

(28)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH  
AT HYDERABAD.

O.A.No.296/89.

Date of Judgement 28/7/Aug 1992.

1. J.Sri Hari  
2. B.A.Reddy  
3. P.V.Vivekanand  
4. S.K.Shahabuddin  
5. S.Madhukar .. Applicants

Vs.

Union of India, Rep. by:

1. Secy., to Govt.,  
Min. of Defence,  
New Delhi.  
  
2. The Engineer-in-Chief,  
Army Head Quarters,  
Kashmeri House, Rajaji Marg,  
New Delhi-11.  
  
3. The Chief Engineer(Project),  
Factory MES, Parade Grounds,  
Secunderabad-500003. .. Respondents

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

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

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CORAM:

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

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

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

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This application has been filed by Shri J.Sri Hari & 4 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 here is to declare the seniority list circulated under Engineer-in-Chief, New Delhi letter No.A/41020/1/EM/87/EIR dt. 25.5.87 as illegal and further to direct the respondents to recast the seniority list based on principles of continuous officiation.

2. The applicants were promoted to Grade-I Superintendents E/M in 1975 and have been continuously working without any break.

When the impugned seniority list was published for the first time on 25.5.87, the Association represented on 10.6.87. It is their case that direct recruits who joined the grade much later have been placed above the promotees and they have cited a number of court decisions which do not approve of this method of fixing seniority.

They were informed vide minutes of the meeting held on 25.1.89 that their case was taken up with the Department of Personnel & Training who have not acceded to their request.

3. The application is opposed by the respondents who have filed a counter affidavit. They have raised the question of limitation (This does not arise because the seniority list published on 25.5.87 was opposed on 10.6.87 itself and final rejection was on 25.1.89). 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 (DRs for short) who have not been impleaded as party respondents. They have also pointed out that DRs who will be affected in case the O.A. is allowed, have not been impleaded as party respondents and it is necessary to hear them. What is under question is not individual seniority but the validity of a policy of the Govt ~~court~~ in accordance with which the seniority list has been drawn up. Hence individual impleading does not arise.

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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. 25.7.87 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 list we find that upto Serial 337, the time gap between DRs and promotees is about 2 years - the time taken between selection of DRs and the appointment. But, between Serials 338 and 392, the gap has widened to as much as 8 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 392, it is seen that after the revised quota that the time gap between DRs and promotees is reduced to periods ranging between  $3\frac{1}{2}$  and  $5\frac{1}{2}$  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 system. They have once again changed it to 1:7 in 1983. The quota system suffered due to non-induction of required DRs between 1978 and 1983 as seen from the seniority list. This was arrested and reversed by the respondents by altering the quota.

6. The spell covering Serials 338 to 392 is quite bad and the spell from 393 to 457 is somewhat higher than what it should be. The officers covered in this gradation list are upto Serial 763. Another interesting feature noted in this seniority list is that beyond Serial 458 (Serial 457, a direct recruit, was appointed on 27.12.85) right upto Serial 763 no direct recruit has been shown and the entire range is only of promotees. All these promotees have been appointed to this grade prior to 1.3.86 and would not, therefore, have the benefit of Department of Personnel & Training O.M.No.35014/2/80-Estt(D) dt. 7.2.86. If direct recruits are interpolated following the quota rot system, it would result in a big time gap in terms of seniority between such future direct recruits and the promotees already shown in the gradation list. This is where the observations of the Hon'ble Supreme Court extracted at page 3 (para 5) come into the scene. If unintended disadvantage to the promotees is to be avoided, then the principles laid down in the Department of Personnel & Training O.M. dt. 7.2.86 have to be invoked because that memo is a safeguard against such an eventuality. No doubt, according to para 7 of the order the principles laid down therein would come into effect only from 1.3.86. But in the case before us, to avoid any unintended disadvantage it <sup>may be</sup> necessary to apply the principle even to those ~~direct recruits~~ <sup>promotees</sup> prior to 1.3.86.

We, therefore, direct the respondents that in case direct recruits beyond Serial 457 are to be interpolated in this gradation list, then it shall be done in accordance with the directions contained in the Department of Personnel & Training O.M. dt. 7.2.86 only.

7. With the above directions, we dispose of the application with no order as to costs.

R.Balasubramanian

( R.Balasubramanian )  
Member (A).

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

S.J.B.S  
Deputy Registrar (J)

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Dated: 28<sup>th</sup> August, 1992.

To

1. The Secretary to Govt. Union of India,  
Ministry of Defence, New Delhi.
2. The Engineer-in-Chief,  
Army Headquarters, Kashmeri House,  
Rajaji Marg, New Delhi-11
3. The Chief Engineer (Project)  
Factory MES, Parade Grounds,  
Secunderabad-3.
4. One copy to Mr.K.S.R.Anjaneyulu. Advocate, CAT.Hyd.
5. One copy to Mr.N.V.Ramana, Addl.CGSC.CAT.Hyd.
6. One copy to Hon'ble Mr.C.J.Roy : Member (J)CAT.Hyd.
7. One copy to Deputy Registrar (J)CAT.Hyd.
8. Copy to All Reporters as per standard list of CAT.Hyd.
9. One spare copy.

*Sh. Balasubramanian*  
pvm.

TYPED BY

COMPARED BY

CHECKED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH

THE HON'BLE MR.

AND

THE HON'BLE MR. R. SALASUBRAMANIAN : 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. 296 / 89

T.A. No.

(W.P.Np )

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.

