

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 169/2001

THIS THE 31ST DAY OF MAY, 2002

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

Suresh Chander Jarrel,
Superintending Engineer (Electrical),
Now working as Deputy General manager,
MTNL, Bandra Telephone Exchange,
Mumbai-400 050. .. Applicant

By Advocate Shri K. Shivaramakrishnan.

Versus

1. Union of India (through
Secretary, Department of
Telecom Services, Sanchar
Bhavan), 20 Ashoka Road,
New Delhi-110 001.
2. Senior Deputy Director General,
Department of Telecom Services,
523 Dak Bhavan, Parliament Street,
New Delhi-110 001.
3. Union Public Service Commission,
through its Secretary, Dholpur
House, Shahjahan Road,
New Delhi-110 011. .. Respondents

By Advocate Shri V.S. Masurkar.

O R D E R
Hon'ble Smt. Shanta Shastry. Member (A)

The applicant in this case is challenging the seniority list of 16.8.2000 in which according to the applicant many persons have been wrongly shown as senior to the applicant in the cadre of Executive Engineer (E).

2. The applicant belongs to the P & T Building Works (Group-A) Service (Electrical Wing). He was appointed by promotion as Assistant Executive Engineer (E) in the then P & T Civil Engineering (Electrical Service) on regular basis on 18.12.1976. He was

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regularly promoted from 06.10.1989 as Executive Engineer (E) [EE (E) for short] after selection by the DPC headed by the Member of the UPSC so states the applicant. This post was later on incorporated into P & T Building Works (Group-A service) in 1994. The applicant has been granted further adhoc promotion as Superintending Engineer (E) vide orders dated 23.8.1999 and has been working in that grade since that date.

3. A seniority list of EE (E) as on 10.02.1992 was issued earlier. It was cancelled in 1994 consequent upon the orders of the Mumbai Bench of the Tribunal in OA No.286/92 in the matter of S.L. Mishra Vs. Union of India decided on 05.11.1993. Thereafter, a provisional seniority list of EE (E) was issued of 13.9.1995. The applicant figured at Sl. No.47 in this list. The applicant further submits that on 09.9.1997 the seniority list of Group - A Officers of the new service formed in 1994 was circulated as corrected upto 30.4.1997. The applicant appears at Sl No.39 in this 1997 list of EE (E). Appeals filed against the Tribunal's decision in Mishra's case were dismissed on 25th April, 2000 vide judgment in M.K. Shanmugam Vs. Union of India (2000) SCC (4) 476. The Civil Petition challenging the seniority list of 1995 was also dismissed by the Tribunal. Thereafter, the impugned seniority list of 16th August, 2000 had been issued by the respondents.

4. According to the applicants this list is different than the earlier list. It includes the names of eight AEEs who were promoted as EE(E) between 20.9.76 and 24.5.82 and who figured in the 1995 list. The

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applicant figured at Sl. No.62 as against his being at Sl. No.45 in 1995 list and at Sl. No. 39 in the 1997 list. He has thus been pushed down by 23 places in the seniority list as compared to his position in 1995 list. It is further stated that the impugned list contains 23 names which were not in the list of 1995 and all of them have been shown as senior to the applicant. They had been included in the 1997 list also but had been shown as junior to the applicant. Not only that, all of them were only AEE (E) at the time the applicant was promoted in 1989 as EE(E), they were promoted as EE in 1996 and thereafter, much after the new recruitment rules of 1994 came into force. The applicant has also alleged about one Shri S.K. Mehra who was recruited as AEE (E) only in 1993 he became eligible for promotion as EE in 1997 and was actually promoted in December, 1998.

5. The applicant is aggrieved that the seniority list has not been drawn up properly. The applicant submits that recruitment rules for gazetted officers in the electrical wing were first framed in 1975 effective from 05.4.1975. They were amended retrospectively with effect from 05.4.1975 in the year 1984. These amended rules provide for initial constitution of the service which had not been provided for earlier. 1975 rules were later on replaced by new set of recruitment rules in 1994 on the formation of the new service. Under the new rules, the new service was to consist of persons taken up at the time of new constitution from the service existing earlier and all those recruited subsequently under the new rules. promotions to the post of EE (E) from AEE (E) are to be in the ratio of

1:1 in the new service whereas in the old service under 1975 rules it was 2:1. The applicant feels threatened as his position may now be changed in view of the impugned seniority list and he may get reverted.

6. The applicant has taken several grounds. According to him the impugned list violates the recruitment rules of 1994. Under Rule 9 of those rules seniority is to be determined separately for those appointed under Rule 6 and those under Rule 7. Separate principles have been laid down for determination of seniority in the two categories. Any interse dispute regarding seniority has to be settled only in consultation with UPSC vide Rule 9(3). The present seniority list has not been prepared in consultation with the UPSC. It also applies the quota rule to the initial constituents to whom it is totally inapplicable as has been held in R. Ravindran Vs. Union of India in OA No.1120/91 decided on 03.3.1992 by the Madras Bench of the Tribunal. The seniority of EE (E) promoted under 1994 rules can only be fixed on the basis of the ratio of 1:1 and not on the basis of the old ratio of 2:1 which was applicable only to entrants under 1975 rules. According to the applicant, the impugned list has relied upon the superseded OM of 22.12.1959 which is no longer applicable. The respondents have failed to apply the principles incorporated in the recruitment rules themselves as also in the subsequent OM of 07.02. 1986.

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OM of 1959 and the clarification issued on 07.02.1990 are not at all relevant as new principles were laid down in 1986, they need to be followed. The seniority list of 16.8.2000 has also failed to take note of the eligibility condition of minimum service before promotion of AEE (E) it has been observed only in breach. The applicant submits that objections had been invited to the provisional seniority list of 1995. The 1997 list was presumably published after considering the objections received to the earlier list. The respondents have now published the impugned seniority list which differs substantially from the list of 1997 and having adverse consequence for the applicant and many others like him without even allowing them an opportunity to represent. The applicant apprehends that if any selection is made based on the impugned seniority list the applicant will be put to irreparable hardship by depriving him of the post of Superintending Engineer (E) already held by him and he may have to serve under persons who are far junior to him and who have served as his subordinates. They were not even qualified to be promoted as EE (E) when the applicant was actually promoted regularly.

7. The respondents submit that the matter of fixation of interse seniority in the grade of EE (E) between officers promoted from the feeder cadre of AEE (E) Grade-A and AEE (E) Grade-B was under dispute since

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1992. It was subjudice initially in OA 286/92 before this Tribunal and thereafter in the Supreme Court in CA No. 5086/94 in the case of M.K. Shanmugam. The Supreme Court delivered the judgment in the aforesaid case on 25.4.2000. The respondents submit that they finalised the seniority list in the grade of EE (E) in accordance with the judgment of the Apex Court in consultation with the department of Personnel & Training and the Legal Cell of DoT and they issued the OM dated 16.8.2000.

8. The respondents further inform that the impugned seniority list of 16.8.2000 was challenged by some of the officers junior to the applicant in OA No.1833/2000 and 2119/2000 before the Principal Bench of the Tribunal in New Delhi. The Principal Bench vide order dated 19.12.2000 upheld the seniority list issued on 16.8.2000. According to the respondents, the matter in the present OA is identical to the matter in OA No.1833/2000 and 2119/2000.

9. The learned counsel for the applicant contended that in the judgment of the Principal Bench in OA No.1833/2000 the seniority list published in 1997 had not at all been considered by the Principal Bench. Shanmugam's case only lays down that adhoc service as EE (E) will not count for seniority in that cadre. The applicant has no adhoc service to his credit. Hence

that case is irrelevant to his seniority. The learned counsel for the applicant further submits that the Principal Bench had not been apprised of the decision of the Madras Bench of the Tribunal in OA No.1120/91 in R.Ravindran Vs. Union of India, a case relating to seniority of EE (E). The judgment laid down inter alia that EE (E) inducted subsequent to the initial constitution of the service cannot claim seniority over those taken up at the initial constitution. The Principal Bench was also not apprised of the decision of the Supreme Court which lays down that an employee's seniority has to be determined with reference to rules in force at the time he was born in the cadre. This principle has been recently reiterated by a three Judge Bench of the Supreme Court in P. Mohan Reddy Vs. CAA Charles after an exhaustive survey of case law. According to the applicant, in view of the various infirmities pointed out, the decision of the Principal Bench is clearly per-injurium and has no binding force.

10. While the OA was pending, MP was filed by three intervenors who would be adversely affected in case the OA succeeds and who are holding the post of EE (E) in that their promotion to the next higher post of SE (E) is in danger.

11. The learned counsel for the intervenors also argued that the seniority list of 16.8.2000 of the EE

(E) is in order. Intervenor 1, 2 and listed at Sl. No.46, 45 and 51 are senior to the applicant. All the earlier seniority list issued stand superseded by the final list of 16.8.2000. Hence, the regular promotion to the SE (E) has to be dealt with on the basis of the final seniority list of EE (E) dated 16.8.2000. The intervenors have further stated that the respondents have issued seniority list of EE (E) as on 01.7.2001 vide letter dated 27.7.2001. In the aforesaid list also the intervenors have been listed correctly at Sl. No.15, 14 and 18 respectively, whereas the applicant is listed at Sl. No.25. It has also been submitted that the applicant was not found fit for regular promotion to the post of SE (E) by the regular DPC held on 27.02.2001 for the vacancies upto the year 2000-2001 and the officers junior to the applicant have been promoted on regular basis. He is therefore, not entitled to continue in the post of SE (E), by virtue of interim order the applicant was allowed to continue as SE (E). The intervenors have prayed for vacation of interim order.

12. The respondents and intervenors both have clarified that the list of 1997 referred to by the applicant is not a seniority list, it is a list of Group-A officers circulated primarily to allot the staff numbers to the newly inducted officers. The list so circulated on 19.9.97 has been circulated by the

Personal Secretary to the Chief Engineer (E), New Delhi who is not competent to issue a seniority list. The seniority list issued in 1995 was only a provisional seniority list and the seniority list has been finalised only by the list of 16.8.2000.

13. We have heard the learned counsel for the applicant, the intervenors and the respondents and have given our careful consideration to the arguments advanced. We have also perused the judgments relied upon by the respondents as well as by the applicant. The respondents have prepared the seniority list of 16.8.2000 based on the judgment of the Supreme Court dated 25.4.2000 in CA No.5086/94 filed by Shri M.K. Shanmugam & Others tagged with CA NO.5081/94 and 3018/97 upholding the Bombay Tribunal's order in OA No.286/92. On perusal of the judgment in OA No.1083/2000 and OA No.2119/2000 decided on 19th December, 2000, we find that as rightly stated by the respondents, the case of the applicant is identical with the case of the applicants in the OAs referred to above. In the judgment of the Principal Bench all the grounds raised by the applicant in the present OA had been duly considered and met with. All the recruitment rules of 1984 effective from 1975 and of 1994 have been discussed in the judgment. In fact, in those OAs also the very seniority list of 16.8.2000 which has been impugned in the present OA had been challenged and the Principal

Bench of the Tribunal did not find any warrant to interfere with the impugned seniority list of 16.8.2000. According to the applicant the seniority list of 1997 was not before the principal Bench New Delhi when they decided the OA Nos. 1083/2000 and 2119/2000. It has been explained by the respondents that what the applicant is referring to as the seniority list of 1997 is not a seniority list at all. We have also perused the list and find that it cannot be said to be a seniority list at all. It takes the normal features of a seniority list. Another contention of the applicant is that the respondents have followed the OM dated 22.12.1959 while revising the seniority of EEs (E) when it has been superseded by the OM of 07.02.1986. We find from the judgment of the Principal Bench in K.K. Jindal's case supra that the bench has taken due note of the preamble to seniority list dated 16.8.2000. As the judgment has dealt with all the aspect of the seniority list of 16.8.2000, in our considered view, the applicant's case is squarely covered by the aforesaid judgment. We are not persuaded to differ with the aforesaid judgment. The entire action of the respondents is based on the judgment of the Apex Court and they cannot be faulted. In the facts and circumstances of the case, in our considered view, the OA deserves to be dismissed and is dismissed accordingly without any order as to costs.

Shanta

(SMT. SHANTA SHASTRY)
MEMBER (A)

B. Dikshit

(BIRENDRA DIKSHIT)
VICE CHAIRMAN