

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A. No. 126/1990 198
~~XXXXXX~~

DATE OF DECISION 22 - 11 - 91

S M NANDGAONKAR

Petitioner

MR. DINESH PURANDHARE
WITH DR. D Y CHANDRACHUD

Advocate for the Petitioner(s)

Versus

UNION OF INDIA & 4 OTHERS

Respondent

MR. V S MASURKAR

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. JUSTICE U C SRIVASTAVA, VICE CHAIRMAN

The Hon'ble Mr. A B GORTHI, MEMBER (A)

1. Whether Reporters of local papers may be allowed to see the Judgement? *Y*
2. To be referred to the Reporter or not? *Y*
3. Whether their Lordships wish to see the fair copy of the Judgement? *Y*
4. Whether it needs to be circulated to other Benches of the Tribunal? *Y*

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, "GULESTAN" BUILDING NO.6
PREScot ROAD, BOMBAY - 400 001

O.A. No. 126/1990

S M Nandgaonkar
Superintending Engineer(Civil)
Civil Construction Wing
All India Radio
Seminary Hills
Nagpur

..Applicant

v/s.

1. Union of India
through Secretary
Ministry of I&B
Department of CCW
All India Radio
6th floor
Shastri Bhavan
New Delhi-1
2. Chief Engineer (Civil)
Civil Construction Wing
All India Radio
2nd floor
PTI Building
New Delhi-1
3. UPSC Through its Chairman
Dholpur House
Shahjahan Road
New Delhi - 11
4. Shyam Kishore
Superintending Engineer
Head Quarters, CPWB
Sewa Bhavan
R K Puram
New Delhi
5. B N Sinha
Superintending Engineer
P.W.D., Delhi Administration
Curzon Road Barracks
Kasturba Gandhi Marg
New Delhi - 1

.. Respondents

CORAM: Hon. Shri Justice U C Srivastava, V.C.
Hon. Shri A B Gorthi, Member (A)

APPEARANCE:

SHRI DINESH PURANDHARE
with DR. D Y CHANDRACHUD
Advocate
for the Applicant

SHRI V S Masurkar
Counsel
for the respondents

JUDGMENT:

(PER: U.C. Srivastava, Vice Chairman)

DATED: 22.11.1991

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By this application the applicant has challenged the appointment of respondent nos. 4&5 and later on gave up the case against respondent No. 4 and confined to respondent no. 5 for appointment to the post of Chief Engineer Civil in the Civil Engineering Construction Wing of All India Radio. The applicant who joined the Military Engineering Service as Superintendent B/R Gr. I in the year 1956 was promoted to the post of Assistant Executive Engineer. He was then promoted as Executive Engineer in the year 1974 and later on as Superintendent Engineer in the year 1982 in the Civil Construction Wing of All India Radio, which post is even now held by him at Nagpur.

One post of Chief Engineer (Civil), Level-II in All India Radio (for brief CEC-II, AIR) was created in August 1986. Till 1984 there was one sanctioned post of Additional CE(C) which was subsequently converted into Chief Engineer(C) Level-II. But the post of CE(C)-II was abolished. In August 1986 the post of C.E.(C)-II was again created. The applicant has alleged that there are no recruitment rules framed by respondent no.1 which would govern the recruitment of C.E.(C)-II. The recruitment rules dated 17-10-1985 for the post of Chief Engineer(C)-I, which provide that the Superintending Engineer with 9 years of regular service in the grade would be promoted to the post of Chief Engineer (C) Level-I. Under the rules as existed then S.E. would get promotion to CE(C)-I failing which the post of CE(C)-I could be filled by transfer on deputation. The new recruitment rules came into existence on 16.11.1990 i.e., after a few days of the impugned selection of respondent no.5 to the said post who was appointed in the year 1990 by way of deputation. Under the new rules also the post of CE(C)-II is a promotion

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post for S.E.(C)/Superintending Surveyor of Works(C) with 7 years regular service in the grade. Appointments to the said post can also be made by transfer on deputation. The post of C.E.(C)-II was created on 28.8.1986 but advertisement for the same was issued on 1.10.1988 inviting officers serving in the Central Government for appointment on deputation to the post of CE(C)-II. It was stated in the advertisement that officers holding analogous post on regular basis or those who are on regular service in the pay scale of Rs.3700-500 for 7 years and holding a degree in Civil Engineering are eligible for deputation.

It also provided that the departmental Superintending Engineer with 6 years service on regular basis who is holding a degree in Civil Engineering from a recognised University would be considered for appointment to the post of Chief Engineer Level-II. It was further stated that if the departmental officer is selected then it will be treated that the post was filled by promotion.

As the new rules were being finalised the department has decided in consultation with the UPSC to adopt a composite method for appointment to the post of CE(C)-II and as suggested by the UPSC an advertisement was inserted in Employment News calling applications from the Central Government officers holding analogous posts on regular basis as has been stated earlier. The applicant represented against the same and the UPSC conducted a personal talk for appointment to the post of CE(C)-II on 29.1.1990. Another departmental officer was also given a personal talk based on the order of the Central Administrative Tribunal, Calcutta Bench. This personal talk was held after the representation dated 15-12-1989 protesting against the mode of selection and requesting for holding DPC to consider his

name for the post of C.E.(C)-II. A composite method of appointment was adopted. Respondent no. 4 & 5 also applied for the said post, who are from CPWD and also fulfilled the recruitment qualification as per advertisement dated 1.10.1988. In the said composite selection Respondent No.5 was adjudged to be the best candidate and consequently he was appointed. The applicant has challenged the said appointment of respondent no.5 and on behalf of the applicant it was contended that it was a cadre post and the rules governing the appointment of C.E.(C)-I of 1985 would also govern for appointment to the post of C.E.(C)-II, which was nothing but a post in the cadre itself.

A great controversy has arisen between the parties and that is why time was given to the respondents to produce the record, on the date fixed. On behalf of the respondents it has been stated that it was a cadre post. There is no doubt as is also evident from the said order dated 28.8.1986 that the post of C.E.(C)-II is a temporary addition to the cadre i.e., to the cadre of Chief Engineer and no other cadre. In the Chief Engineers cadre although up till now there was only one post of C.E.(C)-I, but now subsequently temporarily there is addition of C.E.(C)-II. The post being a temporary addition to the cadre obviously the rules for selection to the post or promotion to the post of said cadre were applicable. It is true that new rules were under finalisation but till then it was not finalised and so long as the new rules do not come into existence any selection which takes place prior to the enforcement of the new rules will be in accordance with the rules as ^{they} existed then. In this connection reference may be made to the case of Y V Rangaiah V. J. Sreenivasa Rao, 1983(3) SCC 385 -

wherein when the old rules were in existence the selection to a particular post was not made and the Government delayed the matter and after coming into force of the new rules selection was made with the result that some of those who were eligible under the old rules became ineligible. They challenged this position. The court observed as under: The vacancies which occurred prior to the amended rules will be governed by the old rules, and not by the amended rules. It was admitted by counsel for both the parties that henceforth promotion to the post of sub-registrar would be made according to the new rules and on zonal basis and not on the statewise basis and therefore there was no question of challenging the vacancies that occurred prior to the amended rules but the question is that of filling the vacancies that occurred prior to the amended rules. In these circumstances the court has taken similar decision earlier also but the case of Rangaiah & other cases again came up for consideration in the case of N.T. Devin Katti V. Karnataka Public Service Commission & Others, 1990(1) SCALE659.

The court observed that the selection should normally be regulated by the existing rules or Government orders the selection of candidates in such a case must be made in accordance with the then existing rules and Government orders. If the recruitment rules are amended retrospectively during the pendency of selection, in that event selection must be held in accordance with the amended rules. This is the same position in this case here, It is admitted that once this is a cadre post obviously the rules as they were in existence were applicable in the matter for selection. It is true that few weeks thereafter the new rules came to force, but the respondents could have waited for making appointment instead of waiting for new rules they have made selection based on old rules. Thus the selection was not made in accordance

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with the old rules, and the old rules did not provide for any ~~compound~~ ^{open} selection. Under the old rules the appointment was to be made by way of promotion failing which on deputation. Whenever the rules provide for appointment by promotion failing which by deputation it means that the departmental candidate has to be considered first and if the departmental candidate is not found up to the mark only then the resort to the other mode i.e., by transfer on deputation could be taken. It was decided before hand that the selection would be a open selection and in a ~~compound~~ ^{open} method wherein candidates ~~are~~ from other departments for the selection on transfer on deputation along with the department candidates would simultaneously interviewed and the one who is adjudged best according to the merit would be selected. Rules ~~do not~~ provide for the same. Under the rules it is only after the exclusion of the departmental candidates the outsiders could be taken. Accordingly the selection and appointment of Respondent No. 5 is illegal and the same has got to be quashed. Respondents are directed to fill in the post in accordance with the rules as ~~it~~ ^{as} existed although there appears to be no substantial difference between the old rules and the new rules in this behalf. Although the appointment of Respondent no. 5 is quashed on this ground but so long as the fresh selection does not take place a vacuum cannot be created and hence he will continue in the same post. In case the respondents do not find any one up to the mark in the department then it is open for the respondents to adopt other mode of recruitment such as transfer on deputation may be the Respondent no. 5 or any other person. Let the fresh selection in accordance with the rules be held within a period of six months. There would be no order as to costs.

transcript
(A B Gorathi)
M(A)

(U C Srivastava)

V C 22-11-71