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CENTRAL ADMINISTRATIVE TRIBUNAL

LUCKNOW BENCH,  
LUCKNOW

O.A.No.438/91

Shri R.S.Chaudhury                      ..    ..    Applicant

Vs.

Union of India & others                      ..    ..    Respondents

Hon. Mr. Justice U.C.Srivastava, V.C.

Hon. Mr. K. Obayya, A.M.

(By Hon. Mr. K. Obayya, A.M.)

The applicant who is working as Assistant Surveyor (works) in the Telecom, Civil Circle, Lucknow, is aggrieved by order dated 15-4-1991 (Annexure A-2) deleting his name from the list of promotees to the post of Assistant Engineer, Civil (A.E.) and in this application filed by him u/s.19 of the Administrative Tribunal Act, 1985 he has prayed for quashing that order.

2. The applicant entered the department of Tele-Communication as Junior Engineer (J.E.) on 26-4-76, in which post he was confirmed w.e.f. 1-10-82, after clearing the departmental examination. Thereafter he appeared and passed the qualifying examination for promotion to the next higher post of Assistant Engineer Civil (A.E.) on 19-12-87. The eligibility criteria for promotion as A.E. was that one should have completed 8 years regular service as J.E. and passed the qualifying examination. The post of A.E. is Gazetted Group 'B' Post on scale Rs.2000-3500 and promotions to that post are made on all India Seniority basis of XXXX J.Es subject to eligibility. In the year 1989 eligibility

list of J.Es for promotion was drawn up, in which the name of the applicant was not included initially, thereafter when he made a representation, his case was considered and as the applicant was eligible in all respects his name was included at Sr.No.289-A in the eligibility list. The D.P.C. approved his name and he was promoted vide order dt. 6-7-1990 and since then he is working as Assistant Surveyor (works) in Lucknow, Telecom Circle, which is a post equivalent to A.E. in the same grade. The posts of Asstt. Surveyors and A.Es are interchangeable. But by the impugned order dated 15-4-91 (Annexure A-2) his name has been deleted from the list of Promotees, on the ground that it was erroneously included.

3. The reversion order is assailed on the ground that it is arbitrary and the result of adopting wrong criteria of eligibility, inasmuch as seniority of J.Es has to be reckoned on the basis of length of service and not from the date of confirmation. The applicant also alleges that in the circle seniority list of J.Es. notified on 1-1-86 and 1-1-89, he has been wrongly shown as junior to many others who entered service after him, though he represented the matter, the list was not corrected.

4. The stand of the respondents is that the post of Junior Engineer is Circle level post and seniority is prepared Circle-wise. However, for consideration of promotion as Assistant Engineer which is a Gazetted-B Post, all India eligibility list is prepared on the basis of date of regular appointment as Junior Engineer. While preparing that list the seniority list of circle is not disturbed. It is also stated that the basis for seniority is length of service as J.E. It is also pointed out, that the case of the applicant was considered and his name was included

at Sr.No. 289 of the list of eligible candidates, and that after due approval of D.P.C. he was promoted. However, when they verified the circle seniority of the applicant, it was found that he would come down low at Sr.No.548 in eligibility list, since promotions upto that number were not made, he had to be reverted. It is also pointed out, that promotion of the applicant, by following wrong seniority was an administrative error and that was corrected.

5. In the rejoinder it is pointed out that seniority of J.E.S<sup>1</sup> has to be done only on the basis or length of service, but in Lucknow, however, this principles has not been followed and the seniority list has been notified on the basis of date of confirmation.

6. We have heard the Counsel for the parties. The Counsel for the applicant strenuously argued that the the applicant was denied of promotion because of wrong seniority principles followed in Lucknow circle. He has pointed out that the eligibility list of all the J.E.S<sup>1</sup> working in the entire country is prepared on the basis of seniority reckoned on length of service. All the other circles in the country have followed this principles but only in Lucknow Circle they have adopted the date of confirmation for fixing the seniority of the J.E.S<sup>1</sup> He also referred to the norms of the seniority lists of different circles as also the eligibility list of J.E.S<sup>1</sup> considered by D.P.C in 1989 selection. The learned Counsel for the respondents Shri S.C.Fripatri, while admitting the seniority of the J.E.S<sup>1</sup> and their eligibility <sup>worked out</sup> stated that it is on the basis of length of service since the promotion to the post of A.E. is by seniority. However, the list <sup>SO</sup> ~~was~~ drawn up should not be inconsistent

with the circle-wise list. Since the applicant was shown lower in the seniority list in Lucknow Circle that position was accepted and consequently he had to be demoted.

7. We have carefully considered the rival contentions, we have also examined the very comprehensive record from which it is evident that seniority list of J.Es of all the other circles is prepared on the basis of length of service while in Lucknow Circle this has not been followed and they have adopted a different criteria i.e. the date of confirmation to notify seniority. Obviously, the principle followed by the Lucknow Circle appears to be inconsistent to the general principle followed all over India. The eligibility list of J.E.s for consideration for promotion to J.E.s is contained in Annexure 82-3 indicating 614 names. Against the names of the candidates in Col.3 the date of entry into the circle is indicated and in Col.No.4 the date of confirmation is indicated. The list indicates that the date of entry into J.E.s' circle is taken as the basis of seniority and not the date of confirmation. For instance, Shri B.Vishwanath at Sl.No.19 (Annexure 82-3) was confirmed on 1.3.68 but above him, in the eligibility list, all candidates were confirmed during the years 1970, 1971 and 1972 etc. as they entered the department earlier, they were shown senior to said B.Vishwanath. Similarly, at Sl.No.45 Shri K.M.G. was confirmed on 1.3.68 but his place is indicated at Sl.No.45 in the list because of his entry in the department which was 19.10.68. Thus, it is clear that for the purpose of eligibility for promotion of J.E.s, the eligibility list has been prepared reckoning seniority on the basis of length

of service and not on the basis of date of confirmation. Even in the case of applicant, it would appear that initially the same criteria was followed and he was included in the eligibility list at Sl.No. 28044. The Department appears to have proceeded correctly by following uniform criteria to fix eligibility of the applicant for promotion to the higher post and the applicant, who stood at Sl.No. 28044 in the All India Eligibility List, was duly considered and he was also promoted after approval of REC. His reversion merely because Lucknow Circle <sup>Seniority</sup> is different, does not appear to be a valid ground since the criteria of determination of eligibility of J.Es. for promotion to the next higher post is on the basis of length of service and not on the basis of date of confirmation. Though the Lucknow Circle has made a separate seniority list based upon the date of confirmation but that list would not be a proper list for determining the All India Seniority List of J.Es. The seniority list of J.Es. prepared in Lucknow Circle is liable to be quashed as it is inconsistent with the principle stated in the circles all over the country. In Vimal Kumar Choudhary Vs. State of Bihar (1988) 1956 (LR), the Supreme Court held that in the absence of rules to prepare promotion list, the original list taking into account length of service in the concerned post shall be the basis for determining the seniority.

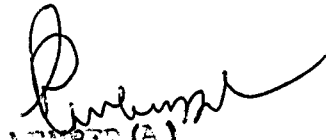
8. For the reasons, discussed above, the impugned order dated 15.4.11 (Annexure-I) is liable to be quashed and the same is quashed and the applicant


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will be deemed to be continuing in service on the  
post of Assistant Surveyor (Works) equivalent to  
A.2. The applicant is also entitled for seniority  
and the other consequential benefits. Accordingly,  
the application is allowed. The parties to bear  
their own costs.

  
MEMBER (A)

  
VICE CHAIRMAN.

DATED: SEPTEMBER 17<sup>th</sup>, 1992

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