

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Second Floor,
Commercial Complex,
Indiranagar,
BANGALORE- 560 038.

Dated: - 4 ^{NOV} ~~MAY~~ 1994

APPLICATION NO: 209 of 1994

APPLICANTS:- Mr. H. Anjinappe
V/S.

RESPONDENTS:- Seely, S/o Tebenn, New Belthi & 2 ors.

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1. Sri. P. A. Kulkarni

Advocate
No. 47, II floor, 57th 'A' Cross
4th Block, Rajaji Nagar
Bangalore - 560 010.

2. Sri. M. S. Padmarajaiah,

Sr. C.G.S.C.,
High Court Bldg.
Bangalore - 1.

Subject:- Forwarding of copies of the Order passed by the
Central Administrative Tribunal, Bangalore.
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Please find enclosed herewith a copy of the ORDER/
~~STAY ORDER/INTERIM ORDER/~~ passed by this Tribunal in the above
mentioned application(s) on 28th October 1994

Issued ^{alc}
on 4.11.94 Gah

for 10/11/94
DEPUTY REGISTRAR
JUDICIAL BRANCHES

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

O.A. NO.209/94

FRIDAY THIS THE TWENTY EIGHTH DAY OF OCTOBER, 1994.

Shri V. Ramakrishnan ... Member [A]

Shri A.N. Vujjanarathya ... Member [J]

H. Anjinappa,
S/o late Sadara Hanumantharayappa,
Aged about 48 years,
Assistant Engineer [Civil],
Presently working as Astt.
Surveyor of Works, Postal
Civil Circle, Jayalakshmi Mansion,
Gandhinagar,
Bangalore-9.

... Applicant

[By Advocate Shri P.A. Kulkarni]

v.

1. The Union of India
by its Secretary,
Deptt. of Telecommunication,
Sanchar Bhavan,
No.20, Ashoka Road,
New Delhi-1.
2. Department of Telecom,
Ministry of Communications,
govt. of India,
Sanchar Bhavan,
No.20 Ashoka Road,
New Delhi,
by its Head of the Deptt.

Sri K.K. Paul,
Executive Engineer,
O/o the Director General,
Deptt. of Telecommunications,
New Delhi.

... Respondents

[By Advocate Shri M.S. Padmarajaiah,
Senior Standing Counsel for R-1 and 2]



O R D E R

Shri A.N. Vujjanaradhya, Member [J]:

1. The applicant had initially made the application
with the following prayers:

- a. To hold that applicant is entitled for extending the benefit of ad hoc promotion w.e.f. 21.11.1969 from the cadre of J.E.[C] to the cadre of A.E.[C] that is the date on which Respondent No.3 K.K. Paul a junior official to the applicant in the J.E.[C] cadre came to be extended the benefit of such adhoc promotion.
- b. To hold that applicant's seniority position in the cadre of A.E.[C] is required to be fixed over and above the seniority position assigned to Respondent No.3 K.K. Paul in the final seniority list Bg. No.19-14/93-CWG dated 10.12.1993 vide Annexure 11 published by Respondent No.2 Deptt. of Telecommunication and consequently.
- c. Set aside the seniority list Bg. No.19.14/93-CWG, dated 10.12.1993 Annexure 11 published by the Deptt. of Telecommunications, Respondent No.2 herein as far as the seniority position assigned to this applicant is concerned.
- d. For issue of further directions to the Respondents for fixed the seniority position of the applicant over and above the position now assigned to Sri K.K.Paul Respondent No.3 herein vide Annexure 11.
- e. For issue of directions to the Respondents to extend the benefits arising out of counting of the seniority in the cadre of A.E.[C] w.e.f. 21.11.1969 as a consequence of grant of relief No.1 above.
- f. Any other order or direction that this Hon'ble Tribunal deem it fit and necessary circumstances of the case, in the interest of justice and equity

But he has impleaded only 3 respondents ['R' for short] and not the other persons who would be affected by the grant of relief sought by the applicant. The office took objection about the requirement of the other persons likely to be affected as party respondents. On the first date of hearing, learned counsel for the applicant undertook to implead those persons who were likely to be affected, but on the next date of hearing, however, he made a request to delete the

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prayers [b], [c] and [d] mentioned above submitting that as he restricts his prayer only to the one mentioned at [a] above and consequential relief, it would not be necessary to implead other persons as observed by the office. In view of this submission, the learned counsel was permitted to delete the prayers as at [b], [c] and [d] above at his risk and accordingly he has deleted those prayers. The application as it now stands is in respect of prayer at [a] and the consequential reliefs at paras [e] and [f] only.

2. Briefly stated the case of the applicant is as below:

The applicant was appointed as Junior Engineer ['JE' for short] in the combined P&T Department on 28.4.1965 and R-3 K.K. Paul was appointed to the same cadre on 1.7.1965. The next promotion was to the cadre of Assistant Engineer [Civil] ['AEC' for short]. Until 1976 Cadre and Recruitment Rules ['CRR' for short] had not been framed in the department. The CRR came into force on 21.2.1976, according to which 50% were to be recruited directly and 50% by promotion. Prior to the CRR, the department resorted to promote JES to the cadre of AEC on ad hoc basis. But no uniform procedure was followed in effecting ad hoc promotion. The applicant came to be promoted on ad hoc basis for the first time on 1.8.1973 as per Annexure 2 but he was reverted by order dated 26.6.1975 [Annexure 3]. However, his junior viz., R-3 was allowed

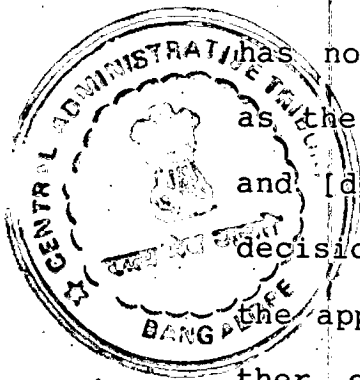


to function in the promotional cadre on ad hoc basis. When the disparity was brought to the notice of the authorities by the applicant, the applicant came to be promoted on ad hoc basis again with effect from 31.7.1976 [[Annexure 4]. Thereafter by order dated 29.3.1978, the department issued regular promotion orders in respect of 215 JEC[Annexure 5] with the date of eligibility of the applicant as 24.2.1977. R-3 who was promoted along with the applicant on 29.3.1978 is shown at S.No.108 whereas the name of the applicant appears at S.No.94. When the applicant was reverted during 1975 some of his juniors were allowed to continue as AEC on ad hoc basis. The department came out with final seniority list in the grade of AEC as on 1.6.1987 placing the applicant at S.No.117 and R-3 at S.No.130 [Annexure 9]. Subsequently there were certain litigations before the Calcutta and Madras Bench of this Tribunal as also in O.A.No.1108 to 1110/89 decided by this Bench of the Tribunal on 20.12.1989 [Annexure 10]. Applying the ratio of this decision, taking into account the dates on which the incumbents were appointed on ad hoc basis following continuous service as the date of determining their provisional seniority in the cadre of AEC, the applicant's service on ad hoc basis was required to be counted for fixation of his seniority. The 2nd applicant in Annexure 10 was not even promoted on ad hoc basis. However, relief was granted to him also on the basis that his junior had also

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been promoted on ad hoc basis. In view of this decision in Annexure 10 the applicant who came to be promoted on ad hoc basis is required to be extended such benefit because R-3 was extended such ad hoc promotion from 21.11.1969. However, applying the ruling in annexure 10, the department published the seniority list of AEs under OM dated 10.12.1993 [Annexure 11]. Contending that if the relief sought at sub-para [a] were to be granted in view of the decision at Annexure 10, the applicant would agitate before the Department and get the necessary redress is the submission of learned counsel for the applicant.

3. R-3 K.K. Paul has not filed any reply statement and is not represented though served with notice. R-1 and 2 oppose the application contending that the applicant is not entitled to any of the reliefs inasmuch as it is barred by the law of limitation and relief sought is in relation to 1969 and this tribunal has no jurisdiction to entertain the application and as the applicant has deleted the prayers at [b], [c] and [d] he cannot seek to place any reliance on the decision in O.A.No.1108 to 1110/89 and, therefore, the application is liable to be dismissed. They further contend that when the applicant was promoted on ad hoc basis for the first time in 1973 he was a non-graduate and was junior to several other persons who were required to be promoted on ad hoc basis and, therefore, he was reverted and further as that cause



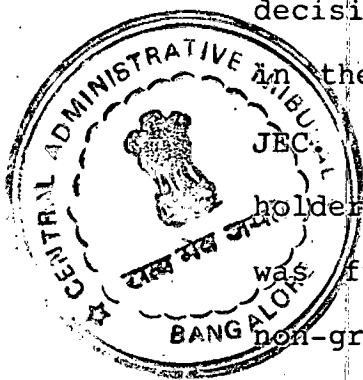
of action arose at the point of time and as the applicant has not approached the proper forum at the appropriate time, he is not entitled to agitate his grievance at this stage before this Tribunal.

4. We have heard Shri P.A. Kulkarni, learned counsel for the applicant and Shri M.S. Padmarajaiah, learned Senior Standing Counsel for R-1 and 2.

5. Mainly the contentions advanced by the learned counsel for the applicant are that because decision in O.A.No.1108 to 1110/89 rendered by this Tribunal shows that 2nd applicant therein was not even promoted on ad hoc basis and question of limitation was also considered in that application and was found in favour of the applicants therein, the question of limitation does not arise in this case. Further the department had failed to comply with such direction of common applicability in respect of similarly placed persons and, therefore, the applicant has every right to move for redressal of his grievance. Referring to the DO letter dated 26.3.1969, copy of which is produced by the official respondents, on which reliance is placed, the learned counsel for the applicant contended that because the draft rules are referred to thereunder, the DO letter cannot be relied upon and, therefore, there is no material to support the case of the official respondents that promotions were made in accordance with the instructions contained in the DO letter. On the other hand Shri Padmarajaiah placing reliance on the decision in the case of Dr.[Mrs.] KSHAMA KAPUR V. UNION OF INDIA reported in 1987[4]

ATC 329 rendered by this Bench of the Tribunal, contended that the relief sought by the applicant cannot be granted at this distance of time because there is no jurisdiction as the relief sought relates to the year 1969. - As regards the 2nd applicant in OA No.1108 to 1110/89 the contention of the learned counsel is that he was a graduate and, therefore, he was duly considered and the applicant is not a similarly placed person who can be said to be entitled to such benefit.

6. R-1 and 2 have set out the reason for ad hoc promotion thus: After the formation of the P&T Civil Wing in July 63, with the staff from CPWD who had been looking after the construction and maintenance work of P&T Bldgs till then, the P&T deptt. started recruiting persons to the grade of Sectional Officers [Civil] and AEC from the open market. Pending finalisation of recruitment rules for the post of AEC a decision was taken in 1969 to fill up 50% vacancies in the grade of AEC by promotion from the grade of JEC. Since there were degree holders and diploma holders among the JEs, the promotion quota of 50% was further apportioned for graduate Engineers and non-graduate Engineers in 1:1 ratio. There was a 3 year relaxation in service for the graduate Engineers for promotion to AEC grade. A DPC meeting was held to consider the suitability of eligible officers in the graduate and non-graduate quota for promotion

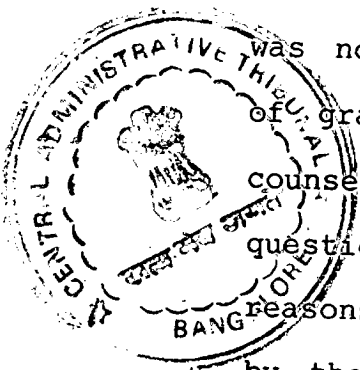


on ad hoc basis to the grade of AEC. R-3 being a graduate Engineer, was considered under the graduate quota and he was promoted as AEC on ad hoc basis in 1969. The applicant on the other hand was non-graduate and therefore he was not considered at that time. In this connection our attention was brought to the DO letter dated 26.3.1969 issued by the Ministry of Communication in which there is a reference to draft CRR and the DO had intimated the concerned that the service requirement of 5 years and 8 years are relaxable for special reasons upto 3 years for graduates and 6 years for non-graduates. Accordingly R-3 who was a graduate Engineer was promoted on ad hoc basis during 1969 whereas the applicant who was then a non-graduate was not considered for promotion and when his turn came he was also considered and was given ad hoc promotion subsequently. The contention of the learned counsel for the applicant that ad hoc promotions were not being made on the basis of any rules and who ever was promoted earlier was required to be placed above the person who was subsequently promoted cannot be accepted as a correct proposition. Because seniors to the applicant in the grade of JE were required to be promoted his ad hoc promotion given in 1973 was reversed and subsequently the applicant was promoted with effect from 21.1.1977 giving a regular promotion from 20.3.78 and treating the deemed date of promotion as 24.2.1977. The contention of the learned counsel that because the DO letter

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dated 26.3.69 refers to draft RRs, it was not proper to rely on the provision relating to relaxation and, therefore, there is no material to support the deemed date of promotion of R-3 and the applicant is not tenable inasmuch as the department has followed a rationale which cannot be faulted. Besides at that time the deptt. was in need of officers to attend to construction and maintenance of buildings. No doubt the draft CRR prescribed service of 5 years for graduate Engineers and 8 years for non-graduate engineers and the same was relaxed to suit the situation at that time and this being based on a reasonable understanding of the position we are unable to accept the contention of the learned counsel that there is no material to support the case of the respondents in effecting the promotion and give the deemed date of promotion in respect of applicant as well as R-3.

7. The applicant has relied strongly on the observations in the order in Annexure 10 ie., in O.A.NO.1108 to 1110/89 and because it was held therein that there was no question of limitation which came in the way of granting relief, it is contended by the learned counsel for the applicant that even in this case the question of limitation will not arise and for the reasons stated in para 4 of the order, relief sought by the applicant will have to be granted. In O.A.-No.1108 to 1110/89 the applicants had sought to quash the seniority list as on 1.6.1989 and the subsequent orders as illegal and unjust and also sought a direction to recast the seniority list properly fixing



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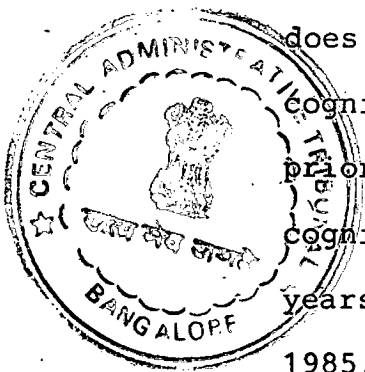
the seniority of the applicants notionally treating them as having been promoted on the due dates when they became eligible after 8 years of service as has been done in the case of their juniors and to assign higher ranking to the applicants in the final seniority list of AEs by placing them between 22C and 22D in the case of 1st applicant, between 2 and 2A for the 2nd applicant and between 25 and 26 for the 3rd applicant. In view of such relief sought, after observing thus in para 4 and 5 the Tribunal allowed the said OAs directing the respondents to revise the seniority list of AEs by taking into account the dates on which the incumbents were appointed on ad hoc basis followed by continuous service as the date for determining the relative seniority in the cadre of AEs.

"4. The question of limitation does not arise in these cases as the applicants were justified in waiting for appropriate action being taken by the department extending the general principle laid down by the two Benches of the tribunal to every one similarly situated. It is only when they found to their surprise that the same principle was not applied the cause of action accrued to them to approach this Tribunal for appropriate relief. Hence, we are not inclined to shut out the applicants on the ground of limitation.

5. We must advert to the case of the second applicant who had never been appointed on ad hoc basis as Assistant Engineer. It has been pointed out that his case for ad hoc appointment was not considered not because there was any deficiency or that he was not eligible. That being the position, his claim for appropriate seniority in the cadre of Assistant Engineers should not be denied merely because he was not appointed earlier on an ad hoc basis. Fairness requires that his case should be examined to determine the date on which he would have been given ad hoc appointment such as the date when his immediate junior was appointed on ad hoc basis, that date should be regarded as the deemed date for his promotion to the regular cadre of Assistant Engineer for the purpose of determining his seniority in the cadre of Assistant Engineer."

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In the present case even though the applicant had earlier sought reliefs as at [b], [c] and [d] supra, he had deleted those prayers when an objection was taken to the fact that applicant has not impleaded the persons who may be affected. Therefore, the only prayer which remains to be considered herein is prayer [a] viz., to hold that the applicant is entitled for extending the benefit of ad hoc promotion from 21.11.1969 from the cadre of JEC to the cadre of AEC ie., the date on which R-3 a junior official to the applicant in the JEC cadre came to be extended the benefit of such adhoc promotion. Because this prayer relates to the year 1969 and he has deleted other prayers [which he could have urged had he impleaded the other persons that are going to be affected] he cannot invoke the jurisdiction of this tribunal. In V.K. MEHRA V. THE SECRETARY, MINISTRY OF INFORMATION AND BRADCASTING reported in ATR 1986[1] CAT 203 it was held that Administrative Tribunals Act, 1985, does not vest any power or authority in CAT to take cognizance of a grievance arising out of order passed prior to 1.11.1982. Because the Tribunal could take cognizance of the grievance only for a period of 3 years prior to the coming into force of the Act in 1985, the grievance of the applicant relating to the year 1969 cannot be sought to be resolved and, therefore, this Tribunal lacks jurisdiction and the claim of the applicant is also barred by limitation as rightly contended by the learned counsel for R-1 and 2 contending that he has sought to enforce the relief




nearly 25 years after he is aggrieved. Shri Padmarajaiah also relied on the decision in DR.[MRS.] KSHAMA KAPUR V. UNION OF INDIA 1987[1] ATC 329 to support his contention that applicant relying on the subsequent decision in O.A.No.1108 to 1110/89 will not have the effect of extending the limitation inasmuch he has restricted his prayer to only the one relating to 1969. Because the applicants in the said OA had sought to quash the seniority list dated 1.6.1987 and subsequent orders the question of limitation was not seriously viewed in annexure 10. Similarly in para 5 of the said decision the case of the 2nd applicant therein was considered and he was directed to be considered for promotion from the date his junior was appointed. The applicant is not entitled to rely on the decision in Annexure 10 for the reason that he has deleted the prayers at [b], [c] and [d] and made himself liable for observation that this Tribunal lacks jurisdiction. Viewed from any angle there is no merit in this application and the same will have to fail.



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8. In the result this application is hereby dismissed with no order as to costs.


Section Officer
Central Administrative Tribunal
Bangalore Bench
Bangalore

O.A.


MEMBER [J]


MEMBER [A]