

(S)

# Central Administrative Tribunal

HYDERABAD BENCH : AT HYDERABAD

O.A. No. 862/89  
-T.A.No.-

Date of Decision : 4-12-1990

J.Lingaiah

Petitioner.

Shri K.S.R.Anjaneyulu

Advocate for the  
petitioner (s)

Versus

Union of India represented by  
The Secretary to Govt., & Director-General, Respondent.  
Dept. of Telecommunications, New Delhi & 9 others  
Shri N.Bhaskara Rao, Addl. CGSC Advocate for the  
Shri N.Rama Mohan Rao, Advocate for RR 4 & 6 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 Judgement ?
2. To be referred to the Reporter or not ? Yes.
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 ? Yes.
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.962/89.

Date of Judgment 4-12-1990

J.Lingaiah

.. Applicant

Versus

Union of India  
represented by:

1. The Secretary to Govt., &  
Director-General,  
Dept. of Telecommunications,  
New Delhi.
2. The Chief General Manager,  
Telecommunications, A.P.,  
Hyderabad-500001.
3. Shri K.K.Bhagat,  
Architect,  
O/o Sr. Architect-I,  
Telecom.,  
7th Floor, Devika Tower,  
Nehru Place,  
New Delhi-110019.
4. Shri Vijaya Chand,  
Architect,  
O/o Sr. Architect(Posts),  
Dak Tar Bhawan,  
3rd Floor, Parliament St.,  
New Delhi-110001.
5. Shri Ashis De,  
Architect,  
O/o Sr. Architect(Telecom),  
3rd Floor, Yogayog Bhawan,  
36, C.R.Avenue,  
Calcutta-700012.
6. Shri V.Balasubramanian,  
Architect,  
O/o Sr. Architect(Telecom),  
6th Floor, Devika Tower,  
Nehru Place,  
New Delhi-110019.
7. Shri Dantale S.L.,  
Architect-II,  
O/o Sr. Architect(Telecom),  
Mhatre Pen Building,  
2nd Floor, S.B.Marg, Dadar(West),  
Bombay-400028.
8. Shri J.R.Potey,  
Regional Architect,  
Telecom. Department,  
T.C.25/1001(1),  
MaManjalikulam Road,  
Trivandrum-6950001 (Kerala).

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9. Shri Khoragade R.H.,  
Architect,  
O/o Sr. Architect(Posts),  
Mhatre Pen Building, S.B.Marg, Dadar,  
Bombay-400028.

10. Shri Prabhat Pal,  
Architect,  
O/o Sr. Architect(Posts),  
Yogayog Bhawan, 3rd Floor,  
36, C.R.Avenue,  
Calcutta-700012. .. Respondents

Counsel for Applicant : Shri K.S.R.Anjaneyulu

Counsel for Respondents : Shri N.Bhaskara Rao,  
Addl. CGSC & ~~for RR 1 & 2~~  
Shri N.Rama Mohan Rao,  
Advocate for RR 4 & 6.

**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 under section 19

of the Administrative Tribunals Act, 1985 by Shri J.Lingaiah against the Union of India represented by the Secretary to Govt., & Director-General, Department of Telecommunications, New Delhi and 9 others. Respondents 4 to 10 are private respondents. In this application the applicant seeks revision of seniority.

2. The applicant joined the Telecommunications Department as an Asst. Architect in the year 1977. It is stated by him that he was thereafter promoted as Architect after approval of the U.P.S.C. on adhoc basis

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vide Director-General of Telecommunications letter No.9/6/88-CWG dated 19.6.81. Accordingly, he took over as Architect on 22.6.81. Subsequently, he was appointed regularly to the post with effect from 9.4.84 as per notification of the Ministry of Telecommunications, New Delhi No.12/5/82-CWG dated 25.5.85. The applicant also belongs to S.C. community and expects to be promoted in accordance with the quota reserved. While so, the Department of Telecommunications, New Delhi vide their letter No.55/18/88-CWG dated 11.1.89 circulated <sup>the</sup> ~~provisional~~ seniority list of officers in the grade of Architects as on 1.1.89. They called for representations, if any, from the persons listed therein. The applicant who was shown at Sl.No.10 represented on 25.2.89 and 15.3.89 and 4<sup>th</sup> July 89, stating that since he had been continuously officiating from 22.6.81 and since he belonged to S.C. community he should be given the first position in the seniority list and not the tenth position. He also contended that officers at serials 3 to 8 therein were direct recruits and should not be given higher seniority than him. He has prayed that directions be given to the respondents to revise the seniority list circulated on 11.1.89 giving him due position as a S.C. candidate and treating him as one having officiated continuously from 22.6.81.

3. The application is opposed by the official respondents 1 and 2. It is their point that his promotion in June, 1981 as Architect was only on adhoc basis and conferred no benefits like seniority etc., whatsoever

on him. During this period of officiation he can expect only the higher emoluments that the post carries and nothing else. <sup>9.6.85</sup> He also denied that the <sup>ad hoc</sup> promotion was effected after approval of the U.P.S.C. It is also pointed out that the subsequent promotion <sup>ordered on 25-5-85</sup> of the applicant <sup>and</sup> was done according to the rules and in consultation with the U.P.S.C. <sup>and</sup> was with effect from 9.4.85 and not from 1984. In the orders they had issued they had corrected this typographical error in hand. It is also contended that though the applicant had not completed 8 years of service even on 9.4.85 he was promoted because some persons junior to him were promoted as on 9.4.85. It is repeatedly stressed by them that in 1981 he was not eligible at all for promotion to the cadre and the earliest he could be promoted was only in 1985.

4. The application is also opposed by the private respondents 4 and 6. It is their point that the communication dated 11.1.89 was only a provisional list inviting representations from all concerned and that before finalisation the applicant has approached the Tribunal. They point out that the application itself is not maintainable. Even on merits they opposed the claim of the applicant for his seniority based on continuous officiation from 22.6.81 and against the reserved vacancy. These respondents were appointed as Asst. Architects from 26.12.75 whereas the applicant

was appointed as Asst. Architect only from 22.12.87 and that by the argument now put forward by the applicant they were senior to him as Asst. Architects. They, however, admit that the position got altered because the applicant was recruited as an Asst. Architect by a process of direct recruitment since the recruitment rules provided for recruitment to the cadre of Asst. Architects from two sources - 50% by promotion and 50% by direct recruitment. In the case of Architects which is the cadre in question there is only one source of recruitment and that is by promotion failing which direct recruitment can be resorted to. It is also stressed by them that the applicant was regularly appointed only in 1985 whereas they were all appointed as Architects in accordance with the recruitment rules in 1983/84 itself. Therefore, they plead that he cannot get higher seniority than them.

As for reservation, they point out that one Shri R.H.Khebragade has already been recruited against the S.C. quota in the direct recruitment and that the applicant has no place against this reservation also.

5. We have examined the case and heard the learned counsels for the rival sides. The main grounds on which the applicant puts his claim are:

(1) That he had been continuously officiating as Architect from 22.6.81 in a long term vacancy and was subsequently regularised without any interruption in his officiation as Architect. He relies on the Supreme Court judgment in the case of Narender Chadha Vs. Union of India (AIR 1986 SC 638).

(4) The officials shown at serials 3 to 8 of the 11.1.89 communication were all direct recruits through U.P.S.C. but entered service only in 1983-84 and he was already officiating as an Architect before they joined as Architects and is aggrieved that the direct recruits who came subsequently have been placed higher than him.

(5) He alleges that the quota system has not been correctly followed in that the direct recruits who had come later had been placed above him.

(6) That the point reserved for S.C. was not filled up properly and that he should be the one to be shown against that point.

(7) He had also cited the Supreme Court judgment in the case of A.Janardhana Vs. Union of India [1983(1) SLJ 565] according to which a direct recruit who came into service after the promotee was not to be placed above him.

6. The private respondents have questioned the maintainability stating that the 11.1.89 communication is only a provisional seniority list and it is premature for the applicant to have rushed to the Tribunal. Against this, the learned counsel for the applicant argued that this provisional list which was circulated in January, 1989 had not been finalised even till the date of the application in December, 1989 and that the respondents are acting on the provisional list. He, therefore, argued that the application is maintainable. The official respondents wanted that the merits of the case should be gone into.

We shall, therefore, go into the merits of the case.

7. The applicant joined as a direct recruit Asst. Architect in December, 1977. There is a statutory recruitment rule circulated under GSR-1400 dated 3.11.83. According to this statutory rule, promotion to the cadre of Architects is by promotion from the cadre of Asst. Architects with 8 years of service in the grade rendered after appointment in the grade of Asst. Architects on regular basis. If promotion was not possible, then there is provision for direct recruitment. In 1982, the Department wanted the posts of Architects to be filled up. At that time the applicant was not eligible at all with less than 4 years of service. According to the notification of the U.P.S.C. vide Advertisement No.38 dated 18.9.82, 8 posts were advertised for, out of which one post each was reserved for S.C. and S.T. This was a direct recruitment. Based on this, the private respondents 4 to 10 were appointed in 1983-84. It is averred by the private respondents that the applicant also applied in response to this advertisement and that against the S.C. point reserved, Shri R.H.Khebragade, belonging to S.C., was selected and not the applicant. It is also averred by them that even if adhoc promotions to the posts of Architects were to be taken <sup>as a criterion for seniority</sup> into account they were senior to the applicant because they also got purely temporary and adhoc promotions in February, 1980 itself as against the applicant getting such adhoc promotion <sup>later</sup> in January, 1981.

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8. The main question to be settled is whether the applicant can get the benefit of his uninterrupted adhoc service for purpose of seniority. The order dated 9.6.81 promoting him on adhoc basis clearly indicates that the appointment was temporary and on adhoc basis and does not bestow on the officer any claim for regular appointment. It was also made clear therein that that adhoc promotion would not confer any claim in the matter of seniority, confirmation etc. The respondents also stated that the adhoc promotion was not against any long term vacancy and that it was initially for one year only although it continued longer. There is a statutory recruitment rule according to which the applicant would become eligible for promotion only after December, 1985. In the meantime, however, the Department felt the need for ~~resorted~~ filling up the posts of Architects and ~~took~~ recourse to direct recruitment in accordance with the statutory recruitment rule. It should be seen here that there is only one source of recruitment normally and that is by promotion. There is no quota system for direct recruits and promotees. The cases cited by the applicant such as Narender Chadha Vs. Union of India and A. Janardhana Vs. Union of India, are all cases where disputes interse seniority had arisen between direct recruits and promotees. In those cases there was a quota system. Therefore, the two cases cited by him are not applicable from this aspect there being only one source of recruitment to the posts of Architects. The applicant cannot

have a grievance because he was promoted regularly even before he became fully eligible, thanks to some of his juniors who were <sup>then</sup> fully eligible and were promoted as Architects. The respondents had been fully considerate to him and had protected his seniority vis-a-vis those juniors who had attained eligibility conditions earlier than him. The direct recruitment was resorted to in 1983, 84 when the applicant was just not eligible for promotion. The respondents had to go in for direct recruitment in accordance with the rules. The direct recruits thereof and appointed properly <sup>appointed</sup> earlier than the applicant have definitely got a right for higher seniority than the applicant. It is also seen that the applicant ~~also~~ did not <sup>then</sup> rely ~~on~~ on his continuous officiating service for his promotion but made an attempt to make it through the direct recruitment. It is only when he failed in that attempt that he has come up with the present attempt through this application banking this time heavily on continuous officiation. Against the reserved point also the respondents had followed the rules by appointing Shri R.H.Khebragade who was successful in the direct recruitment against the reserved point. The applicant had quoted the case of Narender Chadha Vs. Union of India (AIR 1986 SC 638). As pointed out earlier, that was a case where the dispute between the direct recruits and promotees was gone into and the Hon'ble Supreme Court had observed that where persons had been allowed to function in higher posts for 15 to 20 years and where

To

1. The Secretary to Government,  
Union of India, Director General. Dept. of Telecommunications,  
New Delhi.
2. The Chief General Manager,  
Telecommunications,  
Hyderabad,  
Andhra Pradesh.
3. One copy to Mr. KSR. Anjaneyulu, Advocate,  
H.No.1-1-365/A, Bakaram, Hyderabad.
4. One copy to Mr. Naram Bhaskar Rao, Addl. CGSC, CAT, Hyderabad.
5. One copy to Mr. N. Rammohan Rao, advocate, HNo. 714,  
Brindavan Apartment, Niloufer Hospital, Hyderabad.

Conld...

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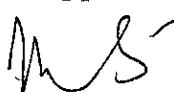
the Department wanted to continue them as such they should not suffer in terms of seniority vis-a-vis direct recruits. In the same case the Hon'ble Supreme Court had observed:

"But we, however, make it clear that it is not our view that whenever a person is appointed in a post without following the Rules prescribed for appointment to that post, he should be treated as a person regularly appointed to that post. Such a person may be reverted from that post."

The latest case settled by the Hon'ble Supreme Court is AIR 1990 SC 1607 wherein a 5 Judge bench which considered the whole gamut of cases on the subject of seniority including the cases cited by the applicant <sup>and</sup> ~~had~~ observed vide para 44(A) that:

"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 stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority.

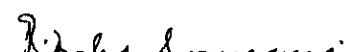
The applicant was not eligible for regular promotion till 1985 and, therefore, the ad hoc appointment he had held till then cannot confer on him the benefit of seniority. It is only from 9.4.85 that he can be considered to have been appointed as an Architect and those who were appointed as Architects prior to him in accordance with the statutory rule can only be senior to him. We are, therefore, not in a position to interfere and dismiss the application with no order as to costs.



( J. Narasimha Murthy )  
Member (Jud1).

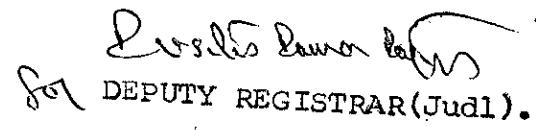
Dated

4 - 12 - 90



R. Balasubramanian

( R. Balasubramanian )  
Member (Admn).

  
L. Visalakshmi  
S/o DEPUTY REGISTRAR (Jud1).

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- 6. The Dy. Registrar, Central Admn. Tribunal, Madras Bench, Tamilnadu Text Book Society Building, D.P.I. Compound, Nungambakkam, Madras-600065.
- 7. The Dy. Registrar, Central Admn. Tribunal, Calcutta Bench, CGO Complex, 234/4-AOC Bazar Road, Nizam Palace, Calcutta-700020.
- 8. The Dy. Registrar, Central Admn. Tribunal, Bombay Bench, CGO Complex (CBO), 1st floor, New Bombay-400614.
- 9. The Dy. Registrar, Central Admn. Tribunal, Chandigarh Bench, S/o No. 102-103, Sector-34, Chandigarh.
- 10. The Dy. Registrar, Central Admn. Tribunal, Allahabad Bench, 23-A, Thorn Hill, Road, Allahabad-211001.
- 11. The Dy. Registrar, Central Admn. Tribunal, Guwahati Bench, Rajgarh Road, off Shillong Road, Guwahati-781005. ~~Shillong Road, Guwahati-781005~~ Bhangaghat, P.B.no: 52, G.P.O. Guwahati
- 12. The Dy. Registrar, Central Admn. Tribunal, Bangalore Bench, Commercial complex (BDA), Indira Nagar, Bangalore-560030.
- 13. The Dy. Registrar, Central Admn. Tribunal, Ernakulam Bench, Kandamukulathil Towers, 5th & 6th floors, Opp. Maharaja College, M.G. Road, Ernakulam, Cochin-682001.
- 14. The Dy. Registrar, Central Admn. Tribunal, Jabalpur Bench, CARVS Complex, 15-Civil Lines, Jabalpur, M.P.
- 15. The Dy. Registrar, Central Admn. Tribunal, Patna Bench, 32-A, B.M. Enterprises, Shri Krishna Nagar, Patna-1.
- 16. The Dy. Registrar, Central Admn. Tribunal, Jodhpur Bench, C/o. Rajasthan High Court, Rajasthan (Jodhpur).
- 17. The Dy. Registrar, Central Admn. Tribunal, Ahmedabad Bench, Navrang Puri, Near Sardar Patel Colony, Osmania, Ahmedabad.
- 18. The Dy. Registrar, Central Admn. Tribunal, Cuttack Bench, Belimandi, 4th Floor, Cuttack-753001. Rajeswar Bhawan,
- 19. The Dy. Registrar, Central Admn. Tribunal, Principal Bench, Faridkot House, Copernicus Marg, New Delhi-110001.
- 20. Sri Sanjeev Malhotra, Managing Editor, All India Services Law Journal, 22, Tagore Park, New Model Town, New Delhi-9.
- 21. The Editor, Kerala Law Times, High Court Road, Ernakulam, Cochin-602031.
- 22. M/s. Eastern Book Company, 34, Lalbagh, Lucknow.
- 23. M/s. Delhi Law Times, 5355, Jawaharnagar, Kolhapur Road, Delhi-7.
- 24. Sri Hasin Ahmad, S.P.I. Representative Reporter, A.I.R. Ltd, No. 21-1-1964 & 1965, Gandhi Bazar, Opp. High Court Bar Association, Hyderabad.
- 25. The Administrative Tribunal Reporter, Bhagat Singh Market, 90, New Delhi-11 110001.
- 26. Sri KBS Sarma, General Secretary, All India Equal Rights Association, C-58, HUDA Residential Complex, Vanasthalipuram, Hyderabad.
- 27. The Dy. Registrar (J), Central Admn. Tribunal, Hyderabad Bench, Hyderabad.
- 28. One copy to Library, CAT, Hyderabad Bench, Hyderabad.
- 29. ...~~etc.~~ Spare Copies.

ASR  
5/12/90

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CHECKED BY  
TYPED BY

APPROVED BY  
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 : M(J)  
AND

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

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

DATE : 24-9 4-12-1990

ORDER / JUDGEMENT :

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

T.A. No.

W.P. No.

O.A. No. 962 | 89.

Admitted and Interim directions  
issued.

Allowed.

Dismissed for default.

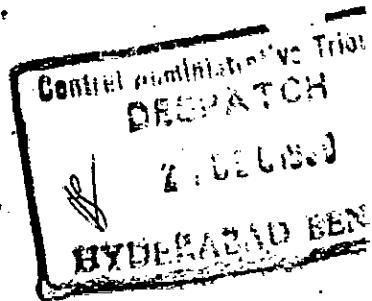
Dismissed as withdrawn.

Dismissed.

Disposed of with direction.

M.A. Ordered / Rejected.

No order as to costs.



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