

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD.

O.A.No.295/89.

Date of Judgement 28/5 Aug 1992.

1. J.Sree Hari
2. G.Lakshmi Reddy
3. V.Krishna Swamy
4. D.V.B.Rama Rao

.. Applicants

Vs.

Union of India, Rep. by:

1. Secy., to Govt.,
Min. of Defence,
New Delhi.
2. Engineer-in-Chief,
Army Head Quarters,
Kashmir House,
Rajaji Marg,
New Delhi-1.
3. Chief Engineer (Project)
Factory, MES Parade Grounds,
Secunderabad-500003. .. Respondents

Counsel for the Applicants : Shri K.S.R.Anjaneyulu

Counsel for the Respondents : Shri N.V.Ramana, Addl. CGSC

CORAM:

Hon'ble Shri R.Balasubramanian : Member(A)

Hon'ble Shri C.J.Roy : Member(J)

X Judgement as per Hon'ble Shri R.Balasubramanian, Member(A) X

This application has been filed by Shri J.Sree Hari & 3 others against the Union of India, Rep. by the Secy., to Govt., Min. of Defence, New Delhi & 2 others under section 19 of the Administrative Tribunals Act, 1985. The prayer herein is for a direction to declare the seniority list circulated under Engineer-in-Chief, New Delhi letter No.A/41020/1/87/EIR dt. 4.7.87 as illegal and further to direct the respondents to recast the seniority list on the principle of continuous officiation in the post.

2. The applicants are working in the grade of Superintendent B/R Grade-I in the Military Engineering Services. The applicants were promoted from Grade-II to Grade-I as Superintendent B/R in 1975 and 1976. They are working

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continuously without any break from the dates of promotion. The seniority list in Grade-I Superintendent B/R was circulated for the first time vide the impugned order dt. 4.7.87. The Association represented the cause of the applicants on 25.5.88 for giving seniority based on the date of continuous officiation. However, in the meeting held on 25.1.89 they were told that the Dept. of Personnel & Training has not accepted the contention. Hence this application. They draw our attention to the fact that all direct recruits who have entered the Department much later to the applicants as Superintendents Grade-I are shown above many of the promotees like the applicants. In some cases persons appointed in 1984 are shown senior even to persons appointed in 1976. They have cited a number of decisions of various courts including several decisions of the Hon'ble Supreme Court. It is contended that once the quota rule broke down seniority should be based on continuous officiation.

3. The application is opposed by the respondents who have filed a counter affidavit. It is contended that the case is hit by limitation under section 21 of the Administrative Tribunals Act, 1985. It is stated that the cause of action arose on 4.7.87 and that none of the applicants herein have either raised any objection or assailed the ~~applicants~~ placements assigned to them and the O.A. was filed only in April, 1989. It is stated that the general principles of seniority contained in O.M.No.9/11/55-RPS dt. 22.12.59 as reviewed and decided vide O.M.No.35014/2/80-Estt(D) dt. 7.2.86 have been followed in drawing up the seniority list dt. 4.7.87. It is stated that the slot system followed in the past and not accepted by the courts in general was given a go-bye only to ensure that promotees exceeding their quota are not penalised on account of their counterparts being given seniority over them following the quota and rota system. It is also pointed out that if the prayer of the applicants is acceded to, it will upset the interest of a large number of direct recruits/who have not been impleaded as party respondents.

4. We have examined the case and heard the rival sides.
5. The Hon'ble Supreme Court has observed:

"Para 44(C) When appointments are made from more than one source, it is permissible to fix the ratio for recruitment from the different sources, and if rules are framed in this regard they must ordinarily be followed strictly.


(D) If it becomes impossible to adhere to the existing quota rule, it should be substituted by an appropriate rule to meet the needs of the situation. In case, however, the quota rule is not followed continuously for a number of years because it was impossible to do so the inference is irresistible that the quota rule had broken down.

(E) Where the quota rule has broken down and the appointments are made from one source in excess of the quota, but are made after following the procedure prescribed by the rules for the appointment, the appointees should not be pushed down below the appointees from the other source inducted in the service at a later date."

This 5 Judge Bench judgement (AIR 1990 SC 1607) covers all the earlier judgements of the Apex Court on the subject. We have only to see whether the quota rule has broken down and, if so, what is (not) to be done. The gradation list dt. 4.7.87 is stated to be in accordance with the principles of seniority laid down (in para 6) in O.M.No.10(1)/60/D(Appts) dt. 11.3.65 i.e., by rotation of vacancies between DRs and promotees based on the quotas of ^(DIRECT RECRUITS) vacancies reserved for them - referred to as quota rota system (para 6 of the counter). On a scrutiny of the ^{seniority} list we find that upto Serial 480, the time gap between DRs and promotees is about 2 years - the time taken between selection of DRs and the appointment. But, between Serials 481 and 504, the gap has widened to as much as 7 years - the promotees having been promoted in 1976 and the DRs having joined in 1983 and 1984 in 4 cases. In 1977, the quota for DRs and promotees was altered from 1:1 to 1:4. Beyond Serial 505, it is seen ~~that~~ after the revised quota that the time gap between DRs and promotees is reduced to periods ranging between 2½ and 3½ years. ^{By} Altering the quota (See para 44(D) of the Supreme Court judgement) the respondents have ^{considerably} reduced

the gap caused by the quota rota systems. They have once again changed it to 1:7 in 1983. The quota system suffered due to non-induction of DRs between 1978 and 1983 as seen from the seniority list. This was arrested and reversed by the respondents by altering the quota. Except for the spell covering ^{23 persons} (Serials 481 to 504) - a small proportion of an otherwise large cadre of about 1300 officers upto the year 1985, the system has worked well and cannot be considered to have broken down. In any case beyond 1.3.86, the reservation of slots for future direct recruits had been dispensed with and a new system of bunching of promotees in case of shortfall in direct recruits had been introduced vide Dept. of Personnel & Training O.M.No.35014/2/80-Estt(D) dt. 7.2.86 to avoid what is indicated by the Hon'ble Supreme Court in para 44(E) of the judgement.

6. In view of what is stated above, we do not wish to unsettle the seniority list of 1987 by interfering with it. The application is, therefore, dismissed with no order as to costs.


(R. Balasubramanian)
Member (A).


(C. J. Roy)
Member (J).


Dated: 28th August, 1992.


Dy. Registrar (Judicial)

Copy to:-

1. Secretary to Government, Ministry of Defence, New Delhi.
2. Engineer-in-Chief, Army Head Quarters, Kashmir House, Rajaji Marg, New Delhi-1.
3. Chief Engineer (Project) Factory, MES Parade Grounds, Secunderabad-003.
4. One copy to Sri. K.S.R. Anjaneyulu, advocate, CAT, Hyd.
5. One copy to Sri. N.V. Ramana, Addl. CGSC, CAT, Hyd.
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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

THE HON'BLE MR.

AND

THE HON'BLE MR. R. BALASUBRAMANIAN : M(A)

AND

THE HON'BLE MR. T. CHANDRASEKHAR REDDY :
MEMBER (J)

AND

THE HON'BLE MR. C. J. ROY : MEMBER (J)

Dated: *28/8* - 1992

ORDER / JUDGMENT

~~R.A./C.A./M.A.~~ No

in

O.A.No.

295789

~~T.A.No.~~

(~~W.P.No~~)

Admitted and interim directions
issued

Allowed.

Disposed of with directions

~~Dismissed~~

Dismissed as withdrawn

Dismissed for default

M.A. Ordered / Rejected

~~No~~ orders as to costs.

pvm.

