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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH: HYDERABAD

O.A. NO. 841/89.

~~T.A. NO.~~

DATE OF DECISION 21-8-90

K.Sanjeeva Rao & 12 others

Petitioner

Shri T.Jayant,
Advocate.

Advocate for the
Petitioner (s)

Versus

Secretary, Ministry of Defence, New Delhi
& 2 others

Respondent

Shri N.Bhaskara Rao,
Addl. CGSC

Advocate for the
Respondent (s)

CGRAM

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 Lordship 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)

no.

HJNM
M(J)

HRBS
M(A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD.

O.A.No.841/89.

Date of Judgment: 21.8.90

1. K.Sanjeeva Rao,
2. S.Kamalakar Rao,
3. A.Krishna Prasad,
4. H.Subramanyam,
5. K.Satyanarayana,
6. B.Potharaju,
7. K.Ramaprasad,
8. T.Rajagopalarao,
9. V.K.Tiwara,
10. Surajuddin,
11. M.Harikumar,
12. D.V.Subba Rao &
13. M.R.K.Mohanlal .. Applicants

Versus

1. Union of India,
represented by the
Secretary,
Ministry of Defence,
New Delhi-11,
2. Scientific Adviser to
Minister of Defence &
Director-General,
Defence Research and
Development Organisation (DRDO),
New Delhi-11 &
3. Director,
Defence Metallurgical
Research Laboratory (DMRL),
Kanchanbagh P.O.,
Hyderabad-500258 .. Respondents

Counsel for the Applicants : Shri T.Jayant,
Advocate.

Counsel for the Respondents : Shri N.Bhaskara Rao,
Addl. CGSC

CORAM:

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

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

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

Shri K.Sanjeeva Rao and 12 others have filed this
application under section 19 of the Administrative Tribunals
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Act against the Secretary, Ministry of Defence, New Delhi and 2 others.

2. The applicants were appointed as Tradesman 'A' by direct recruitment from 1984 onwards in the D.M.R.L. According to the recruitment rules the posts of Tradesman 'A' are filled up from two streams (1) direct recruitment 33% and (2) promotion 67%. In the D.M.R.L. the seniority list in the grade of Tradesman 'A' have not been maintained on the basis of the said ratio as a result of which the direct recruits were adversely affected in the matter of promotion to the next higher grade of Chargeman II. The direct recruits made representations and the seniority list for the year 1986 was prepared on the basis of the said ratio 1:2 and was circulated by Daily Orders Part I dated 10.2.86 (A2). But this seniority list was revised subsequently without following the principle of ratio 1:2 and the revised seniority list was circulated vide AFTER ORDER dated 9.4.86 (A3). It is the information of the direct recruits that the Director, D.M.R.L. succumbed to the oral representations of the promotees, constituted a Board to examine the issue of determining the seniority between direct recruits and promotees and based on the minutes dated 27.3.86 (A4) of the committee revised the seniority list. The applicants represented against it without success. The applicants pray that the Tribunal set aside the impugned order ADM/LB/9/1 dated 12.6.89 (A.10).

3. The respondents have opposed the prayer. They admit that the Defence Metallurgical Research Laboratory (DMRL) interse seniority between the direct recruits and promotees

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in the grade of Tradesman 'A' who were appointed during the period 1973 to 1988 had been fixed on the basis of their length of service in the grade and not on the basis of rotation as laid down in the guidelines. They also admit that eventhough in the recruitment rules for the post of Tradesman 'A' issued vide SRO 221 of 1981 it has been prescribed that one-third of the posts should be filled up by direct recruitment and the remaining two-third by promotion, these quotas have ^{not} ~~never~~ been adhered to strictly while filling up the posts. As an illustration, they have pointed out that in the year 1982 no post was filled up by direct recruitment whereas 13 posts have been filled up by promotion. Similarly, in the years 1983, 1984 and 1985 only 1, 4 and 8 vacancies respectively were filled up by direct recruitment whereas 12, 36 and 1 vacancies respectively were filled up by promotion. Thus, the prescribed ratio for direct recruitment and promotion has not been maintained while filling up the vacancies during 1982 to 1985. As the quota prescribed for direct recruitment and promotion has not been followed while filling up the vacancies, the interse seniority between direct recruits and promotees had also not been fixed in accordance with the ratio prescribed in the recruitment rules.

4. In 1985 there were demands from the employees that the seniority in the grade of Tradesman 'A' should be fixed in accordance with the ratio prescribed in the recruitment rules. There were also counter representations from certain other employees who desired that the seniority

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should continue to be fixed on the basis of length of service as was obtaining. As the decision was to affect the interest of large number of employees, a committee was constituted in which the representatives from the employees' union were also associated, to examine the issue in detail. The committee recommended that the seniority already fixed in the grade of Tradesman 'A' upto 16.10.85 on the basis of length of service may not be destroyed and thereafter the seniority may be fixed in accordance with the ratio prescribed in the rules. According to the respondents the committee's recommendations were based mainly on the various judgments of the Supreme Court and Central Administrative Tribunal regarding fixation of seniority in cases where the quota prescribed in the recruitment rules has not been followed while filling up the vacancies as in this case.

5. In the meanwhile, the revised principles of seniority have also been received which were made effective from 1.3.86. It was therefore decided that the seniority fixed on the basis of length of service upto 28.2.86 may be allowed to continue and from 1.3.86 the revised principles may be followed.

6. We have examined the case and heard the learned counsel both for the applicants and the respondents. Admittedly the ratio stipulated in the recruitment rules has not been adhered to by the respondents and as a result they could not maintain the proper gradation lists also vis-a-vis the direct recruits and the promotees. When there were representations from the applicants that the seniority lists should be cast

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in accordance with the rules, the respondents appointed a committee. We find from the report of the committee (A4) which consisted of 5 members, that the committee took into consideration the situation as was obtaining in the D.M.R.L. like the quota system not being followed etc. The committee also took into consideration the clashing interest of both the direct recruits and the promotees and finally recommended that the most convenient and the least harmful solution under the circumstances would be to implement these orders from 16.10.85 only. These orders are the guidelines on the subject which were relied upon by the applicants in this case. The respondents have accepted this committee's recommendations with the only change that instead of till 16.10.85 the practice they were adopting ^{should} ~~be~~ continue till 28.2.86 and from 1.3.86 the new practice which was stipulated by the Department of Personnel ^{could} ~~can~~ be adopted. In other words the respondents decided that upto 28.2.86 a procedure different from the guidelines was to be adopted and from 1.3.86 a new procedure (not the guidelines prescribed earlier) ordered by the Department of Personnel was to be adopted. ^{Thus} ~~In other words~~ the guidelines prescribed by the Government was to have no application at all. The learned counsel for the applicants pointed out that SRO 221 being a statutory order duly notified the action of the respondents in not following it at all is illegal. He also pointed out that this SRO was being strictly followed in other sister organisations like the D.R.D.L. and D.L.R.L. and that in the D.M.R.L. ^{alone} ~~alone itself~~

this statutory requirement was given a go bye. He also pointed out that in the D.M.R.L. itself SRO 221 was being strictly followed in the case of others except in the case of industrial staff like the applicants.

7. Both the learned counsel for the applicants and the respondents cited a few decisions. We will take up only the latest decision of 2.5.90 of the Hon'ble Supreme Court by a 5 Judge Bench reported vide A.I.S.L.J. V-1990(2) Page 40 in the case of the Direct Recruit Class II Engineers Officers' Association and others Vs. State of Maharashtra and others. This judgment has taken into account several judgments of the Hon'ble Supreme Court on the subject and had considered the situation similar to the one in the case before us. In the case before the Supreme Court also during the period 1960-70 adequate number of direct recruits were not available, and a large number of promotees were appointed to officiate as Deputy Engineers on continuous basis. The Hon'ble Supreme Court also observed:

"It is highly desirable that a decision, which concerns a large number of government servants in a particular Service and which has been given after careful consideration of the rival contentions, is respected rather than scrutinised for finding out any possible error. It is not in the interest of the Service to unsettle a settled position every now and then."

The summary of the judgment is given below:-

- (A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation.

The corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority.

- (B) If the initial appointment is not made by following the procedure laid down by the rules but the appointed continues in the post uninterruptedly till the

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regularisation of his service in accordance with the rules, the period of officiating service will be counted.

- (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.
- (F) Where the rules permit the authorities to relax the provisions relating to the quota, ordinarily a presumption should be raised that there was such relaxation when there is deviation from the quota rule.
- (G) The quota for recruitment from the different sources may be prescribed by executive instructions, if the rules are silent on the subject.
- (H) If the quota rule is prescribed by an executive instruction and is not followed continuously for a number of years, the inference is that the executive instruction has ceased to remain operative..
- (I) The posts held by the permanent Deputy Engineers as well as the officiating Deputy Engineers under the State of Maharashtra belonged to the single cadre of Deputy Engineers.
- (J) The decision dealing with important questions concerning a particular service given after careful consideration should be respected rather than scrutinised for finding out any possible error. It is not in the interest of Service to unsettle a settled position.

In the case before us the quota rule has broken down miserably. The respondents are to be blamed for this situation on account of their poor personnel management.

Para (C) requires that where there is a ratio for recruitment from the different sources (direct recruitment and promotion) the rules must be ordinarily (emphasis supplied) followed strictly.

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Para (D) states that if it becomes impossible to adhere to the existing quota it should be substituted by an appropriate rule to meet the needs of the situation. No such substitute rule has been made by the respondents and as a result the quota rule had broken down.

However, in para (E) the Hon'ble Supreme Court had indicated that 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.

In para (J) it had been indicated that the decision dealing with important questions concerning a particular service given after careful consideration should be respected rather than scrutinised for finding out any possible error. It is not in the interest of service to unsettle a settled position.

In the instant case when the quota rule had broken down the respondents had ~~pointed-out~~ appointed a committee to find a way out of the situation and had taken a decision that the practice they had been adopting could continue till 28.2.86 even though it was not in accordance with the guidelines. The committee has no locus standi. However, the respondents were under compulsion to find a solution and hence the committee and they had taken a ^{conscious} ~~conscientious~~ decision that the wrong situation could continue upto a certain date only to be corrected.....9/

To

1. The Secretary, Union of India, Ministry of Defence; New Delhi
2. The Scientific Adviser to Minister of Defence & Director-General, Defence Research and Development Organisation (DRDO), New Delhi-11
3. The Director, Defence Metallurgical Research Laboratory (DMRL) Kanchanbagh P O., Hyderabad 258.
4. One copy to Mr. T. Jayant, Advocate
17-35 B, Srinagar colony, Gaddiannaram, P&T colony P.O.,
Dilsukhnagar, Hyderabad - 660.
5. One copy to Mr. N. Bhaskara Rao, Adol CGSC. CAT. Hyd. Bench.
6. One copy to Hon'ble Mr. J. Narasimha Murty (Member(J) CAT. Hyd. Bench.
7. One copy to Hon'ble Mr. R. Balasubramanian Member(A) CAT. Hyd. Bench.
8. One spare copy. *NO*

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with effect from 1.3.86 from which date in any case a new set of rules were to be followed. We find the respondents in a pathetic situation attempting to correct a situation that they had allowed to ~~go~~ stray over a long period. If, at this state, the respondents attempt to correct the situation, there will be large scale consternation in the service and it was this that led the committee to feel that the most convenient and the least harmful solution would be to implement the orders from a certain date. The learned counsel for the applicants pointed out that in the statutory rule there is no provision for relaxation and the rule should be strictly followed. We find that one of the important considerations that weighed with the Hon'ble Supreme Court was that in the interest of service a settled position should not be unsettled. We therefore agree with the stand taken by the hapless respondents and reject the prayer of the applicants to revise the seniority list which will cause large scale dislocation.

The application thus fails with no order as to costs.

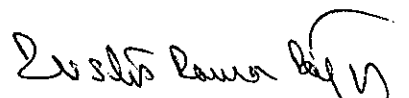


(J. NARASIMHA MURTHY)
Member(Judl).



(R. BALASUBRAMANIAN)
Member(Admn).

Dated 21-8-90


for Deputy Registrar(Judl)

RVS
22/8- (10)
DVS
CHECKED BY

APPROVED BY

TYPED BY *f*

COMPARED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. B. N. JAYASIMHA : V.C.

AND

THE HON'BLE MR. D. SURYA RAO: MEMBER(J)

AND

THE HON'BLE MR. J. NARASIMHA MURTY: M(J)

AND

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

DATE: 21/8/90

ORDER/JUDGMENT: ✓

L.A./ R.A./ C.A./ No.

in

T.A. No.

W.P. No.

O.A. No. 841/89

Admitted and Interim directions issued
Allowed.

Dismissed for Default.

Dismissed as withdrawn.

Dismissed. *Fail*

Disposed of with direction.

M.A. Ordered/Rejected.

No order as to costs.

