

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO.158/2001

Date of Decision: 31.05.2002

Shri T.R. Viswanathan Applicant(s)

Shri M.S. Ramamurthy Advocate for applicants

Versus

Union of India & others. Respondents

Shri V.S. Masurkar. Advocate for Respondents

CORAM: HON'BLE SHRI JUSTICE BIRENDRA DIKSHIT. VICE
CHAIRMAN
HON'BLE SMT. SHANTA SHASTRY. MEMBER (A)

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

Shanta Shastri
(SMT. SHANTA SHASTRY)
MEMBER (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

O.A.No.158/2001.

Dated this 31st the _____ Day of May, 2002.

Hon'ble Shri Justice Birendra Dikshit, Vice Chairman
Hon'ble Smt.Shanta Shastry, Member (Administrative).

T.R. Vishwanathan,
presently working as Superintending
Surveyor of Works (Electrical) in
the office of Chief Engineer,
Electrical, BSNL, Electrical Zone,
Administration Complex,
Juhu Tara Road, Mumbai.

.. Applicant.

(By Advocate Shri M.S. Ramamurthy)

Versus

1. Union of India, through
the Secretary,
Department of Telecom,
Ministry of Communications,
Government of India,
Sanchar Bhavan, 20, Ashoka Road,
New Delhi - 110 001.
2. The Senior Dy.Director General,
(Electrical), Bharat Sanchar
Nigam Ltd., Chandralok Building,
10th Floor, Janpath,
New Delhi - 110 001.
3. Shri R.K. Mishra,
Superintending Engineer (Electrical),
Telecom Electrical Circle No.2,
Yogayog Bhavan, 2nd Floor,
36, C.R. Avenue, Kolkata-700012.

.. Respondents

(By Advocate Shri V.S. Masurkar).

ORDER

{ Per : Smt. Shanta Shastry, Member (A) }

The applicant is aggrieved by the revision of his
date of regular promotion as Executive Engineer
(Electrical) from 6.10.1989 to 11.8.1995 by order dated

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9.8.2000. Also he has challenged the seniority list dated 10.8.2000. He has, therefore sought the following reliefs:-

- "(a) that this Hon'ble Tribunal be pleased to hold and declare that the revision of the Applicant's date of regular promotion as EE (E) from 6.10.1989 to 11.8.1995 by Order dated 9.8.2000 is illegal, arbitrary and liable to be quashed and set aside.
- (b) that this Hon'ble Tribunal be pleased to hold and declare that the seniority assigned to the Applicant in the Seniority List dated 16.8.2000 is not proper and further declare that the Applicant is entitled to be shown above Sr.No.24 (R.K. Mishra) in the said Seniority List and also entitled to all the consequential benefits flowing therefrom.
- (c) that this Hon'ble Tribunal be pleased to quash and set aside the Order dated 9.8.2000 in so far as the Applicant is concerned and direct the Respondents to treat the Applicant as regularly promoted as EE (E) from 6.10.1989 and grant him all further consequential benefits on that basis.
- (d) that this Hon'ble Tribunal be pleased to direct the Respondents to re-draw the Seniority List dated 16.8.2000 by taking into account Rule 6 relating to initial constituent clause in the 1994 Rules and arrange the Officers accordingly.
- (e) that this Hon'ble Tribunal be pleased to direct the Respondents to assign the Applicant a proper place in the Seniority List to be revised on the basis of his regular promotion as EE (E) from 6.10.1989.

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- (f) that the Respondents be permanently restrained from in any manner disturbing the present status of the Applicant as Superintending Engineer (E) on the basis of the impugned Order dated 9.8.2000 and Seniority List dated 16.8.2000.
- (g) that in any case the Respondents be directed to consider the Applicant for regular promotion as Superintending Engineer on the basis of his regular promotion as EE (E) w.e.f. 6.10.1989.
- (h) that such other and further order or orders be passed as the facts and circumstances of the case may require.
- (i) that the costs of this Application be provided for."

2. The applicant is a direct recruit Assistant Engineer (Electrical), a Group B Gazetted post in the P&T Building, works services. He joined the department in June, 1980 after recruitment through U.P.S.C. According to the relevant recruitment rules, the next promotion for the applicant is to Group A post of Executive Engineer (Electrical) after 8 years of service as Assistant Engineer (Electrical). He was, therefore, eligible to be considered for promotion from or about June, 1988. It is submitted by the applicant that there was serious dispute in the seniority list of Assistant Engineers (Electrical) due to litigation spread over a long period of time, therefore, his position in the seniority list was not properly assigned and he was not considered in the D.P.C. held in 1988-1989 for promotion as Executive Engineer

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(Electrical). Many juniors of the applicant were wrongly shown as seniors during that period and were regularly promoted.

3. The applicant states that thereafter he was promoted on adhoc basis as Executive Engineer (Electrical) vide order dated 19.11.1992. Thereafter pursuant to the Judgment of the Principal Bench in the case of I.K. Sukhija and the Mumbai Bench in the case of R.K. Jain, the seniority list of Assistant Engineers was recast and a review DPC was held in 1995 by the U.P.S.C. and many seniors like the applicant who had been left out in the DPC of 1988 and 1989 were reconsidered and granted promotions from the due dates on regular basis vide order dated 11.8.1995. In this order the applicant appears at Sl.No.23 and has been given the date of 6.10.1989 as a date of regular promotion. In the same order the applicant's junior viz. S.C. Jarrel is shown at Sl.No.24 and his date of promotion is also shown as 6.10.1989.

4. Thereafter there was another judgment of the Mumbai Bench in the case of S.N. Mishra and another in O.A.No.286/93 dated 5.11.1993. In pursuance of this judgment the department published a provisional seniority list of officers in the grade of Executive Engineer (Electrical) wherein the name of the applicant appeared

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at Sl.No.46. The said judgment of S.N. Mishra (Supra) was carried in ¹in appeal and was upheld by the Hon'ble Supreme Court in L.K. Shanmugam's case vide judgment dated 25.4.2000. A provisional seniority list was drawn on 13.9.1995. It was further stated that the judgment of the Principal Bench in the case of I.K. Sukhija was upheld by the Hon'ble Supreme Court vide order dated 8.7.1997 and thereafter the department published a revised seniority list in the grade of Assistant Engineer (Electrical) vide office memorandum dated 9.1.1998. The name of the applicant was shown as^h Sl.No.38 in this order, which according to the applicant is correct. Thereafter, the applicant was promoted to JAG as Superintending Engineer on 10.5.1999. This was on the basis of having been regularly promoted as Executive Engineer (Electrical) from 6.10.1989. However, after the judgment of the Hon'ble Supreme Court in the case of I.K. Sukhija a second review D.P.C. was held in July, 2000 and the promotions made in 1995 and 1997 by the first review D.P.C. were reconsidered and the impugned order dated 9.8.2000 was issued wherein the applicant's regular promotion was brought down from 6.10.1989 to 11.8.1995. The applicant is still shown above his admitted junior S.C. Jarrel whose date of regular promotion had been maintained at 6.10.1989.

5. The applicant contends that the said downward

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revision of his date of regular promotion as Executive Engineer (Electrical) without notice is illegal and bad in law. The first review D.P.C. held in 1995 had correctly considered the applicant for regular promotion against the 1988 vacancy and granted the said promotion from 6.10.1989; changing that date is wrong. The applicant made several representations against downward grading of his date of regular promotion and against the seniority list of 16.8.2000.

6. The contention of the applicant is that since no notice was given to the applicant while changing his date of promotion the order of 9.8.2000 is illegal and bad in law and is violative of Articles 14 and 16 of the Constitution of India. According to him there was no need to revise his date of promotion as Executive Engineer (Electrical). The review D.P.C. in 1995 had corrected the errors in the D.P.C. of 1988-1989. There^{is} is no provision for holding a second review D.P.C. and certainly not for rejecting the findings of another review D.P.C. According to the applicant his proper place in the seniority list of 16.8.2000 should be above Sl.No.24 and he should also be considered for regular promotion as Superintending Engineer on that basis. The applicant contends that the seniority list of 16.8.2000 has been drawn up without taking into account any of the judgments of the Hon'ble Supreme Court in the case of

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I.K. Sukhija and M.K. Shanmugam and judgment in the case of Suraj Prakash Gupta. The seniority list has been drawn up in a totally wrong manner without giving any benefit of Rule 6 of the 1994 Recruitment Rules relating to initial constituent clause. The appointees/promotees of 1996 have been shown above the appointees/promotees of 1988 which is incorrect. The direct recruits of 1996 and subsequent batches who have been shown senior in this manner cannot claim reservation of any slots. This has been expressly prohibited by the Hon'ble Supreme Court in a number of judgments including the judgment in the matter of Suraj Prakash Gupta. It has also been reiterated by the Department of Personnel & Training's O.M. of 1996, that if the initial constituent clause is applied all the persons at Sl.Nos.27,28,30,31,33.34,37,39,40 and all other Assistant Executive Engineer (Electrical) upto 1997 will have to be placed enbloc junior to all persons regularly appointed prior to coming into force of 1994 Rules including the applicant who was regularly appointed as Executive Engineer (Electrical) with effect from 6.10.1989. The applicant has further alleged that the respondents have followed the O.M. of 22.12.1959 of the DOP&T and 7.12.1990, whereas the O.M. dated 22.12.1959 was

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superseded by the O.M. dated 7.th2.1986. Apparently the respondents have not taken note of this while recasting the seniority.

7. The respondents have filed their reply taking preliminary objections that the O.A. is bad in law for non joinder of essential parties and, therefore, deserves to be dismissed at the outset.

8. The respondents have submitted that the matter of fixing of inter-se seniority in the grade of Executive Engineer (Electrical) between officers promoted from the feeder cadre of Assistant Executive Engineer (Electrical) Group 'A' and Assistant Engineer (Electrical) Group 'B' was under dispute since 1992. It was sub-judice initially in the O.A. 286/1992 before the Tribunal and thereafter in C.A.No.5086/1994 in the case of M.K. Shanmugam, the Hon'ble Supreme Court delivered the judgment on 25.4.2000 reported in (2000) 4 SCC 476. In accordance with the aforesaid judgment of the Apex Court the seniority list in the grade of Executive Engineer (Electrical) of P & T Building Works Services was finalised in consultation with the Department of Personnel & Training and the legal cell of the Department of Telecommunications and the seniority list of 16.8.2000 was issued. This list was challenged by some of the officers junior to the applicant in O.A.No.1833/2000 and

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2119/2000 before the Principal Bench of the Tribunal. The Principal Bench vide order dated 19.12.2000 upheld the seniority list of 16.8.2000. Accordingly the respondents have initiated the steps to fill up the post of Superintending Engineer (Electrical) on regular basis for filling up the vacancies of the year 1991-1992 to 2000-2001. It is submitted that presently all the officers including the applicant are working on adhoc basis in the grade of Superintending Engineer (Electrical).

9. The respondents have also stated categorically that the Union of India has not contemplated the reversion of the applicant, it will all depend only on the out come of the D.P.C. held by the U.P.S.C. on the basis of seniority list dated 16.8.2000, in view of the judgment of the Principal Bench the seniority list of 16.8.2000 having been upheld. According to the respondents the O.A. deserves no consideration and should be rejectged at the admission stage itself and the ad-interim relief granted be vacated.


10. The applicant has filed rejoinder and has pointed out that there is no delay in filing of his O.A. as his promotion order is dated 9.8.2000 against which he made representation immediately on 31.8.2000 and 20.10.2000. He received a reply on 1.12.2000 and 4.12.2000 and
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immediately thereafter the O.A. has been filed on 22.2.2001. According to him his claim is for proper seniority as was assigned to him under order dated 11.8.1995 which is sought to be taken away without any notice and without hearing the applicant in that behalf. The applicant contends that there is no need to join any person as party respondent as essentially the relief is sought for claiming his own seniority as per rules. In any case the applicant has made one of the officers as party respondents as he is claiming seniority above him in the seniority list of 16.8.2000 and therefore the O.A. is maintainable.

11. Coming to the judgment of the Principal Bench in O.A.No.1833/2000 and 2119/2000 in the matters of K.K. Jindal and V.M. Kohli, the applicant contends that it has not finally settled the legality and validity of the seniority list of 16.8.2000. According to the applicant the same Vice Chairman who delivered the judgment in the aforesaid O.A.s has delivered another judgment in respect of promoted Assistant Engineers (Electrical) of the same department and has given the ruling that the Assistant Engineer (Electrical) would get seniority from the date she was promoted as Executive Engineer (Electrical) against the vacancy in a particular year. The applicant submits that his case is covered by the aforesaid

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judgment, in the aforesaid case of S.Q. Nasreen Kadri in O.A.No.1176/1999 decided on 8.3.2001 by the Hyderabad Bench.

12. Further the applicant submits that ruling given in the case of K.K. Jindal and V.M. Kohli (Supra) is contrary to the judgment of the Hon'ble Supreme Court in Suraj Prakash Gupta's case reported in 2000(1)SCSLJ 427. It was recorded therein that direct recruits will get seniority only from the date of their joining Government service and not from any notional back date. According to the applicant Principal Bench did not consider the aforesaid judgment, may be it had not been brought to their notice. In the judgment of Principal Bench again the O.M. dated 7.2.1986 of the DOP&T which lays down the correct principle based upon a number of judgments of the Supreme Court as to how the seniority should be given to the direct recruits joining service in a particular year vis-a-vis the promotees already promoted to the higher cadre, has not been taken into consideration. The rota quota had been revived in the most ridiculous manner ignoring the Apex Court's ruling. The applicant has also referred to 2 judgments of the Bangalore Bench which were contrary to the judgement in the case of K.K. Jindal and V.M. Kohli (Supra). He has referred several other judgments including the judgment of the Ernakulam Bench in the case of Mr.D.R. Rao and Mr.K.P. Ramanandam

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wherein relief was granted against the reversion from the rank of Superintending Engineer and the stay is continuing.

13. We have heard learned counsel for the applicant as well as respondents. It is very clear that the inter-se seniority of the Executive Engineer (Electrical) has undergone further change due to litigation. The respondents have finalised and drawn up the seniority list of 16.8.2000. It was upheld by the Principal Bench in O.A.Nos.1833/2000 and 2119/2000. The Principal Bench has considered all the aspects/objections raised in regard to the validity of the seniority list of 16.8.2000, as we find from a perusal of the above judgment. Although the applicant has alleged that the Principal Bench perhaps did not take note of the judgment in Suraj Prakash Gupta or OM dated 7.2.1986, it has to be noted that no appeal is said to have been filed against the aforesaid judgment of the Principal Bench, we are, therefore, bound to follow the judgment of the coordinating Bench in this matter and accordingly the seniority list of 16.8.2000 stands. In that judgment of the Principal Bench various points raised by the applicant in regard to the recruitment rules of 1984 and 1994 have been duly considered.

14. The applicant has compared his case with that of

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the applicant in O.A.No.1176/1999 decided on 8.3.2001 by the Hyderabad Bench. However, we find that in the case of Smt.Nasreen Kadri she was one of the employees found suitable for promotion against the vacancy and her seniority was recast to be included in the panel of the grade of Superintending Engineer (Civil). Her name was shown in the panel of 1986, thus she was lawfully notified to have been promoted with effect from 1986 giving retrospective notional promotion. In her case she was being denied promotion to the grade of Superintending Engineer on the ground that she had not completed 5 years of qualifying service. However, in view of her empanelment in 1986, the Hyderabad Bench of the Tribunal held that she was entitled for deemed promotion with retrospective effect of 1988 on notional basis and the said date has to be taken into consideration for the qualifying period for promotion as Superintending Engineer. There was no dispute in her case about her having been empanelled in 1986. Whereas in the case of the applicant he was initially empanelled by order of 1995 and the same was revised, therefore, the applicant cannot be compared with that ^{of} Smt.Nasreen Kadri and the judgment in her case cannot be made applicable in the applicant's case.

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15. We therefore are of the considered view that the applicant has no case. We are not persuaded to quash and set aside the impugned orders.

16. During the hearing respondents have produced orders dated 8.5.2001 whereby the applicant has been promoted to officiate as Superintending Engineer (Electrical) in the Junior Administrative Grade of P&T Building Works (Group A) Service in the pay scale of Rs.12,000-16,500/- on regular basis with effect from 27.2.2001 or the date they assume charge of post whichever is later and until further orders. However, another group of persons have been given promotion with effect from the same date i.e. 27.2.2001 but in the pay scale of Rs.14,300-18,300/-. The applicant submits that this is again surprising that they have placed him in the lower scale of Rs.12,000-16,500/- instead of in the scale of Rs.14,300-18-300/- as applicable to officers considered for promotion to the grade of Superintending Engineer on completion of 5 years of regular service in the grade of Executive Engineer (Electrical). No satisfactory reason has come forth from the respondents in regard to the lower pay scale is granted to the applicant when actual pay scale of the Junior Administrative Grade (Group A) is Rs.14,300-18300/-. According to us the applicant had also been promoted earlier as Superintending Engineer (Electrical) with

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effect from 10.5.1999 in the scale of Rs.14,300-18,300/on a temporary basis, therefore, promoting him on the regular basis in lower pay scale does not appear to be proper and justified. Now the applicant cannot have any apprehension about his reversion at the same time, in our considered view he is also entitled to the higher scale of Rs.14,300-18,300/-. The respondents are accordingly directed to consider granting the scale of Rs.14,300-18,300 to the applicant on his regular promotion which has been ordered vide letter dated 8.5.2001.

17. In view of the discussion and reasons recorded above, we do not find any substance in the O.A. meriting quashing of the order dated 9.8.2000 and the seniority list dated 16.8.2000. Accordingly the O.A. fails and is dismissed without any order as to costs.

Shanta
(Smt.Shanta Shastri)
Member (A)

B. Dikshit
(Birendra Dikshit)
Vice Chairman.

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24/6/02
Order/Judgement Case
to Applicant, Respondent, etc.
24/6/02
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