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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH: AT HYDERABAD

O.A.NO.159/92

Date of Judgment: 20.2.95

BETWEEN:

A.Natarajan

Applicant

AND

Union of India represented by

1. The Secretary to the Government,
Ministry of Defence,
New Delhi.

2. Engineer-in-Chief,
Army Headquarters,
DHQ Post,
New Delhi-110011.

3. The Chief Engineer,
Southern Command Engineers Branch,
Pune-411001.

4. The Chief Engineer (Air Force),
No.2 Defence Camp Area, MES Road,
Bangalore-560022.

5. The Commander Works Engineers (Air Force),
Mudfort,
Secunderabad-500003.

Respondents

COUNSEL FOR THE APPLICANT: Shri KSR Anjaneyulu

COUNSEL FOR THE RESPONDENTS: Shri N.R.Devaraj, Sr.CGSC

CORAM:

HON'BLE SHRI JUSTICE V.NEELADRI RAO, VICE CHAIRMAN

HON'BLE SHRI A.E.GORTHI, MEMBER (ADMN.)

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3. The ^{relevant} ~~revised~~ recruitment rules were amended as per SRO 303, dated 26.10.1989 (vide Annexure-10). The required service for promotion to Administrative Officer Gr.II (AO Gr.II) is OS Gr.I with seven years combined regular service as OS Gr.I/OS Gr.II/Steno Gr.II. The requisite eligibility period prior to the date of amendment was eight years.

4. For such of those who were selected as OS Gr.II in 1980, 1982 and 1983, ^{but} who had fallen short of the requisite period were given notional seniority on the ground that if they were promoted even before 1980 on the basis of the seniority list which was challenged before the Allahabad High Court, they would have got the eligibility period specified as per the extant rules for consideration for promotion to the post of AO Gr.II. The same was challenged by some of the promotees in TAs 177, 465, and 427/86 on the file of Madras Bench of C.A.T., OA 521/87 on the file of New Bombay Bench of C.A.T., and OA 760/90 on the file of this Bench. It was held by all the three benches that the action of the respondents in giving notional seniority is illegal.

5. But it is submitted for the respondents that in pursuance of the above judgment, the seniority was fixed on the basis of the empanelment at the time of each selection from 1980, and those who were selected earlier.

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OA 159/92.

JUDGMENT

Dt:20.2.95

(AS PER HON'BLE SHRI JUSTICE V.NEELADRI RAO, VICE CHAIRMAN)

Heard Shri KSR Anjaneyulu, learned counsel for the applicant and Shri N.R.Devaraj, learned standing counsel for the respondents.

2. The applicant is now working as Office Superintendent Grade-II (OS Gr.II) in the office of the Commander Works Engineers (Air Force), Secunderabad. The facts which give rise to this OA are as under:-

The combined seniority list of UDCs and Stenographers Grade-II in the Air Force (All India seniority unit) was challenged before the Allahabad High Court in 1975. The said seniority list was struck-down by the Allahabad High Court in 1979, and on the basis of the guidelines given therein, the revised seniority list of UDCs/Stenos Gr.II was published. The selection for the vacancies in the category of OS Gr.II upto 1980 was made and the selected candidates were appointed to the posts of OS Gr.II in 1980. There was another selection in 1982 for the posts of OS Gr.II for the subsequent vacancies upto 1982. Those UDCs/Stenos Gr.II who were selected were given appointments in OS Gr.II in 1982. Another selection had also taken place for the vacancies in the category of OS Gr.II in 1983 and the candidates selected then also were appointed in 1983.

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were placed above those who were selected later for the posts of OS Gr.II. The further submission for the applicant is that those who were promoted as OS Gr.II after they were given notional seniority were ^{not} reverted as sufficient number of posts were available for them also.

6. The applicant herein was promoted to the post of OS.Gr.II on 23.1.1987. As he had not completed 7 years of the eligibility period for consideration for promotion to the post of AO Gr.II as per the rule which was amended in 1989, he filed this OA ~~seeking~~ claiming that he too should have ^{been} given notional seniority for consideration for promotion to the post of AO Gr.II. As this Bench and the Madras and New Bombay Benches already held that these OS Gr.II officers ^{are} ~~were~~ not entitled to ~~any~~ notional seniority, it has to be held that the applicant is ^{also} not entitled to any notional seniority. // The question of giving notional seniority will arise if due to litigation, selection is not made even ^{when} vacancies existed, or if the case of senior is not considered due to over-sight or otherwise when his turn had come while the case of his junior was considered, or when the delinquent is exonerated and thereby his promotion has to be given from the date on which his junior was promoted if the recommendation as per the

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sealed cover is in favour of the delinquent. No such situation is relied upon for the applicant. Even in a case where notional promotion has to be given, the date from which the notional promotion has to be given depends upon the situation. It is not the case of the applicant that his case was not considered even though his turn had come. It is also not his case that even though the vacancies existed his case was not considered. But we have to make it clear that even if the vacancy existed and if there is no eligible candidate as on that date, the regular selection will be made only when the eligible candidates are available and even in case of such selection, promotion cannot be claimed from the date on which the vacancy existed. Be that as it may, the applicant cannot claim notional seniority which in fact is by way of relaxation in regard to the eligibility period. The grievance of the applicant seems to be that in spite of the judgment of New Bombay and Madras Benches and this Bench, those who had not completed the eligibility period were not reverted and they were allowed to continue in the posts of AO Gr.II. But it is now well settled that if a mistake is committed earlier, Court/Tribunal will not give any direction to the department to commit similar mistake even in favour of the applicant who is before the Court/Tribunal. It is not the case of the applicant that he is senior to any of those who were given notional seniority. Further there is no bar to continue them on adhoc basis in the category of AO Gr.II, when the vacancies existed and absorb them on regular basis after they complete the eligibility period. Hence their continuation in AO Gr.II, without ~~xxxxx~~ reverting them does not appear to be contrary to judgments of Benches Madras and New Bombay/and this Bench. In any case there is no legal right to claim notional seniority.

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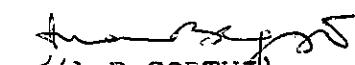
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7. It is further submitted for the applicant that he (the applicant) was delegated with the powers of AO Gr.II from 2.5.1988 to 31.7.1989 and he was not paid the salary in the pay scale of AO Gr.II for that period and his representation for claiming the same is not yet disposed of. Though such allegation was made in the body of the OA, no relief is claimed in regard to the same in this CA. Hence, the only direction that can be given in regard to the same is for disposal of that representation and if the applicant is going to be aggrieved in regard to the same, he is free to file an application under Section 19 of the Administrative Tribunals Act, 1985, if he is so advised.

8. Subject to the above, the OA is dismissed.

No costs./


(A.B. GORTHI)
MEMBER (ADMN.)


(V. NEELADRI RAO)
VICE-CHAIRMAN

DATED: 20th February, 1995.
Open court dictation.


Dy. Registrar (Judl)

Copy to:-

1. The Secretary to the Govt, Min. of Defence, New Delhi.
2. Engineer-in-Chief, Army Headquarters, DHQ, Post, New Delhi. 11.
3. Chief Engineer, Southern Command, Engineers Branch, Pune-411006
4. Chief Engineer (Air Force), No. 2 Defence Camp Area, MES Road Bangalore-560 022.
5. Commander Works Engineers (Air Force) Mudfort, Sec 'bad-500 003
6. One copy to Mr. K.S.R. Anjaneyulu, Advocate, CAT, Hyd.
7. One copy to Mr. N.R. Devaraj, Sr. CGSC, CAT, Hyd.
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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD.

THE HON'BLE MR. JUSTICE V. NEELADRI RAO
VICE- CHAIRMAN

AND

THE HON'BLE MR. R. RANGARAJAN: M (ADMN)

DATED 20.2.1995.

ORDER/JUDGMENT:

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

O.A.No.

T.A.No.

Admitted and Interim directions
issued.

Allowed.

Disposed of with directions.

Dismissed.

Dismissed as withdrawn

Dismissed for default.

Ordered/Rejected.

No.order as to costs.

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