

CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH

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Commercial Complex (BDA)  
Indiranagar  
Bangalore - 560 038

Dated : 12 AUG 1988

APPLICATION NO.

54

/88(F)

W.P. NO.

Applicant(s)

Respondent(s)

Shri D.S. Raghavan V/s The Secretary, M/o Defence, New Delhi  
To & 2 Ors

1. Shri D.S. Raghavan Executive Engineer Office of the Commander Works Engineer Military Engineering Service Dickenson Road Bangalore - 560 042	5. The Secretary Department of Personnel & Administrative Reforms North Block New Delhi - 110 001
2. Shri S. Ranganatha Jois Advocate 36, 'Vagdevi' Shankarapuram Bangalore - 560 004	6. Shri M. Vasudeva Rao Central Govt. Stng Counsel High Court Building Bangalore - 560 001
3. The Secretary Ministry of Defence South Block New Delhi - 110 011	
4. The Engineer-in-Chief Army Headquarters Kashmir House DHQ PO New Delhi - 110 011	

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER/~~STAN~~/~~INTERIM~~ ORDER  
passed by this Tribunal in the above said application(s) on 9-8-88.

*4th Aug  
K. Raghavan  
16.8.88*  
Encl : As above

*M. Vasudeva Rao*  
DEPUTY REGISTRAR  
(JUDICIAL)

*QC*

CENTRAL ADMINISTRATIVE TRIBUNAL: BANGALORE

DATED THIS THE 9TH DAY OF AUGUST, 1988.

PRESENT:

Hon'ble Mr.Justice K.S.Puttaswamy, .. Vice-Chairman.

And

Hon'ble Mr.P.Srinivasan, .. Member(A).

APPLICATION NUMBER 54 OF 1988.

D.S.Raghavan,  
S/o Sri S.Devarajan,  
Aged about 43 years,  
Executive Engineer,  
Office of the Commandar Works  
Engineers, Bangalore-42. .. Applicant.

(By Sri S.Ranganatha Jois, Advocate.)

v.

1. The Union of India,  
by its Secretary,  
Ministry of Defence,  
South Block,  
NEW DELHI-11.
2. The Engineer in Chief,  
Kashmir House,  
New Delhi-11.
3. The Secretary,  
Department of Personnel and  
Administrative Reforms, North Block,  
NEW DELHI-1. .. Respondents.

(By Sri M.Vasudeva Rao, Standing Counsel)

This application having come up for admission, Member(A) made the following:

O R D E R

This application has been listed for admission before us to-day. The respondents have also been notified of the date of hearing to-day. Sri S.Ranganatha Jois, learned counsel for the applicant and Sri M.Vasudeva Rao, learned Additional Central Government Standing Counsel for the respondents have been heard.

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2. This application raises the never ending question of seniority between two sets of recruits to a service. The applicant was directly recruited to Class-I service of the Military Engineering Service as a result of the competitive examination held by the Union Public Service Commission in 1965. During the years 1960 to 1965, direct recruitment to the same service was effected through interview. A panel for promotion to the cadre of Executive Engineers in the Military Engineering service was published on 29-7-1987. In that list persons directly recruited by interview between the years 1960 and 1965 were shown as seniors to the applicant. The applicant's contention is that those persons do not belong to the regular cadre of Assistant Executive Engineers (Class-I) and as such had no right to be placed as seniors to the applicant who ~~were~~ <sup>was</sup> directly recruited through a competitive examination as provided in the Rules. As a result, the applicant also contends that those persons recruited through inter-view had no right for promotion to ~~the~~ <sup>the</sup> higher posts ahead of him, as he belonged to the cadre and they did not.

3. When the matter came up for admission to-day, Sri Vasudeva Rao on behalf of the respondents submitted that the validity of the recruitment of persons through inter-view between the years 1960 and 1965 had been upheld by the Supreme Court in BACHAN SINGH AND ANOTHER v. UNION OF INDIA AND OTHERS [1972 (7) SLR p.397] and, therefore, nothing remained to be decided by this Tribunal in this regard.

Sri Ranganatha Jois appearing for the applicant submitted that in Bachan Singh's case the dispute was between persons promoted to Class-I service of the Military Engineering Service and those directly recruited to the said Class-I service. Repelling the claim of the promotees to Class-I service that persons directly recruited by interview were not part of the service and should not, therefore, be given

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seniority according to the date of their recruitment, the Supreme Court held that those recruited through inter-view were validly taken as direct recruits. The phrase used by the Supreme Court was that they 'fell within the class of direct recruits'. Sri Jois submitted that the position of such persons vis-a-vis persons directly recruited through competitive examination as provided in the Rules was not considered by the Supreme Court. Sri Jois also submitted that the decision of the Supreme Court in Bachan Singh's case is itself open to question.

4. Sri Vasudeva Rao submits that the very question whether the recruitment to the Military Engineering Service (Class-I) through inter-view was a valid recruitment to that service had to be considered by the Supreme Court in Bachan Singh's case and the challenge in that case was by persons promoted to Class-I service. The Supreme Court unequivocally held that even though the Military Engineering Service Class-I (Recruitment, Promotion and Seniority) Rules, provided that direct recruitment shall be made by competitive examination, *they relaxed* those Rules were between 1960 and 1965 because the method of recruitment through examination had failed. That being so, the Supreme Court *held that* the method of recruitment by inter-view was a valid method. The Supreme Court had also observed that candidates so recruited had been put through a probation of 2 years and were allowed to continue in service only on satisfactory completion of probation. Therefore, by a long process of reasoning the Supreme Court arrived at the conclusion that those recruited through inter-view fell within the class of direct recruits and when the Court said so, it was referring to direct recruits in the service, that is, the Military Engineering Service. The recruits through interview were thus validly recruited to the Class-I service of the Military Engineering Service and they were entitled to seniority and promotion on the basis of

*P. J. ke*

their recruitment. The applicants having \_\_\_\_\_  
been directly recruited later cannot claim seniority over them.  
Sri Vasudeva Rao, therefore, submitted that the application be dis-  
missed.

5. Having considered the rival contentions carefully, we have no doubt whatsoever that this application deserves to be dismissed. In Bachan Singh's case the dispute was raised by persons who were promoted to Class-I service of the Military Engineering Service. To quote from the judgment in that case the contention of the petitioners was, inter-alia, "that the respondents \_\_\_\_\_  
who were directly appointed to Class-I Service by interview were not within the purview of recruitment to Class-I service by competitive examination. The Military Engineer Service Class-I (Recruitment, Promotion and Seniority) Rules which came into force on 1st April, 1951 speak in rule 3 of recruitment to the Class I Service (a) by competitive examination in accordance with Part-II of the Rules and (b) by promotion in accordance with Part-III of the Rules. The appellants contended that appointment to Class I service by interview was not one of the methods of recruitment contemplated in the Rules, and therefore, the respondents who were appointed by interview could not be said to be validly appointed in accordance with the Rules". Dealing with this contention, the Court noticed

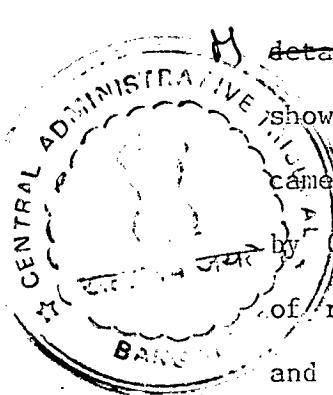
that in 1961, on the results of competitive examination, only two candidates were available for allotment to Class-I service. In 1962 there was a state of emergency. Engineers were immediately required to fill the temporary posts in Class-I Service. To meet the emergency the Union Government in consultation with the Union Public Service Commission decided to recruit candidates by advertisement and selection by the Union Public Service Commission. In this manner the persons were selected through interview in the years 1962, 1963 and

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1964. "It, therefore, follows that the method of recruitment by interview was adopted to meet the emergency specially when the mode of appointment by competitive examination failed. The candidates who were selected were put through a period of probation of 2 years. Only on a satisfactory completion of probation the candidates were allowed to continue in service. On completion of 3 years continued service in the grade and after qualifying the necessary departmental test the respective officers were declared quasi permanent in the grade in terms of Central Civil Services (Temporary Service) Rules". Dealing with the matter further, the Court noticed that Class-I Service Rules were not statutory in character till 1969 and went on to observe "the Union Government relaxed the Rules both in regard to recruitment by interview and in regard to the quotas fixed by the Rules for direct recruitment and recruitment by promotion to Class-I Service". The power to relax the Rules was available to the Government and they could do so in consultation with the Union Public Service Commission. In 1969 the Class-I Service Rules were amended and notified under Article 309 of the Constitution and when these Rules were notified and became statutory, "not only the recruitment by interview but also the relaxation of rules was regularised. The result is that the respondents who were appointed by interview fell within the class of direct recruits". We have extracted ~~in some~~ <sup>HS</sup> detail from the judgment in Bachan Singh's case in some detail to show that the Court considered the matter in depth and ultimately came to the conclusion that the recruitment by interview was made by Government within the recruitment Rules, availing of the power of relaxation conferred on the Government by those Rules themselves and that persons so recruited were direct recruits to the service.

<sup>H that</sup>  
Sri Jois submitted <sup>H Rose</sup> the expression 'direct recruits' used in the judgment in the context of <sup>H not</sup> appointed after interview should be understood

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*to mean*

direct recruits to the service. The Court was merely referring to the manner in which they had been recruited; every person directly recruited need not necessarily be a direct recruit to the service. We are unable to accept this contention. The Court in Bachan Singh's case was considering the precise question whether those recruited by interview were members of the Military Engineering Service. The claim of the persons so recruited was that they fell within the direct recruitment quota of that service and it was this contention which the Court upheld. What the Court meant was that the persons recruited through interview were direct recruits to the service and not outside the service.

6. In the background of the clear enunciation of law on the subject by the Supreme Court in Bachan Singh's case, we cannot uphold the contention of the applicant before us. The application is, therefore, rejected at the stage of admission itself. Parties are directed to bear their own costs.

Sd/-

VICE-CHAIRMAN

*g/p/s*  
TRUE COPY

Sd/-

MEMBER(A)

*Rajendra Singh*  
DEPUTY REGISTRAR (JN)  
CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE

