

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE

DATED THIS THE 31ST DAY OF DECEMBER 1986.

Present : Hon'ble P.Srinivasan .. Member (A)
Hon'ble Shri Ch Ramakrishna Rao .. Member (J)

Application No803, 1797 to 1800/86(T)

1. V.M.Sasidharan, Major
S/o. Sri T.Chathan,
Chargeman Grade-I,
LRDE, High Grounds,
BANGALORE - 1. Petitioner
A.No.803/86(T)
2. Sri P.K.Balan, Major
S/o. Late Sri P.K.Kittunny,
r/o. C-12, 1st Main Road,
Ganganahally,
BANGALORE - 32. Petitioner
A.No.1797/86(T)
3. Sri V.K.George, Major
S/o. Sri A.E.Verghese,
r/o. No. 5A/3, PAMME Gowda Rd.,
M.R.Palyam,
BANGALORE -6. Petitioner
A.No.1798/86(T)
4. Sri S.D.Gajendra Rao, Major,
S/o. Sri S.N.Dhathathri Rao,
R/o. No.1040, 5th Block,
Rajajinagar,
BANGALORE -10. Petitioner
A.No.1799/86(T)
5. Sri S.Jayakumar, Major
s/o. Sri S,Shivashankar,
r/o. No.4, Pottery Road,
Richerds Town,
BANGALORE - 5. Petitioner
A.No.1800/86(T)
R.U.Gowlay
(Shri ~~B.G.Naik~~, Advocate)

Vs.

1. Union of India, represented
by its Secretary to Ministry of
Defence, Raksha Bhawan,
NEW DELHI.
2. The Scientific Adviser and Director
General, Research & Development Orgn.,
Ministry of Defence, D.M.A.P.O.
NEW DELHI-11.

3. The Director,
L R D E , High Grounds,
BANGALORE - 560 001.

... Respondents
(common to all
(Shri M.S.Padmarajaiah, Advocate) the Petitioners)

91 The application has come up for hearing
before ^{the} Tribunal today. The Member, Sri P.Srinivasan
made the following :

O R D E R

In this composite application which originated as
a writ petition before the High Court of Karnataka,
there are five applicants left in the field, the
remaining having sought permission to withdraw there-
from and the said permission having been granted by
this Tribunal.

2. Shri R.V.Goulay, learned counsel for the
applicants and Shri M.S.Padmarajaiah, learned counsel
for the respondents have been heard.

3. All the five applicants before us were directly
recruited as Chargeman I in the Electronics and
Radar Development Establishment (LRDE). They
joined service between June 1980 and January 1981.
Recruitment to posts of Chergemen I in LRDE is made
from two sources viz. through direct recruitment from
the open market and through promotion from persons
working as Chergemen II in the organisation. Cherge-
men II may also compete for direct recruitment if

P. Srinivasan

they have the necessary qualification for the purpose. The recruitment is regulated by the Defence Research and Development Organisation (DRDO) Class III non-gazetted (Technical, scientific and other non-ministerial) posts recruitment rules, 1968 ("Rules" for short). We may explain here that LRDE is one of the units under the control of DRDO. One-third of the posts in the cadre are to be filled by direct recruitment; two-thirds by departmental promotion from persons working as Chargemen II, failing which by direct recruitment. The qualification required for direct recruitment is a degree or diploma in Engineering with three years' experience (which could be as Chargeman II in the organisation itself or elsewhere). For promotion to the said post, Chargemen II with three years' experience in the grade are eligible. Though there is no rule regulating inter se seniority as between persons recruited from the two sources, it is stated in the application that such seniority is, in practice, determined on the basis of rotation of vacancies between direct recruits and promotees in accordance with the prescribed quota of recruitment, viz. two promotees followed by one direct recruit followed again by two promotees and so on. The respondents have clarified that this practice is based on executive instructions issued by the Ministry of Defence.

4. The next promotion from the grade of Chargeman I

P. S. S. S.

service in the grade rendered after appointment thereto on regular basis, failing which chargeman Grade I with combined three years' service as chargeman Grade I and Chargeman Grade II put together". (Emphasis supplied)

It is the portion of the amended entry underlined above (which will hereinafter be referred to as "the amended Rule") which is challenged in this application as discriminatory and violative of Articles 14 and 16 of the Constitution.

5. As mentioned above, the applicants joined as Chargeman I on direct recruitment on various dates in 1980-81 as indicated below :

Applicant No.1. V.N.Sasidharan	6.11.80
Applicant No.2. P.K.Balan	1.12.80
Applicant No.3. V.K.George	15.11.80
Applicant No.4. S.D.Gajendra Rao	27.01.81
Applicant No.5. Jayakumar	27.01.81

When this application was filed as a writ petition before the High Court on 14.9.81, the present applicants and others who have since withdrawn from this application apprehended that (i) persons who would be promoted as Chargeman I after that date and should therefore normally be considered as their juniors might be made senior to them by applying the principle of rotation of vacancies by which such promotees would be fixed in vacancies reserved for

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promotion which arose in the years 1977 to 1980 when there had been no promotions and (ii) their juniors in the cadre of Chargeman I might be promoted as Assistant Foreman before them because of the impugned amended Rule - such juniors becoming eligible for promotion earlier by virtue of possessing three years' combined service as Chargeman I and II put together while the applicants would have to wait longer till they put in three years' ⁸⁾ ~~combined~~ service as Chargeman I. However, of the two prayers in the petition arguments were addressed to us by learned counsel for the applicants at the time of hearing only in respect of prayer (a) viz. to quash the amended rule brought in by rule 2(1) of the Amendment Rules of 1976. No arguments were addressed in regard to prayer (b) which relates to the fixation of seniority of promotees vis-a-vis direct recruits in the grade of Chargeman I and so we do not propose to deal with prayer (b).

6. After the writ petition was filed, several promotions to posts of Assistant foreman are reported to have been made, the applicants themselves having been so promoted by an order dated 15-3-84. By an interlocutory application presented before the Tribunal on 6-8-86, the applicants have sought a direction from

P. S. - 10

discrimination against the others who had not been Chargemen II before they were selected as Chargeman I. He pointed out that even among directly recruited persons like the applicants, there were some who had worked before their recruitment as Chargemen II in the same organisation and they were also sought to be given an advantage in the matter of eligibility for further promotion by counting their service as Chargeman II. Thus the rule resulted in discrimination against the applicants who were directly recruited as Chargemen I and had not earlier worked as Chargemen II in the same organisation vis-a-vis promotees as well as direct recruits to that cadre who had worked earlier as Chargemen II. The classification of persons recruited as Chargemen I into those who had prior experience as Chargemen II in the organisation and those who had not, after they had all been merged into a homogeneous class was not based on any intelligible differentia nor did it have any nexus with the purpose sought to be served. Such earlier experience as Chargemen II having been prescribed as a condition of eligibility for appointment as Chargemen I either by direct recruitment or by promotion cannot ensure to their benefit after such appointment and integration into the cadre of Chargemen I. For that matter, even persons directly recruited as Chargemen I like the applicants

P. S. S. K.

any specified persons. Even if some persons had been so promoted by virtue of that rule, it would be the result of that rule only ;otherwise there was no conflict between them as individuals and the applicants. This litigation has been pending for five years and all persons in the department would have known of it by now. If any person felt that the outcome of this litigation would affect him, he was free to come before the High Court or before us. We therefore reject this preliminary objection raised by Shri Padmarajaiah.

11. We now turn to the merits of the application. Government's right to frame rules of recruitment under ARTICLE 309 of the Constitution and to amend the rules from time to time is indisputable. It is equally well-settled that a rule is liable to be struck down if it offends Articles 14 and 16 of the Constitution. This Tribunal is empowered to exercise "all the jurisdiction, powers and authority" exercisable by all courts except the Supreme Court immediately before 1st of November 1985 in relation, inter alia, to " all service matters concerning.....a civilian ... appointed to a post connected with defence" (emphasis ours); vide Section 14 of the Administrative Tribunals Act, 1985 ("the Act" for short),

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If earlier experience in a lower grade in the same setup is considered valuable, some weightage for such service is given at the point of entry itself in fixing the seniority of persons having such experience. Once persons are thus assigned their positions of seniority on entry into a cadre, thereafter they constitute a homogeneous class. The qualifications or experience which they may have brought with them at the point of entry and which may have distinguished them from each other before such entry, stood reflected thereafter by their relative positions in the seniority list. To our mind, therefore, it would amount to discrimination if the same qualifications and experience are again to be taken into account for further promotion from the cadre of initial entry. Once persons are integrated into a homogeneous class, after recruitment to a cadre, they cannot, thereafter, be again classified with reference to their experience before such integration : in fact there is nothing to differentiate one from the other after such integration except their relative seniority in the post to which they are appointed. The quality of their performance in the post after recruitment, the nature

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of experience acquired or new qualifications obtained by them after such recruitment, may be relevant for promotion to higher posts, but not the same qualifications and experience on the basis of which they were initially appointed to the cadre.

13. In view of the observations made above, we held that the amended rule is discriminatory and violative of Articles 14 and 16 of the Constitution. The original rule before the amendment providing for promotion to the post of Assistant Foreman merely prescribed a qualifying length of service as Chargeman I, and made no distinction between one recruit and another in that post with reference to the experience of each of them prior to appointment as Chargeman I, but the amended rule does so and to that extent it offends Articles 14 and 16 of the Constitution. Having held so, we do not wish that promotions of persons already made to the post of Assistant Foreman on the basis of the amended rule be reversed at this stage. It would meet the ends of justice if the applicants are considered for promotion from the date from which their juniors in the grade of Chargeman I were promoted and if found fit, given their appropriate seniority in the said grade of Assistant Foreman as if they were promoted from such date as the case may be, for, after all, they also were required

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to have three years' experience, not necessarily as Chargemen II in the same organisation, before they could be appointed as Chargeman I. As we have said earlier, we have not gone into the seniority in the cadre of Chargeman I, as we were not called upon to do so. Therefore, when we refer to persons junior to the applicants in the cadre of Chargeman I, we mean those who were placed junior to the applicants according to the principle of seniority being regularly followed by the respondents.

14. To sum up, we hold the amendment to the rule for promotion to posts of Assistant Foreman introduced in 1976 by which length of service as Chargeman II was to be taken into account to be unconstitutional : respondents will not operate it in future. We also direct that if, on the basis of the amended rule, persons junior to the applicants in the cadre of Chargeman I have been promoted as Assistant Foreman before the applicants, the applicants be now ^{to} ~~be~~ considered for promotion from the date of promotion of their juniors and if considered fit, be given positions of seniority in the grade of Assistant Foreman accordingly. If in this manner, the applicants are given an earlier deemed date of promotion prior to the date from which they

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were actually promoted, no arrears of pay will be given to them. However, their pay from the date of their actual promotion will be fixed and the future increments regulated as if they were actually promoted from such deemed date.

15. In the result the applications are allowed as indicated. Parties will bear their own costs.

Ch. Ramakrishna Rao
31.12.86
(CH. RAMAKRISHNA RAO)
Member (J)

P. Srinivasan
31/12/86
(P. SRINIVASAN)
Member(A)

Kam.

they have the necessary qualification for the purpose. The recruitment is regulated by the Defence Research and Development Organisation (DRDO) Class III non-gazetted (Technical, scientific and other non-ministerial) posts recruitment rules, 1968 ("Rules" for short). We may explain here that LRDE is one of the units under the control of DRDO. One-third of the posts in the cadre are to be filled by direct recruitment; two-thirds by departmental promotion from persons working as Chargemen II, failing which by direct recruitment. The qualification required for direct recruitment is a degree or diploma in Engineering with three years' experience (which could be as Chargeman II in the organisation itself or elsewhere). For promotion to the said post, Chargemen II with three years' experience in the grade are eligible. Though there is no rule regulating inter se seniority as between persons recruited from the two sources, it is stated in the application that such seniority is, in practice, determined on the basis of rotation of vacancies between direct recruits and promotees in accordance with the prescribed quota of recruitment, viz. two promotees followed by one direct recruit followed again by two promotees and so on. The respondents have clarified that this practice is based on executive instructions issued by the Ministry of Defence.

4. The next promotion from the grade of Chargeman I

R. J.

is to the post of Assistant Foreman. Recruitment to posts of Assistant Foreman is also regulated by the Rules. The manner of recruitment to these and other posts and the qualifications for such recruitment are set out in a Schedule attached to the Rules, in which the post of Assistant Foreman appears at Serial No. 5. There are 13 columns against each post or serial number. We are concerned here only with the entries under columns 11 and 12 against serial No. 5. and more particularly with column 12. Column 11 deals with the method of recruitment and the entry thereunder relating to the post of Assistant Foreman (Serial No.5) reads "One third by direct recruitment and two-third by Departmental promotion failing which by direct recruitment". We are not concerned with direct recruitment to posts of Assistant Foreman. Column 12 sets out the "grade from which promotion to be made". Before the Rules were amended in 1976, the entry under this column relating to the post of Assistant Foreman read : "Chargeman Grade I with three years' service in that grade" : by the Defence Research and Development Organisation Class III Non-Gazetted (Technical, Scientific and other non-Ministerial) posts recruitment (Amendment) Rules, 1976, notified on 14-5-1976 (referred to hereafter as Amendment Rules of 1976) Rule 2(1) thereof- the said entry was amended to read :-

"Chargeman Grade I with three years'

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...5....

service in the grade rendered after appointment thereto on regular basis, failing which chargeman Grade I with combined three years' service as chargeman Grade I and Chargeman Grade II put together". (Emphasis supplied)

It is the portion of the amended entry underlined above (which will hereinafter be referred to as "the amended Rule") which is challenged in this application as discriminatory and violative of Articles 14 and 16 of the Constitution.

5. As mentioned above, the applicants joined as Chargeman I on direct recruitment on various dates in 1980-81 as indicated below :

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Applicant No.2. P.K.Balan	1.12.80
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promotion which arose in the years 1977 to 1980 when there had been no promotions and (ii) their juniors in the cadre of Chargeman I might be promoted as Assistant Foreman before them because of the impugned amended Rule - such juniors becoming eligible for promotion earlier by virtue of possessing three years' combined service as Chargeman I and II put together while the applicants would have to wait longer till they put in three years' ⁽ⁱ⁾ ~~combined~~ service as Chargeman I. However, of the two prayers in the petition arguments were addressed to us by learned counsel for the applicants at the time of hearing only in respect of prayer (a) viz. to quash the amended rule brought in by rule 2(1) of the Amendment Rules of 1976. No arguments were addressed in regard to prayer (b) which relates to the fixation of seniority of promotees vis-a-vis direct recruits in the grade of Chargeman I and so we do not propose to deal with prayer (b).

6. After the writ petition was filed, several promotions to posts of Assistant foreman are reported to have been made, the applicants themselves having been so promoted by an order dated 15-3-84. By an interlocutory application presented before the Tribunal on 6-8-86, the applicants have sought a direction from

P. S. - 12

us to the respondents to consider their (applicants') promotion as Assistant Foreman from the earliest date from which their juniors were so promoted on the basis of the impugned amended rule.

7. Shri R.V.Goulay, learned counsel for the applicants, developed his challenge to the amended rule as follows : Though recruitment to the cadre of Chargeman I is made from two channels i.e. by direct recruitment and by promotion, the two channels became merged into one as soon as the persons who were recruited were fixed in positions of seniority in that cadre according to the principle of seniority applicable thereto. Whatever experience or qualifications the persons so recruited possessed at the time were sufficient to recruit them to posts of Chargeman I. Such experience and qualifications as they possessed was only a passport to entry into the post of Chargeman I and nothing more. Once they were all integrated in the cadre of Chargeman I by being assigned appropriate positions of seniority in that cadre, they lost their 'birth marks' and became one homogeneous class. If thereafter preference is to be given to one set of persons working as Chargeman I for promotion to the next post of Assistant Foreman only because they had earlier worked as Chargeman II, that amounted to dis-

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discrimination against the others who had not been Chargemen II before they were selected as Chargeman I. He pointed out that even among directly recruited persons like the applicants, there were some who had worked before their recruitment as Chargemen II in the same organisation and they were also sought to be given an advantage in the matter of eligibility for further promotion by counting their service as Chargeman II. Thus the rule resulted in discrimination against the applicants who were directly recruited as Chargemen I and had not earlier worked as Chargemen II in the same organisation vis-a-vis promotees as well as direct recruits to that cadre who had worked earlier as Chargemen II. The classification of persons recruited as Chargemen I into those who had prior experience as Chargemen II in the organisation and those who had not, after they had all been merged into a homogeneous class was not based on any intelligible differentia nor did it have any nexus with the purpose sought to be served. Such earlier experience as Chargemen II having been prescribed as a condition of eligibility for appointment as Chargemen I either by direct recruitment or by promotion cannot enure to their benefit after such appointment and integration into the cadre of Chargemen I. For that matter, even persons directly recruited as Chargemen I like the applicants

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were required to have three years' experience in addition to the minimum educational qualifications prescribed for such direct recruitment : since that experience was considered necessary for their recruitment, it should also have been taken into account to determine their eligibility for further promotion even as experience as Chargemen II was counted for the purpose in respect of others, but that was not done. The result was that a person who was promoted or appointed directly at Chargeman I on the basis of three years' experience as Chargeman II would become straight away eligible for further promotion as Assistant Foreman by virtue of his earlier experience while a direct recruit who might be placed senior to the former would have to wait for a full period of three years before he could be considered for promotion if he had not worked earlier as Chargeman II. Thus the rule was discriminatory against the applicants in every possible way and should therefore be struck down as violative of Article 14 and 16 of the Constitution. Shri Goulay relied on the decisions of the Supreme Court in AIR 1972 SC 252, AIR 1974 SC259, AIR 1977 SC 251 and AIR 1986 SC 80 and the decision of the Karnatake High Court dated 14-10-77 rendered in WP 3427 of 1973 in support of his contentions.

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8. Shri Padmarejaiah, learned counsel for the respondents, sought to refute the case made out by Shri Goulay. The amended rule impugned in these applications had come into force from 1976 and the applicants had joined service much later in 1980 and 1981 when they were aware of its implications. Having accepted service in accordance with the Rules as amended by the Amendment Rules of 1976, they cannot challenge the amended rule. Government had every right to amend recruitment rules at any time by notification issued in pursuance of the powers vested in it by Article 309 of the Constitution. Even after the amended rule came into force, the main rule of eligibility for promotion to posts of Assistant Foreman continued to be three years' service ^{as} in Chargeman I and the ^{additional} criterion set out in the amended rule was only an alternative provision. Experience had shown that the number of persons who became eligible for promotion as Assistant Foreman according to the eligibility test before the amendment was not adequate to fill up posts of Assistant Foreman falling vacant from time to time. On the other hand, Government could not afford to leave those vacancies unfilled for long periods. Both Chargemen I

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recruitment as discriminatory, the quarrel of the applicants was only with the Government and not with any individual officials who may have benefitted from that rule. It was therefore not necessary to implead any individuals for the purpose. If Government could not find adequate number of persons for promotion as Assistant Foreman under the old criterion of eligibility, they could make direct recruitment to the posts and not dilute the criterion of eligibility for promotion. There could be no estoppel standing in the way of applicants for challenging what they considered to be an unconstitutional rule. The facts of the case in S. Kalyanam's case decided by this Tribunal were different from those obtaining here and the challenge to the impugned rule in this case has not been considered in Kalyanam's case.

10. We have considered the matter carefully in the light of the submissions made by counsel on both sides. So far as joinder of parties is concerned, we are of the view that that cannot be a fatal flaw here. When the applicants filed the writ petition (which is now before us as an application) in 1981, they had barely entered service. They merely apprehended that persons junior to them may be promoted as Assistant Foreman by virtue of the impugned rule. It could not be said at that stage who might be so promoted for no such promotions had been made till then. Their quarrel was with the rule and not with

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any specified persons. Even if some persons had been so promoted by virtue of that rule, it would be the result of that rule only ;otherwise there was no conflict between them as individuals and the applicants. This litigation has been pending for five years and all persons in the department would have known of it by now. If any person felt that the outcome of this litigation would affect him, he was free to come before the High Court or before us. We therefore reject this preliminary objection raised by Shri Padmarajaiah.

11. We now turn to the merits of the application. Government's right to frame rules of recruitment under ARTICLE 309 of the Constitution and to amend the rules from time to time is indisputable. It is equally well-settled that a rule is liable to be struck down if it offends Articles 14 and 16 of the Constitution. This Tribunal is empowered to exercise "all the jurisdiction, powers and authority" exercisable by all courts except the Supreme Court immediately before 1st of November 1985 in relation, inter alia, to " all service matters concerning.....a civilian ... appointed to a post connected with defence" (emphasis ours); vide Section 14 of the Administrative Tribunals Act, 1985 ("the Act" for short),

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courts, except the jurisdiction of the Supreme Court under Article 136" and the Act is thus in consonance with the Constitutional provision. In a judgement delivered very recently, the Supreme Court has held that so far as service matters are concerned, the powers of the High Court under Article 226 of the Constitution are excluded; therefore it is for this Tribunal to examine a Service rule with reference to its Constitutional validity.

12. Having said so much, let us examine the impugned amended rule. When recruitment is made to a cadre from different sources, persons so recruited have to be integrated in the service after recruitment to form a homogeneous class. The "integrating force", if we may say so, is provided by rules of inter se seniority as between them. If fixed quotas are laid down for recruitment from each source and the quota system is substantially followed in practice (not with mathematical precision but substantially as pointed out by the Supreme Court in Karampal Singh's case, AIR 1985 SC 774), inter se seniority can be determined by rotating the vacancies in the ratio of the quotas.

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If earlier experience in a lower grade in the same setup is considered valuable, some weightage for such service is given at the point of entry itself in fixing the seniority of persons having such experience. Once persons are thus assigned their positions of seniority on entry into a cadre, thereafter they constitute a homogeneous class. The qualifications or experience which they may have brought with them at the point of entry and which may have distinguished them from each other before such entry, stood reflected thereafter by their relative positions in the seniority list. To our mind, therefore, it would amount to discrimination if the same qualifications and experience are again to be taken into account for further promotion from the cadre of initial entry. Once persons are integrated into a homogeneous class, after recruitment to a cadre, they cannot, thereafter, be again classified with reference to their experience before such integration : in fact there is nothing to differentiate one from the other after such integration except their relative seniority in the post to which they are appointed. The quality of their performance in the post after recruitment, the nature

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of experience acquired or new qualifications obtained by them after such recruitment, may be relevant for promotion to higher posts, but not the same qualifications and experience on the basis of which they were initially appointed to the cadre.

13. In view of the observations made above, we held that the amended rule is discriminatory and violative of Articles 14 and 16 of the Constitution. The original rule before the amendment providing for promotion to the post of Assistant Foreman merely prescribed a qualifying length of service as Chargeman I, and made no distinction between one recruit and another in that post with reference to the experience of each of them prior to appointment as Chargeman I, but the amended rule does so and to that extent it offends Articles 14 and 16 of the Constitution. Having held so, we do not wish that promotions of persons already made to the post of Assistant Foreman on the basis of the amended rule be reversed at this stage. It would meet the ends of justice if the applicants are considered for promotion from the date from which their juniors in the grade of Chargeman I were promoted and if found fit, given their appropriate seniority in the said grade of Assistant Foreman as if they were promoted from such date as the case may be, for, after all, they also were required

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CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex(BDA)
Indiranagar
Bangalore - 560 038

Dated : 7/9/87

REVIEW APPLICATION NOS.
IN APPLICATION NOS.

61 to 63 & 92/87
803, 1797 to 1800/86(I)

Applicant

Shri B.R. Prakash & 3 Ors

To

1. Shri B.R. Prakash
Chargeman Grade - I
L.R.D.E.
Jeevanbhimannagar
Bangalore - 560 075
2. Shri S. Mahadevaiah
Chargeman Grade - II
L.R.D.E.
Jeevanbhimannagar
Bangalore - 560 075
3. Shri A.K. Sugunan
Chargeman Grade - II
L.R.D.E.
Jeevanbhimannagar
Bangalore - 560 075
4. Shri B.S. Guru Prakash
Foreman
L.R.D.E.
Jeevanbhimannagar
Bangalore - 560 075
5. Shri M. Narayanaswamy
Advocate
844 (Upstairs)
Vth Block, Rajajinagar
Bangalore - 560 010

Respondents

V/s Shri V.M. Sasidharan & 7 Ors

6. Shri V.M. Sasidharan
Chargeman Grade - I
L.R.D.E.
High Grounds
Bangalore - 560 001
7. Shri F.K. Balan
C-12, 1st Main Road
Ganganahally
Bangalore - 560 032
8. Shri V.K. George
5A/3, Pamme Gowda Road
M.R. Palyam
Bangalore - 560 006
9. Shri S.D. Gajendra Rao
1040, 5th Block
Rajajinagar
Bangalore - 560 010
10. Shri S. Jayakumar
4, Pottery Road
Richards Town
Bangalore - 560 005
11. The Secretary
Ministry of Defence
New Delhi - 110 011

.....2

Copy to:-

FNO. 803, 1797 to 1800/86 (I)

12. The Scientific Adviser &
Director General, R & D Orgn.
Ministry of Defence
DHQ PO
New Delhi - 110 011
13. The Director
L.R.D.E.
Bangalore - 560 001
14. Shri R.U. Goulay
Advocate
90/1, 2nd Block, Near Ganesh Mandir
Post Office Road, Thyagarajanagar
Bangalore - 560 028
15. Shri M.S. Padmarajaiah
Central Govt. Stng Counsel
High Court Buildings
Bangalore - 560 001

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER passed
by this Tribunal in the above said applications on 31-8-87

Encl : As above

B. V. Venkatesh
Deputy Registrar
(Judicial)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE

DATED THIS THE 31st DAY OF AUGUST 1987

Present : Hon'ble Sri Ch. Ramakrishna Rao Member (J)

Hon'ble Sri P. Srinivasan Member (A)

REVIEW APPLICATION No. 61 to 63/87 & 92/87

1. B.R. Prakash,
Chargeman Grade - I,
LRDE, J.B. Nagar,
Bangalore - 75.

2. S. Mahadevaiah,
Chargeman Grade - II,
LRDE, J.B. Nagar,
Bangalore - 75.

3. A.K. Sugunan,
Chargeman Grade - II,
LRDE, J.B. Nagar,
Bangalore - 75.

4. E.S. Guru Prakash,
Foreman, LRDE,
J.B. Nagar,
Bangalore - 75.

Applicants.

(Sri M. Narayanaswamy ... Advocate)

Vs.

1. V.M. Sasidharan,
Chargeman Grade-I,
LRDE, High Grounds,
Bangalore - 1.

Applicant

Respondent - 1.

2. Sri F.K. Balan,
C/o C-12, 1st Main Road,
Ganganahally,
Bangalore - 32.

Applicant

Respondent - 2.

3. V.K. George,
R/o No. 5A/3, Pammie Gouda Road,
M.R. Palyam,
Bangalore - 6.

Applicant

Respondent - 3.

4. S.D. Gajendra Rao,
R/o No. 1040, 5th Block,
Rajajinagar,
Bangalore - 10.

Applicant

Respondent - 5.

5. S. Jayakumar,
No. 4, Pottery Road,
Richards Town,
Bangalore - 5.

Applicant

Respondent - 5.

6. Union of India represented
by its Secretary to Ministry
of Defence, Raksha Bhavan,
New Delhi.

Respondent

Respondent - 6.



[Handwritten signature]

7. The Scientific Adviser and
Director General, Research &
Development Organisation,
M/o Defence, DMAPO,
New Delhi - 11. Respondent Respondent - 7.
8. The Director,
LRDE, High Grounds,
Bangalore - 1. Respondent Respondent - 8.
- (Sri M.S.Padmarajaiah ... Advocate)
(Sri R.U.Goulay ... Advocate)

These Review Applications have come up before the Tribunal today. Hon'ble Sri P.Srinivasan, Member (A) made the following :

O R D E R

In these review applications, the applicants - there are 4 of them - want us to review the consolidated order dated 31.12.1986 rendered by us disposing of applications No.803 and 1797 to 1800/86.

2. In applications No. 803 and 1797 to 1800/86, 5 persons who had been directly recruited as Chargeman I in the Electronic and Radar Development Establishment (LRDE), a unit of the Defence Research and Development Organisation (DRDO) challenged an amendment to the DRDO Class III Non-gazetted (Technical, scientific and other non-ministerial) posts Recruitment Rules, 1968 (1968 RULES) made in 1976. Prior to the amendment, Chargemen I with three years' experience were eligible for promotion as Assistant Foreman, but the relevant rule was amended in 1976 to the following effect :-

"Chargeman Grade I with three years' service in the grade rendered after appointment thereto on regular basis, failing which Chargeman Grade I with combined three years' service as Chargeman Grade I and Chargeman Grade II put together". (emphasis supplied).

All the applicants before us in these applications were directly recruited as Chargeman I and they complained that by virtue of the residuary provision in the amendment extracted

25.12.86

above, persons junior to them in that grade could be promoted earlier as Assistant Foreman if they completed three years' service in Grade I and Grade II put together before the applicants had completed the same length of service as Charge-man I. They, therefore, challenged the amendment as unconstitutional and violative of Article 14 of the Constitution. This Challenge was upheld by us in our order 31.12.1986. The respondents in these applications were the Union of India and its officials.

3. The applicants in these review petitions contend that they should have been impleaded as respondents in applications No. 803 to 1797 to 1800/86 because they have been adversely affected by the order of this Tribunal made therein on 31.12.1986. We may, at this stage itself, dispose of this contention. In THE GENERAL MANAGER, SOUTH CENTRAL RAILWAY, SECUNDERABAD AND ANOTHER VS A.V.R.SIDDHANTTI AND OTHERS 1974 SUPREME COURT CASES (L&S) 290, certain policy decisions of the Railway Board consisting of administrative rules of general application, recruitment, absorption and promotion in permanent departments, fixation of seniority, pay, etc of its employees, were challenged and in this connection, the question arose as to who would be the necessary parties to the litigation, whose non-joinder would be fatal to the writ petition itself. This is what the Court held (page 296 - para 15 of the Report):-

"The respondents-petitioners are impeaching the validity of these policy decisions on the ground of their being violative of Article 14 and 16 of the Constitution. The proceedings are analogous to those in which the constitutionality of a statutory rule regulating seniority of Government servant is assailed. In such proceedings the necessary parties to be impleaded are those against whom the relief is sought, and in whose absence no effective decision can be rendered by the Court. In the present case, the relief is claimed only against the Railway which has been impleaded through its representative. No list or order fixing seniority of the petitioners vis-a-vis particular individuals, pursuant to the impugned decisions, is being challenged. The employees



who were likely to be affected as a result of the readjustment of the petitioner's seniority in accordance with the principles laid down in the Board's decision of October 16, 1952, were at the most, proper parties and not necessary parties, and their non-joinder could not be fatal to the writ petition." ~~("Original application" for~~ M

In applications No. 803 and 1797 to 1800/86, ^{M ("original applications", for short)} the applicants

challenged the validity of a statutory rule regulating promotion to the post of Assistant Foreman and not any list or order fixing their seniority vis-a-vis other individuals or any order promoting particular individuals. Therefore, the applicants in these review petitions who were likely to be affected if the challenge to the validity of the rule of promotion was accepted by the court, were at the most proper parties and not necessary parties. Therefore, their non-joinder in the original applications does not affect the decision rendered therein.

4. Having said so much, we should not be understood to mean that the applicants in these present review applications cannot seek a review of our order rendered in the original applications. It is well known that review of a judgement once delivered is limited to correct patent errors on the face of the record which affect the final decision and also to cases where evidence which was not available when the matter was first heard is produced at the stage of review. It is in this background that we have to consider these review petitions.

5. Sri M. Narayanaswamy, learned counsel for the applicants in the review applications urged that certain essential documents were not made available to the Tribunal when the original applications were heard and that these documents were relevant to decide whether the amendment to the rule made in



P. S. V.

1976 was constitutional. Though the amendment on the face of it might appear discriminatory and unconstitutional, it could be shown by reference to amendments to the rules made subsequently that the amendment of 1976 was made with a particular object in view and the classification contemplated in the amendment had nexus with the object sought to be achieved. This is how Sri Narayanaswamy developed his arguments; The Electronic Research Development Establishment (ERDE) and the Aeronautical Development Establishment (ADE) are two units of DRDO. Recruitment and promotion to non-gazetted posts in both these establishments were governed by the 1968 Rules. However, persons appointed to ADE in the initial cadre of Chargeman II took much longer time for promotion to higher cadres than their counterparts in ERDE. The amendment of 1976 was made to remove this disparity and to enable persons working as Chargeman II in ADE to get quick promotions to the grade of Assistant Foreman. This was possible only if the eligibility rule of 3 years' service for promotion as Assistant Foreman was made to cover service as Chargeman I and Chargeman II, put together. That was why the residuary provision was made in the amendment of 1976. This process was carried through further by an amendment to the 1968 Rules introduced in 1981. By the 1981 amendment, recruitment to the post of Chargeman I was to be by promotion from among Chargeman II and only failing this source, could direct recruitment be resorted to. The object of this amendment was to further the prospects of promotion of persons who had joined as Chargeman II in ADE. According to Sri Narayanaswamy, one more step towards achieving the same object was taken by another amendment to the 1968 Rules made in 1984. The 1984 amendment enlarged the



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eligibility for promotion to the ^{of} ~~post~~ ^{post} of Assistant Foreman to include not only persons with three years' combined service as Chargeman Grade I and Grade II, but also persons who had the same length of combined service as Chargeman Grade I and ^{of} ~~P~~ Precision Mechanic put together. The purpose here was to give better promotion prospects to Precision Mechanics in addition to Chargeman Grade II. In addition to providing better promotional opportunities to persons working as Chargeman Grade II or Precision Mechanics in the same organisation, it was also in the interest of the employer that persons with experience in the lower cadres in its own organisation should get some preference in the matter of promotion over those who had been recruited from outside. Sri Narayanaswamy contended that these factors had not been brought to the attention of this Tribunal when deciding the original application and to that extent our order in these original applications suffered from a serious error apparent from the records.

6. Opposing Sri Narayanaswamy, Sri R.U.Goulay, learned counsel for the applicants in the original application contended that there was no error apparent from the record. An error apparent from the record should be one which is straightway visible to the eye or, as held by the Supreme Court in AIR 1964 SC 1372, Tungabhadra Industries' Case, "stares one in the face". So far as Sri Narayanaswamy's contention regarding the object of the 1976 amendment is concerned, the said object could not be achieved by an illegal rule. Once persons who were appointed as Chargemen Grade I either by promotion from the post of Chargemen Grade II or by direct recruitment were integrated by applying the



P. J. - 12

rules of seniority, discriminatory treatment cannot be handed out to one set of employees vis-a-vis others in the name of attaining some object. Moreover, if it was the intention to encourage persons to get promotion as Chargeman I, the proper course was to eliminate direct recruitment to the post of Chargeman Grade I altogether, but not to pick and choose persons working as Chargemen I for preferment in the matter of promotion as Assistant Foreman on some arbitrary basis. The amendments in the rule made in 1981 and 1984 were not relevant to determine whether the 1976 amendment was unconstitutional. The 1981 amendment made promotion the primary source of recruitment as Chargemen I and direct recruitment a secondary source. The amendment of 1984 was an extension of 1976 amendment in that service as Precision Mechanic was also to be counted for promotion as Assistant Foreman. Neither of these amendments justify discrimination as between a homogenous group of persons working in a grade and duly integrated in that grade by rules of seniority. Therefore, by not referring to the amendment of 1971 and 1984, the original applicants have certainly not misled this Tribunal and no error apparent from the record has occurred as a result thereof.

7. Sri M.S.Padmarajaiah, appearing for the respondents in the original applications stated ^M that his clients had accepted our order therein and had given effect to it. Whatever was to be said on their behalf was said when the original applications were heard and they will abide by whatever order may be made by this Tribunal on the present review application.

8. After considering the rival contentions carefully, we are of the view that the objections of Sri Narayanaswamy



17-12-84

and cannot be accepted. What we ^{said} ~~said~~ in our order dated 31.12.1986 was that persons working as Chargemen I whether recruited through promotion or through direct recruitment, who were integrated by a rule of seniority applicable to that post, could not be treated differently, according as ^{and} ~~to~~ whether they had worked as Chargeman Grade II in the same organisation or not. That position remains unchanged irrespective of the amendment to the rules made later. If Sri Narayanaswamy's contention is that our judgement as such is incorrect, the remedy is not review, but appeal. We cannot sit in judgement over our own order.

9. One more contention urged by Sri Narayanaswamy was that the original applicants in applications No. 803 and 1797 to 1800/86 had no locus standi to challenge the 1976 amendment having entered service long after the amendment was made. In other words, they entered service with open eyes and were aware of the rules regulating their promotion and so they were estopped from challenging the amendment. There is no merit in this contention. If a rule is violative of a provision of the Constitution, a person who joined service after the rule is promulgated is not estopped from challenging it. As observed by the Supreme Court in *OLGA TELLIS AND OTHERS VS BOMBAY MUNICIPAL CORPORATION AIR 1986 SC 180*, there can be no estoppel against the Constitution. This ground was raised by the respondents in the original applications and was rejected by us at the time. As we have said earlier, we cannot sit in judgement over our own order as if we were hearing an appeal against it.



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10. In the result, all the review applications are dismissed. There will be no order as to costs.

[Signature]
DEPUTY REGISTRAR
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE

[Signature]
MEMBER (J)

an.

[Signature]
MEMBER (A) '51/1'

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex (BDA)
Indiranagar
Bangalore - 560 038

Dated : 28 DEC 1988

REVIEW APPLICATION NO. 132 / 88
IN APPLICATION NOS. 803, 1797 to 1800/86(1)
W.P. NO.

Applicant(s)

Shri K. Laxmana

Respondent(s)

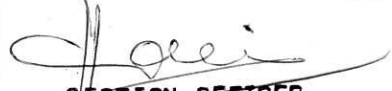
V/s The Secretary, M/o Defence, New Delhi & 7 Ors

To

1. Shri K. Laxmana
Chargeman Grade - I
Radar/B, Division
Electronics & Radar Development Establishment
C.V. Raman Nagar
Bangalore - 560 093
2. Shri A.C. Rajasekhar
Advocate
No. 82/B, Banashankari 1st Stage
2nd Block
Bangalore - 560 050

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER/~~STAY/INTERIM ORDER~~
Review
passed by this Tribunal in the above said application (x) on 14-12-88.


SECTION OFFICER

~~DEPUTY REGISTRAR~~
(JUDICIAL)

Encl : As above

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE

DATED THIS THE FOURTEENTH DAY OF DECEMBER, 1988

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

REVIEW APPLICATION NO.132/1988

Shri K. Laxmana
Aged 47 years
S/o. Shri Kempaiah
Rader/B, Division
LRDE, C.V. Raman Nagar
Bangalore - 560 093.

(Shri A.C. Rajasekhar, Advocate)

.. Applicant

Vs.

1. The Government of India
By it's Secretary
Ministry of Defence
South Block, New Delhi-110 001.
2. The Scientific Adviser to
Raksha Mantri and
Director General
Research & Development
South Block, New Delhi-110 001.
3. The Director
L.R.D.E., C.V. Raman Nagar
Bangalore - 560 093.
4. Shri V.M. Sasidharan
Chargeman Grade-I
LRDE, High Grounds
Bangalore-560 001.
5. Shri F.K. Balan
C/o. C-12, 1st Main Road
Ganganahally
Bangalore - 560 032.
6. Shri V.K. George
R/o. No.5A/3
Pamme Gowda Road
M.R. Palyam
Bangalore - 560 006.
7. Shri S.O. Gajendra Rao
R/o. No.1040, 5th Block
Rajajinagar,
Bangalore - 560 010.
8. Shri S. Jayakumar
No.4, Pottery Road
Richard Town
Bangalore -560 005.

.. Respondents



P. Srinivasan

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

ORDER

By this application the applicant is seeking a review of judgement delivered on 31.12.1986 by a Bench of this Tribunal of which one of us (Shri P. Srinivasan, Member (A)) was a party in A.No.803 and 1797 to 1800/86 B.M. SASIDHARAN AND OTHERS V. UNION OF INDIA. We have perused the office objections on file stating that this application is barred by limitation by as much as one year and 303 days. The applicant has filed I.A. No.I seeking condonation of delay. He states therein that he became aware of the judgement in Sasidharan's case much later and that ^{was} is why he could not seek review in time. According to the applicant he made a representation to the authorities who gave him a reply on 14.9.1988 and it was only then that he became aware of the said decision of this Tribunal in Sasidharan's case. Even reckoning limitation from 14.9.1988 the review petition should have been filed on or before 13.10.1988 but was actually filed only on 29.11.1988 i.e., 45 days later. The applicant himself admits this delay. Thus even if we accept the contention urged by the applicant in I.A. No.I, delay can be condoned only upto 13.10.1988 and not beyond. Therefore, this application deserves to be dismissed

P. Srinivasan



on the ground of limitation itself. However, in deference to the learned counsel for the applicant Shri A.C. Rajasekhar, we have also thought fit to examine the application on merits which we proceed to do presently.

2. In the decision rendered by this Tribunal in Sasidharan's case a rule of promotion to the grade of Assistant Foreman was challenged as unconstitutional. We upheld the challenge and struck down the rule as unconstitutional and directed that the said rule should not be operated in future. When that application was being heard an objection was raised that all persons who would have been affected by the outcome of that application had not been impleaded as respondents. We overruled this objection in para 10 of our order stating that the quarrel of the applicant was with the rules and not with any specific persons. Even so, three persons who had not been made parties in that application, Shri B.R. Prakash and two others filed Review applications (No.61 to 63/87 and 92/87). These RAs were disposed of by order dated 31.8.1987 by the same Bench. In that order we again pointed out that it was not necessary to implead in the original application all persons who might have been affected by its outcome and we relied in this connection on the decision of Supreme Court in GENERAL MANAGER, SOUTHERN RAILWAY V. A.V. SIDDHANTI 1974 SCC(L&S) 290. The Review Application was also



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considered on merits and rejected by us in that order.

3. The present applicant was also not a party in the original application filed by Sasidharan and others. What he seeks in this application is a modification of our decision rendered in A. No.803 and 1796 to 1800/86. He accepts that our decision striking down the rule was correct but he wants an exception to be made in his case. In other words, he wants us to direct the respondents that the old rule be followed so far as he is concerned till ^{the} ~~an~~ the amendment to the old rules in line with our judgement was promulgated in 1988.

4. From what we have stated above it will be clear that the applicant is not seeking a review on the basis that there has been any mistake apparent from the record in our original order or on the basis of any fresh document which could not be produced at the time. To put it simply he wants us to alter the terms of our original order which is not within the scope of a review. Thus this review application is devoid of merit and deserves to be dismissed. We, therefore, reject this application at the admission stage itself.



TRUE COPY

[Signature]
SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE

[Signature] Sd/-
VICE CHAIRMAN 14/12/88
[Signature] Sd/-
MEMBER (A)