

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 414/91
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DATE OF DECISION 24.7.1992

V.S.Babu and three others. Applicant (s)

Mr. M.R.Rajendran Nair Advocate for the Applicant (s)

Versus

Union of India, represented by
Secretary to Government, Respondent (s)
Ministry of Communications, New Delhi and two others.

Mr.C.Kochunni Nair, ACGSC Advocate for the Respondent (s)

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 Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. To be circulated to all Benches of the Tribunal?

JUDGEMENT

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

In this application dated 12.3.1991 the four applicants who have been working as Telephone Supervisors under the Chief General Manager, Telecommunications, Kerala Circle have challenged the Circlewise Seniority List based on the dates of their confirmation in their respective Divisions and have prayed that rule 32 E of P&T Manual Vol.IV be declared to be applicable to the fixation of seniority in the unit of appointment and to direct that the Circle Seniority List of Telephone Operators prepared by merging Divisional Seniority Lists should be on the basis of date of commencement of service as Telephone Operators. They have prayed consequential benefits flowing out of the revision of Circlewise Seniority List. The brief facts of the case are as follows.

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2. The cadre of Telephone Operators is a Divisional cadre and appointment and confirmation as Telephone Operator is determined on the basis of the position in the respective Divisions. The Seniority List of Telephone Operators on a Divisionwise basis is prepared on the basis of date of confirmation. Promotion of Telephone Operators is made to the Lower Selection Grade which is a Circle cadre. The grievance of the applicants is that the Circlewise Seniority List ^{also} has been prepared on the basis of dates of confirmation in different Divisions, as a result of which they have been rendered junior to a number of persons of other Divisions who have lesser length of service as Telephone Operators but were confirmed in the respective Divisions because of availability of substantive vacancies. ^{in their Divisions} They have argued that by such a Circlewise Seniority List their legitimate claim to promotion has been pre-empted by their juniors in other Divisions. Their representatives have been unfruitful.

3. In the counter affidavit the respondents have accepted that Telephone Operators' is a Divisional cadre and seniority of officials in this cadre is fixed on the basis of date of confirmation. They have stated that for assigning the seniority in the Circle Gradation List, date of confirmation is taken to be the criteria in accordance with rule 32 E of P&T Manual Vol. IV. They have, however, conceded that after 1.4.88 the system of assigning confirmation of Government employees has been delinked with the availability of substantive vacancies and all officials who have completed the probation period satisfactorily are confirmed irrespective of ^{any} the vacancy being

available or not.

4. In the rejoinder the applicant has stated that the Circle Seniority List is prepared only for the purpose of further promotion by merging the Divisional Seniority List and for that purpose dates of initial appointment should be the most equitable basis.

5. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. Rule 32 E of the P&T Manual Vol.IV opens out as follows:-

" Rule 32-E. Subject to any special rules prescribed for any particular service, the seniority of an official in the cadre to which he belongs should be fixed according to the date of his permanent appointment to that cadre. When this date happens to be the same in the case of two or more officials, seniority should be determined according to the following principles:"
(emphasis added)

From the above it is clear that rule 32 E applies to fix the seniority in the cadre to which an employee belongs. In the instant case it will be the Divisional cadre of Telephone Operators. This rule, therefore, cannot apply in preparing a Circlewise Seniority List of Telephone Operators which is merely a working list ^{prepared} by merging the Divisional Seniority Lists for the purpose of promotion to the Circle cadre of Lower Selection Grade. In such a situation the universal practice is to go by the length of continuous service in the respective cadres keeping the inter se seniority position in the respective cadre unchanged. The Supreme Court in a plethora of cases over the last more than one decade has been laying down that where the Seniority Rules have broken down or there are no statutory rules for seniority

it is the length of continuous service in equivalent grade that should determine the inter se seniority. This principle has been upheld by the Hon'ble Supreme Court in a recent ruling in R.L.Bansal and others vs. Union of India and others, Judgment Today 1992 (3) S.C.

243. Rejecting the deadline of December 22, 1959 to have two criteria of seniority with pre-1959 persons to have seniority on the basis of length of service and post-1959 entrants to have seniority on the basis of date of confirmation, the Hon'ble Supreme Court in that case observed as follows:-

"There is yet another glaring feature. So far as the appointments/promotions made prior to December 22, 1959 are concerned, they are to be confirmed in the order of their appointment - which means that seniority is determined on the basis of their appointment irrespective of the mode in which he is appointed. But when it comes to the period subsequent to December 22, 1959, the rule is altogether different. The Assistant Engineers appointed/promoted on or after December 22, 1959 are divided into three categories mentioned above. There is no reason or basis for the date 22.12.1959 except that it is the date on which the subsequent Memorandum of the Home Ministry (said to contain the principles regarding determination of seniority) was issued. (We have not been shown a copy of the said Memorandum). It is not a mere case of different principle being adopted subsequent to 22.12.1959, it is the inherent vice of discrimination implicit in it that is hurting the promotees (as defined in amended Rule 3(b) of the 1954 Rules)."

The Hon'ble Supreme Court further rejected the criterion of basing seniority on confirmation by relying copiously on the celebrated judgment in S.B.Patwardhan and Anr. vs. State of Maharashtra and Ors. (AIR 1977 S.C. 2051)

in which confirmation was termed as one of the "inglorious uncertainties of Government service depending neither on efficiency of the incumbent nor on the availability of substantive vacancies". The following observations of the Hon'ble Supreme Court in Bansal's case would be relevant:-

"22. In S.B.Patwardhan and Anr.v. State of Maharashtra and Ors. (A.I.R. 1977 S.C.2051), this Court observed:-

"Instead of adopting an intelligible differentia Rule 8(iii) leaves seniority to be determined on the sole touchstone of confirmation which seems to us indefensible. Confirmation is one of the inglorious uncertainties of Government service depending neither on efficiency of the incumbent nor on the availability of substantive vacancies. A glaring instance widely known in a part of our country is of a distinguished member of the judiciary who was confirmed as a District Judge years after he was confirmed as a Judge of the High Court. It is one the record of these writ petitions that officiating Deputy Engineers were not confirmed even though substantive vacancies were available in which they could have been confirmed. It shows that confirmation does not have to conform to any set rules and whether an employee should be confirmed or not depends on the sweet will and pleasure of the Government.

Rule 8(ii) in the instant case adopts the seniority-cum-merit test for preparing the statewise Select List of seniority. And yet Clause (III) rejects the test of merit altogether. The vice of that clause is that it leaves the valuable right of seniority to depend upon the mere accident of confirmation. That, under Articles 14 and 16 of the Constitution, is impermissible and therefore we must strike down Rule 8(iii) as being unconstitutional."

"23. The petitioners also rely upon the following observations from the same judgment:

"Though drawn from two different sources, the direct recruits and promotees constitute in the instant case a single integrated cadre. They discharge identical functions, bear similar responsibilities and acquire an equal amount of experience in their respective assignments. And yet clause (iii)

of Rule 9 provides that probationers recruited during any year shall in a bunch be treated as senior to promotees confirmed in that year. The plain arithmetic of this formula is that a direct recruit appointed on probation, say in 1966, is to be regarded as senior to a promotee who was appointed as an officiating Deputy Engineer, say in 1956, but was confirmed in 1966 after continuous officiation till then."

"24. True it is that in the present case, a formula contained in Rule 5 of 1979 Rules (as amended in 1982) is devised to govern the order of confirmation, but as demonstrated above, this very rule is discriminatory inasmuch as it seeks to treat equals unequally, to the prejudice of what is now compendiously called, the class of "promotees".

"25. For the above reasons, it must be held that Rule 4 of the Central Public Works Department Assistant Engineers (Central Engineering Service and Central Electrical Engineering Service) Group 'B' (Confirmation and Seniority) Rules, 1979 (as amended by the Central Public Works Department, Assistant Engineers (Central Engineering Service and Central Electrical Engineering Service) Group 'B' (Confirmation and Seniority) Amendment Rules, 1982), insofar as it predicates the seniority of Assistant Engineers (appointed on or after December 22, 1959) on the date of their confirmation, is violative of the fundamental rights guaranteed to the petitioners (and other similarly placed Assistant Engineers) by Articles 14 and 16(1) of the Constitution of India and accordingly held to be inoperative and void."

6. In the light of the aforesaid discussion and rulings of the Hon'ble Supreme Court, we allow the application and declare that the applicants' seniority in the Circlewise Gradation List of Telephone Operators for the purpose of promotion to Lower Selection Grade shall be determined on the basis of date of commencement of continuous service as Telephone Operators keeping the Divisional inter se seniority intact. The Circlewise Seniority List should be

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prepared on the above basis with all consequential benefits to the applicants. There will be no order as to costs.

A. V. Haridasan *24/7/92* *S.P. Mukerji* *24.7.92*

(A.V. HARIDASAN)
JUDICIAL MEMBER

(S.P. MUKERJI)
VICE CHAIRMAN

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