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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

D.A. 366/94.

Dt. of Decision : 19.1.95.

A.T. Natarajan

.. Applicant.

vs

1. Union of India, rep. by
the Secretary to the Ministry
of Telecommunications, New Delhi. .. Respondents

2. Smt. S. Q. Nagreen Quadri -

Respondent No. 2 instead of respondent No. 2 as per Court order dt. 16.9.94 in
ms. No. 3414 (on the file of the Tribunal).

Counsel for the Applicant : Mr. K. Venkateswara Rao

Counsel for the Respondent : Mr. N.R. Devaraj, Sr. CGSC.

CORAM:

THE HON'BLE SHRI JUSTICE V. NEELADRI RAO : VICE CHAIRMAN

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

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JUDGEMENT

(as per Hon'ble Sri Justice V.Neeladri Rao, Vice-Chairman)

The applicant joined service as Section Officer in C.P.W.D. on 14-8-1961. Till 1-7-63 the wing of P&T zone of CPWD used to look after the planning and execution of all civil engineering works of the P&T Department. The Government of India issued notification dated 4-5-63 for setting up Civil Engineering Wing in the Posts and Telegraphic Department with effect from 1-7-63. In pursuance of the said notification orders were issued on 22-6-63 transferring the posts and the units in the wing of P&T Zone of CPWD to Civil Engineering Wing in Posts and Telegraphic Department. All the officers working in the CPWD were required to give option for absorption in the P&T Department as per circular dated 24-8-63. The applicant exercised his option for being absorbed in the P&T Department. He was promoted as Assistant Engineer on adhoc basis by order dated 14-12-70 and he joined as Assistant Engineer on 20-12-70.

2. P&T Civil Engineering (Civil Gazetted Officers Recruitment) Rules, 1976 (for short P&T Rules 1976) had come into effect on 9-9-76. Those rules envisage recruitment to the posts of Assistant Engineer by direct recruitment and by promotion from the Junior Engineers (the post of Section Officer was designated as Junior Engineer) in the ratio of 1:1.

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The applicant was informed by memo. No. 42/2/78-Stg. dated 29-3-78 issued by the Director General, P&T that his services in the category of A.E. WERE regularised with effect from 20-3-78. The Government of India issued amended rules on 5-4-80 whereby it was stated that all officers who have been appointed on regular basis prior to the date of commencement of P&T rules of 1976 shall be deemed to have been appointed under the above rules to the respective posts on regular ~~post~~ basis with effect from the date of their appointment to the posts.

3. Thereupon the applicant filed Writ Petition No. 1988/82 in the High Court of Bombay praying, inter alia, for a direction that his services in the category of A.E. (Civil) had to be regularised with effect from 20-12-70. The said Writ Petition was transferred to the Principal Bench of the Tribunal, New Delhi and registered as T.A.No.24/89. TA 24/89 was disposed of alongwith various other T.As. and O.As. by order dated 4-3-93. The respondents were directed to prepare revised seniority list within three months from the date of communication of that order in accordance with the judgement of the Bangalore Bench of the Tribunal in O.As. 1108 to 1110 of 1989 and the decision of the Principal Bench dated 17-2-93 in OA 2368/88.

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4. This O.A. was filed praying for declaration that the applicant is entitled for regular appointment to the category of A.E. with effect from the date on which his junior Sri B.K.Chakravarthy was promoted to the said category in 1969 with all consequential benefits such as seniority, pay fixation, promotion to the higher post and other attending benefits by holding that the action of the respondents in not fixing his seniority according to the judgement dated 4-3-93 in O.A. 1783/87 of the Principal Bench and in placing him below the direct recruits as per O.M.No.19-14/93-CWG dated 10-12-93 is illegal, arbitrary and discriminatory and violative of Articles 14 and 16 of the Constitution.

5. It is stated for the respondents that basing on the judgement of the Bangalore Bench in O.A.s., 1108 to 1110 of 1989 revised seniority list was prepared by arranging the seniority of the promotee A.Es. in the order of their continued adhoc promotion and thereafter they were rotated with the directly recruited A.Es. in the ratio of 1:1 in accordance with the seniority principle laid down by the Ministry of Home Affairs in their O.M. dated 22-12-59. It was further stated for the respondents that after the above revised seniority list was issued in February 1993, ~~before~~ the judgement dated 17-2-93 in OA 2367/88 and the judgement dated 4-3-93 in OA No.1783/87 and batch of the Principal Bench were received and as those judgements were

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also in accordance with the judgement of the Bangalore Bench, the provisional seniority list which was issued in February 1993 did not warrant any alteration and after considering the objections the same was finalised as per memo. dated 10-12-93.

6. The promotion of the applicant as Assistant Engineer which was styled as adhoc was in 1970, and thus even before the recruitment rules had come into effect on 9-9-76. The said rules were silent in regard to those who were appointed/promoted before the new rules had come into effect. Then amended rule was incorporated on 5-4-80 stating that those who were appointed/promoted on regular basis prior to the date of commencement of 1976 P&T rules shall be deemed to have been appointed under the said rules to the respective posts on regular basis.

7. It is stated for the respondents that even in 1969 a decision was taken to fill up 50% of the posts of A.Es. by promotion. The applicant and other promotees were promoted on the basis of the recommendations of the D.P.C. But it is stated that as the recruitment rules were not made, the promotions of the applicant and other promotees were referred to as adhoc. But as no provision was made in the amendment dated 5-4-80 that the promotion of the

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promotees had to be regularised from the dates of their respective adhoc promotion in cases where they are in continuous service, the applicant filed writ petition No.1988/82 and other promotees also approached the High Courts before the Administrative Tribunals Act had come into effect, and some promotees approached the various Benches of the Tribunal after the A.T. Act had come into effect. It is ~~in those OAs and TAs~~ held that the services of the promotees, ~~though~~ styled as adhoc, have to be regularised from the date of their respective promotion in case there is no break in service in the category of A.E.

applicant is that the inter-se seniority in the category of A.E. as between the promotees and the direct recruits prior to 9-9-76 had to be fixed on the basis of date of regularisation, as there were no recruitment rules by then and as there was no provision for quota and rota between the promotees and direct recruits. It is further stated for the applicant that even assuming that there was provision for quota and rota as per administrative instructions prior to 9-9-76, it has to be held that the quota failed and accordingly the rota also failed and as such the date of entry into category of A.E., that is the date of regularisation in the said category had to be taken as the basis for fixing the inter-se seniority as amongst the direct recruits and the promotees.

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9. It is stated for the respondents that the Principal Bench held in judgement dated 17-2-93 in O.A. 2367/88 that the inter-se seniority as amongst the promotees and direct recruits had to be fixed in accordance with the memo. No.9/11/55-RPS dated 22-12-59 of the Ministry of Home Affairs and when the said judgement was followed by the Principal Bench in the common judgement dated 4-3-93 in OA 1783/87 and other OAs and TAs including TA 24/89. The contention of the applicant that rota rules should not have been followed in preparation of the seniority list of those who were promoted and directly recruited as AES prior to 9-9-76 cannot be countenanced.

10. Even in para 1 of the common judgement dated 4-3-93 in OA 1783/87 and TA 24/89 and batch, the point which had arisen for consideration was referred to asunder:

"The short question raised in this batch of petitions is that the seniority list of Assistant Engineers (Civil) should be recast in accordance with the principles laid down in the Ministry of Home Affairs OM No.9/11/55-RPS dt. 22-12-1959 and in accordance with the judgement of the Bangalore Bench of the Tribunal in the case of R.Ganapathy and others Vs. Union of India and others (Application Nos.1108 to 1110/89 rendered on 20-12-1991."

The judgement dated 17-2-93 in OA 2367/88 of the Principal Bench is also in regard to finalisation of the seniority list in the grade of A.E.(Civil) in P&T. The applicant is bound by judgement dated 4-3-1993 in O.A. 1783/87 and T.A. 24/89 and batch for he was the applicant in T.A. 24 of 1989.

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The revised seniority list as per amendment memo. dated 10-12-93 was prepared on the basis of rota in the ratio of 1:1 between the direct recruits and the promotees. It is hence urged for the respondents that the impugned seniority list is in accordance with the judgement in TA 24/89 and batch.

11. OM No. 9/11/55-RPS dated 22-12-59 lays down that whenever a quota is fixed, rota has to be followed. Probably as decision on the administrative side was taken even in 1969 for recruiting 50% of the AEs (Civil) in P&T by way of promotion from amongst the Junior Engineers, it might have been held in the OA 1783/87, TA 24/89 and batch and OA 2367/88 that quota and rota have to be followed in preparing the seniority of AEs promoted/appointed by way of direct recruitment prior to 9-9-76, the date when the P&T Rules 1976 had come into effect. It is true that rota fails if quota fails. But the judgement dated 4-3-93 in TA 24/89 and batch does not indicate that any argument was advanced to the effect that as quota failed, the date of regular appointment/promotion has to be taken as basis for fixation of seniority. In fact at the time of consideration for admission of this O.A., we observed as to whether in view of the relief prayed for in this O.A. it is not a case for moving the Principal Bench in TA 24/89 and batch by way of Miscellaneous Application praying for directions if the impugned

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seniority list is ~~not~~ ^{not} in accordance with the said judgement or whether it is open for the applicant to file an application under section 19 of the AT Act in regard to the relief claimed. During the course of arguments in this O.A. the following portion in para 5 of the judgement dated 4-3-93 in TA 24/89 and batch was referred:

"... ... We reserve liberty to the petitioners to approach the Court, if they are still aggrieved after the final seniority list has been prepared in accordance with our directions, as above. "

It does not specifically indicate as to whether the aggrieved has to approach the Tribunal by way of application under section 19 of the A.T. Act or by way of Miscellaneous Application in the above proceedings. But normally as the aggrieved has to approach by way of an application under section 19 of the A.T. Act, if it is not by way of contempt, it has to be held that this O.A. is maintainable.

12. But as it is alleged for the applicant that the impugned seniority list is not in accordance with the judgement dated 4-3-93 in TA 24/89 and batch the only point which has to be considered in this O.A. is as to whether the said seniority list is in accordance with the judgement dated 4-3-93.

OM dated 22-12-59 was specifically mentioned in the ~~above~~ judgement in the context that the revised seniority list has to be prepared on the basis of the said memo. It follows that rotation has to be followed ~~in the ratio~~ of 1:1, for a decision was taken on the administrative side even before the 1976 P&T Rules had come into

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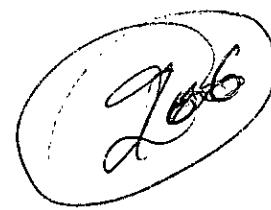
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effect, that 50 per cent of the posts of AES (civil) have to be filled by promotion from amongst the junior engineers. When the rota was followed in preparation of the impugned seniority and when the judgement dated 4-3-93 in TA 24/89 and batch, ~~it~~ states that the judgement dated 17-2-93 in O.A. 2367/88 also has to be followed, the contention for the applicant that the rotation should not have been followed has to be repelled.

13. When it was not argued in TA 24/89 and ~~it~~ that the quota rules had failed and hence rotation should not be followed and as on the other hand it was urged even for the applicants therein that the rota rule as per OM dated 22-12-59 had to be followed, it is not now open to the applicant to urge that the quota failed and hence the rota also failed and the ~~jud~~ date of regularisation should be taken as the basis for the preparation of inter-se seniority of the promotees and the direct recruits, prior to 9-9-76.

14. A later appointee may become a senior to the former appointee in case of recruitment from more than one source where rota is followed. Hence merely because the promotion of the applicant was regularised in 1971 he cannot complain when 1976 direct recruits were placed above him when it was necessary to place them above him in following the principle of rotation. Hence even the contention for the applicant that those who were recruited by way of direct recruitment long after the promotion



of the applicant cannot be shown as his seniors is bereft of the merit. In the above view there is no ~~for~~ disposal of this OA need to consider ~~that~~ in case of deemed promotion the has to be taken to the logical conclusion fiction ~~in~~ regard to which the applicant referred to 1953 S.C. Report 773 (The State of Bombay Vs. Pandurang Vinayak Chaphalkar & ors.), AIR 1959 SC 353 (Commissioner of Income-tax, Delhi Vs. Teja Singh) and (1966) II Andhra Weekly Reporter 17 (SC) (Amireddi Raja Gopala Rao & ors. Vs. Amireddi Sitharamamma & ors.). The above judgements are relied upon to urge that the fiction had to be taken to its logical conclusion and when the applicant was given the deemed date of promotion as 27-2-71, the period of service of the applicant from that date had to be reckoned even for the purpose of seniority. It is not the contention of the applicant that he was placed below any of the promotees who were junior to him in the category of Junior Engineer. The actual or deemed date of promotion is relevant for inter-se seniority as amongst the But promotees. ~~But~~ it is not of any relevance when it is a case of fixation of inter-se seniority between the promotees and the direct recruits, when rotation has to be followed. Of course the deemed date of promotion will be of importance in case promotion is given from a date earlier to the date of actual promotion, for fixation of pay in the promotional post and also for payment of difference in salary and other emoluments if they are going to be ordered. But as this is a case where the regular promotion was given from 27-2-71 while he was actually promoted on adhoc basis on 20-12-70, the applicant was



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actually drawing the pay in the pay scale of A.E. by 27-2-71 and hence the question of again fixing his pay on 27-2-71 in the category of A.E. does not arise. As such the question of claiming difference in pay also does not arise.

15. It was pleaded for the applicant that as the Bangalore Bench held in OAs 1108 to 1110 of 1989 that the promotee should be given the date on which his junior was promoted. But the same was not pressed during the course of arguments in this O.A. When it is a case of following rotation in fixation of inter-se seniority between the direct recruits and the promotees, it is immaterial as to whether the date of deemed promotion of the junior should be treated as the date of deemed promotion of the senior when ~~the~~ promotion of senior was later to that of junior, or in such a case, the deemed date of promotion of senior and junior is fixed on the basis of adhoc promotion of senior, though it may have a bearing in giving notional promotion whereby the employee/officer will be entitled to get difference in pay. The period from the date of temporary/adhoc promotion may be taken into consideration if there is no break till the date of regular promotion. But if a junior was promoted on a d. h. o. c basis without ~~promoting~~

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promoting the senior on adhoc basis and if on regular selection the senior was placed above the junior, the junior cannot claim that his service from the date of adhoc promotion has to be reckoned for fixation of seniority. So the proper course that has to be adopted is that if a junior is promoted on adhoc basis even before the senior was promoted, and if on regular selection the senior was placed above the junior for promotion, the service of the junior in the promotion post has to be regularised from the date on which the senior was actually promoted or from a date on which the service of the senior was regularised, if that senior was promoted on adhoc basis prior to regular selection but later to the adhoc promotion of the junior, if there was no interruption in the service of the junior in the promotional cadre from the date of his adhoc promotion till the date of his regular promotion. It is stated that the respondents followed the said principle in fixing the inter-se seniority of the promotees in preparation of the impugned seniority list. It is thus explained for the respondents that even though the applicant was promoted on adhoc basis on 20-12-70, his service was regularised with effect from 27-2-71 as the service of senior ~~senior~~ Shri S.N.Karmakar, a promotee, who was senior regularised with effect from 27-2-71 as he was to the applicant was promoted as A.E. on adhoc basis on 27-2-71, ~~was deemed to be 27-2-71~~. Realising the same the plea that the applicant should be given deemed promotion even in 1969, the date on which

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his junior was promoted was not even argued.

15. No other point has arisen for consideration.

The O.A. is dismissed. No costs. /

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(R.Rangarajan)
Member (Admn.)

V.Neeladri Rao
(V.Neeladri Rao)
Vice-Chairman

Dated: the 19th day of January 1995

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Ansari
Deputy Registrar (J) CC

To

1. The Secretary to the Ministry of Telecommunications,
Union of India, New Delhi.
3. One copy to Mr. N.R. Devraj, Sr. CGSC. CAT. Hyd.
4. One copy to Library CAT. Hyd.
5. One spare copy.
6. one copy to Mr. P.L. Rama Rao, Advocate, C.A., #4/2
pvm

Pls. file
1/1/95

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APPROVED BY

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(ADMIN)

DATED: 19-1-1995

ORDER/JUDGEMTN:

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

in

O.A.No. 366/94

T.A.No.

(w.p.)

Admitted and Interim directions issued.

Allowed.

Disposed of with directions.

Dismissed.

Dismissed as withdrawn

Dismissed for default.

Ordered/Rejected

No order as to costs.

PVM

