

Central Administrative Tribunal
HYDERABAD BENCH : AT HYDERABAD

O.A. No. 536/89.
-T.A.Ne--

Date of Decision :

P.Krishna & 14 others

Petitioner.

Shri N.Ram Mohan Rao

Advocate for the
petitioner (s)

Versus

Union of India, represented by its
Scientific Adviser to Government, Defence
Research & Development Organisation,
Sena Bhavan, New Delhi-110001 & 14 others

Respondent.
Advocate for the
Respondent (s)

Shri E.Madan Mohan Rao, Addl. CGSC

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 Judgement ?
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)

HJNM
M(J)

HRBS
M(A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD.

O.A.No.536/89.

Date of Judgment : 4-3-1991.

1. P.Krishna
 2. G.Narasimha
 3. D.Subrahmanyam
 4. L.V.Bhanumurthy
 5. Sarfaraz Ahmed Khan
 6. Arshad Ismal Khan
 7. Indra Singh Yadau
 8. T.V.Subba Rao
 9. C.Buchi Reddy
 10. P.V.R.Sastry
 11. Md.Iqubaluddin Khan
 12. N.Narahari
 13. D.Kedeva Rao
 14. A.Rajashaker
 15. T.Narasimha
- .. Applicants

Versus

1. Union of India,
represented by its
Scientific Adviser to
Government,
Defence Research &
Development Organisation,
Sena Bhavan,
New Delhi-110001.
2. The Director,
Defence Research &
Development Laboratories,
Kanchanbagh,
Hyderabad-500258.
3. D.E.Tarin Kumar.
4. G.Ramreddy.
5. L.Kothandaraman.
6. S.B.Sakri.
7. V.Anjanya Prasad.
8. S.Dharma Rao.
9. S.Salvaraj.
10. T.Ramulu.
11. M.Srinivasachari.
12. C.Rama Rao.
13. C.B.Chandra Kumar.
14. M.Masilamani.
15. Kotaveeraiah. Respondents

(R-4. given up vide order of Registrar, Dt.18-9-89).

Counsel for the Applicants : Shri N.Ram Mohan Rao

Counsel for the Respondents : Shri E.Madan Mohan Rao,
Addl. CGSC

CORAM:

Hon'ble Shri J.Narasimha Murthy : Member(Judl)

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

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

This application has been filed by Shri P.Krishna and 14 others under section 19 of the Administrative Tribunals Act, 1985 against the Union of India, represented by its Scientific Adviser to Government, Defence Research & Development Organisation, Sena Bhavan, New Delhi-110001 and 14 others seeking that the seniority positions of the applicants be stepped up. Respondents No.3 to 15 are private respondents.

2. The applicants are working as Chargemen Grade II in the Defence Research & Development Organisation (DRDO). The statutory rules for appointment to this cadre are changing from time to time and at the relevant time the posts in this cadre are to be filled up from two sources, direct recruitment and by promotion, in the ratio of 1/3rd and 2/3rd respectively. The applicants were duly appointed to this grade on 21.4.84 and got regularised on completion of probation in April, 1986. Respondents No.3 to 15 were all directly recruited and they joined the DRDO on various dates during the year 1986. The applicants are aggrieved that though the

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direct recruits joined later they have been placed senior to them. It is, therefore, prayed that the seniority list be recast strictly following the dates of promotion as the criteria.

3. The application is contested by the respondents.

It is their case that the relative seniority of the direct recruits and the promotees are fixed in accordance with the rules on the subject and that the applicants have no case for such a prayer. The respondents have also raised the question of limitation. It is their case that seniority lists are being displayed on the notice board regularly twice a year in the months of February and August and that this seniority which is questioned by the applicants was known to them in 1984 itself and the case is hopelessly time-barred.

4. We have examined the case and heard the learned counsels for the applicants and the respondents. The short point is whether the seniority has been governed strictly by the valid rules on the subject. The applicants have raised the following important grounds:-

(a) That it is settled law that continuous service for a particular period should be taken for determining seniority i.e., the length of continuous service cannot be ignored. By this, the applicants having longer service than the respondents, ~~the former~~ should be treated as senior.

(b) Where there are two sources of recruitment, the prescription of quota between those in service and

20/

future recruits is arbitrary. The quota should be applied only to the initial quantum of recruitment and should not be extended to fixation of seniority.

(c) That in a number of cases the courts have struck down seniority lists not properly framed such as reserving slots for direct recruits when they are not actually available. They have cited two Supreme Court cases - A.I.R. 1987 SC 716 and A.I.R. 1988 SC 857.

5. The respondents who oppose the application point out that the seniority has been fixed in accordance with the instructions contained in Memo No.29/6/67(D)/APPTS dated 29.6.73 and ^{that} they have followed the rota quota system strictly. The important grounds on which they oppose the application are:-

(a) The Government have given clear instructions on the ~~regarding quota and following of~~ rotation for determining the seniority and

(b) The principles which are applied to the applicants have been followed throughout by the Central Government

6. Taking up the Supreme Court cases cited by the applicants, we find that the decision in the case of A.N.Pathak & others Vs. Secretary to Govt., Ministry of Defence (A.I.R. 1987 SC 716) can be applied to the advantage of the applicants where there had been an enormous delay in making the direct recruitment. The Hon'ble Supreme Court has remarked:

"The rules enabling the authorities to fill in vacancies for direct recruits as and when recruitment is made and thereby destroying the chance of promotion to those who are already in service cannot but be viewed with disfavour. If the authorities want to adhere to the rules strict

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 consequences, denying them the benefits of their service."

In this case, the applicants were all appointed in April, 1984 on probation and regularly in April, 1986 after completion of probation. The direct recruitment through which Respondents No.3 to 15 had entered service was initiated in 1985 itself and the respondents joined in 1986. Being direct recruits certain formalities like verification of antecedents, medical examination etc., were required to be undergone unlike in the case of promotees and the time that is normally required for this is between 15 and 18 months. It cannot therefore be said in this case that there had been an enormous delay in effecting the direct recruitment which had visited the promotees with adverse consequences.

7. Taking up the other Supreme Court case of Shri D.Rama Rao Vs. State of Andhra Pradesh (A.I.R. 1988 SC 857), the Hon'ble Supreme Court had observed that if there be a rule indicating the manner in which such seniority has to be fixed, that is binding. In the absence of such a rule, length of service is the basis for fixing inter se seniority (para 5 of the judgment). In the case before us we find that there is a clear rule dated 29.6.73. Para 6 of the memo dated 11.3.65 referred to therein states:

NB
"The relative seniority of direct recruits and of promotees shall be determined according to the rotation of vacancies between direct recruits and promotees which shall be based on the quotas of vacancies reserved for direct recruitment and promotion respectively, in the Recruitment Rules.....6

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7. Taking up the other Supreme Court case of Shri D.Rama Rao Vs. State of Andhra Pradesh (A.I.R. 1988 SC 857), the Hon'ble Supreme Court had observed that if there be a rule indicating the manner in which such seniority has to be fixed, that is binding. In the absence of such a rule, length of service is the basis for fixing inter se seniority (para 5 of the judgment). In the case before us we find that there is a clear rule dated 29.6.73. Para 6 of the memo dated 11.3.65 referred to therein states:

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2. In the case before us the statutory recruitment rule states that appointment to this cadre would be 2/3rd by promotion and 1/3rd by direct recruitment. Accordingly the rotation should be promotee/promotee/direct recruit. Since there is a rule indicating the manner in which inter se seniority between promotees and direct recruits ^{is} has to be fixed such a rule becomes binding and this is what the respondents had done.(8) In the course of the hearing the learned counsel for the respondents drew our attention to the latest 5 Judge Bench Judgment of the Supreme Court (A.I.R. 1990 SC 1607). Para 44 gives the summary of the discussions. The learned counsel for the applicants would seem to rely on sub-para (A) of para 44 according to which seniority of an official should be counted from the date of his appointment and not from the date of his confirmation. This does not have an application in this case since what we are considering is the relative seniority between two different groups of people. Among the same group of people date of officiation should according to this sub-para, be given priority over the date of confirmation. The learned counsel for the respondents would rely on sub-para (C) of para 44 according to which 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. Here, we have two sources of recruitment - direct and promotion and the quota has been

73

fixed according to the rules and the inter se seniority is again fixed by a rule of rotation contained in the memo dated 29.6.73.

9. Under the above circumstances we do not find any illegality in the action of the respondents warranting our interference.

10. We shall next take up the question of limitation raised by the respondents. In covering the question of limitation the applicants have stated that they had protested when the seniority list in the grade of Chargemen Grade II was published in March & September, 1988. They, therefore, contend that the application is well within time. On the other hand, the counter to the application states that the applicants were promoted in 1984 and they knew their relative seniority at that stage itself and still they did nothing to seek redressal from the courts. It is also averred by them that twice a year in the months of February and August the seniority lists are displayed on the notice board and also notification issued through the media of daily orders to provide an opportunity to the individuals concerned to acquaint themselves with their placement in the seniority lists. In fact, we find a letter dated 19.2.87 (page 6 of the material papers to the application) addressed to the Director, Defence Research & Development Laboratories by some quoting two newspaper publications stating that their seniority was affected by the direct recruits and they wanted

the seniority lists to be corrected. It can therefore be ~~fully~~ presumed that the applicants were also fully aware of the implications at that time. The display of seniority lists in the month of February, 1987 or at least August, 1987 should have aroused the applicants and it was not until March & September, 1988 that the applicants chose to agitate first and the application is filed finally only in June, 1989.

The case, is, therefore, hit by limitation also.

11. We find that this case apart from lacking merits is also hit by limitation and we therefore dismiss the application with no order as to costs.

MS'

(J. Narasimha Murthy)
Member (Judl).

R.Balasubramanian
(R. Balasubramanian)
Member (Admn).

Dated 4th March 91

Dushyant
Deputy Registrar (Judl)

To

- 1. The Scientific Adviser to Government,
Defence Research & Development Organisation,
Sena Bhavan, New-Delhi-110001.*
- 2. The Director, Defence Research & Development Laboratories
Kanchanbagh, Hyderabad-500258.*
- 3. One Copy to Mr. N. Rama Mohana Rao, Advocate,
Flat No. 714, Brindavan Apartments, B. Block,
Nilefer Hospital, Red Hills, Hyderabad.-500004. A.P.*
- 4. One Copy to Mr. E. Madan Mohan Rao, Addl. CGSC., CAT., Hyd.*
- 5. One Spare Copy.*
- 6. one Copy to Mr. J. Narasimha Murthy; member (J), CAT.*
- 7. one Copy to Mr. R. Balasubramanian; member (A) ^{Hyd}
VGB. CAT.*