

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

DA No.417/90.

Date of Judgement:4-1-1991.

1. Bh.Surapa Raju
2. G.Prabhakara Rao

...Applicants

Vs.

1. Union of India, rep. by
The Director, Naval Science & Tech.Labs,
Visakhapatnam (AP).
2. N.Maria Das
3. PVSN Raju
4. PVN Raju
5. M.Nookaraju
6. Malik Mohammed

...Respondents

Counsel for the Applicants : M/s K.Padmanabha Goud &
V.Rajeswara Rao

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

CORAM:

THE HON'BLE SHRI B.N.JAYASIMHA : VICE-CHAIRMAN

THE HON'BLE SHRI D.SURYA RAO : MEMBER (JUDICIAL)

(Judgement of the Division Bench delivered by
Hon'ble Shri B.N.Jayasimha, Vice-Chairman)

The applicants 1 and 2 were working as Turnermates
in the Respondent No.1 organisation. They were promoted
with effect from 13-12-1982 as Tradesman 'A' after interview
on 6-12-1982 by a recruitment board under what is known as
'Failing which category'. Consequently in the seniority list
dt.26-3-1984 they were shown seniors to Respondents 2 to 6
in the category of Tradesman 'A'. Respondents 2 to 6 were
promoted as Tradesman 'A' with effect from 24-12-1982.

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- 2 -

In the revised seniority list dt.11-11-1986 Respondents 2 to 6 are shown seniors to the applicants. The applicants say that this has been made without notice and giving no opportunity to the applicants to submit representations against the revision of seniority. They submitted representations and they were informed that their seniority in the list dt.11-11-1986 has been fixed according to the position in the percentage roster. A further representation dt.25-7-1989 submitted by them is yet to be disposed-of. They contend that respondents 5 and 6 were initially promoted on adhoc basis as Tradesmen 'A' with effect from 24-12-1982 and regularised as such subsequently, and the adhoc service rendered by Respondents 5 and 6 cannot be taken into consideration for giving them seniority over them. According to Article 26 of C.S.R. under para-8, persons appointed on adhoc basis to any grade are to be replaced by persons approved for regular appointment and they are replaced, such persons will be shown according to their adhoc appointment below persons regularly appointed. Observing these guidelines, Respondents 2 to 6 ought not to have been placed above applicants.

2. The Respondent No.1 in his counter says that promotions to the post of Tradesmen 'A' are governed by the recruitment rules issued under S.R.O.No.221, dated 7-8-81. Under these rules 1/3rd of the vacancies should be filled by direct recruitment and the balance 2/3rd by promotion.

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It is however clarified by DRDO, Headquarters in letter dt.1-10-1982 as follows :-

"(a) The posts reserved for promotion quota can be filled by direct recruitment under the 'failing which' clause, with the approval of the Appointing Authority.

(b) Persons appointed by direct recruitment under the 'failing which' clause, against promotion quota, will consume the promotion points and their seniority will be fixed accordingly."

Tradesmen-B with three years service failing which Tradesmen-B with 6 years combined service as Tradesmen 'B' and 'C' or Tradesmen 'C' with six years service in the respective grades rendered after appointment thereto on regular basis are eligible to be considered for promotion. Under the existing Government of India rules, panels are prepared for both promotion quota and direct recruitment quota by the Departmental Promotion Committee and the Recruitment Board respectively. Interse seniority between direct recruits and promotees will be adjusted on the basis of the date of recruitment board or the D.P.C. meeting. The letter dt.1-10-1982 lays down that it is incumbent on the appointing authority to judiciously look into the matter, and take care of departmental candidates for promotion first, before releasing promotion quota vacancies to be filled in by direct recruitment. The vacancies for direct recruitment were released on 8-11-1982 and 6-12-1982 for

- 4 -

filling-up posts in the category of Tradesmen 'A'. According to the procedure the vacancies to be filled in by Departmental candidates by promotion had to be made first and only thereafter the balance of the vacancies of promotion quota were to be released for being filled by direct recruitment. Due to administrative reasons, viz., absence of Head of the Establishment, who is to Head the D.P.C., no DPC for preparing the panel for the promotion quota could be made till 24-12-1982. Earlier to the DPC meeting, the recruitment board for preparing panel under the 'failing which clause' i.e. by direct recruitment met on 8-11-1982 and 6-12-1982. The seniority list dt.26-3-84 was issued without properly applying the rules relating to fixation of seniority and that after the appointing authority realised the mistake a review of the seniority list was made and the revised seniority list dt.11-11-1986 was issued. The respondents therefore contend that merely on the ground that the recruitment board for direct recruitment met on 8-11-1982 and 6-12-1982 and the applicants were promoted earlier, they could not get seniority over those to be promoted under the promotion quota, whose promotions was delayed because of the delay in constituting the DPC.

3. We have heard the learned counsel for the applicant Shri Padmanabha Goud and Shri E.Madan Mohan Rao, Additional standing counsel for the Respondents. Respondents 2 to 6

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H. N. Madan Mohan Rao

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have been served with notices and have filed a letter stating that they are adopting the stand of Respondent No.1 and the matter may be disposed on the averments made in the counter of the Respondent No.1. The applicant's case is that they were appointed earlier to the respondents 2 to 6 as Tradesmen 'A' and therefore they must be treated as seniors. Their selection was also earlier to the selection of the Respondents 2 to 6. Shri Madan Mohan, learned standing counsel on the other hand contends that the rules envisage that posts reserved for promotion quota should be filled-up first and only thereafter promotions under the 'failing which' category to be taken by. In this case the recruitment board for considering the candidates under the 'failing which category' met earlier and selected candidates, and the DPC which was to consider the cases of the Respondents 2 to 6 for promotion coming in the normal promotion channel was delayed and it was held on 24-12-1982. The delay on the part of the department cannot adversely affect the seniority of Respondents 2 to 6.

4. From the facts and according to the rules, it is clear that the applicants who have been promoted under the 'failing which category' cannot get seniority over Respondents 2 to 4 only on the ground of their earlier date of appointment or earlier date of selection. The Date of Appointment/Date of Selection as the determining factor for purpose of seniority would apply only to cases where

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promotions are made after considering all the eligible persons from same category i.e. promotion quota and not where promotions are made from different categories/sources. In this case the applicants come in for consideration only after exhausting all the persons available for promotion. In these circumstances we do not find that the applicants have made out any case in regard to their claim of seniority over respondents 2 to 4.

5. In regard to respondents 5 and 6, Shri Goud states that as per the seniority list dt.11-11-1986, respondents 5 and 6 were appointed to the post of Tradesmen 'A' on adhoc basis on 24-12-1982 and regularised on 18-6-1983. Since the respondents 5 and 6 were promoted only on an adhoc basis and not on regular basis from 24-12-1982 they cannot be shown as seniors to the applicants who were promoted earlier to them on 13-12-1982 on a regular basis. Shri Padmanabha Goud contends that the fact that Respondents 5 and 6 have been regularly appointed from 18-6-1983 shows that they could not have been empanelled for promotion alongwith the applicants when the DPC met on 24-12-1982. On this point we sought clarification from the learned standing counsel for the Respondent No.1, who could not clarify whether respondents 5 and 6 were also included in the panel

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dated 24-12-1982 prepared by the DPC. It therefore appears that in as much as respondents 5 and 6 have been regularised with effect from 18-6-1983 and not from the date of their adhoc appointment i.e. 24-12-1982, The Departmental Promotion Committee did not include their names in the panel prepared on 24-12-1982.

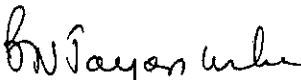
6. The learned counsel for the respondents at this stage pointed out that if the applicants are given seniority over respondents 5 and 6, the applicants will also get seniority over several others who are not made parties in this application viz., candidates at serial Nos.15, 16, 17, 18 and 19 as per the seniority list dt.11-11-1986. Shri Padmanabha Goud, however, states out that in a subsequent seniority list dt.15-11-1990, persons mentioned at Sl.Nos. 15 to 19 of the seniority list dt.11-11-1986 do not figure except candidates at serial No.16 viz., Smt.P.Sharada Devi in a later seniority list published on 15-11-1990. He states that their names do not figure in 15-11-1990 list because they have been promoted. He therefore states that he limits his prayer for assigning seniority to the applicants at Sl.No.3(a) and 3(b) in the seniority list dt.15-11-1990 without prejudice to the seniority of Smt.B.Sharada Devi (Sl.No.6 in the seniority list of 15-11-1990).

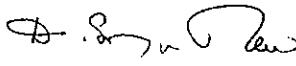
7. On a consideration of the submissions made and having regard to the facts detailed above, we find that,

(a) the applicants claim for seniority over respondents 2 to 4 is untenable.

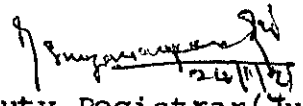
(b) the applicants will be given seniority in the seniority list dt.15-11-90 over respondents 5 and 6 if Smt.Sarada Devi has been promoted over-looking M.Nookaraju i.e. Respondent No.5 and Malik Mohammed i.e. Respondent No.6.

8. The application is disposed-of with the above direction. No order as to costs.


(B.N.JAYASIMHA)
Vice-Chairman


(D.SURYA RAO)
Member (J)

Dated: 4th January, 1991.
Dictated in Open Court.


Deputy Registrar (Judl)

avl/nsr

To

1. The Director, Union of India,
Naval Science & Tech.Labs, Visakhapatnam(AP)
2. One copy to Mr.K.Padmanabha Goud & V.Rajeswara Rao, Advocate
6-3-347/22/10, Dwarakapuri colony, Punjagutta, Hyderabad.
3. One copy to Mr.E.Madanmohan Rao, Addl CGSC. CAT.Hyd-Bench
4. One spare copy.

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APPROVED BY

TYPED BY

COMPARED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH 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)

Dated: 6-1-1991.

~~ORDER~~ / JUDGMENT:

M.A./R.A. /C.A. NO.
in

T.A.No.

W.P.No.

O.A.No. 617/90

Admitted and Interim directions
issued.

Allowed

Disposed of with direction

Dismissed

Dismissed as withdrawn

Dismissed for default

M.A. Ordered/Refected.

No order as to costs.

