

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION NO. 293/96, 303/96 and 304/96.
xx1099

Date of Decision: 28/1/97

Subrata Akhil Kumar Dutta, ... Petitioner in O.A. No. 293/96.

Vilas Arjun Khachane, ... Petitioner/s in O.A. No. 303/96.

Abhijit Kumar Misra, ... Petitioner in O.A. No. 304/96.

Shri M.B. Agasti alongwith
Shri M. K. Deshpande, Advocate for the
Petitioner/s

V/s.

Union Of India & Others,

Respondent/s in O.A. Nos.
293/96, 303/96 and 304/96.

Shri R. S. Sunderam.

Advocate for the
Respondent/s

CORAM:

Hon'ble Shri B. S. Hegde, Member (J).

Hon'ble Shri P. P. Srivastava, Member (A).

- (1) To be referred to the Reporter or not ?
- (2) Whether it needs to be circulated to other Benches of the Tribunal ?


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

OS*

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

CAMP: NAGPUR.

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

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

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

HON'BLE SHRI P. P. SRIVASTAVA, MEMBER (A).

Subrata Akhilkumar Dutta,
Quarter No. A-5/Type-III,
DPS Compound,
Civil Lines,
Nagpur - 440 001.

... Applicant in O.A. No.
293/96.

Vilas Arjun Khachane,
10, Ujwal Housing Society,
Old Mehrum Road,
Jalgaon - 425 001.

... Applicant in O.A. No.
303/96.

Abhijit Kumar
S/o. Nikhil Rajan Misra,
Quarter No. B-8/Type-III,
D.P.S. Compound,
Civil Lines,
Nagpur - 440 001.

... Applicant in O.A. No.
304/96.

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

VERSUS

1. Union Of India,
Ministry of Communication,
New Delhi - 110 001 -
Through its Secretary.
2. Superintending Engineer,
Postal Civil Circle,
Mhatre Pen Building,
S.B. Marg,
Mumbai - 400 028.
3. The Superintending Engineer
(H.QRS.)
Telecommunications,
Sion P.O. Building,
2nd Floor, Bombay - 400 022.
4. Executive Engineer,
Postal Civil Division,
First Floor,
Panchasheel Vachanalaya,
Nagpur - 440 010.

... Respondents in O.A.
Nos. 293/96, 303/96
and 304/96.

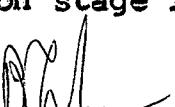
(By Advocate Shri R.S. Sunderam)

BS

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 OAs. 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.


(P.P. SRIVASTAVA)

MEMBER (A).


(B. S. HEGDE)

MEMBER (J).

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

R.P. NO.: 9/97 IN O.A. NO.: 293/96.

Dated this Tuesday 15th the 15th day of JULY, 1997.

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

HON'BLE SHRI P. P. SRIVASTAVA, MEMBER (A).

Subrata Akhilkumar Dutta ... Applicant

Versus

Union Of India & 3 Others ... Respondents.

TRIBUNAL'S ORDER BY CIRCULATION :

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

The applicant has filed this application seeking review of the order/judgement dated 28.01.1997. After hearing the rival contentions of the parties, the Tribunal had dismissed the O.A. at the admission stage itself. The main contention of the applicant is to give direction 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, Volume IV, and further contends that unless the name of the petitioner is included in the list of eligible candidates who are eligible for promotion on the basis of the examination conducted by the department and in terms of the Rules of 1976, the applicant will never be considered in future for promotion. The very same plea has been considered by the Tribunal at the time of disposal of the O.A.

62

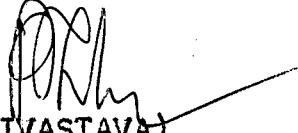
...2

2. In the eligibility list of Junior Engineers, the applicant's name has not been included though he is otherwise qualified. As per rule, the post of Assistant Engineer (Civil) is to be filled by the 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 the arguments is, since the applicant has passed the departmental examination in the year 1981, his name ought to have been included in the eligibility list and further contended that ~~the~~ is governed by the Recruitment Rules, 1976. However, the said contention has been considered by the Tribunal and found that it 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 Service Class-II and the same is not applicable to the applicants who are Junior Engineers (Civil) of the P & T Civil wing. Both the posts are separate services and they do not have any nexus. Further, it was held that in view of the recent Supreme Court decision in Satpal Antil V/s. Union Of India (1995) 4 SCC 419 that the recruitment rules ~~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' interse seniority does not arise.

As

3. The O.A. was disposed of on merits and on perusal of the review petition it is found that the same grounds have been reagitated, thereby, in our opinion, by way of review petition the applicant cannot re-argue the case on the same set of facts. In accordance with the Apex Court decision, in the absence of non-applicability of the relevant recruitment rules or the observations made in the P & T Manual, the eligibility list of Junior Engineers (Civil) is prepared on the basis of length of regular service in the junior engineer civil grade but without disturbing their respective circle seniority list. Further, it is noted that 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).

4. In the light of the above, we find that neither any error apparent on the face of the record has been pointed out nor any new facts have been brought to our notice calling for review of the judgement. The grounds raised in the Review Application are more germane for an appeal against our judgement and not for review. The review application is therefore dismissed by circulation.


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


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

R.P.W. (W) 9/97
by circulation

2613

dd. 15/7/97
order/Judgement despatched
to Applicant/Respondent (s)
on 22/7/97

24/7/97