

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 154/99

Date of Decision: 02.11.2001

Shri M.G. Gunaware.

Applicant

Shri S.P. Saxena.

Advocate for Applicant

Versus

Union of India & 6 others

... Respondents

Shri V.S. Masurkar.

Advocate for Respondents 1 to 4

CORAM: HON'BLE SHRI S.L. JAIN.  
HON'BLE SMT. SHANTA SHAstry.

.. MEMBER (J)  
.. MEMBER (A)

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

*Shanta* ✓  
(SMT. SHANTA SHAstry)  
MEMBER (A)

Gajan

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 154/99

THIS THE <sup>2<sup>nd</sup></sup> DAY OF NOVEMBER, 2001

CORAM: SHRI S.L. JAIN.  
SMT. SHANTA SHAstry

: MEMBER (J)  
: MEMBER (A)

M.D. Gunaware,  
Junior Engineer,  
Waked Telephone Exchange,  
Kaveri Nagar, Chinchwad,  
Pune-411 019. ... Applicant

By Advocate Shri S.P. Saxena

Versus

1. Union of India,  
through the Secretary,  
Ministry of Communications,  
Sanchar Bhavan,  
20, Ashoka Road,  
New Delhi-110 001.
2. Superintending Engineer (HQ),  
Office of Chief Engineer,  
C.T.O. Compou7nd, Juhu Danda,  
Santacruz (West), Bombay-54.
3. Superintending Engineer  
Telecom No.I,  
Yerwada Telephone Exchange,  
Pune-411 006.
4. Executive Engineer  
Telecom NO.I,  
Yerwada Telephone Exchange,  
Pune-411 006.
5. George Thomas,  
Office of Chief Engineer,  
C.T.O. Compound, Juhu Danda,  
Santacruz (West), Bombay-54.
6. V. Khachane,  
Office of Chief Engineer,  
C.T.O. Compound, Juhu Danda,  
Santacruz (West), Bombay-54.
7. Nasar Ahmed,  
Office of Chief Engineer,  
C.T.O. Compound, Juhu Danda,  
Santacruz (West), Bombay-54. ... Respondents

By Advocate Shri V.S. Masurkar for R1 to R4.

O R D E R

Smt. Shanta Shastry, Member (A)

The applicant in this case is a civilian employee appointed as Junior Engineer on 22.3.1979 and is presently working in the office of Wakad Telephone Exchange, Chinchwad, Pune. The next post of promotion is that of Assistant Engineer. The promotion is considered on the basis of All India seniority list, whereas the seniority upto the level of Junior Engineer is maintained circle wise. According to the recruitment rules for the post of Junior Engineer, a person has to pass the prescribed departmental examination within two years of appointment as Junior Engineer. Non passing of the prescribed examination within the stipulated time results in non grant of annual increments till such time the candidates pass the prescribed examination. The applicant though joined on 22.3.1979 as Junior Engineer, could pass the prescribed examination only in 1990. His annual increments therefore, were released after he was confirmed in the post of Junior Engineer (Civil) with effect from 02.02.90. Based on this, the applicant's seniority was determined in the circle seniority list and the same was reflected in the All India eligibility list of Junior Engineer (Civil) showing the applicant at serial No.748, whereas the applicant feels that he ought to have been placed at serial No.253(A) i.e. below serial No.253 and above serial No.254 in the seniority list of Junior Engineer, which was published on

15.7.1996. The applicant is aggrieved that a large number of his juniors have superseded him only because of this mode of determining the seniority on the basis of date of confirmation rather than on the date of continuous officiation. The applicant, has therefore, challenged the All India eligibility list issued on 15.7.1996 and has sought direction to the respondents to reckon his seniority in the grade of Junior Engineer with effect from 22.3.1979 on the basis of the principle of continuous officiation and to place him between serial No.253 and 254 of the aforesaid eligibility list. He has further prayed for convening of a review DPC and to reconsider his case for promotion to the post of Assistant Engineer on the basis of his revised seniority position and if found fit to promote him to the post from the date when the applicant's junior is promoted to the post of Assistant Engineer with all consequential benefits including monetary benefits.

2. It is the contention of the applicant that it is the settled principle of law that the confirmation date cannot be the criteria for reckoning the seniority of an employee. Merely not passing the departmental examination only results in non grant of annual increment, it should not affect the seniority of the person. The seniority has to be reckoned from the date of appointment and not confirmation. The applicant submits that the eligibility list though issued on 15.7.1996 was not available to be seen by the applicant,

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since it was not received in his office. He came to know about it only when he noted the alleged wrong seniority granted to him.

3. The applicant further submits that the impugned list of 15.7.1996 was challenged in OA No.1863/96 before the Principal Bench and the Principal Bench held that seniority has to be determined on the basis of regular appointment in a cadre and not from the date of confirmation or passing of departmental examination. The Tribunal directed the respondents therein to modify the eligibility list of 15.7.1996 in respect of entries relating to the applicants therein by taking into account the principle of determination of seniority on the basis of regular appointment in a cadre and not from the date of confirmation or passing departmental examination and to re-assign appropriate seniority position in the eligibility list relating to the applicant as per rule. In view of this also, the applicant's case needs to be reconsidered and he too ought to have been given seniority based on his date of regular appointment rather than on the date of confirmation. The applicant made representation on 14.8.1996 to the respondents, but according to him he did not receive any reply.

4. The respondents in their written reply submit that the cadre of Junior Engineer is a circle cadre, recruitment to which is made by respective circles of

P&T Civil Wing and each Circle of P&T Civil Wing maintains its own circle seniority list of Junior Engineers in accordance with the seniority principles laid down in the OM dated 22.12.1959 of the Ministry of Home Affairs as amended from time to time. According to para 04 of this aforesaid OM relative seniority of JEs is determined by the order of merit in which they are selected for such appointment subject to their confirmation. The Junior Engineer appointed on the basis of select list are to be on probation for a period of two years. During this period, they have to pass simple accounts examination and satisfactorily completes the cadre level training course. So long as they do not pass the probation or the said examination, they remain on probation and as a consequence, they remain ineligible for consideration for confirmation in the post of Junior Engineer. Naturally therefore, those whose probation is cleared and who pass their examination belatedly or confirmed later, therefore become junior to those who cleared their probation period and got confirmation earlier. The All India eligibility list of Junior Engineers for promotion to the grade of Assistant Engineers (Civil) is maintained by the Ministry of Communication, Department of Telecommunication, which is prepared after the merger of all the circle seniority list, but without disturbing the interse circle seniority position of Junior Engineers within a particular circle. While preparing All India eligibility list of Junior Engineers due care

is required to be taken so that the interse seniority of the JEs within a circle is not at all disturbed. Thus the eligibility list of JEs as on 01.01.1996 is based on the respective circle seniority position. The respondents submit further that the DOP&T vide their OM dated 04.11.1992 delinked the seniority from confirmation. According to which it was decided that the seniority of a person regularly appointed to a post according to rule would be determined by the order of merit indicated at the time of initial appointment and not according to the date of confirmation. However, these orders were to take effect from the date of issue of OM. Seniority already determined according to the earlier rules was not to be reopened. Therefore, according to the respondents this OA is devoid of merit and deserves to be dismissed. The respondents have reiterated that passing of simple accounts examination is one of the pre-requisite to clear the probation period. As the applicant had not passed the examination till 1990 he was not eligible for being confirmed from the earlier date.

5. We have heard the learned counsel for the applicant as well as the respondents and have perused the judgment of the principal Bench in OA No.1863/96. Identical issue had been raised in OA No.1863/96. It is now well settled law that seniority is to be reckoned from the date of regular appointment and not from the date of confirmation. Although the respondents

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acknowledge that the DOP&T have issued OM dated 04.11.1992 delinking seniority from confirmation, it has to be noted that the rule that seniority cannot be linked with confirmation was decided long before in the case of Patwardhan Vs. State of Maharashtra (reported in 1977 (3) SCC 399) by the Hon'ble Supreme Court. The Hon'ble Supreme Court held that the seniority cannot be made to depend on the fortuitous circumstances of confirmation when all other factors are equal. Thus, though the DOP&T OM made it prospective since the issue had been decided much earlier than this, the respondents were required to adhere to the principle of reckoning seniority from the date of regular appointment and not from the date of confirmation. In OA No.1863/96 there was another point raised, namely the eligibility list of 15.7.1996 suffers from infirmity in that except in Delhi circle other circles had determined the seniority on the basis of date of appointment and therefore, it was held that the eligibility list of 15.7.1996 was discriminatory.

6. The applicant's case is similar to the case of the applicants in OA 1863/96 and is squarely covered by the judgment in that OA and therefore, we are bound by the aforesaid judgment. In the result, applicant needs to be granted seniority on the basis of the date of regular appointment irrespective of the date of passing the departmental examination and confirmation. Accordingly the OA is allowed and the respondents are

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directed to give appropriate seniority to the applicant in the circle seniority as well as in All India eligibility list on the basis of the date of regular appointment and to convene a review DPC to consider the applicant for promotion to the post of Assistant Engineer from the date his juniors were promoted. Since the applicant has approached this Tribunal belatedly, the monetary benefits, if any, if found fit for promotion, shall be payable to the applicant from one year prior to the filing of this OA i.e. from 03rd February, 1998. No costs.

*Shanta F*

(SMT. SHANTA SHAstry)  
MEMBER (A)

*S.L. Jain*

(S.L. JAIN)  
MEMBER (J)

Gajan

Dated: 16-3-2005 (10)

Applicant by Shri S. P. Sascena.  
Respondents by Shri V. S. Masurkar.

It has been stated by Shri Masurkar that the case was taken by the the respondents to the Apex Court where the respondents lost the case. Now they have implemented the order of the Tribunal.

Shri Sascena states that he has no instructions as the applicant has been transferred out of station.

As substantial compliance have been done in the present case, the C.P. does not stand and is accordingly closed. Notices issued are discharged.

Applicant is at liberty to approach the Tribunal in case any grievance subsists.

Muzaffar Hussain  
(Muzaffar Hussain)  
M.J.

Anand Kumar Bhatt  
(Anand Kumar Bhatt)  
M(A)

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