

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

CAMP: NAGPUR.

ORIGINAL APPLICATION NO.: 293/96, 303/96 AND 304/96.

Dated, this 26th, the first day of January, 1997.

CORAM : HON'BLE SHRI B. S. HEGDE, MEMBER (J).
HON'BLE SHRI P. P. SRIVASTAVA, MEMBER (A).

(By Advocate Shri M.B. Agasti alongwith Shri M.K. Deshpande).

VERSUS

(By Advocate Shri R.S. Sunderam)

O R D E R

I PER.: SHRI B.S. HEGDE, MEMBER (J) I

Heard Shri M.B. Agasti alongwith Shri M.K. Deshpande, Counsel for the applicant and Shri R. S. Sunderam for the respondents.

2. The applicants in these O.As. are working in the capacity of Junior Engineer (Civil) in the office of the Assistant Engineer, Postal Civil Sub-Division, Nagpur and the applicants are seeking directions to the respondents to revise the eligibility list of Junior Engineers (Civil) as on 01.01.1991 for promotion to the grade of Assistant Engineer (Civil) in terms of the provisions of Rule 206(2) of the P & T Manual, Vol.IV and to include the names of the applicants at the appropriate place in the said eligibility list. The grievance of the applicants is on account of inaction on the part of the respondents. In the eligibility list of Junior Engineers, the applicants names have not been included though they are otherwise qualified. As per rule, the post of Assistant Engineer (Civil) is to be filled up by direct recruitment through U.P.S.C. and by promotion of those junior engineers who are qualified in the departmental examination and have rendered not less than 8 years service in the grade after appointment on a regular basis. The main thrust of argument on behalf of the applicants is that, since they have passed the departmental examination in the year 1991, their names ought to have been included in the eligibility list, however, on account of inaction on the part of the respondents, their names did not appear in the eligibility list.

3. The respondents in their reply contended that the applications are not maintainable on the ground of limitation, as the cause of action arose in the year 1991 and they have filed these QAs. in the year 1996, thereby, the petition is not maintainable. Secondly, the applicants are challenging the grant of promotion on the basis of Recruitment Rules, 1976, as well as para 206 (2) of the P & T Manual, Vol.IV. The applicants are governed by the Recruitment Rules, 1976 and not by the provisions mentioned in the P & T Manual. Even on merits, the contentions raised by the applicant is not justified because para 206 (2) of the P & T Manual, Vol.IV is applicable to Engineering Supervisors in connection to their promotion to the Telegraph Engineer and Wireless Services Class-II and the same is not applicable to the applicants who are junior engineer (Civil) of the P & T, Civil Wing. Both the posts are separate services and they do not have any nexus. Even the Recruitment Rules, 1976, is not applicable to the present applicants and they are not governed by the same. The All India eligibility list of Junior Engineers (Civil) of the P & T, Civil Wing, is prepared on the basis of the length of regular service in the junior engineer civil grade but without disturbing the inter-se circle seniority within their respective circle seniority list. As per new Rules, 1992, passing of the departmental qualifying examination is no more a condition for promotion to the grade of Assistant Engineer (Civil) in view of the recent decision of the Supreme Court in Satpal Antil V/s. Union Of India [(1995) 4 SCC 419] wherein the Apex Court has held that the Recruitment Rules, 1976 as well as para 206 (2) of the P & T Manual, Vol.IV, is not applicable to the Junior Engineers (Civil) in the P & T Department. This controversy has already been settled by the Apex Court, therefore, the question of considering the applicants'

inter se seniority does not arise. Since the Recruitment Rules, 1976 and para 206 (2) of the P & T Manual, Vol.IV, would not apply to the facts of this case, the question of relying upon para 206 (2) of the P & T Manual hardly arises. The applicants are governed by different set of rules known as Post and Telegraph Civil Engineering (Civil Gazetted Officers) Recruitment Rules, 1976 and para 206 of the P & T Manual governs the service of Assistant Engineer (Wireless). For promotion under the 1976 Rules, the Junior Engineers (Civil) who have qualified in the departmental examination and have rendered not less than 8 years of service in the grade will be eligible for promotion. Such rules for promotion do not contain any provision for determining the inter se seniority for the purpose of giving promotion earlier or later with reference to date of passing the qualifying examination. Accordingly, it was held that the Recruitment Rules, 1976 and Para 206 of the P & T Manual is not applicable to the applicant.

4. In the light of the above, we do not see any merit in the O.A. and the same is dismissed at the admission stage itself. There will be no order as to cost.

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(P.P. SRIVASTAVA)
MEMBER (A).

(B. S. HEGDE)
MEMBER (J).

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

R.P.NO.(N) 11/97 in CA.NO. 304/96, R.P.NO.10/97 in CA.NO.303/96

Tuesday this the 15th day of JULY 1997

CORAM: Hon'ble Shri B.S.Hegde, Member (J)
Hon'ble Shri P.P.Srivastava, Member (A)

Tribunal's Order by Circulation

The applicants are seeking review of the judgement dated 28.1.1997. The applicants are working as Junior Engineer (Civil) in the Office of the Assistant Engineer, Postal Civil Sub-Division, Nagpur and in these OAs. they are seeking direction to the respondents to revise their seniority as Junior Engineers as on 1.1.1991 for promotion to the grade of Assistant Engineer (Civil) in terms of the provisions of Rule 206(2) of the P&T Manual, Vol.IV, as well as Recruitment Rules of 1976. The grievance of the applicants is on account of inaction on the part of the respondents. In the eligibility list of Junior Engineers their names have not been included though they are otherwise qualified. As per rule, the post of Assistant Engineer (Civil) is to be filled up by direct recruitment through U.P.S.C. and by promotion of those Junior Engineers who are qualified in the departmental examination and have rendered not less than 8 years service in the grade after appointment on a regular basis. The contention of the applicants is that since they have passed the departmental examination in the year 1991, their names ought to have been included in the eligibility list but on account of inaction on the

part of the respondents, their names did not appear in the eligibility list. After hearing the rival contentions of the parties and in view of Supreme Court decision in Satpal Antil vs. Union of India (1995) 4 SCC 419, the Recruitment Rules, 1976 as well as para 206 (2) of the P & T Manual, Vol. IV is not applicable to the Junior Engineers (Civil) in the P & T Department. Accordingly, the OA. was dismissed in the light of the decision of the Supreme Court.

2. The applicant has filed Review Petition against the respondents for the declaration that the service conditions of the applicant are governed by the Recruitment Rules of 1976 and Para 206(2) of P & T Manual and it further states that the order of the Tribunal contains certain averments which are not found in the Supreme Court judgement reported in 1995 (4) SCC 419, and as such the order of the Tribunal is required to be corrected and reviewed.

3. Further, it is observed in the Supreme Court judgement that provisions in 1976 Recruitment Rules and in Para 206 of P & T Manual would not apply to the cadre of the service to which the applicant belongs. The applicants are governed by different set of rules known as Posts & Telegraphs Civil Engineering (Civil Gazetted Officers) Recruitment Rules, 1976 and Para 206 of P & T Manual governs the service of the Assistant Engineers (Wireless). For promotion under the 1976 Rules, the Junior Engineers (Civil) who have qualified in the departmental examination and have rendered not less than

eight years of service in the cadre will be eligible for promotion. Such rules for promotion do not contain any provision for determining inter se seniority for the purpose of giving promotion earlier or later with reference to date of passing the qualifying examination, etc. The applicant further contends that the judgement of the Supreme Court is in their favour.

4. It is open to the applicant to prefer an appeal to the appropriate forum against the order of the Tribunal. Parties are aware that the scope of the review is very limited. The Review Application is maintainable only if there is any error apparent on the face of the record. It is not maintainable on the same set of facts. The applicant is challenging the order of the Tribunal stating it is contrary to the Supreme Court decision. If the applicant is aggrieved, he can file an appeal not the review petition. Accordingly, the Review Petition is dismissed.

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(P.P.SRIVASTAVA)
MEMBER (A)

(B.S.HEGDE)
MEMBER (J)

mrj.