

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH BANGALORE

DATED THIS THE 25TH DAY OF MAY 1987

Present: Hon'ble Shri Justice K.S. Puttaswamy .. Vice Chairman
Hon'ble Shri P. Srinivasan .. Member (A)

APPLICATION NO. 1371/86(T)

Shri H.M. Nagabhushana,
Senior Scientific Officer, Gr.II,
A.L.I.S.D.A.,
D.T.D. & P(AIR)
Yeshwantpur, BANGALORE-560022.

.. Applicant

(Shri M. Narayanaswamy, Advocate)

vs

1. Union of India represented
by its Secretary,
Ministry of Defence,
New Delhi-11
2. The Director,
Technical Development & Production
(AU)P, Ministry of Defence,
H Block, New Delhi-11.
3. The Scientific Adviser,
R & D Organisation,
Ministry of Defence,
South Block, New Delhi-11.
4. Sri T. Sree Ranga,
Senior Scientific Officer, Gr.II,
A.A.I.W., D.D.D. & P(AIR)
Ordnance Factory,
Khamaria, Jabalpur-482005.
5. Sri V.V. Rao,
Senior Scientific Officer, Gr.II,
O.C.R.I., D.T.D. & P(AIR),
C/O H.A.L. Hyderabad.
6. Sri E.A. Khaliq,
Senior Scientific Officer, Gr.II,
O.C.R.I. D.T.D. & P(AIR),
C/O H.A.L. Bangalore-17.
7. Sri S.S. Bedi,
Senior Scientific Officer, Gr.II,
O.C.R.I., D.T.D. & P(AIR),
C/O H.A.L. Bangalore-17.
8. Sri R.P. Agarwal,
Senior Scientific Officer, Gr.II,
H.O. D.T.D. & P(AIR), H. Block,
New Delhi-11.
9. Shri V.K. Sharma,
Senior Scientific Officer, Gr.II,
Headquarters, D.T.D. & P.(AIR),
H. Block, New Delhi-11.

P. Srinivasan

SSO-II brought out on 19-7-1983 (Annexure G to the application) ^{by to} be quashed; with a further direction to respondent-2 to place the applicant above respondents 4-16 in the said seniority list.

2. Shri M. Narayanaswamy, learned counsel, appeared for the applicant and Shri M.S. Padmarajaiah, Central Government Standing Counsel appeared for respondents 1-3. Respondents 7 to 15 have been duly served and notified of the hearing today, but they have chosen to remain absent. Notices issued to respondents 4, 5 and 16 have not come back unserved nor has any acknowledgement of ~~the~~ ^{the} service been received from them. We are satisfied, in the circumstances, that it is not reasonably practicable to serve notices of this application on respondents 4, 5 and 16. Notices have been served on the Union of India as well as on the authority which passed the order against which this application has been filed. We are, therefore, satisfied that the interests of respondents 4, 5 and 16 on whom notices have not been served are adequately and sufficiently represented by the Union of India and its officials and other respondents on whom notices have been served. We therefore dispense with the service of notices ^{on them} in terms of rule 11(8) of the Central Administrative Tribunal (Procedure) Rules, 1987, and having done so, we have proceeded to hear counsel present.

3. At the outset, Shri Padmarajaiah raised a preliminary objection that this application having been filed originally as a writ petition in 1984, was badly delayed and suffered from laches and should, therefore, be rejected on this ground. The applicant was directly recruited as SSO-II in 1975 and the respondents against

P. S. Padmarajaiah

when the applicant claims seniority were promoted to that post in 1976. The writ petition was filed in 1984 i.e. 8 years after the appointment of the respondents. The applicant had, therefore, not been diligent in pursuing his legal rights such as they were and so the application deserved to be rejected on the ground of laches.

4. Opposing the preliminary objection, Shri Narayana-swamy pointed out that though the applicant and the respondents were appointed in 1975 and 1976 respectively, no seniority list of SSO-II was brought out till January 1980. The applicant submitted a representation against the seniority list of SSO-II brought out for the first time in January 1980. This representation was made on 27-2-1980 to which he received reply on 20-5-1980 stating that his seniority was based on the combined seniority list of SSO-II in the ^{erstwhile} Defence Science Service (DSS) which the applicant had joined in 1971 and which had since been split into three separate services, one of them being DTD&P(Air). Another seniority list was brought out on the same lines on 10-8-1981 and the applicant made a representation against the same in December 1981, only to be told in April 1982 that he should address a self-contained representation to the R & D Organisation. He, then, submitted a representation to the R & D Organisation in June 1982 to which he received a reply from the DTD&P(Air) dated 27-7-1982 conveying the rejection of his representation by the R & D Organisation. On 19-7-1983, the DTD&P(Air) brought out a seniority list of SSO-II for the purpose of promotion to Grade I. This seniority list was on the same lines as the earlier ones and had adversely affected the applicant's prospects of promotion. Therefore, he came to court on 1-3-1984 and this cannot be treated as having been badly delayed.

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5. Having considered the contentions urged on both sides, we do not agree with Shri Padmarajaiah that this application should be dismissed for laches. We, therefore, proceed to deal with the matter on merits.

6. According to the Defence Science Services (DSS) Rules, 1967, recruitments to the posts of SSO-II were to be made in the ratio of 1:1 from two sources namely (1) by direct recruitment and (2) by promotion from among Junior Scientific Officers. Inter se seniority of appointees from the two sources were to be regulated by rotation of vacancies in the same ratio i.e. one direct recruit followed by one promotee followed by one direct recruit and so on. The applicant was appointed in 1975 as SSO-II against a direct recruitment vacancy while respondents 4-16 were taken to the same post in 1976 against vacancies available for promotees. The adoption of ^{the} rotational principle of seniority resulted in direct recruits of 1975 like the applicant being intermingled with promotees of 1976 and in the process, respondents 4-16 were placed senior to the applicant and that is what the applicant objects to in this application.

7. Shri Narayanaswamy representing the applicant clarified that he had no quarrel with the quota rule of recruitment or the rota rule of seniority as such. His contention, however, was that the rota rule of seniority should not have been applied to the applicant vis-a-vis the respondents 6-14 on the peculiar facts ^{which} obtained here. He drew our attention to rule 9 of the DSS Rules, 1967, in which, after setting out the quotas of recruitment from the two sources, sub-rule (2) of clause (ii) sets out the eligibility for promotion in the following words:

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"No officer, who has not completed in a Grade 3 years of regular service, including probation, and completed his probation satisfactorily, shall be considered for promotion to the next higher grade."

When the applicant was directly recruited as SSO-II and joined the post on 20-8-1975 as a result of such recruitment, he was admittedly taken against a vacancy which arose in 1975 or earlier. In 1975 respondents 4-16 had not put in the requisite three years of service in the next lower grade and were, therefore, not eligible for consideration for promotion to that post. They became eligible for such consideration only in 1976 when the DPC met and recommended them for promotion. By according them seniority over the applicant, respondents 1-3 had treated them as having been promoted against vacancies which arose in 1975 or earlier to which they were clearly ineligible. Rotation of vacancies as and when they arise between the different sources of recruitment and the fixation of relative seniority of persons so recruited on the basis of such rotation implied that the persons recruited against such vacancies, either by direct recruitment or by promotion, were eligible to be appointed to that post at the time the vacancy arose. If a vacancy relatable to a particular source of recruitment, like promotion in this case, could not be filled up in the year of its occurrence, not because of administrative delays in processing the appointments or for some other reasons, but because of non-availability of persons eligible for appointment from that source, persons taken subsequently from that source, when they became eligible, should not be given seniority on the basis of ^M such rotation of vacancies. In other words, when respondents 4-16 were not eligible at all

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for consideration, for the purpose of promotion in 1975, the rule of eligibility being mandatory in this regard, they should not have been allowed positions of seniority over the applicant who was properly recruited in 1975. Therefore, Shri Narayanaswamy contended, respondents 1-3 were in error in according seniority to respondents 4-16 over the applicant.

8. Shri Padmarajaiah sought to refute the contentions of Shri Narayanaswamy. It is well settled that where a quota rule of recruitment was being worked, there was no illegality or unconstitutionality in regulating seniority of recruits from the different sources by the principle of rotation of vacancies between those sources. The ratio of recruitment by direct recruitment and promotion was 1:1 in this case and so alternate positions of seniority were rightly given to direct recruits and promotees irrespective of the year in which they were actually appointed. Slight delays in appointments from a particular source will not affect rotation of vacancies for the purpose of seniority and the delay in this case in filling vacancies by promotion vis-a-vis direct recruitment was only one year and it was not so long or so unconscionable as to displace the rota rule of seniority by some other rule. A quota vacancy could be carried forward upto three years as held by the Supreme Court in COL A.S. IYER VS BALASUBRAMANIAN IN 1980 SCC (L&S) 145. Therefore, according to Shri Padmarajaiah, this application deserves to be dismissed on merits.

9. We have considered the rival contentions carefully. It is not in dispute that where a quota rule of recruitment is in operation, seniority can be validly regulated by rotation of vacancies between the different sources in the ratio of their quotas. It is also well-settled that

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slight delays in filling up vacancies relatable to a particular source cannot lead to a denial to the recruits from that source ^{of} all the benefits of the rota rule of seniority. The Supreme Court in several cases has recognised that it is not always possible for recruits from different sources to be made in the same year in which vacancies arise. Administrative delays inevitably happen in filling up vacancies relatable to a particular source, but as long as these delays are within reasonable limits, the rota rule of seniority can be validly applied for determining inter se seniority as between recruits from different sources. Shri Narayanaswamy does not seriously dispute this proposition. But his point is that if a person is to be allotted a vacancy relatable to the source of recruitment to which he belongs by applying the rota rule for the purpose of seniority, the essential condition is that he should have been eligible for appointment to the post concerned when the vacancy arose. If he were not eligible and he could not be appointed to that post, when the vacancy arose, he cannot be given a position of seniority as if he was so eligible. An extreme case of this kind was noticed by the Supreme Court in A.JANADHAN VS UNION OF INDIA 1983 SCC (L&S) 467 wherein direct recruits were sought to be given seniority above persons promoted many years earlier. Their Lordships observed as follows:

"When the promotee was promoted and was rendering service, the direct recruit may be a school-leaver or college-going boy. He emerges from the educational institution, appears at a competitive examination and starts challenging everything that had happened during the period when he has had nothing to do with the service."

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dated 19-7-1983 (Annexure G).

10. We, therefore, direct respondents 1-3 to revise the seniority list of SSO-II dated 19-7-1983 (Annexure G) by placing the applicant above respondents 6-16.

11. In the result, the application is allowed to the extent indicated above. Parties to bear their own costs.

K. S. Puttaswamy
(K.S. PUTTASWAMY) 25/5/87
VICE CHAIRMAN

P. Srinivasan
(P. SRINIVASAN)
MEMBER(A) 25/5/87

10. Sri S.Chandrashekar, Senior Scientific Officer, Gr.II, A.L.I.S.D.A., D.T.D.& P(AIR), Ministry of Defence, Yeshwantpur, Bangalore-22
11. Sri T.S. Kani, Senior Scientific Officer, Gr.II, O.C.R.I., D.T.D.& P(AIR), C/O H.A.L. Bangalore-17.
12. Sri H.V.Rao, Senior Scientific Officer, Gr.II, O.C.R.I., D.T.D.& P(Air), C/O H.A.L. Bangalore-17.
13. Sri R.C.Sharma, Senior Scientific Officer, Gr.II, Headquarters, D.T.D.& P.(Air), H. Block, New Delhi-11.
14. Sri Kewal Krishna, Senior Scientific Officer, Gr.II, O.C.R.I. D.T.D.& P.(Air), C/O H.A.L. Bangalore-17.
15. Sri S.G.Karimandan, Senior Scientific Officer, Gr.II, Headquarters, D.T.D.& P(Air), H Block, New Delhi-11.
16. Sri V.J.R.Murthy, Senior Scientific Officer, Gr.II, O.C.R.I. D.T.D.& P(Air), C/O H.A.L. Kanpur.

... Respondents

(Shri M.S.Padmarajaiah, Advocate
for Respondents 1 to 3)

This application having come up for hearing today, Hon'ble Shri P.Srinivasan, Member (A) made the following:

ORDER

In this application, filed originally as writ petition No. 5517 of 1984 before the High Court of Karnataka, the applicant, who was at the time working as Senior Scientific Officer, Grade II (SSO-II) in the Directorate of Technical Development and Production (Air) (DTDP-Air for short) at Bangalore wants the rankings assigned to respondents 4-16 in the seniority list of



CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex(BDA)
Indirenagar
Bangalore - 560 038

Dated : 18-6-87

Application No. 1371/86(T)

W.P. No. 5517/84

Applicant

Shri H.M. Nagabhushana

Respondents

V/s The Secy, M/o Defence and 15 Ors

To

1. Shri H.M. Nagabhushana
Senior Scientific Officer Gr II
A.L.I.S.D.A.
D.T.D & P(Air)
Yeshwantpur
Bangalore - 560 022

2. Shri M. Narayanaswamy
Advocate
No. 844 (Upstairs)
V Block
Rajaji Nagar
Bangalore - 560 010

3. The Secretary
Ministry of Defence
South Block
New Delhi - 110 011

4. The Director
Technical Development & Production(Air)
Ministry of Defence
'H' Block
New Delhi - 110 011

5. The Scientific Adviser
R & D Organisation
Ministry of Defence
South Block
New Delhi - 110 011

6. Shri T. Sree Ranga
Senior Scientific Officer Gr II
A.A.I.W., D.T.D & P(Air)
Ordnance Factory
Khamaria
Jabalpur - 482005

7. Shri V.V. Rao
Senior Scientific Officer Gr II
O.C.R.I. D.T.D. & P(Air)
C/o HAL, Hyderabad

8. Shri G.A. Khaliq
Senior Scientific Officer Gr II
O.C.R.I. D.T.D. & P(Air)
C/o HAL, Bangalore - 560 017

9. Shri S.S. Bedi
Senior Scientific Officer Gr II
O.C.R.I. D.T.D.&P(Air)
C/o HAL, Bangalore - 560 017

10. Shri R.P. Agarwal
Senior Scientific Officer Gr II
H.Q. D.T.D. & P(Air)
'H' Block
New Delhi - 110 011

11. Shri V.K. Sharma
Senior Scientific Officer Gr II
H.Q. D.T.D.&P(Air)
'H' Block
New Delhi - 110 011

12. Shri S. Chandrashekaran
Senior Scientific Officer Gr II
A.L.I.S.D.A. D.T.D.& P(Air)
Ministry of Defence
Yeshwantpur
Bangalore - 560 022

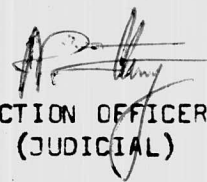
13. Shri T.S. Kani
Senior Scientific Officer Gr II
O.C.R.I. D.T.D. &P(Air)
C/o HAL, Bangalore 560 017
14. Shri H.V. Rao
Senior Scientific Officer Gr II
O.C.R.I. D.T.D. &P(Air)
C/o HAL, Bangalore - 560 017
15. Shri R.C. Sharma
Senior Scientific Officer Gr II
H.Q. D.T.D. &P(Air)
'H' Block
New Delhi - 110 011
16. Shri Kewal Krishna
Senior Scientific Officer Gr II
O.C.R.I. D.T.D. &P(Air)
C/o HAL, Bangalore - 560 017
17. Shri S.G. Karimandan
Senior Scientific Officer Gr I
H.Q. D.T.D. &P(Air)
'H' Block
New Delhi-110 011
18. Shri V.J.R. Murthy
Senior Scientific Officer Gr II
O.C.R.I. D.T.D.&P(Air)
C/o HAL, Kanpur
19. Shri M.S. Padmarajaiah
Senior Central Govt. Stng Counsel
High Court Buildings
Bangalore - 560 001

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Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH
IN APPLICATION NO. 1371/86(T)

Please find enclosed herewith the copy of the Order passed by this Tribunal
in the above said Application on 25-5-87

Encl : As above


SECTION OFFICER
(JUDICIAL)

Amul
20/6/87

Sh
Plan
19/6/87

O/C

Received copy for
Sh. no. 2
19/6/87
per Bangalore