

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 1208/92

Transfer Application No.

Date of Decision 20/1/98

B.R.Dhame & Anr,

Petitioner/s

Shri S.M.Dharap

Advocate for
the Petitioners

Versus

Union of India & Ors.

Respondent/s

Shri V.S.Masurkar

Advocate for
the Respondents

CORAM :

Hon'ble Shri. Justice R.G.Vaidyanatha, Vice Chairman


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

(1) To be referred to the Reporter or not ?

No

(2) Whether it needs to be circulated to
other Benches of the Tribunal ?

No


(P.P.SRIVASTAVA)

MEMBER (A)


(R.G.VAIDYANATHA)

VICE CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

OA.NO. 1208/92

Prima facie this the 20th day of January 1998

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman
Hon'ble Shri P.P.Srivastava, Member (A)

1. B.R.Dhame

2. S.A.Devasthali

Assistant Engineer at
Sion Post Office Building,
O/o the Superintending Engineer,
Telecom Civil Circle, Sion, Bombay.

By Advocate Mr. S.M.Dharap
and Mr. A.G.Abhayankar

... Applicants

V/S.

1. Union of India through
the Secretary, Deptt. of
Telecommunications,
Ministry of Communications,
Sanchar Bhavan, 20 Ashoka Road,
New Delhi.

2. The Assistant Director General
(Civil Wing), Ministry of
Communications, Govt. of India,
Sanchar Bhavan, New Delhi.

3. The Secretary,
Deptt. of Personnel & Public
Grievances, New Delhi.

And Drs.

By Advocate Shri V.S.Masurkar
CGSC

... Respondents

O R D E R

(Per: Shri P.P.Srivastava, Member (A))

There are two applicants in the OA.
Mr. B.R.Dhame and Mr. S.A.Devasthali. At the
outset, the learned counsel for the applicant
mentions that he is pressing the claim for Mr.
B.R.Dhame. The applicant joined the Telecom
Department in 1963 and was promoted as Assistant
Engineer in March, 1972. The applicant was promoted

on regular basis as Assistant Engineer in March, 1978. The applicant has further mentioned that final seniority list was prepared on 1.6.1987. The applicant's name appeared in the seniority list at Sl.No. 90. The applicant has further brought out that Respondents 4 to 15 approached various Central Administrative Tribunals at Calcutta, Bangalore, Ernaculam and Madras Bench and challenged the seniority list. The matter was decided by the various Tribunals holding that their adhoc service is to be counted for the purpose of seniority. Thereafter, the department issued an order dated 27.9.1992 revising the seniority list and putting Respondents No. 4 to 15 over the head of the applicant. The seniority list is placed at "Ex.-A" and the letter dated 27.9.1991 giving the revised seniority to the private respondents is placed at "Ex.-B". Thus, it will be seen that Respondents No. 4 to 15 have been given position at 22-A, B, C, D, E, F, G etc. as shown in the letter dated September, 1991 placed at "Ex.-B". On the basis of this seniority list the respondent administration promoted the private respondents No. 4 to 15 to the post of Executive Engineer on adhoc basis. The applicant in this OA. is challenging the said order dated 12.11.1992 promoting the private Respondents 4 to 15 as Executive Engineers on adhoc basis. This letter is placed at "Ex.-C".

2. The applicant further stated that the counting of adhoc service was permitted by the Bangalore Bench for all the persons whose adhoc service had not been taken into consideration.



The respondent administration should have revised the seniority list and the seniority of the applicant as well as of private respondents as a result of the final decision of Bangalore Bench in OA.NO. 1108/89 should have been shown as brought out at page 8 of the OA. The applicant has further brought out that Bangalore Bench decision has not been followed as yet. Aggrieved by non action of the respondent administration, the applicants have approached this Tribunal and have prayed the following reliefs :-

- "(a) This Hon'ble Court may be pleased to issue an order and injunction restraining the respondents 1 to 3 from confirming the respondents 4 to 15 in the post of Executive Engineer.
- (b) This Hon'ble Court may be pleased to restrain the respondents 1 to 3 by an order and injunction from promoting any other person who is junior to the applicants in length of service as Asstt. Engineer by including the period of adhoc appointment in the capacity of Asstt. Engineer.
- (c) Alternatively this Hon'ble Court may be pleased to direct respondents 1 to 3 to promote the applicants as Executive Engineers in temporary capacity by considering their length of service on the basis of inclusion of the period of their adhoc appointment.
- (d) Ad-interim relief in terms of prayers (a), (b) & (c) be granted.

3. Learned counsel for the applicant at the time of argument stated that since the time the OA. was filed, certain developments have taken place. The respondent administration has revised the seniority list by giving weightage of adhoc service to all the employees including the applicant. The Applicant No. 1 is also promoted to the post of Executive Engineer on adhoc basis by counting his adhoc service. He has further argued that the only



relief which the applicant is pressing at present is that the applicant is entitled to be promoted from the date the private respondents 4 to 15 were promoted and he should be paid the wages of the Executive Engineer from the date his juniors private respondents 4 to 15 have been promoted.

4. Respondents have filed their reply and the applicants have filed rejoinder and the respondents have filed additional reply to the rejoinder. In Para 10 of the additional reply of the respondents dated 31.1.1996, it has been brought out that the adhoc service rendered by the applicant as Assistant Engineer has already been regularised and their seniority in Assistant Engineer grade has accordingly been refixed in the final seniority list issued on 20.6.1994. In this seniority list, the Applicant No. 1 has been placed at Sr.No. 125. The respondents have further brought out that on the basis of this seniority list dated 20.6.1994 the applicant has been promoted on adhoc basis vide letter dated 4.11.1994, a copy of which is placed at "Ex.R-V". The respondents have further brought out that in view of the promotion of the applicant on adhoc basis, nothing survives in this OA.

5. The ld. counsel for the applicant has submitted that although the main relief sought in the OA. has been granted, the applicant is entitled to actual payment of salary from the date his junior was promoted because the applicant was deprived of this promotion for no fault of his and as a result of wrong policy followed by the administration. But for the



wrong policy by the administration, the applicant would have been promoted instead of the private respondents 4 to 15 and was promoted in 1992. Ld. counsel for the applicant has further argued that although the applicant has been promoted in 1994, he is entitled to be promoted from 1992 when his juniors private respondents were promoted and he should be paid actual wages from 12.11.1992, the date from which private respondents 4 to 15 have been paid. The Ld. counsel for the applicant has argued that it is not the fault of the applicant that the administration did not follow the promotion policy and not only the applicant should be treated as promoted from the date his juniors private respondents No. 4 to 15 but he should also be paid the wages of the post of Executive Engineer from that date.

6. Learned counsel for the respondents on the other hand has argued that the private respondents No. 4 to 15 had to be promoted in view of the various judgements of the Tribunal by which these private respondents were granted the seniority. When the Bangalore Bench decided that the adhoc service should be given to all the employees, the respondent administration promptly revised the seniority list and has promoted the applicant on the basis of that seniority list. The ld. counsel for the respondents has further argued that all the promotions of the applicants as well as of private respondents were on an adhoc basis and the issue has been finally decided by the Hon'ble Supreme Court by their judgement in the case of Union of India & Anr. vs. R. Swaminathan etc. reported in 1997 (2) S.C. SLJ 383. The issue before the Hon'ble Supreme Court was whether stepping up of the pay is



required to be granted when the juniors have been promoted on adhoc basis or local officiating basis. The Hon'ble Supreme Court has held that :-

"The increased pay drawn by a junior because of ad hoc officiation or regular service rendered by him in the higher post for periods earlier than the senior is not an anomaly because pay does not depend on seniority alone nor is seniority alone a criterion for stepping up of pay".

7. The ld. counsel for the respondents has argued that in view of the authoritative decision by the Hon'ble Supreme Court, there is no scope for granting any benefit of pay to the applicant with reference to his junior on the basis of adhoc promotion of the junior which has to be made as a result of Court's case. Ld. counsel for the respondents has further argued that it is not the action of the respondent administration which has resulted into promotion of private respondents No. 4 to 15 but the direction given by the Tribunal which has resulted in their promotion earlier than the applicant. When the decision of Bangalore Bench was available, the respondents have promptly given the promotion to all the employees counting their adhoc service including the applicant and therefore the non-promotion of the applicant is not as a result of in-action on the part of the respondent administration.

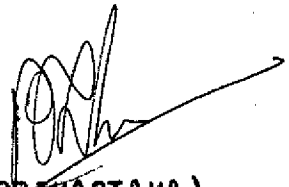
8. Learned counsel for the respondents has also argued that the relief now been argued at the time of hearing concerning payment of salary from the date his juniors were promoted is not one of the prayer which has been made by the applicant in this

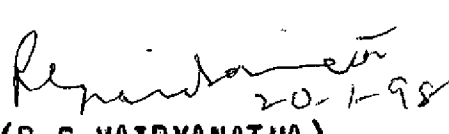


OA. and on this ground also the applicant is not entitled to any relief for grant of pay from the date his juniors were promoted on adhoc basis. The ld. counsel for the respondents has also argued that all other reliefs have already been granted to the applicant.

9. After hearing both the parties, we are of the view that the main relief in this OA. has already been granted and the question of granting of pay equal to that of the junior when the juniors were promoted on adhoc basis has been finally settled by the Hon'ble Supreme Court in the judgement cited above and in view of that the applicant would not be entitled to grant of pay from the date his juniors were promoted on adhoc basis. We have also noticed that this relief has not been sought by the applicant in this OA.

10. In the result, since the relief of promotion sought by the applicant to the post of Executive Engineer has already been granted and the applicant's seniority has been revised taking into account his adhoc service, nothing survives in this OA. The OA. is, therefore, dismissed with no orders as to the costs.


(P.P. SRIVASTAVA)
MEMBER (A)


(R.G. VAIDYANATHA)
VICE CHAIRMAN

mrj.