

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH : HYDERABAD

O.A. No. 33 of 1989.

~~T.A. No. --~~

DATE OF DECISION 22-2-89

P.N.Labru

Petitioner

Shri SUDHAKAR KULKARNI

Advocate for the
Petitioner(s)

Versus

The Secretary,

Department of Defence Production,
Ministry of Defence,
New Delhi & 6 others

Respondent

Shri N. BHASKAR RAO

Advocate for the
Respondent(s)

CORAM

The Hon'ble Mr. J. NARASIMHA MURTHY : MEMBER (JUDL)

The Hon'ble Mr. R. BALASUBRAMANIAN : MEMBER (ADMN)

1. Whether Reporters of local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?
5. Remarks of Vice-Chairman on columns 1,2,4 (To be submitted to Hon'ble Vice-Chairman where he is not on the Bench)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD
BENCH : AT HYDERABAD

O.A.No.33 of 1989.

Date of Judgment : 22-2-1990

P.N.Labru

.. Applicant

Versus

The Secretary,
Department of
Defence Production,
Ministry of Defence,
New Delhi & 6 others

.. Respondents

COUNSEL FOR THE APPLICANT : Shri SUDHENDER KULKARNI
Advocate

COUNSEL FOR THE RESPONDENTS : Shri N.BHASKAR RAO
NO. 1 and 2. Addl. CGSC

Counsel For - 1st Respondent No. 35 71. v. Jogayya Sarma.

CORAM:

HONOURABLE SHRI J.NARASIMHA MURTHY : MEMBER (JUDL)

HONOURABLE SHRI R.BALASUBRAMANIAN : MEMBER (ADMN)

{ Judgment as per Hon'ble Shri R.Balasubramanian,
Member (Admn) }

This case is filed by Shri P.N.Labru under section 19 of the Administrative Tribunals Act against the Union of India and six others, five of whom (R3 to R7) are private respondents. The applicant was promoted as Sr. Scientific Officer Grade-I on 30.4.81. The seniority list in that grade was published by the respondent department on 29.10.82. In that seniority list the applicant ^{was} ~~is~~ shown at serial 23 and the applicant ^{was} ~~is~~ quite satisfied with that. Subsequently another list was published on 7.7.84 in which respondents 3 and 4 were shown at serials 18A and 20A

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pushing the applicant down. These two respondents had become Sr. Scientific Officers Grade-I later than the applicant namely on 30.8.82 and 31.8.82 respectively. Thereafter another seniority list was published by the respondent department on 18.3.85 in which the applicant was further pushed down to serial 29 while the respondents 3 to 7 were shown at serials 11, 15, 19, 23 and 27 respectively. The respondents were all direct recruits who had joined as Sr. Scientific Officer Grade-I in the years 1982, 1983 and 1984. The applicant contends that he was promoted in the year 1981 against the promotees quota of 75% and he should be ranked senior to those who became Sr. Scientific Officer Grade-I later than him. The applicant has quoted a number of Supreme Court cases like A.Janardhana Vs. Union of India, P.S.Mahal Vs. Union of India, O.P.Singhla Vs. Union of India, G.S.Lamba Vs. Union of India and A.N.Pathak Vs. Union of India. He finds that these Supreme Court judgments are favourable to him and therefore he should be treated senior to respondents 3 to 7. The applicant alongwith three other Sr. Scientific Officers Grade-I had filed a writ petition No.14666 to 14669/assailing the validity of order No.A/99094/Electronics/DG-I(Adm-6B) dated 18.3.85 before the High Court of Karnataka which was later transferred to the Central Administrative Tribunal, Bangalore as Transfer Application No.1517 to 1520 of 1986(T). The Bangalore Tribunal struck down the seniority list published by the respondent department

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on 18.3.85 on the grounds that they had not followed the required procedure for publishing such a list. They had given the liberty to the respondent department to issue a fresh list following the due procedure. Later, the respondent department circulated a gradation list dated 2.2.88 and in that also the applicant has been shown junior to the private respondents. In the meantime R3 has already been promoted to the next higher rank of Principal Scientific Officer. The applicant has prayed that the seniority list circulated by the respondent department on 18.3.85 and 2.2.88 be quashed and that he be promoted as Principal Scientific Officer.

2. The respondents have opposed this prayer. It is their case that the applicant is a promotee officer and the private respondents were all direct recruits. Under rule 8 of the Defence ^{Quality} ~~Quota~~ Assurance Service Rules (D.Q.A.S. Rules) there is a provision for recruitment to the Sr. Scientific Officer Grade-I in the ratio of 75 : 25 for promotees and direct recruits respectively. The seniority of the promotees vis-a-vis direct recruits is fixed on the basis of rotation ~~vacancy~~ as per the general principles of determining the seniority. They published the first list on 29.10.82 which was erroneously drawn because the rotation principle between promotees and direct recruits was not followed. On representations from the direct recruits the case was examined again and through yet another intermediate stage they finally

published the list on 18.3.85., this time, according to them, incorporating all the principles of quota and reservation. It is their point that direct recruitment takes a lot of time because of many factors whereas the promotee officers lose no time in joining when they are promoted. It is their point that though the direct recruit officers join later on account of recruitment difficulties, they have to, under the rules, follow the quota and rotation system while fixing the seniority. They also point out that the applicant along with others had approached the Central Administrative Tribunal, Bangalore which struck down their list of 18.3.85 on the ground that the respondent did not issue the show cause notice to the applicants and provide them an opportunity to ^{consider} ~~study~~ their case before revising the seniority list. Therefore, the respondent department again re-circulated their list of 18.3.85 and invited objections/representations. They were fully examined and as a result issued a fresh seniority roll dated 2.2.88. The respondents also state that the applicant alongwith others had filed a Review Application in the Bangalore Bench seeking review of their earlier judgment but that they withdrew the application. The withdrawal of the Review Application was also permitted by the Bangalore Bench. They strongly contend that the applicant has no case for claiming seniority over the direct recruits

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~~overlooking~~ ^{disregarding} the rules for fixing seniority.

3. We have heard the learned counsels for both the sides and examined the case. The question before us is whether the fixation of seniority in the list dated 2.2.88 is in accordance with the rules of the department. The question of inter-se seniority between the promotees and the direct recruits has been the subject matter of any number of court cases. The Department of Personnel which is the ^{nodal} ~~nodal~~ department had issued comprehensive instructions vide their O.M.No.35014/2/80-Estt(D) dated 7.2.86. In para 7 of the aforesaid memo it is stated that seniority already determined in accordance with the existing principles on the date of issue of these orders will not be reopened and those orders were to come into effect only from the 1986 recruitment onwards. In the instant case, the recruitment in the grade of Sr. Scientific Officer-I was all done much before this date. The applicant had quoted several Supreme Court judgments. We shall take up the case of A.N.Pathak Vs. Secretary, Defence vide Supreme Court case 1987(1) SLR 788. In this judgment the Hon'ble Judges of the Supreme Court ~~had~~ referred to all the cases cited by the applicant.

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Their observation is given below:-

"The rules enabling the authorities to fill in ^{Vacancies} for direct recruits as and when recruitment is made and thereby destroying the chances of promotion to those who are already in service cannot but be viewed with disfavour. If the authorities want to adhere to the rules strictly all that is necessary is to be prompt in making the direct recruitment. Delay in making appointments by direct recruitment should not visit the promotees with adverse consequence denying them the benefit of their service."

Against this two judge ^{bench} decision the respondent had quoted a three judge ^{bench} decision of the Supreme Court in the case of V.B.Badami Vs. ~~State of Mysore and others~~. A.I.R. 1980 SC 1561. In that case, the learned judges had observed as follows:-

"If promotions are made to vacancies in excess of the promotional quota the promotion may not be ~~totally~~ illegal but would be irregular. The promotees cannot claim any right to hold the promotional posts unless the vacancies fall within their quota. If the promotees occupied any vacancies which are within the quota of direct recruits, when direct recruitment takes place the direct recruits will occupy the vacancies within their quota. The promotees who were occupying the vacancies within the quota of direct recruits will either be reverted or they will be absorbed in the vacancies within the quota."

It is seen from the above and ^{also} the other judgments referred to by the applicant ~~also~~ that nowhere ~~such~~ ^{is} a system of quota and rotation as such has been struck down. There is unfortunate delay in recruiting direct recruits and, therefore, in this system of quota and rotation direct recruits who joined much later than the promotees have perforce to be placed senior to the promotees. This exactly has happened in this case. Based on the Bangalore Bench judgment the respondent had subsequently invited objections/representations

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6/5/82

To

1. The Secretary (Union of India), Department of Defence Production, Ministry of Defence, DHQ, New Delhi-110011.
2. Director General, Quality Assurance, Department of Defence Production, Ministry of Defence, DHQ PO, New Delhi-110011.
3. Sri KL Chugh, PSCO, SCCC, Directorate of Production and Quality Assurance (Electronics), DHQ PO, New Delhi-110011.
- ~~4. One copy to Sri Sudhender Kulkarni, Advocate, 3-4-164, Baghlingampalli, Hyderabad-500027 (A.P).~~
4. One copy to Sri Sudhender Kulkarni, Advocate, 3-4-164, Baghlingampalli, Hyderabad-500027 (A.P).
5. One copy to Mr. N. Bhaskara Rao, Addl. CGSC, CAT, Hyderabad.
6. One copy to Mr. V. Jogayya Sarma, Advocate, H. No. 5-1-896/6, Putli Bowli, Hyderabad-500195.
7. One copy to Hon'ble Sri R. Balasubramanian, Member (Admn.), CAT, Hyd.
8. One spare copy.

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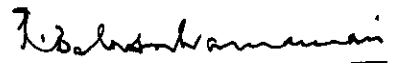
and the applicant has also put in his representation and this has been considered and the respondent had finally issued the gradation list dated 2.2.88. Under these circumstances we see no reason to interfere with the gradation list circulated on 2.2.88.

4. Promotion of the 3rd respondent to the next higher grade is a result of his seniority. Once we uphold the gradation list of 2.2.88, we see no reason to interfere with his promotion also.

5. Before we part with the case we cannot but observe that there is enormous delay on the part of the respondents in effecting the direct recruitment. Delays of 12 to 15 months in direct recruitment are not uncommon but in the instant case the delay is much more and that is where the heart burning comes. Since, however, we do not find anything illegal in the act of the respondent in publishing the gradation list of 2.2.88 we do not interfere in the case. In the result the application fails with no order as to costs.



(J. NARASIMHA MURTHY)
Member (Judl)



(R. BALASUBRAMANIAN)
Member (Admn)

Dated

22-2-90

7/10/88
27/1/90