

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,
C Chargean Grade - I,
LRDE, J.B.Nagar,
Bangalore - 75.

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

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

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

Applicants.

(Sri M.Narayanaswamy ... Advocate)

Vs.

1. V.M.Sasidharan,
Chargean 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, Pamme Gowda 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, DMAPD,
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 :

ORDER

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

above, ... used ... to ...

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

P. J. K.

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

Y ("original applications", for ~~short~~ ^{stat})
In applications No. 803 and 1797 to 1800/86, 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. J. 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 (LRDE) 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 LRDE. 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

P. Narayanaswamy

eligibility for promotion to the ⁸¹ ~~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 ⁸¹ ~~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. - 82

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 homogeneous 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 ^Mthat 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

P. S. Narayanaswamy

end 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 were hearing an appeal against it.

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

C. Chandrasekharendra
MEMBER(J)

P. J. ...
MEMBER(A) 31/8/1987

REGISTERED

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(T)

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

Copy to :-

RA 92/87

.....2

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


Deputy Registrar
(Judicial)

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of Defence, Raksha Bhavan,
New Delhi.

Respondent

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3

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.

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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~~ 91

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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 ⁹¹ 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.

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P. J. V. K.

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 (LRDE) 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 LRDE. 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



P. S. S.

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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. - 19

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 ^Mthat 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




DT - 29

can 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 ^{*can*} ~~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.

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

- True copy -


[Signature]
DEPUTY REGISTRAR
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE

[Signature]
MEMBER (J)

an.

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

Dated 14/4/88
50/50
R.K.
S.P.R.

D.No. 255-59/88 sec. iv-
SUPREME COURT OF INDIA
NEW DELHI.

dated 7-4-88

From:

The Additional Registrar,
Supreme Court of India,

To

The Registrar,
~~High Court of~~ Central Administrative Tribunal
Bangalore Bench, Bangalore

PETITION FOR SPECIAL LEAVE TO APPEAL (CIVIL) NO. 461-65/88

(Petition under Article 136 of the Constitution of India for
Special Leave to Appeal to the Supreme Court from the Judgment
& Order dated 31-8-87 of the High Court of

Central Administrative Tribunal Bangalore Bench, Bangalore
in R.P. Nos. 61-63 & 92/87, & in A.No. 803/86)

B.R. Prakash & Ors.

...Petitioner

-VS-

V. M. Sashidharan & Ors. ...Respondent

Sir,

I am to inform you that the petition above-mentioned
for Special Leave to Appeal to this Court was filed on behalf
of the petitioner above-named from the Judgment and Order
of the Central Administrative Tribunal Bangalore Bench, Bangalore
High Court noted above and that the same was/were
dismissed by this Court on the 30th day of March
1988.

Yours faithfully,

Jainendra
for ADDL. REGISTRAR