

(9)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No.
Transfer Application No.

1053/92

Date of Decision : **9.8.1995**

Shri P.D. Rana

Petitioner

Shri I.J.Naik

Advocate for the
Petitioners

Versus

Union of India & Ors.

Respondents

Sh.V.S.Masurkar for R-1to3 and Sh.S.R.Atri for R-4.

Advocate for the
respondents

C O R A M :

The Hon'ble Shri Justice M.S.Deshpande, Vice Chairman

The Hon'ble Shri P.P.Srivastava, Member (A)

- (1) To be referred to the Reporter or not? —
- (2) Whether it needs to be circulated to other Benches of the Tribunal? *W*


(P.P.SRIVASTAVA)
MEMBER (A)


(M.S.DESHPANDE)
VICE CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

OA.NO. 1053/92

Shri Pravinchandra D.Rana

... Applicant

v/s.

Union of India & Ors.

... Respondents

CORAM: Hon'ble Vice Chairman Shri Justice M.S.Deshpande
Hon'ble Member (A) Shri P.P.Srivastava

Appearance

Shri I.J.Naik
Advocate
for the Applicant

Shri V.S.Masurkar
Advocate
for Respondents No. 1 to 3

Shri S.R.Atre
Advocate
for Respondent No. 4.

ORAL JUDGEMENT

Dated: 9.8.1995

(PER: M.S.Deshpande, Vice Chairman)

By this application the applicant challenges the seniority list of Assistant Engineer/Assistant Surveyor of Works which came to be revised on 25.6.1992 and the promotion of Respondent No. 4 to the post of Assistant Engineer by the order dated 18.1.1990.

2. The applicant and Respondent No. 4 were working as Junior Engineers in the Union Territory of Goa, Daman & Diu and they came to be confirmed by the order dated 26.8.1986. A tentative seniority list was circulated on 29.5.1981 in which the applicant was shown senior to Respondent No. 4 and the final seniority list was drawn up on 19.7.1982 (Annexure: 'A-8') in which the applicant appeared at Sl.No. 210 and Respondent No. 4 at 211. Despite this, ^{the} seniority list was sought to be modified and a Circular came to be issued on 25.6.1992 (Annexure : 'A-2') by which a tentative seniority list

Was circulated and it was to be finalised after receiving objections. The applicant's name appeared at Sl.No. 5 while that of Respondent No. 4 appeared at Sl.No. 4 in the tentative seniority list. The applicant's grievance is that having already prepared a final seniority list that list could not have been revised later and the later list should therefore be quashed. The Respondent No. 4 came to be promoted as Assistant Engineer by the order dated 18.1.1990 (Annexure 'A-1') apparently on a purely adhoc basis without bestowing upon him any claim for seniority or regular appointment. The applicant's contention is that the Departmental Promotion Committee was not properly constituted and suffered from ~~a~~ the vice as it did not consider the relevant seniority list in respect of post of Executive Engineer. The selections made on the basis of the recommendations of the DPC held on 31.5.1989 for the Group 'C' posts to Group 'A' & 'B' posts came to be set aside by the decision of this Tribunal in OA.NO. 138/90, Bharat Gupta vs. Union of India decided on 19.7.1991. It is urged that the applicant should have been preferred to Respondent No. 4 and in any event the Respondent No. 4 who was junior to the applicant could not have been preferred because the promotion was to be on the basis of the guidelines issued on 10.4.1989. The applicant, therefore, challenges the promotion of Respondent No. 4 to the post of Assistant Engineer.

3. On behalf of Respondent No. 4 it was contended that Respondent No. 4 had preferred objections by making representations and he received the reply on 17.9.1982 stating that the matter was under consideration and that reply was also repeated on 2.5.1988 and therefore the seniority list prepared on 19.7.1982 had not reached finality and DPC which was convened on 13.12.1989 could have taken only the tentative seniority list prepared later and there was no vice in the process of selection. The

learned counsel for Respondents No. 1 to 3 contended that it was within the province of Respondents No. 1 to 3 even after the selection by the DPC held on 13.12.1989 to make either a purely adhoc appointment or regular appointment and if the Respondents No. 1 to 3 were to make the adhoc appointment of Respondent No. 4, that would not be irregular.

4. It is clear from the plain reading of the seniority list dated 19.7.1982 (Annexure: 'A-8') that it was to be the final seniority list and once the issue of seniority was settled merely because later the Respondent No. 4 made representations for which he received replies on 17.9.1982 and 2.5.1988, that would not change the finality which attached to the seniority list dated 19.7.1982 and that seniority list would have been subject only to judicial orders which could have been passed had the Respondent No. 4 challenged the final seniority list ~~by~~ which he was aggrieved. The Circular dated 25.6.1992 (Annexure: 'A-2') inviting objections to the tentative seniority list ~~can~~ not have any validity and such ~~action~~ action could not have been taken by the Respondents No. 1 to 3. The selection obviously could have proceeded only on the basis of earlier seniority list dated 19.7.1982.

5. Though the learned counsel for the Respondent No. 4 at one stage urged that the DPC had before it the seniority list which showed him senior to the applicant, this assumption was not valid ^{but} when the learned counsel ^{became} aware of the position that the tentative list ^{was} prepared on 25.6.1992 while the selection by the DPC was on 13.12.1989, he did not pursue the contention.

6. With regard to selection by the DPC, the learned counsel for Respondents No. 1 to 3 urged the rating of the that Respondent No. 4 was "Very Good" while that of the applicant was "Good" on the rating given by the DPC. Respondents No. 1 to 3 had to select the Respondent No. 4 in preference to the applicant. We have considered the relevant rules and the effect of the guidelines issued in this respect in our judgement in Arun Srinivas Shenoy vs. Union of India, OA.NO. 302/90 decided on 28.1.1995 and held that when the promotion was to be made to Group 'B' & 'C' posts, that would be on the basis of seniority irrespective of any better rating above "Good" which any of the candidates may secure. This view of the law would hold good in respect of the selection made by the DPC on 13.12.1989 on the basis of the rating "Good" given to the applicant and "Very Good" given to Respondent No. 4. The selection could have been made only on the basis of seniority in that event and to that extent the recommendations of the DPC and the appointments following those recommendations shall have to be struck down.

7. The learned counsel for the respondents urged that the present OA. which was filed on 14.10.1992 would be beyond time considering that the selection was made by the DPC on 13.12.1989. In the application for condonation of delay filed by the applicant M.P.353/95 it was urged that since the appointment of Respondent No. 4 made in January, 1990 was only adhoc basis and he did not challenge the legality of the promotion, thinking that after 6 months, i.e. in July, 1990 the limit of period of adhoc promotion given to him would end and he had submitted his representation in August, 1991. No relief was granted to him till September, 1992. The representation dated

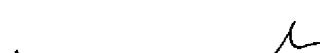
30.8.1991 refers to the applicant's earlier representation dated 15.12.1989. Normally, the applicant should have approached the Tribunal within 18 months of the making of the representation dated 15.12.1989. However, it is clear that the recommendations of the DPC held on 13.12.1989 were given effect on 18.1.1990 by promoting the Respondent No. 4 on adhoc basis. Though the documents produced by the applicant would show that the applicant regarded the promotion of Respondent No. 4 as regular promotion, it is clear that what would be of consequence would be the nomenclature used in the order of promotion dated 18.1.1990 that the promotion was only on adhoc basis. In this context limitation would not run from the earlier representation dated 15.12.1989 but run only from 30.8.1991 when the second representation (Annexure : 'A-3') came to be made. As we have already pointed out that the present application was filed on 14.10.1992, i.e. within 18 months from making of this representation which really raised the challenge to the appointment of Respondent No. 4. The second seniority list was circulated on 25.6.1992 and so on that basis also the present OA. filed on 14.10.1992 will be within time. Limitation, therefore, would not come in the way of the applicant and in any event he had a good reason to wait and that would justify our allowing the M.P. for condonation of delay and we would have condoned the delay had there been any.

8. With regard to relief, we quash the Circular dated 25.6.1992 by which the final seniority list circulated on 19.7.1982 was sought to be revised and confirm the seniority list dated 19.7.1982. Since the DPC's constitution was not in-consonance with the view we had taken in OA.NO. 302/90 viz.

that for promotion to Group 'B' & 'C' posts the Bench-Mark would be "Good" and the securing of the higher Bench-Mark than "Good" would not entitle the person securing the higher rating to a preference who are senior by rating higher than "Good". We quash the recommendations of the DPC which met on 13.12.1989 for the post of Assistant Engineer and direct the Respondents No. 1 to 3 to hold a fresh DPC and complete the process of selection within six months from the date of communication of this order. Since the Respondent No. 4 is already holding the post of Assistant Engineer by virtue of his appointment on 18.1.1990, the Respondents No. 1 to 3 may if they are so inclined continue the adhoc appointment until an appointment is made in the regular manner pursuant to the above directions. If the process of selection is not completed within the period stated above, the adhoc promotion of Respondent No. 4 shall automatically lapse and he shall be reverted to the post of Junior Engineer. With these directions the OA. is disposed of.



(P.P. SRIVASTAVA)
MEMBER (A)



(M.S. DESHPANDE)
VICE CHAIRMAN

mrj.

Staged by S/e