this review petition has to be rejected.

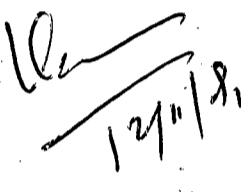
  
27/11/81  
(N. V. Krishnan)  
Administrative Member

Order of the Bench

The review petition is dismissed.

  
27/11/81  
(N. DHARMADAN)

JUDICIAL MEMBER

  
27/11/81  
(N. V. KRISHNAN)  
ADMINISTRATIVE MEMBER

kmn