

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 71/97

Date of Decision : 24th September 01.

A.D.Chaudhari & Ors. _____ Applicant

Shri S.P.Saxena _____ Advocate for the
Applicant.

VERSUS

Union of India & Ors. _____ Respondents

Shri R.R.Shetty for
Shri R.K.Shetty _____ Advocate for the
Respondents

CORAM :

The Hon'ble Shri S.L.Jain, Member (J)

The Hon'ble Shri S.K.Agarwal, Member (A)

- (i) To be referred to the reporter or not ? Yes
- (ii) Whether it needs to be circulated to other ~~two~~ Benches of the Tribunal ?
- (iii) Library Yes

S.L.JAIN
(S.L.JAIN)
MEMBER (J)

mrj.

10/2009
PP

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.71/97

Dated this the 24th day of September 2001.

CORAM : Hon'ble Shri S.L.Jain, Member (J)

Hon'ble Shri S.K.Agarwal, Member (A)

1. Ajitkumar Dhanjay Chaudhari
2. Arjun Krishna Bhagat
3. Anil A.Kamalapurkar
4. Eknath Kadar Dhadwad
5. Girish Sharadchandra Bhogale
6. Kishor Hari Patil
7. Shankar Dattatraya Kulkarni
8. Pradeep Sahebrao Kadu
9. Rajendra Gokuldas Taneja
10. Rajnish Laxmikant Karnik

All are Supdt. B/R Grade-I,
O/o Garison Engineer (South),
1. Gen.Bhagat Marg,
Pune.

...Applicants

By Advocate Shri S.P.Saxena

vs.

1. Union of India through
The Secretary,
Ministry of Defence,
DHQ P.O., New Delhi.
2. The Engineer-in-Chief,
Army Headquarters,
Kashmir House,
New Delhi.
3. The Chief Engineer,
Southern Command,
Pune.

...Respondents

By Advocate Shri R.R.Shetty
for Shri R.K.Shetty

.2/-

J.C.D.

O R D E R

{Per : Shri S.L.Jain, Member (J)}

This is an application under Section 19 of the Administrative Tribunals Act, 1985 seeking the reliefs as under:-

"8. (a) to direct that the existing method of filling up of posts of Assistant Engineer by promotion, is irrational, arbitrary and violative of Articles 14 and 16 of the Constitution.

(b) to direct the respondents to consider the applicants for promotion to the post of Assistant Engineer as soon as they become eligible on completing three years of service in the Superintendent B/R Grade-I grade, by holding review D.P.C.

(c) to direct the respondents to pay all consequential benefits to the applicants, including monetary benefits, if the applicants are promoted to the post of Assistant Engineer, retrospectively.

(d) to pass any other just and proper order in the interest of justice and equity.

(e) to award cost of application."

2. The applicants who are direct recruits possessing the qualification of Bachelor of Engineering or equivalent to it are Superintendent B/R Grade-I were recruited and appointed on the dates shown as per Exhibit-'A-1'. As per Recruitment Rules, their promotion to the post of Assistant Engineer B/R is based on the eligibility criteria which is B/R Grade-I with three years regular service in the Grade in the case of Degree holders in Civil Engineering or equivalent, (ii) 7 years regular service in

1/1

..3/-

the Grade in the case of Diploma holders in Civil Engineering or equivalent or having passed MES Procedure Examination. Thus, though the feeder cadre is Superintendent B/R Grade-I but eligibility criteria for Degree holders and Diploma holders is different one, i.e. 3 years regular service in the Grade for Degree holders and 7 years regular service in the Grade for Diploma holders.

3. The grievance of the applicants is that the respondents have neither enlisted the applicants in the seniority list nor considered them for promotion on completion of stipulated period of three years of service. There is a lacuna in the Rules applicable for filling up the posts of Assistant Engineer that no ratio is made out for the two distinct and separate classes of employees possessing degree or diploma qualification respectively. In the absence of any such ratio, preference must be given to the more qualified degree holders over diploma holders as Degree holders are also eligible and available for promotion after three years of service. Such a qualification is permissible in view of Articles 14 and 16 of the Constitution and it ought to have been done, keeping in view the true intention of the Rules. The Engineering degree holders have become frustrated that although they are eligible for promotion after three years, but because of the system prevailing, the applicants are not even enlisted in the seniority list, what to talk of promotion, despite the fact that they have rendered 9-12 years of service. As such, they are having no chance for promotion. Hence, this OA. for the above said reliefs.

4. During the pendency of the OA., in view of orders passed by the Bangalore Bench, which were implemented by the Government, Superintendent B/R Grade-I were provided with the scales of the promoted post, the learned counsel for the applicants stated that providing the scale of promoted post without the promotion and promotion are not one and the same thing. We agree to the submission of the learned counsel for the applicant.

5. The claim of the applicants is being resisted by the respondents.

6. During the course of arguments, the learned counsel for the applicants did not dispute the Recruitment Rules. On perusal of the pleadings of the applicants, we are of the considered opinion that the applicants are claiming that as soon as after lapse of 3 years of service in the grade of Superintendent B/R Grade-I, they are entitled for promotion while the fact is that the Recruitment Rules prescribed 3 years' criteria as the eligibility criteria and not entitlement for promotion. Thus, the applicants claim that the Recruitment Rules either be amended or revised. Rules under Article 309 of the Constitution of India are the policy matters and the Tribunal do not find any ground to interfere in such policy matters. It is for the Government to take a decision in this respect.

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..5/-

7. We are not concerned how the cadre of Superintendent B/R Grade-I is being filled which according to both the parties by promotion 87-1/2% by promotion and 12-1/2% by transfer on deputation/re-employment (Ex-Servicemen) and failing which by direct recruitment as the said question is not at all relevant for decision of this OA.

8. The learned counsel for the applicants stated during the course of arguments that though applicants were recruited in the year 1987 (Applicants No. 1 to 9) and Applicant No. 10 was recruited in the year 1990, so far they have not been considered for the promotion to the post of Assistant Engineer. The respondents have stated that to the best of their knowledge DPC was held probably in the year 1998. As this was not the subject matter of the OA., the respondents' reply may be vague one because they are not supposed to reply the same.

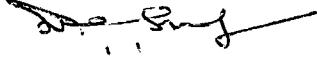
9. The respondents have stated in para 14 of the reply that the names of the applicants are included in the All India Seniority of Superintendent B/R Grade-I. They have placed on record Exhibit 'R-4' though it is later in time as it is dated 10.6.1997 while the OA. was filed on 18.12.1996.

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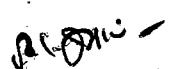
..6/-

10. In the result, we do not find any merit in the OA. as the Recruitment Rules framed under Article 309 of the Constitution are not violative of Article 14 and 16 of the Constitution and in view of the said Recruitment Rules, the applicants' claim cannot survive.

11. In the result, OA. deserves to be dismissed and is dismissed accordingly with no order as to costs.


(S.K.AGARWAL)

MEMBER (A)


(S.L.JAIN)

MEMBER (J)

mrj.