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IN THE CENTRAL ADMINISTRATIVE TRIBUNA: HYDERABAD BENCH:
AT HYDERABAD

OA No.114/94

Date of Decision: 8.7.87

BETWEEN:

A.R.S. VITTAL RAO

.. Applicant

AND

1. The Secretary
Union Ministry of Water Resources,
Sharm Shakti Bhawan,
Rafi Marg,
New Delhi - 110 066
2. The Chairman,
Central Water Commission,
Sewa Bhavan,
R.K. Puram,
New Delhi - 110 066
3. The Secretary,
Department of Personnel & Training,
Government of India
North Block,
New Delhi - 110 001.
4. The Secretary,
Union Public Service Commission,
Dholpur House,
New Delhi.

Counsel for the applicant: Party in Person

Counsel for the Respondents: N.R. Devaraj

CORAM:

THE HON'BLE SHRI R. RANGARAJAN: MEMBER (ADMN.)

THE HON'BLE SHRI B.S. JAI PARAMESHWAR: MEMBER (JUDL.)

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JUDGEMENT

(PER HON'BLE SRI B.S. JAI PARAMESHWAR: MEMBER (JUDL.))

Heard the applicant in person. Heard Sri N.R. Devaraj, the learned Sr. Standing Counsel for the respondents.

This OA is filed under Section 14 of the Administrative Tribunals Act. This OA was filed on 31.12.93.

Facts leading to this OA may, in brief, be stated as follows:-

Prior to 1980 the applicant was working as an Assistant Engineer under the Respondent-2 - Central Water Commission. By proceedings No.8/2/80-Adm.I(B) Dt.8.7.80 the applicant was promoted as Asstt. Director / Asstt. Executive Engineer on ad-hoc basis in the scale of pay of Rs.700-1300. He relinquished the post of Assistant Engineer on 17.7.80. It is stated that he continued to work in that post on ad-hoc basis for a period of about 4 years.

By proceedings No.8/1/84-E-III Dt.2.2.85 (Annexure-II) page-21 of the OA) the applicant was appointed regularly to the post of Assistant Director/Asstt. Executive Engineer. It is submitted that during the year 1984-85 the commission recruited to the post of Asstt. Director/Asstt. Executive Engineer by direct recruitment. It is submitted that provisionally seniority list of Asstt. Directors/Asstt. Executive Engineers was prepared vide OM No.29/1-89-E/III Vol.II Dt.7.9.89. It is submitted that the said seniority list was as on 1.6.85. ^{and} that the said seniority list was quashed by the Delhi Bench of this Tribunal in OA No.31/87 (V.P. Misra vs Union of India).

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The next promotional post is Deputy Director/Executive Engineers. The applicant was promoted to the post of Deputy Director/Executive Engineer vide Office Order No.A32013/1(2)/92-Est.II dated 7.9.93. The applicant retired from service with effect from 31.12.93 on attaining the age of superannuation. It is his grievance that the direct recruits appointed during 1984-85 were promoted to the post of Deputy Director/Executive Engineer vide Office Order No.32013/1(2)/89-E-II Dt.28.2.90. The applicant claims to be senior to the direct recruits of 1984-85, and claims that he should have been promoted as Deputy Director/Executive Engineer with effect from 28.2.90 rather during 1993.

He made representations dated 15.3.90 and 15.9.93. These representations evoked no response from the respondents.

Hence the applicant has filed this OA praying for a direction to the respondents to promote him from the grade of Assistant Director/Asstt. Executive Engineer to the post of Dy. Director/Executive Engineer with effect from 28.2.90, the date on which his juniors i.e. S/Shri A.K. Agarwal, D.J. Sen and V.S. Khatri were promoted, with all consequential benefits.

The respondents have filed a counter stating that earlier the employees of the Central Water Commission were governed by the Central Water Engineering Group 'A' service Rules 1965 (for short "the Rules 1965") that the said rules 1965 envisaged the mode of recruitment for the post of Asstt. Director/Asstt. Executive Engineer as under:-

Direct recruits	60%
Promotion	25%
Transfer on deputation	15%

That the 1965 Rules did not lay down any principles of fixation of seniority of the officers appointed to the grade.

That the seniority of the officers ^{were} governed by the general principles for determining the seniority in the Central Services as enshrined in OM No.9/11/55-RPS dt.22.12.59 that in accordance with para 1(1) of the said OM the principles applied to the determination of seniority in Central Civil Services and Civil Posts except such services and posts for which separate principles/rules have already been issued or may be issued thereafter by the commission. A copy of the said rules is at annexure R-I to the counter. It is stated that the seniority of the officers appointed to the Central Water Engineering Group-A services were determined in accordance with the guidelines laid-down in the above OM, that para- 6 of the said OM further provided that the relative seniority of the direct recruits and promotees would be determined in accordance with the rotation of vacancies between direct recruits and promotees which should be based on the quota of vacancies reserved for direct recruitment and promotion, respectively, in the recruitment rules, that in accordance with the general principles of seniority vacancies earmarked for direct recruit quota did not lapse whether there was delay in direct recruitment or promotion when enough number of recruits or promotees were not available, that the slots meant for particular quota which could not be filled up in a particular year were required to be left blank with when direct recruits or promotees were available in subsequent selection such persons occupied the vacant slots and thus became senior to those who were already working on the regular basis.

That the rules 1965 were repealed by the Central Water Engineering (Group-A) Service Rules 1982 (in short "the Rules 1982").

That the said rules were notified in the Official Gazette Dt.10.4.82 that earlier to the Rules 82, the seniority of the promotees and direct recruits were determined in the ratio

of 12:5. That after the rules 1982 came into force their seniority between direct recruits and promotees were rotated in the following order:

1st point	-	Direct Recruit
2nd point	-	Promotee
3rd point	-	Direct Recruit
4th point	-	Promotee
5th point	-	Direct Recruit
6th point	-	Direct Recruit
7th point	-	Promotee
8th point	-	Direct Recruit
9th point	-	Promotee
10th point	-	Direct Recruit

That the general Principles of Seniority laid down in the OM (Annexure R-1) the UPSC-Direct recruit officer appointed later, on the basis of the subsequent examination may become senior to the promotee officer on the basis of the vacant slot meant for the direct recruits; that the DOPT vide their letter Dt.7.2.1986 revised the Principles of fixation of seniority between the direct recruits and promotees, that the letter dt.7.2.84 is at annexure R-2 to the counter, that in accordance with the said OM while the principles of rotation of quota was still valid for determining inter-se seniority of direct recruits and promotees that keeping vacant slots for filling direct recruits during subsequent years thereby giving unintended seniority had been dispensed with, that in case adequate number of direct recruits became available in any particular year then rotation of quotas for the purpose of determination of seniority would take place only to the existing direct recruits and promotees; that in other words, to the extent direct recruits are not available the promotees will be bunched together at the bottom of the seniority list below the last position upon to which it was possible to

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determine the seniority on the basis of rotation of quotas with reference to the actual number of direct recruits. The unfilled direct recruit quota will however be carried forward for the future year for taking action for direct recruitment for the total number according to the usual procedure. These orders came into force effective from 1.3.86.

The seniority determined earlier with the then existing principles on the date of issue of the letter dt.7.2.84 were not re-opened for recruitment for which action has already been taken on the date of issue of this order either by direct recruitment/promotion was in accordance with the principles detailed in the OM. That since the recruitment action of CESC BS-86 was taken earlier to 7.2.86, the seniority of direct recruits of CESE 86 was fixed in accordance with the Rules 1959 (Annexure-R-1).

It is stated that the applicant has referred to the decision of the Principal Bench of the Tribunal in OA No.31/87 that in accordance with the directions issued in the said case the respondents issued a fresh seniority list on 7.9.89 that simultaneously the Government had filed an appeal against the said judgement before the Hon'ble Supreme Court that the Hon'ble Supreme Court while disposing the appeal was pleased to direct "that Sri V.P. Mishra was admittedly promoted to the post of Assistant Director on 31.3.78 and on that post his services were regularised with effect from 9.3.82 after the DPS approved his appointment. Therefore, he was entitled to seniority with effect from the date on which the vacancy in the promotee quota was available to him. According to documents produced before us vacancy was available somewhere in 1979. In this view we are of the opinion that the applicant is entitled to promotion against the vacancy in the promotee quota and his

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seniority will be taken into account for the purpose of higher post in service. The petitioner should, therefore, re-arrange his seniority and consider the respondents for promotion". The SLP was accordingly disposed of.

In the background of the case cited above the officers ~~... v. ...~~ belong to 1985 batch of the UPSC recruits and after being fitted in the vacant ... for direct recruitment were fitted in the seniority list of 1.6.85 as revised pursuant to the judgement of the Principal Bench of this Tribunal in OA 31/87 as modified by the Hon'ble Supreme Court judgement dated 23.4.91 in SLP No.14389/88. Thus the 3 officers stood senior to the applicant and their positions came at Sl. No.522, 523 and 525, respectively, while the position of the applicant was at Sl. No.686. Hence there are no merits in this OA and the OA be dismissed with costs.

The applicant has filed a rejoinder more or less asserting the averments made in this OA and disputing the averments made in the counter.

It is not in dispute that the applicant was promoted as Asst. Director/Asstt. Executive Engineer on Adhoc basis only for a period of 6 months. The order of promotion is at page No.20 of the O.A. The condition No.2 of the promotion reads as follows:-

" The appointment of the above officers to the higher post is purely on ad-hoc departmental arrangement and will not entitle them for regular promotion or seniority etc. in the grade. "

Admittedly, when the applicant was promoted to the post of AD/AEE on 8.7.80 then the Rules 1959 was in force.

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A copy of the said Rules 1959 ^{was} produced by the respondents along with their counter. It is at Annexure R-I. In para-8 of the Rules it is stated as under:-

" Persons appointed on ad-hoc basis to a grade without consultation with the UPSC under Regulation-4 of the UPSC (Exemption from Consultation) Regulations, 1958, are to be replaced by persons approved for regular appointment by direct recruitment, promotion or transfer as the case may be. Until they are replaced, such persons will be shown in the order of their ad-hoc appointments and below all persons regularly appointed to the grade."

(underlining by us)

Further the applicant was regularly appointed as AD/AEE by the Office Order Dt.2.2.85. The copy of the Office Order is at Annexure-2, page-21 of the OA. Even though the applicant was working as AD/AEE from 18.7.80 onwards, he was appointed by the order Dt.2.2.85 in officiating capacity with effect from 5.4.84 and he was to be on probation for a period of 2 years. Therefore, the respondents have not taken into consideration the services of the applicant as AD/AEE on ad-hoc basis. In view of the stipulation in condition No.8 of the Rules 1959 and in view of the condition No.2 of the order of promotion Dt.8.7.80 the applicant cannot claim seniority from 18.7.80 onwards, the date on which he assumed charge of AD/AEE. In view of the letter of appointment dt.2.2.85 it can only be considered that the applicant was appointed as AE/AEE on an officiating post only effective from 5.4.84 and on regular basis after completion of his probationary period of 2 years.

Therefore the contention of the applicant that he must be held to be senior to the direct recruits of 1984-85 cannot be accepted. Further the respondents have specifically

contended that while determining the seniority between direct recruits and promotees rotation of quota was followed and any unfilled vacancy of direct recruits were fitted in the vacant slots of earlier years. In that view of the matter also the applicant cannot claim seniority from 1980 onwards.

The Rules 1982 came up for consideration before the Hon'ble Supreme Court of India in the case of Union of India Vs S.D. Gupta and others reported in AIR 1996 File No.I Supreme Court Cases. Supreme Court has been pleased to observe as under:-

" 6. In view of the respective contentions the question arises whether the fitment of seniority determined by the appellant Union is in accordance with the rules? It is seen that the fitment of rota and quota is not specifically provided in 1982 statutory rules. But it prescribes admittedly 60% of the substantive vacancies for the direct recruits and 40% for the promotees. Among the 40% quota, they further made a demarcation in the ratio of 25 : 15 between the Extra Assistant Directors and the appointees by transfer. We are not concerned with each class in this case. Admittedly, the promotees are entitled to their fitment within 25% of the quota prescribed for them under the rules. Since rules are silent, sub-rule(2) of Rule 8 clearly mentions that the determination of seniority in accordance with the rules of the Government of India, Ministry of Home Affairs, Personnel and Administrative Reforms Department will be applicable to the members of the service. It is seen that under 1959 instructions, the quota and rota procedure has been prescribed as extracted hereinbefore. In other words, since the statutory rules are silent as regards the fitment of the rota and quota and determination of the inter se seniority, the administrative instructions issued by the Government, would supplement the rules and accordingly they must be worked out.

7. It is seen that admittedly the vacancies for the promotion had arisen on 3.5.1979 and thereafter V.P. Misra is entitled to the vacancy that arose on that date. Therefore, when the inter se seniority is determined between the promotees to the substantive vacancies that have arisen on 3.5.1979 and thereafter, though direct recruits were recruited later, their fitment in the order of seniority should be determined with reference to rota and quota prescribed under the aforesigned administrative instructions and the statutory rules. It would appear that the Government of India had worked out the rota and quota in tune with the above rules.

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8. It is then contended that the direct recruits were not born in the service when the promotees were promoted and equity requires that they cannot be pushed down. The object of direct recruitment is to blend talent and experience to augment efficiency when direct recruits, though came from green pastures, were imbued with dedication and honesty. So long as system continues, consequences are inevitable. The question of equity does not arise. Shri Krishnamani then contended that direct recruits are shown temporary and so they cannot be similar to promotee substantive appointees. The quota of though their initial appointment substantive vacancies, on completion of period of probation they become substantive appointees. That is the settled principle of law in this behalf. The Tribunal, therefore, is not right in giving direction to consider their fitment vis-a-vis the order passed by the Court in their quota above the direct recruits. "

The applicant particularly claims, seniority over Agrawal, Sen and Khatri who belonged to 85 batch of the UPSC recruits. The respondents denied this aspect. The vacant slots meant for direct recruits of the UPSC as on 1.6.85 was revised in pursuance of the OA 31/87 of the Principal Bench of this Tribunal and of the modified order of the Supreme Court in the SLP and therefore their seniority ~~senior~~ position was determined at Sl. No.522, 523 and 525. They further contend that the applicant's position was at Sl. No.626. The applicant has not controverted this position of the seniority list.

The applicant was regularly appointed to the post of AD/AEE as per order Dt.8.1.84 (Page 21 of the OA). As on that date the new Rules i.e. ^{the} Rules 1982 were in force. The applicant has produced the said rules. The said Rules came into force on 10.4.82. The applicant relied upon rule 7 (2) of the said rules. The Rule 7(2) prescribed the percentage of vacancies to be filled up by direct recruitment and by promotion. The ratio is 60 & 40. Rule 8 of the Rules 1982 deals with the seniority.

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Under Rule 8(3) it is stated that the seniority of persons recruited to the service after the initial constitution shall be determined in accordance with general instructions issued by the Government in the matter from time to time. Further the rule states that the relative seniority of members of services appointed to a grade at the time of initial constitution under the rules this shall be as obtaining from date of ~~commencement~~ provided if the seniority of any such member has not been specifically determined on the said date the same shall be determined by the Government by the Ministry of Home Affairs, Department of Personnel and Administrative Reforms, like the seniority of members of similar services under the Government.

It is not in dispute that quota rota rule was applied while determining the seniority of the direct recruitment and the promotees under the rules 59. The respondents specifically stated that the vacancies which could not be filled up in earlier years were carried forward for the subsequent years and that persons though recruited during subsequent years were related to the vacant posts of the particular previous year. It is thus clarified that the officers viz. S.K. Agarwal, Sen and Khatri, though recruited in 1985 batch of the UPSC were fitted in the vacant slots meant for direct recruits of UPSC in the seniority list as revised in accordance with the directions in the OA No.31/87.

Therefore we humbly feel that the service rendered by the applicant in the post of AD/AEE on ad-hoc basis cannot count for seniority and that his regular appointment to the cadre from 8.4.84 is the material date for considering his position in the seniority. Even though he worked on ad.hoc basis between July 80 and 8.4.84 the said period of service



cannot be counted for the purposes of promotion on seniority. Further the vacant slots were fitted in by the direct recruits of the years 84-85.

We feel that the applicant was not diligent in asserting his rights for the following reasons:-

a) It is stated that the direct recruits who were recruited after the applicant was in the cadre were promoted on 28.2.90. If he had approached their promotion on 28.2.90, then he should have approached the competent judicial forum to assert his seniority. He did not do so except submitting a representation dt. 15.3.90.

b) The applicant was regularly appointed to the post of AD/AEE on officiation by order Dt.2.2.85. Then also he merely accepted his position without any protest.

c) When the direct recruits were promoted to the cadre of DE/EE on 28.2.90 he did not protest by agitating his right before a competent judicial forum. He simply submitted his representation dt.15.3.90.

d) Further, the applicant was promoted as DD/EE vide order Dt.7.9.93. The said order clearly stated that the order is effective from the date 7.9.93. Even at that point of time he did not assert to be senior. He was not definite of his position in the seniority list.

e) Even the Department prepared the seniority list on 7.9.89. The same came to be quashed by the Principal Bench of this Tribunal on OA 31/87. Thereafter the seniority list was prepared and it is stated now by the respondents that the said seniority list was prepared in accordance with the directions contained in the OA No.31/87 and further directions given by the Hon'ble Supreme Court of India in SLP No.1427/88. Even then the

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applicant did not assert his seniority or did not question the position allotted to him. When the respondents specifically asserted that while determining the inter se seniority among AD/AEE quota rota rule was applied, he did not whisper even a word.

f) When the respondents in their reply stated the position of the applicant was at Sl. No.686 he did not challenge the same.

... the circumstances we feel that the applicant was totally indolent with respect to his rights.

Since quota rota rule was applied and since certain direct recruits were fitted in the vacant slots of the previous years it was inevitable for the respondents to bring down the applicant below the direct recruits as per rules then in force.

The applicant could have claimed the seniority in the list only when he was regularly appointed as AD/AEE.

The applicant filed the OA on the last date of his service i.e. 31.12.1993.

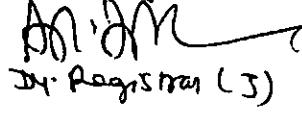
The applicant was not diligent in asserting his rights. In view of the matter we are of the considered view that the applicant is not entitled to any of the reliefs prayed in the OA.

Therefore, the only order that can be passed in this OA is to dismiss the same. Accordingly, the same is dismissed with no order as to costs.


(B.S. JAI PARAMESHWAR)
MEMBER (JUDL.)


(R. RANGARAJAN)
MEMBER (ADMN.)


Date: 8th July 1997


A.D.M.
Dy. Registrar (3)

25/7/97

(a)

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD

THE HON'BLE SHRI R. RANGARAJAN: M(A)

AND

THE HON'BLE SHRI B.S. JAI PARAMESHWAR: M
(J)

DATED

25/7/97

ORDER/JUDGEMENT

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

in

D.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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II Court.

