

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH BANGALORE

DATED THIS THE 30 SEPTEMBER 1986

Present : Shri Ch. Ramakrishna Rao  
Shri L.H.A. Rego

- Member (JM)  
- Member (AM)

Application No. 32 of 1986 (F)

A.G. Ethirajulu  
s/o late A.Govindaswamy  
Survey Assistant, Selection Grade  
No. 24 Party, Survey of India  
No.1-A, Brunton Road Bangalore

- Applicant

(Sri U.L. Narayana Rao, Advocate)

1. The Surveyor General of India  
Surveyor General's Office  
No. 37, Dehra Dun, Uttar Pradesh
2. The Director (Selection Grade)  
Southern Circle  
Survey of India, Bangalore
3. The Union of India  
by its Secretary  
Survey of India,  
Ministry of Science & Technology,  
New Delhi
4. A. Chandrasekaran  
Major Officer Surveyor Group B  
Survey of India  
No. 1-A, Brunton Road, Bangalore
5. T.T. George, Major  
Officer, Surveyor Group B  
41 Party (SC)  
Survey of India, Palghat, Kerala State
6. G.B. Neelammanavar, Major  
Officer Surveyor  
40 Party (SC), Survey of India  
Bangalore
7. G. Premakumar, Major  
Officer Surveyor,  
Survey of India  
No. 17 Part (SC), Bangalore 25

- Respondents

(Sri N. Basavaraju, Central Govt. Standing Counsel)

The application has come up for hearing before Court today.

Honourable Member (AM), Shri L.H.A. Rego made the following

O R D E R

1. The applicant seeks mainly, a writ of certiorari or any other writ, order or direction quashing the Combined Seniority List (CSL for short), drawn up by the Respondents on 30.4.1984 in respect of Group C Division I Topo Establishment, in the Survey of India and a writ of mandamus or any other writ, order or direction, directing the respondents to promote him to the post of Officer Surveyor in Group B, with effect from 19.4.1982, with consequential relief, on the basis of <sup>h</sup> Green List said to have been maintained cadrewise for each Group, for the purpose of seniority.
2. The facts of the case are briefly as follows. The applicant was appointed to officiate in the cadre of Survey Assistants, in Group C, Class III, Division ~~of~~ I of the Survey of India on 24.4.1969 and was made substantive in the Ordinary Grade in that cadre, with effect from 1.3.1975. He was appointed to the Selection Grade in that cadre, on 1.9.1981 and became eligible to be considered for promotion as Officer Surveyor in Group B, Class II. The applicant states, that the Departmental Promotion Committee (DPC, for short) considered his case and promoted him as Officer Surveyor in Group B on ad hoc basis, with effect from 19.4.1982 by its Order dated 23.9.1982. According to the respondents, the Survey of India was experiencing difficulty in filling up posts by direct recruitment, under the Survey of India, Class II (Recruitment) Rules 1962 (1962 Rules, for short). In Writ Appeal No. 628 of 1976 arising out of Writ Petition No. 4888 of 1975 which came up before the High Court of Judicature, Andhra Pradesh in this

matter, the High Court observed that the mode of direct recruitment to the posts did not evoke the desired response and therefore, in these circumstances, this was an eminently fit case, to do away with this mode of recruitment, as specified in the 1962 Rules and to fill up the posts in Class II Service, by promotion. Pursuant to this, the Survey of India sought to amend these Rules.

3. In the meanwhile, the Survey of India in administrative interest felt the need to fill in the existing vacancies meant for direct recruitment, on an ad hoc basis, by appointing officers from Group C, Division I, lest the progress of survey work, which was gaining momentum should suffer. Action in this regard was initiated in 1977 and ad hoc appointments were made on the basis of seniority subject to rejection of the unfit, in accordance with the criteria stipulated in the 1962 Rules, for filling up the posts of Officer Surveyors by promotion. It was, however, made clear to the appointees in their order of appointment, that this appointment was ad hoc and would not therefore confer any right on them, for regular appointment in the grade and that they would have to make place and revert, as and when regular candidates were appointed. No meeting of the DPG is said to have taken place for these ad hoc appointments.

4. The applicant was, among others, accordingly promoted as Officer Surveyor in Group B on an ad hoc basis, under the letter dated 29.1.1982 of the Surveyor General of India (SGI, for short). The respondents deny the statement of the applicant, that he has been working as in-charge of the post of Officer Surveyor in Group B since 1969. The respondents further refute the contention of the applicant that he was the seniormost in the cadre of Surveyor Assistants, in the Selection Grade.

5. The applicant came to be reverted from his ad hoc appointment as Officer Surveyor, in Group B, by the SGI under his letter dated 23.5.1985 with effect from 1.6.1985. The contention of the applicant, that the order of reversion was invalid, because his juniors were not reverted, has been denied by the respondents.

6. Pursuant to the direction of the High Court of Judicature of Andhra Pradesh in the Writ Appeal referred to above, the Survey of India, Officer Surveyor (Recruitment) Rules, 1983 (1983 Rules, for short) came to be enforced, in supersession of the 1962 Rules, and as a result the earlier mode of direct recruitment to the post of Officer Surveyor came to be abolished. Instead, 75% of the posts were to be filled up by promotion, by selection from among the personnel in the feeder cadres, namely, Surveyors, Survey Assistants, Scientific Assistants, Geodetic Computers and Draftsmen in Division I, Group C, with 8 years of regular service, in the respective grades, including service if any, rendered in the Selection Grade. The remaining 25% of the posts were to be filled in, by limited departmental competitive examination, from among the personnel in the feeder cadres referred to above, the qualifications prescribed being a Bachelor's Degree in Mathematics and a minimum of 5 years of regular service in the respective grades. A CSL of all the feeder cadres was drawn up as a pre-requisite, to filling in the posts under the 1983 Rules and the same was circulated to all concerned by the SGI on 20.3.1984. The applicant states that he had received a copy of this CSL and had sent his written objection thereto but the CSL has not yet been finalised. Countering the same, the respondents confirm that the CSL is not provisional as alleged by the applicant.

7. According to this CSL, which is said to be based on the criterion of date of substantive appointment to the Ordinary Grade in the respective feeder cadres, the applicant's name appears at Sl. No. 224 therein. In the rejoinder filed by the applicant on 28.6.1986, he has inter alia stated, that while he has been reverted from the post of Officer Surveyor

in Group 'B', some of his juniors have been regularised in this post. In this context, he has referred to one Shri T.T. George, who was placed lower in the Green List as compared to him. The respondents state, that some of these juniors belonged to the SC/ST community and therefore, came within the purview of "reserved category" of candidates, in accordance with the instructions of the Union Ministry of Home Affairs. As regards Shri T.T. George, the respondents clarify, that he belonged to another feeder cadre, namely, that of Surveyors in Group C, while the applicant belonged to the cadre of Survey Assistants. Besides, the date of substantive appointment to the Ordinary Grade (which is the criterion for seniority) is earlier in the case of Shri George, than that of the applicant, as can be seen from Sl.Nos. 137 and 224 respectively, in the CSL. According to the respondents, the applicant cannot, therefore, claim seniority over Shri George.

8. We have heard the counsel of both the sides at length, in this case and examined carefully, the material placed before us. The learned counsel for the applicant vehemently contends, that the seniority of the applicant according to the Green List referred to above, cannot be disturbed and that the 1983 Rules do not lay down anything in regard to the drawing up of a CSL. It would be seen that in this respect, even the 1962 Rules make no mention as to the manner in which the seniority list should be drawn up. The Recruitment Rules basically deal with the aspects such as : the mode of recruitment to the post and prescription of educational and other qualifications for the same.

9. The counsel for the applicant invites our attention to para 538 of the Hand Book of General Instructions (corrected up to 28.2.1967, VIIth Edition) issued by the Survey of India, to show that the Green List

is an index of seniority of officers in various Service Groups in the Survey of India and therefore, pleads that the seniority of the applicant as is shown in this Green List cannot be overlooked, while considering the applicant for promotion to the post of Officer Surveyor in Group B. Though in the statement of objections, the counsel for the respondents has not effectively <sup>rebutted</sup> resulted this contention of the applicant, in the course of his argument however, before us, he clarified that the said Green List was merely a Classified List, furnishing relevant service particulars of the officers in each of the various Service Groups in the Survey of India, which was updated periodically and has no sanctity for the purpose of determining seniority of the officers for their promotion to the higher posts outside the feeder cadre.

According to him, seniority is governed by the Rules of Recruitment and Promotion to various categories of posts in different Service Groups as laid down in the pertinent Administrative Circular Orders of the Survey of India.

10. In order to help ascertain the factual position in this respect, let us examine the prevalent rules and regulations relating to determination of seniority and eligibility for promotion to the post of Officer Surveyor in Group B in so far as they relate to the applicant. The counsel for the respondents alludes to Rule 7 of the Rules relating to Recruitment and Promotion of Personnel in Division I of the Group Service of the Survey of India (Rule 7, for short), which deals with seniority and status and is pertinent to the case of the applicant. To facilitate reference, this Rule is extracted below from the Administrative Circular Order No. 436 of the Survey of India, dated 1.8.1950 (corrected upto 31.3.1983):

"7. Status and Seniority.— Personnel in Division I covered by rules 4 and 5 and Surveyors' Ordinary Grade will be of equal status. Seniority in each grade and as between the different trades in Ordinary Grade, will be reckoned from the date of substantive appointment to the grade. When two or more individuals are appointed to a grade from the same date, the seniority among the individuals will be as follows:

- (i) When appointments are made by promotion from Division II, the seniority will be in order of selection as decided by the D.P.C.
- (ii) When appointments are made from among the trainees on classification, the seniority will be determined on merits by the Surveyor General."

11. As stated earlier, the applicant was appointed substantively in the cadre of Survey Assistants in Group C, Division I, in the Ordinary Grade, with effect from 1.8.1975 and was appointed to the Selection Grade in that cadre on 1.9.1981, Group C of Division I. The Topographical and Reproduction Establishment of the Survey of India comprises the following five feeder cadres, in so far as they are relevant to the case of the applicant :

Sl. No.	Designation of the feeder cadre
(1)	(2)
1	Surveyors
2	Geodetic Computers
3	Scientific Assistants
4	Survey Assistants
5	Draftsmen

12. Each of these posts carries a pay scale of Rs.425-15-500-E8-15-560-20-700 with Selection Grade of Rs.500-25-750-E8-30-900, upto 15% of the number of posts sanctioned in the respective feeder cadres. According to Rule 7, Draftsmen, Survey Assistants and the Surveyors in the Ordinary Grade in Group C, Division I, are deemed to be equal in status. Seniority in each Grade and as between different trades (in different cadres) in the Ordinary Grade is to be reckoned from the date of substantive appointment

to the Ordinary Grades. This criterion for determination of seniority is seen to have remained unaltered, regardless of supersession of the 1962 Rules by the 1983 Rules, relating to recruitment to the posts of Officer Surveyors in Group B. The counsel for the applicant has not been able to indicate to us change, if any, in Rule 7, relating to determination of seniority in respect of feeder cadres in Group C, Division I, as it existed when the 1962 Rules were in force.

13. Instructions of the Ministry of Home Affairs (Department of Personnel and Administrative Reforms) Government of India, in their OM No. 22011/5/77-Estt.(D) dated 24.7.1979 reveal that Selection Grades have been created in various feeder cadres in Groups C and D of Division I, with a view to relieving stagnation in these cadres. Further, these instructions, state, that appointments made to the posts in Selection Grades in the respective feeder cadres, do not normally involve assumption of higher responsibility and that consequently, it is not necessary to frame separate Recruitment Rules for these grades or to draw a separate seniority list for the incumbents in these grades. The posts in the Selection Grades in these feeder cadres are, therefore, treated as "non-functional" in nature and the date of appointment therein, is deemed to have no bearing on seniority for the purpose of promotion to higher posts. In the light of these instructions and of the criterion for seniority spelt out, namely, the date of substantive appointment in the Ordinary Grade in the feeder cadre of Survey Assistants (to which the applicant belongs), the claim of the applicant for seniority on the basis of his earlier date of appointment to the Selection Grade in that cadre, is ill-founded.

14. Since five feeder cadres listed in para 11 supra have identical pay scales both for the Ordinary and Selection Grades, it is but proper, that a CSD is drawn up integrating all these feeder cadres into one, for the purpose of promotion to the higher post namely, that of Officer Surveyor in the instant case, outside these feeder cadres on the basis of substantive appointment in the Ordinary Grade of these cadres, as stipulated in Rule 7. The trades of Geodetic Computers and Scientific Assistants according to the Administrative Circular Order No. 436 referred to above, are required to supply a limited number of skilled personnel in these trades for the Geodetic Computers and Research Branch of the Survey of India and these posts are, therefore borne on "unfixed" establishment, as compared to the other feeder cadres. Apart from the fact that there has been no change in the criterion laid down for the determination of seniority of the personnel in these feeder cadres, for the purpose of promotion to the higher posts, regardless of supersession of the 1962 Rules, no alternative other than drawing up a CSD above, seems rational and feasible, for the purpose of determination of seniority of the personnel inter se, with the <sup>t</sup> respect <sub>A</sub> of feeder cadres carrying identical scales of pay. The contention of the applicant that his seniority for the purpose of promotion to the post of Officer Surveyor should be considered on the basis of his date of appointment to the Selection Grade in the feeder cadre of Survey Assistants is not supported by any rule or authority. As stated above, Selection Grade posts are "non-functional" in nature and appointments therein are not considered for the purpose of seniority, for promotion to higher posts for the reasons already stated. The number of Selection Grade posts in each feeder cadre is restricted to 15% of the posts

sanctioned in each feeder cadre as aforementioned. It is, therefore, not unlikely that in some of the feeder cadres where the number of sanctioned posts is comparatively much larger, a good number of incumbents may not get into the Selection Grade posts, at a certain point of time, even though their date of substantive appointment in the Ordinary Grade in their feeder cadre, is much earlier than in the case of the incumbents in other feeder cadres who were fortunate enough to get into the Selection Grade posts earlier, by virtue of smaller strength of their feeder cadre. The criterion for determination of seniority stipulated in Rule 7, does not seem to have undergone any change, despite supersession of the 1962 Rules by those brought into effect in 1983 and the same seems to us to be just and equitable for the reasons aforementioned, in order to obviate the anomaly arising out of promotions based merely on the date of appointment in the Selection Grade in the respective feeder cadres.

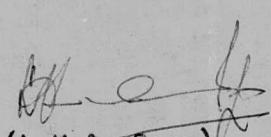
15. The counsel for the applicant invites our attention to the decision of the SUPREME COURT IN NARENDER CHADHA AND OTHERS V. UNION OF INDIA (AIR 1986 S.C. 638) to substantiate the claim of regularisation of the applicant in the post of Officer Surveyor, on the premise, that he held this post for quite long, even though on ad hoc basis. The ratio of this decision is reproduced below:

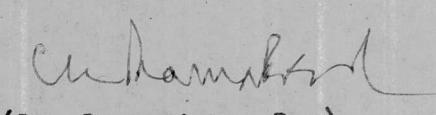
"It cannot be said that whenever a person is appointed in a post without following the Rules prescribed for appointment to that post, he should be treated as a person regularly appointed to that post. Such a person may be reverted from that post. But in a case, where persons have been allowed to function in higher posts for 15 to 20 years, with due deliberation, it would be certainly unjust to hold, that they have no sort of claim to such posts and could be reverted unceremoniously or treated as persons not belonging to the Service at all, particularly where the Government is endowed with the power to relax the Rules to avoid unjust results."

16. In our view, the above decision has little relevance to the case of the applicant, as he had barely worked for a period of three years from 1982 to 1985 as Officer Surveyor, in Group B on ad hoc basis and that too, on a clear written understanding that he would have to make place for the regular candidates in course of time. The counsel for the respondents brings to our notice, that owing to pendency of a Court case in respect of Group A Officers in the Survey of India, in the matter of promotions, no promotions were ordered from 1975. However, for the reasons stated in para 3 supra, the respondents made ad hoc appointments to the posts of Officer Surveyors in 1979 among which, the applicant was one. Besides, Recruitment Rules to the post of Officer Surveyors in Group B, were in the process of being framed and the same were officially notified by the Government of India, in April, 1983, according to which, regular promotions to these posts were ordered in 1985.

17. The contention of the applicant that Shri T.T. George who was junior to him has been regularised in the post of Office Surveyor while he has been reverted, is without basis, as Shri George was substantively appointed to the Ordinary Grade in the feeder cadre of Surveyors on 1.9.1977, <sup>1971</sup> ~~xxxxxx~~ while the applicant was so appointed on 1.8.1975, in a different feeder cadre, namely, that of Survey Assistant, and the date of substantive appointment in the Ordinary Grade is the criterion for determination of seniority according to Rule 7 as aforementioned.

18. In view of the above facts and circumstances, we find no merit in the application and therefore, dismiss the same. No order as to costs.

  
(L.H.A. Rego)  
Member (AM)  
24x9x1986  
30-9-1986

  
(Ch. Ramakrishna Rao)  
Member (JM)

30-9-1986