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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH
NEW BOMBAY-400 614

ORIGINAL APPLICATION NO.373/87

R.K. Jain
Assistant Engineer (Elect.)
Telecom Elect. Sub. Divn. No.V
5th floor; Worli;
T.E. Building; Telephone Exchange;
Bombay 400 018 .. Applicant

V/s.

Director General
Department of Telecommunications
Sanchar Bhavan
New Delhi 110001 .. Respondent

Coram: Hon'ble Shri Justice U C Srivastava, V.C.
Hon'ble Shri M.Y. Priolkar, Member(A)

APPEARANCES:

Shri S.R. Atre
Advocate
for the applicant

Shri V.S. Masurkar
Advocate
for the respondents

JUDGMENT

DATED: 3-5-1991.

(Per: U C Srivastava, Vich Chairman)

The seniority between the Executive Engineer(Electrical) in the circle, Department of Civil Engineer Works (Electrical) of the Post and Telegraphs Department is the subject matter of controversy in this application under Section 19 of the Administrative Tribunals Act. The relative seniority between direct recruits & promotees is the dispute.

2. The applicant entered the service of the Department as Supervisor in 1968 which designation was subsequently changed to Junior Engineer and was confirmed as such on 1st March 1971.

3. He appeared in the examination for the post of Assistant Engineer held by Union Public Service Commission in which he was successful and was initially appointed ~~on~~ probation on 30th June, 1980.

4. Prior to in 1963 Civil Engineering Department was created in the P&T Department and entire ~~Central~~ Public Works Department staff was transferred to P&T and all such persons were treated on deputation and were later given option for absorption and were absorbed in either of the three categories viz., technical, non-technical and ministerial.

5. In 1986 a provisional seniority list was circulated in which some Junior Engineers who were junior to the applicant in that cadre were shown as senior to him as promoted Assistant Engineer. The said list was subsequently given final shape without calling upon applicant to file objections to the same.

6. The applicant who as per rules completed probationary period on 20th June 1985 has claimed seniority in the cadre of Assistant Engineer (Elect.) from the date of confirmation in the grade of Junior Engineer viz., 1st March 1976, while transferees from CPWD are to be granted seniority as per Office order dated 24th August (No.10-62/66-STB-II, issued by P&T Board that is on the basis of date of confirmation in CPWD or length of service). According to applicant two of such employees viz., Shri I.K Sukhija and Shri J.K Puri though they were not confirmed or considered eligible for confirmation in CPWD were made senior to him (none of whom are party to this D.A.).

7. According to the respondents the seniority of applicant who is a direct recruit in the cadre of Assistant Engineer, which is not a promotional post for Junior Engineer of Telecom Wing, has been determined on the strength of appointment as Assistant Engineer (Electrical) with effect from 30th June 1980 and the earlier period as Junior Engineer can be counted only for the purposes of pensionary and other allied benefits. It has also been stated the seniority list which was circulated and referred to by the applicant has already been cancelled. Regarding Sukhija and Puri it has been stated that they were confirmed as section officers in their Department in 1968, the year in which applicant was appointed as Junior Engineer on temporary basis, while the applicant was confirmed as Junior Engineer in 1976. The applicant's seniority has been determined by respondents on the strength of his appointment as Assistant Engineer (Elect.) with effect from 30th June 1980 and that he is not entitled to count the period during which he was junior officer for the purposes of seniority. It has been stated the provisions of Ministry of Home Affairs Q.M. No. 9/11/55/RPS dated 22.12.1959 was not applicable as while making recruitment to the post of Assistant Engineer (Elect.) it was not possible to make it according to prescribed quota.

8. The service conditions of the wing of Department are governed by Post & Telegraphs Civil Engineering (Electrical Gazetted Officer) Recruitment Rules 1975 which were amended in 1984 by Post & Telegraphs Circle Engineering (Electrical Gazetted Officers) Recruitment (Amendment) Rules 1984. Under the said Rules the vacancies in the cadre in question are to be filled in 50% by direct recruitment and 50% by promotion, failing which by transfer on deputation. Section Officers (Electrical) who have qualified in departmental examination and have rendered not less than 8 years in the grade after appointment thereto on a regular basis are entitled for promotion. Sub-rule (4) of Rule 4 of the said Rules provides that UPSC shall constitute a Screening Committee to consider the suitability of officers for appointment to these posts. Rule 6 provides that relative seniority of direct recruits and promotees shall be determined according to the rotation of vacancies between direct recruits and promotees which shall be based on quota vacancies reserved for direct recruitment and promotion respectively in the Recruitment Rules. The amendment of 1984 to the rules which was given retrospective effect prevails so far as Assistant Engineer(Electrical) are concerned. The relevant part of notification is

under:

... or Assistant Engineer(Electrical), and all those officers who were recruited for appointment on a regular basis to the posts of Assistant Executive Engineer(Elect.) and Assistant Engineer(Electrical) specifically in the Posts & Telegraphs Department on the results of the Combined Engineering Service Examinations held by the Union Public Service Commission prior to the date .. 5/-

of such commencement shall be deemed to have been appointed under these rules to the respective posts on a regular basis with effect from the date of their appointment to the said posts."

9. In view of the above satutory rule the applicant whose year of recruitment was 1980, as referred to above, the year in which he passed the Assistant Engineers examination. According to the respondents direct recruitment was made in 1976 but no promotion was made in that year while in 1977 both were made but in 1978 only direct recruitment was made but no promotion was made and the quota system thus failed. Hence rotation of vacancies was not possible, and that is why the general principles of seniority provided in OM of 1959 referred to above was not applicable and as such only length of service was the only viable and intelligible criteria and this is how seniority was fixed. In 1977 as both direct recruitment and promotion were made ratio of 1:1 was maintained and excess promotees were kept below the last direct recruit and in 1978 as only direct recruitment was resorted to their seniority was fixed as per length of service without disturbing interse seniority amongst promotee with interpolated/direct recruits of 1977 examination.

(98)

Merely because for definite reasons in one year there
is no recruitment ~~cannot be resorted~~ and in the third
year promotion quota could not be filled, that could
not be taken to mean that the rota system had broken
down, what to say of massive breaking ^{down} of rota system.

Accordingly the contention which has been raised on
behalf of the respondents based on the additional
written statement that due to breaking down of this
rota system the seniority could not be fixed or given
effect to in accordance with Memorandum no. 9/11/55/RPS
dated 22.12.1959 has ^{no} ~~leg~~ to stand and this plea is
expelled.

In view of what has been said above
this application deserves to be allowed to the
extent that the seniority list, if any, prepared
by the respondents between the Direct recruits and
Promotee Assistant Engineers shall stand quashed.

The respondents are directed to prepare a fresh seniority
list in accordance with the Memo No. 9/11/55/RPS
dated 22.12.1959 of Ministry of Home Affairs as per
observations in this judgment within a period of
three months. In these circumstances of this case
parties will bear their own costs.

u/s
(M Y Priolkar)
M(A)

u/s
(U C Srivastava)
V.C.