

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE

DATED THIS THE TENTH DAY OF SEPTEMBER 1986

Present : Hon'ble Justice K.S. Puttaswamy,

Vice-Chairman

Hon'ble Shri P.Srinivasan

Member

Application No. 158/86(T)

Shri C.V. Gopinath,
S/o S. Venkatakrishnaiah,
156/B, 11th Main,
Saraswathipuram,
Mysore - 9

.. Applicant

(Shri Vasanth Kumar .. Advocate)

Vs.

1. Union of India by its Secretary,
Ministry of Communications,
P&T Board, New Delhi.
2. Secretary to Govt. of India,
Ministry of Home Affairs,
Department of Personnel and
Administrative Reforms,
New Delhi.
3. Union Public Service Commission,
by its Secretary,
New Delhi-1.
4. Shri M.L. Bajpai, Director
(Telegraph Traffic) P&T Dte.,
New Delhi.
5. Shri J.C. Gupta,
Asst. Director General (Telegraph Traffic),
P&T Dte., New Delhi.
6. Shri M.W.J. Fernandez,
Chief Superintendent,
Central Telegraph Office, Bombay.
7. Shri P. Govinda Menon,
Senior Superintendent,
Telegraph Traffic, Coimbatore (Tamil Nadu).
8. Shri V.B. Konkar,
Chief Superintendent,
Central Telegraph Office, Calcutta.
9. Shri N.V. Katdare,
Regional Controller of Telegraph Traffic
Central Telegraph Office,
Calcutta-1.
10. Shri P.F. Nagarwala,
Regional Controller of Telegraph,
Traffic, Central Telegraph Office, Bombay.
11. Shri G.D. Nitsure,
Senior Supdt. Telegraph Traffic, Bombay.

.. Respondents

12. Shri M.G. Chadha, Sr. Suptd.
Telegraph Traffic, New Delhi.
13. Shri Amardeo Singh,
Chief Superintendent,
Central Telegraph Office,
Patna-1 (Bihar).
14. Shri S.S. Giani,
Senior Superintendent,
Telegraph Traffic,
Ambala (Punjab).
15. Shri Manohar Sharma,
Senior Superintendent,
Telegraph Traffic,
Central Telegraph Office,
Lucknow (U.P.)
16. Shri R.L. Singla,
Senior Superintendent,
Telegraph Traffic,
Central Telegraph Office,
New Delhi.
17. Shri B.A. Subramanian,
Regional Controller,
Telegraph Traffic, Madras.
18. Shri C. D'souza,
Asst. Director, Telegraph Traffic,
Office of General Manager,
Tele Communications, Bombay.
19. Shri T.S. Menon,
Senior Superintendent,
Telegraph Traffic, Calicut (Kerala).
20. Shri M.P. Sinha, Senior Superintendent,
Telegraph Traffic, Muzaffarpur (Bihar).
21. Shri R.R. Sahib Singh,
Senior Superintendent, Telegraph Traffic,
Jaipur (Rajasthan).
22. Shri G.G. Ginde,
Asst. Director, Telegraph Traffic,
Office of General Manager,
Telecommunications, Bombay.
23. Shri G.V. Krishnarajan,
Chief Superintendent,
Central Telegraph Office, Bangalore-1.
24. Shri N.D. Puri, Asst. Chief
Superintendent, Central Telegraph Office,
New Delhi-1.
25. Shri P.K. Ranadive,
Superintendent in Charge,
Central Telegraph Office, Poona.
26. Shri S.P. Gohil,
Superintendent in Charge,
Kashmirgate Deptal. Telegraph Office Old Delhi.

27. Shri M.L.Francis
Senior Superintendent,
Telegraph Traffic,
Ernakulam (Kerala).
28. Shri K.P.D. Nair,
Senior Superintendent,
Central Telegraph Office,
Trivandrum (Kerala).
29. Shri P.N. Tripathi,
Senior Superintendent,
Telegraph Traffic,
Allahabad (UP).
30. Shri S.G. Dikshit,
Senior Superintendent,
Telegraph Traffic,
Sholapur (Maharashtra).
31. Shri K.M. Kulkarni,
Asst. Chief Superintendent,
Central Telegraph Office, Bombay-1.
32. Shri Goliwadekar J.V.,
Senior Superintendent,
Telegraph Traffic,
Belgaum (Karnataka).
33. Shri S.Banerji,
Senior Superintendent,
Telegraph Traffic,
Central Telegraph Office, Calcutta-1.
34. Shri A.B. Shrivastava,
Asst. Director, Telegraph Traffic,
C/o General Manager, Telecom, Lucknow (UP).
35. Shri A.N. Sharma,
Senior Superintendent,
Telegraph Traffic,
Ajmer (Rajasthan).
36. Shri C.P.K. Nair,
Superintendent in Charge,
Central Telegraph Office,
Ernakulam (Kerala).
37. Shri Shivaraman, T.A.
Asst. Director, Telegraph Traffic,
Office of General Manager,
Telecommunications, Madras-2.
38. Shri K. Swaminathan,
Senior Superintendent,
Telegraph Traffic, Madras.
39. Shri B.P. Biswas,
Chief Superintendent,
Central Telegraph Office, Gauhati (Assam).
40. Shri N.D. Puri,
Asstt. Chief Superintendent,
Central Telegraph Office, New Delhi-1.

41. Shri S.C.Uggata,
Asst. Director (Telegraph Traffic),
Office of General Manager,
Telecommunications,
Bhubhaneswar (Orissa).
42. Shri Ramaswaroop Lal,
Superintendent in Charge,
Cuttack (Orissa).
43. Shri B.V. Dargani,
Senior superintendent,
Telegraph Traffic,
Jodhpur (Rajasthan).
44. Shri Om Prakash Sud,
Superintendent,
Telegraph Traffic (Jammu (J&K)).
45. Shri Neelamagam,
Chief Superintendent,
Central Telegraph Office, Madras-7.
46. Shri M. Mohahmed Ghouse,
Senior Superintendent, Telegraph
Traffic, Tiruchirapalli (Tamil Nadu).
47. Shri Jagadish Lal,
Superintendent in Charge,
Central Telegraph Office, Kanpur(UP).
48. Shri H.P. Sinha, Asst. Director,
Telegraph Traffic,
Office of General Manager, Telecom.,
Patna (Bihar.)
49. Shri R.K.Saxena,
Asst. Director, Telegraph Traffic,
Office of General Manager,
Telecommunications, Patna (Bihar).
50. Shri A. Sanyal,
Chief Superintendent,
Central Telegraph Office (Agra (UP)).
51. Shri P.L. Mani,
Asst. Director (Telegraph Traffic),
P&T Dte., New Delhi-1.
52. Shri L.A. Faife,
Asst. Director (Telegraph Traffic),
Office of General Manager,
Telecommunications, Bangalore-9.
53. Shri B.K.Yadwadker,
Senior Superintendent,
Telegraph Traffic, Rajkot (Gujarat).
54. Shri L.G. Patel,
Asst.Chief Superintendent (Spl),
Central Telegraph Office, Bombay-1.

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55. Shri M.P. Thiruvadi,
Superintendent in Charge,
Central Telegraph Office,
Madurai (Tamil Nadu).
56. Shri M.D. Deshpande,
Superintendent in Charge,
Central Telegraph Office,
~~xxx~~ Nagpur (Maharashtra).
57. Shri Almeida, E.,
Asst. Chief Superintendent,
Central Telegraph Office,
Madras.
58. Shri E. Diraviyam,
Asst. Chief Superintendent,
Central Telegraph Office,
Madras.
59. Shri K. Krishnaswamy,
Superintendent in Charge,
Central Telegraph Office,
Salem (Tamil Nadu).
60. Shri P. Pani,
Superintendent in Charge,
Central Telegraph Office,
Bhubhaneswar (Orissa).
- 61.. Shri M.R. Vijn,
Asst. Chief Superintendent (G.II)
Central Telegraph Office,
New Delhi.
62. Shri Vasudevaiah,
Asst. Director, Telegraph Traffic,
Office of General Manager,
Communications, Hyderabad.
63. Shri B. Agarwal,
Superintendent in Charge,
Central Telegraph Office,
Amritsar (Punjab).
64. Shri K.P.K. Nair,
Superintendent,
Telegraph Traffic, Mangalore.
65. Shri N. Gandhi, Superintendent,
Telegraph Traffic,
Tirunelveli (Tamil Nadu).
66. Shri N. Parthasarathy,
Asst. Traffic Superintendent,
Office of Regional Controller,
Telegraph Traffic, Madras.
67. Shri R.G. Wills,
Asst. Chief Superintendent,
Central Telegraph Office,
Madras.

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Respondents

68. Shri M.C. Jain,
Asst. Traffic Superintendent,
Office of Regional Controller
of Telegraph Traffic,
Kidwai Bhavan, New Delhi.
69. Shri P.H. Vaishnav,
Chief Superintendent,
Central Telegraph Office,
Ahmedabad-1 (Gujarat).
70. Shri A. Krishnan,
Superintendent in Charge,
Central Telegraph Office,
Coimbatore (Tamil Nadu).
71. Shri B.V. Vaidya,
Additional Superintendent,
Central Telegraph Office, Poona.
72. Shri P.C.K. Kutty,
Superintendent in Charge,
Departmental Telegraph Office,
Mount Road, Madras.
73. Shri P.N. Shrivastava,
Superintendent in Charge,
Allahabad (UP).
74. Shri R.S.K. Bairagi,
Superintendent, Telegraph Traffic,
Ranchi.
75. Shri Ramabhadran,
Senior Superintendent,
Telegraph Traffic,
Hyderabad (AP).
76. Shri R.S. Vaish,
Superintendent in Charge,
Central Telegraph Office,
Varanasi (U.P.).
77. Shri Devidas K. Sonwani, Asst. Chief,
Superintendent,
Central Telegraph Office, New Delhi-1.

.. Respondents

(Shri M.S. Padmarajaiah .. Advocate)

The application came up for hearing before Court today. Member (A) made the following:

ORDER

Writ Petition No. 13856 of 1978 received on transfer has been taken on file as application No. 158 of 1986 before this Tribunal.

2. A question was raised initially as to whether the writ petition had already been disposed of by the High Court before its transfer to this Tribunal. We have perused the records and we find that the writ petition

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had not been disposed of by the High court before its transfer. The matter was, therefore, fixed for hearing and learned counsel for the applicant Shri S. Vasanth Kumar and learned counsel for respondents 1 to 3 Shri M.S. Padmarajaiah have been heard.

3. In this case we are faced with the eternal problem of inter-se seniority between direct recruits and promotees to Government service. Even though the principles governing such inter-se seniority have been laid down and repeatedly clarified by the Supreme Court in several decisions rendered over the years, litigation on the subject has continued unabated before the Courts and now before this Tribunal. Considerable ingenuity and effort is spent by litigants as well as their counsel to show that either these principles have not been properly applied or the facts of their cases are distinguishable from those decided by the Supreme Court. We now proceed to deal with the facts of this case.

4. The applicant entered the Telegraph Traffic Service (TTS) of the Govt. of India in Class III (now Group C) cadre on 17.4.1965. He earned a promotion in the cadre on 16.6.1966. Thereafter, he sat for a competitive examination held by the Union Public Service Commission (UPSC) in 1971 for direct recruitment to Class II (now designated as Group B) of that service and was appointed to that cadre on 8.1.1973, as a direct recruit on the results of that examination. We are not really concerned in this case with the subsequent developments in the applicant's career, but just to complete the narration of facts as set out by learned counsel for the applicant, the applicant was promoted to Class I (Group A) cadre of the service on 8.1.1980 and is presently working as Director, Telegraph Traffic at Delhi in the Junior Administrative Grade of Group A of the service. In a letter dated 9.11.1978 addressed to all General Managers, Telecom, in the country (Exhibit A), the Ministry of Communications "finalised" the seniority of directly recruited officers vis-a-vis promotee officers in the Group B cadre of TTS. "The first direct recruit of the cadre", the letter said, "will rank junior to the first promotee of the

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year 1974 and thereafter the ratio of 1:1 will be maintained as per the provision contained in the recruitment rules". The applicant belonged to the first batch of direct recruits to Group B who were in service at the time and being the first in that batch, he was placed at No.2 immediately below the first promotee of 1974 (respondent 77) in this application. In the process, the applicant also became junior to 73 more persons promoted to Group B prior to 1974 (respondents 4 to 76) and this position is reflected in the list of officers annexed as Exhibit B to the application where the applicant appears at No.75. The applicant is aggrieved with the decision conveyed in the aforesaid letter dated 9.11.1978 (Exhibit A) which has produced this result.

5. It will be useful at this stage to notice the rules of recruitment to Class II (Group B) cadre of TTS and the manner of their implementation in the applicant's case in order to understand the detailed submissions made by the learned counsel for the applicant before us. The TTS Class II (Group B) Recruitment Rules, 1954, made in pursuance of the proviso to Article 309 of the Constitution were notified on 25.5.1954, and came into force from that date. Under these rules, recruitment to Class II (Group B) cadre was to be made by direct recruitment and promotion in equal proportions and the inter-se seniority of officers appointed from the two sources was to be regulated by rotation starting with a promotee followed by a direct recruit followed by a promotee and so on. However, a right was reserved to the Government "to fix seniority at their discretion in individual cases" (Appendix V to the Rules). By an amendment duly notified on 30.1.1970, power was vested in Government to "relax any of the provisions to these rules with respect to any class or category of persons or posts" in consultation with the UPSC for reasons to be recorded in writing. We are not concerned with other amendments to the rules made from time to time till 1972. Though the recruitment rules were notified in 1954, the first competitive examination for direct recruitment to Class II (Group B) of the service was held only in 1956 as a result of which three persons were appointed, but all the three left service by 1970.

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The next competitive examination was held only 15 years later in 1971 as a result of which applicant and two others were appointed to Class II (Group B) the applicant having joined, as stated earlier, on 8.1.1973. However, it appears that promotions to class II (Group B) cadre were being made regularly during all these years from 1954 onwards; according to the applicant, "between 1957 and 1971 about 280 departmental officials were illegally and irregularly promoted without corresponding recruitment of direct recruits". Assuming this to be correct and also that at least four persons had been promoted to Class II (Group B) between 1954 and 1956, if the rotational principle of seniority were to be strictly applied, the first three officers among those promoted to Class II (Group B) in 1956 and earlier would have taken alternate positions with the three direct recruits of the 1956 examination, the 4th promotee would have taken position No.7 and the applicant as the next available direct recruit would have been at No.8, above all the 280 persons promoted between 1957 and 1971. It is stated that most of these 280 persons had retired or left service before 1978 and only 74 of those persons remained in service and it is they who have been impleaded as respondents 4 to 77. The applicant would in this manner have become senior to persons who entered Class II (Group B) service 16 years before him. But, as it happened, he was placed at a much lower position, ie., below the first promotee of 1974 by the impugned letter dated 9.11.1978 of the Ministry (Exhibit A) to which we have made reference in the earlier paragraph. "The question of fixing seniority of directly recruited officers vis-a-vis promotee officers in TTS Group B," the letter explains, "has been under consideration for some time now. The issue has now been finalised in consultation with the Department of Personnel and Administrative Reforms and the seniority of the said officers will be indicated as below".

6. In the writ petition as originally filed before the High Court, the applicant wanted his seniority fixed strictly in accordance with the principle of rotation of vacancies between the two sources of recruitment

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from 1954 when the recruitment rules were first promulgated. We have indicated above the result that would ensue if this prayer were to be accepted viz., that the applicant would be placed above respondents 4 to 77 in the seniority list appearing at Exhibit B. In an alternative prayer dated 25.6.1984 placed before the High Court in I.A. No.II, the applicant wanted his seniority to be fixed above respondent No.27 and all consequential benefits given to him as a result thereof. Shri Vasanth Kumar learned counsel for the applicant, pressed before us only this alternative prayer. Respondent No.27 is one Shri M.L. Francis who figures at Sl. No.24 of the seniority list (Exhibit B) in which the applicant is at S. No.75. Shri Vasanth Kumar contended that though Shri Francis had been promoted to Class II (Group B) on 10.7.1968, his appointment was only in an officiating capacity and he was confirmed in Class II (Group B) only on 30.4.1973, after the applicant had joined in Class II (Group B) on 8.1.1973. Since the applicant's appointment was a regular appointment on 8.1.1973, Shri Francis who was "regularly" promoted to that cadre only on 30.4.1973, the applicant should have been showed above Shri Francis. Shri Vasanth Kumar fairly drew our attention to the decisions of the Supreme Court in Lamba's case (1985 SCC(L&S). 491) and Narendra Chadha's case [AIR 1986 SC 638] in both of which it was found that direct recruits who came into service long after departmental promotees were sought to be assigned seniority over the latter; the Supreme Court considered this unconscionable and directed in both the cases that the inter-se seniority of direct recruits and promotees should be refixed on the basis of continuous officiation in the cadre and not on the basis of rotation of vacancies. As he was claiming for the applicant a seniority higher than what he would have been entitled to, if the principle of continuous officiation was applied, Shri Vasanth Kumar drew a distinction between the facts of the present case and those of the two cases decided by the Supreme Court. In both the cases before the Supreme Court the promotees over whom the later direct recruits were sought to be placed in the seniority list

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were all in service when the Supreme Court delivered judgment and some of them would have to be reverted if the direct recruits were placed above them. In this case all the respondents over whom the applicant claims seniority had retired or left service even by June 1983 and so no adverse consequences would be visited upon them if the applicant is given seniority over respondent 27. For the same reason, refixing the seniority of the applicant above respondent 27 will not really have the effect of unsettling a settled order of things which had continued for several years. Therefore, injustice to a large number of persons by their having to be reverted, which was a factor which influenced the Supreme Court in both Lamba's case and Narender Chadha's case in coming to the only solution that would avoid such injustice viz., determining the seniority of promotees and direct recruits on the principles of continuous officiation in the cadre, did not exist here and so this Tribunal will not be violating the ratio of these Supreme Court decisions by acceding to the applicants prayer to be placed above respondent 27.

7. On the other hand, learned counsel for respondents 1 to 3 Shri M.S. Padmarajaiah saw no distinction between the facts of Lamba's and Narender Chadha's cases on the one hand and of the applicant's case on the other. He also contended that the position should be considered as on the date the writ petition was filed (in 1978) when all the respondents 4 to 77 were still in service and if that was done, the alternative prayer of the applicant would affect many of them adversely, in spite of their having put in much longer service in the cadre than the applicant and that was exactly what the Supreme Court had frowned upon.

8. As we have said at the beginning of this order, the Supreme Court has rendered several judgments on the subject of inter-se seniority between direct recruits and promotees in Government service which we are in the happy position to draw upon for resolving the controversy in this case. We turn to them now. The right of Government to regulate seniority as

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between direct recruits and promotees by rotation of vacancies where recruitment is made from two sources in fixed proportions is by now well established. In the words of the Supreme Court in Lamba's case [1985 SCC (L&S) 491] at page 4506 of the report, "shortly, this is called quota rule of recruitment and rota rule of seniority interlinking them". In A.K. Subram V. Union of India 1975 SCC(L&S) 36, it was observed that "the existence of quota and rotational rule by itself will not violate Articles 14 and 16 of the Constitution." Similar observations are to be found in later judgments of the Court including those in Lamba's case and Chadha's case. However, where the quota rule of recruitment is consistently violated and the said rule collapses under the weight of such violation, the rotational rule of seniority will also have to go with it. It was so held by a Constitution Bench of the Supreme Court in B.S. Gupta's case 1973 SCC (L&S) 1 and reiterated in P.S. Mahal's case 1985 SCC (L&S) 61 in the following words:-

"The rotational rule of seniority is inextricably linked with the quota rule and if the quota rule is not strictly implemented and there is much deviation from it regularly from year to year, it would be grossly discriminatory and unjust to give effect to the rotational rule of seniority."

In Lamba's case, the Supreme Court found that though recruitment to the Indian Foreign Service, Branch 'B', was to be made from three sources according to fixed quotas prescribed in the Recruitment Rules, actual recruitment was never according to the quota. There was no direct recruitment, which was one of the sources of recruitment, during many years and similarly, recruitments from a second source, namely, through limited competitive examination was also fitful. In short, as noticed by the Court, "indisputably, there was large-scale departure from the quota rule". "Therefore", the court concluded "assuming that quota rule was mandatory in character as pointed out earlier, its departure must permit rejection of rota rule as a valid principle of seniority." Moreover, power was conferred in that case on the controlling authority to relax any of the provisions of the rules of

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recruitment. Having this in mind, the Court observed that "it can be safely stated that the enormous departure from the quota rule year to year permits an inference that the departure was in exercise of the power of relaxing the quota rule conferred on the controlling authority". Once the quota rule of recruitment had thus collapsed, the rota rule of seniority had to go with it leaving no principle of seniority to be complied. In this vacuum, the Court directed that the seniority list be redrawn on the basis of continuous officiation in the cadre after noticing that "in the absence of any other valid principle of seniority, it is well established that the continuous officiation in the cadre, grade or service will provide a valid principle of seniority". The same line of reasoning was followed in 1986 SCC (L&S) 467 (Janardhan's case) and in 1984 SCC (L&S) 657 (Singla's case).

9. In Chadha's case also (AIR 1986 SC) 638), the Court found that actual recruitment never conformed to the quotas prescribed in the relevant rules. No direct recruitment had been made for several years at a stretch, while promotions were being made regularly from year to year contrary to the quota rule. The Court, therefore, observed at page 645 of the report that "we are faced in this case with the problem of resolving conflicts which have arisen on account of a violent departure made by the Government from the Rules of recruitment by allowing those who were appointed contrary to the Rules to hold the posts continuously over a long period of time." Following the ruling in Janardhan's case and in Lamba's case, their Lordships inferred that Government had, by implication relaxed the quota rule in pursuance of its power to do so. Consequently, the "rota" rule of seniority also disappeared and the principle of continuous officiation in the cadre had inevitably to take its place.

10. When we turn to the facts of the present case, we see that though direct recruitment was to be made to 50% of the vacancies arising from time to time, there was no direct recruitment for 13 years at a

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stretch from 1957 to 1970, a situation exactly like those in Lamba's case and Chadha's case. That this was not unintentional is brought out in the impugned letter of the Ministry of Communications dated 9.11.1978 at annexure B in which the seniority of direct recruits was considered and finalised afresh without reference to promotions and direct recruitments made prior to 1974 and reintroducing the principle of rotational seniority from 1974. In effect, therefore, the "rota" rule of seniority remained in suspended animation till 1973. We have already noticed that a power had been reserved to Government to relax any of the provisions of the TTS Class II (Group B) Recruitment Rules. Therefore, even in this respect, the facts of the present case are in pari materia with those of the two cases decided by the Supreme Court. That being so, it would not be permissible to apply the principle of rotation of vacancies for determining the seniority of the applicant vis-a-vis persons promoted to Class II (Group B) from 1957 to 1973. As held by Supreme Court, the resultant vacuum has to be filled up only by the principle of continuous officiation in the cadre. In this view of the matter, even if the learned counsel for the applicant had pressed the main prayer in the application for fixation of seniority strictly in accordance with the principle of rotation right from 1954, it was liable to be rejected. The more restricted claim in the alternative prayer pressed before us by the learned counsel for the applicant, namely, that the applicant be placed above Shri Francis was promoted to Group B in 1968 when neither the quota rule of recruitment nor the rota rule of seniority was in operation. In such a situation, it was observed in P.S. Mahal's case 1985 SCC (E&S) 61 "when there is no specific rule governing the seniority, the normal rule applicable would be to determine the seniority on the basis of length of continuous officiation in the grade ...". We have reproduced earlier observations to the same effect made in Lamba's case. In view of this, we would not be justified in accepting the claim that Shri Francis, who had continually officiated in Group B from 1968 should be brought down below the applicant, who joined that cadre only on 8.1.1973.

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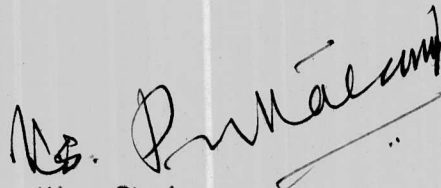
11. For the reasons set out above, both the prayers of the applicant are liable to be rejected in toto. We, on our own, examined the question whether the applicant could be given seniority on the basis of his continuous officiation in Class II (Group B) over certain persons among respondents 4 to 77 who were promoted to that cadre from a date subsequent to the applicant's appointment. We find that even this cannot be done. Respondents 1 to 3 have clarified that the applicant was recruited against a vacancy expected to arise in 1974 and the Government had decided to reintroduce the quota system of recruitment alongwith the rota rule of seniority from 1974 which they had every right to do. This meant that the departure from the quota and rota rules and their implied relaxation by the Government which began in 1957, came to an end in 1974. It has been further explained on behalf of respondents 1 to 3 that even though the applicant joined the Class II (Group B) cadre in January 1973, he was taken at that time only against a training reserve post created exclusively for training purposes and not against a permanent vacancy. He would have joined a working (regular) post in the cadre only in January 1975 after completing two years of probation and training, as provided in the rules of recruitment. It was indeed a concession that he had been given the benefit of seniority against a 1974 vacancy. In view of this explanation, the applicant cannot be given a higher seniority on the basis of continuous officiation either.


12. Before parting with this application, we would like to mention that all the respondents over whom the applicant claims seniority had retired by June 1983 and the applicant was, as on that date, the senior-most officer in Class II (Group B) of the service. His claim, would therefore, appear to be only of academic interest. Learned counsel for the applicant, however, urged that if the applicant were accorded a higher seniority in the list appearing at Exhibit B he would be entitled to retrospective promotions earlier than when he actually got them.

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And his improved seniority would advance his claim for further promotions vis-a-vis persons in other services of the Posts and Telegraphs Department with whom he has to compete for higher posts. It was in deference to his wishes that we have examined the matter on merits in some detail but on doing so we find that the application has to fail.

13. In the result, the application is dismissed. Parties will bear their own costs.


Vice-Chairman


Member

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