

CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH :
AT HYDERABAD.

O.A.No.860/95.

Date of Order:- 31st July, 1998

Between :

1. M. Nagaseshulu
2. K.Swamy

.... APPLICANTS

A n d

1. The Sub-Divisional Officer ,Phones,
Hanamakonda.
2. The Sub-Divisional Officer,
Telecommunications,Warangal.
3. The Telecom District Manager,
Warangal.
4. The Chief General Manager,
Telecome A.P.Circle,
Doorsanchar Bhavan,
Nampally Station Road,
Hyderabad.

.... RESPONDENTS

Counsel for Applicants : Mr. K.Venkateswara Rao

Counsel for Respondents : Mr. V. Rajeswara Rao,ACGSC.

CORAM :

Honourable Mr. R. Rangarajan, Member(Admn.)

Honourable Mr.B.S.Jai Parameshwar, Member(Judl.)

O R D E R.

(Per Hon.Mr.B.S.Jai Parameshwar, Member(J))

1. Heard Mr.K.Venkateswara Rao, learned counsel for the applicants and Mr. V. Rajeswara Rao, learned Additional Standing Counsel for the respondents.

2. This is an application under Section 19 of the Administrative Tribunals Act. The application was filed on 13.7.1995.

3. There are two applicants in this O.A. They are presently working as Linemen under the respondent No.1. The first applicant was initially appointed as a regular Mazdoor on 27.2.1982 and he was promoted as Lineman with effect from

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8.2.1983. The second applicant was appointed as Lineman from 6.8.1982. Both of them became eligible for confirmation with effect from 1.3.1985. However, they were not confirmed in those posts. Both the applicants were confirmed from 1.3.1987 and 1.4.1988 respectively.

4. During this interval, it is submitted that both of them were served with the Memorandum of Charges under Rule 16 of the CCS(CCA) Rules, 1965. The respondent No.1 issued the punishment order on the applicant No.1 imposing the penalty of stoppage of one increment for one year. However, the said punishment was reduced to that of censure by the appellate authority, which was directed to be in force for a period of six months.

in the case of the second applicant, the first respondent vide Memo No.Q411/85-86/20 dated 18.4.1985 imposed the punishment of censure.

5. They submit that the censure in fact is not a punishment in the real sense; that before the dates of their confirmation, their juniors were confirmed on 1.3.1985 and thus their juniors were deputed for Phone Mechanic (Internal) Induction Training Course ignoring their claim.

6. They rely on the decision of the Hon'ble Supreme Court in the case of the Direct Recruit Class II Engineering Officers' Association v. State of Maharashtra (reported in 1990(2) SC 607). It is submitted that the Hon'ble Supreme Court in that case had held that once an incumbent is appointed to a post, according to rule, his seniority has to be counted from the date of appointment and not from the date of his confirmation. They further submit that on the lines of the principle laid down by the Hon'ble Supreme Court, the Ministry of Personnel, Deptt. Personnel and Training, issued an Office Memorandum No. 20011/5/90/Estt.(D) dated 4.11.1992 clearly stating that

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the seniority of a person appointed to the post according to rule should be determined by the order of merit indicated at the time of initial appointment and not according to the date of his confirmation. However, the said O.M. clarified that the above orders shall take effect from the date of issue of the O.M. i.e. 4.11.1992. They submit that the said O.M. is not proper and that the principle enunciated by the Hon'ble Supreme Court is applicable to the earlier cases also.

7. They submit that the post of Phone Mechanic is to be filled up on the basis of seniority-cum-fitness and the qualification for the said post is a Pass in Xth standard. They submit that they possess the requisite qualification for the post of Phone Mechanic. They submit that they were empanelled in the list of eligible candidates for promotion. However, they submit that the seniority list was not prepared on the basis of their appointment as Lineman but on the basis of their date of confirmation which resulted in many of their juniors being shown above them taking the dates of confirmation as the criteria.

8. Hence they have filed this O.A. for declaration that they are entitled for deputation for Phone Mechanic (Internal) Induction training course immediately and consequently entitled for respective promotion as Phone Mechanic from the date on which their immediate junior M.D. Sarwar was promoted as Phone Mechanic with all consequential benefits, such as seniority, pay and allowances and other attendant benefits, such as, seniority, pay and allowances and other attendant benefits by holding that the action of the respondents in not deputing them for the training course on the untenable ground of counting their seniority from the dates of their confirmation instead of from the dates of their entry in

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the cadre of Linemen is illegal, arbitrary, discriminatory and violative of Articles 14 and 16 of the Constitution of India.

9. The respondents have filed their counter stating that the D.P.C. considered the cases of the applicants for confirmation during 1985 itself but however, basing on the performance reflected in the confidential reports of the applicants, the D.P.C. did not recommend their cases for confirmation in the said year. They admit the initiation of disciplinary proceedings against both the applicants. They further submit that at the time of consideration of their promotion by the D.P.C., the disciplinary proceedings against the applicants were pending. Hence, their cases were passed over. Since no case was pending against M.D.Sarwar and other officials, they were confirmed by the respondent No.2 vide his letter dated 3.12.1985. It is stated that the Chief General Manager, Telecommunications, A.P., Hyderabad vide letter No.TA/STB/175-1/II dated 4.12.1989 had clarified the confirmation procedure i.e. the officials whose cases were cleared by an earlier D.P.C. will naturally rank senior to those whose cases were cleared by D.P.C. subsequently. In respect of the officials who were recommended for confirmation by the subsequent D.P.C., the date of confirmation was the criteria with reference to the next junior official in the seniority list recommended for confirmation by the second D.P.C. With regard to the DOPT letter dated 4.11.1992 they submit that the seniority may be delinked from confirmation as per the decision of the Hon'ble Supreme Court (Direct Recruit Class II Engineering Officers' Association v. State of Maharashtra) (supra). Further they submit that in para-4 of the said O.M. it was clearly indicated that

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seniority already determined according the then existing principles on the date of issue of those orders would not be reopened, even in some cases, the seniority has already been challenged or is in dispute and it would continue to be determined on the basis of the principles already existing prior to the issue of the O.M. Thus they submit that according to the recommendation of the D.P.C., the applicants were confirmed on 1.3.1987 and 1.4.1988 respectively. Therefore, they were treated as juniors to M.D.Sarwar. Thus they submit that there are no grounds to impugn the action of the respondents.

10. Admittedly, both the applicants became eligible for confirmation on 1.3.1985. They were confirmed in the cadre of Linemen on 1.3.1987 and 1.4.1988 respectively. In fact, the respondents took action for confirmation in accordance with the rules then in force. They further submit that the cases of the applicants for confirmation were considered by the D.P.C. during the year 1985 and on the basis of their performance reflected in the confidential reports, the D.P.C. did not recommend their cases. When that is so, the grievance of the applicants cannot be said to be genuine.

11. They rely upon the decision of the Hon'ble Supreme Court rendered on 2.5.1990 in the case of ~~S.S.C.~~ Association v. State of Maharashtra (suprea). The first contention that the judgment operates retrospectively cannot be accepted. In fact, basing on the decision of the Hon'ble Supreme Court, the DOPT has issued O.M. dated 4.11.1992. The copy of the O.M. has been furnished by the respondents along with the reply. It is at Annexure R-2. Para -4 of the O.M. reads as follows :

"4. These orders shall take effect from the date of issue of this office Memorandum. Seniority already determined according to the existing principles on the date of issue of these orders will not be reopened even if in some cases seniority has already been challenged or is in dispute and it will continue to be determined on the basis of the principles already existing prior to the date of issue of

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these orders."

12. The applicants have filed this O.A. on 13.7.1995. Admittedly, they were confirmed on 1.3.1987 and 1.4.1988 respectively. If they felt aggrieved on account of their belated confirmation without any justifiable ground, then we feel that they should have immediately approached the judicial forum. Mere submission of representations will not enure to their benefit. After a lapse of nearly 8 years, they have filed this O.A. There is an element of limitation in filing this O.A.

13. They could have easily challenged their belated confirmations during the year 1987 or 1988 because by then there was a decision of the Hon'ble Supreme Court to the same effect in the case of Shivkumar Sharma v. Haryana State Electricity Board, Chandigarh and others, reported in 1988 (8) ATC 792. The similar question came up for consideration before the Hon'ble Supreme Court and the Hon'ble Supreme Court in the case of S.B. Patwardhan v. State of Maharashtra had held that the confirmation may not have any effect on the question of seniority. The initial date of appointment is the basis for fixing the seniority and confirmation might have been done on the subsequent date. Therefore, it is not as if the Hon'ble Supreme Court settled the law on 2.5.1990. The applicants had slept over their rights and approached the Tribunal belatedly.

13.A. In order to ascertain whether the applicants were diligent or not in asserting their rights, we directed the parties to furnish the informations on the following points, viz.,

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(i) To state the date of issue of seniority by the respondents basing on the date of confirmation i.e. 1.3.1987 and 1.4.1988 respectively. If so, a copy of the seniority list; and

(ii) To state when their immediate junior Md. Sarwar was deputed for induction training (internal) for appointing him as Phone Mechanic.

We felt clarification on these points will help us to ascertain whether there is any laches on the part of the applicants.

13.B. The respondents have furnished the file TA/LC/5-158/95 (C) wherein it is revealed that the respondents published the seniority list on 8.1.1990, after the applicants were confirmed and that through letter No.E-1-21/PM 92-93/71 dated 12.4.1993 their immediate junior Md. Sarwar was deputed for Phone Mechanic Training.

13.C. On perusal of these facts, we are convinced that there is inordinate delay on the part of the applicants to approach the judicial forum. They should have approached the judicial forum within a reasonable time after 8.1.1990 - when their seniority was decided on the basis of their date of confirmation or after 12.4.1993, when Sri Md. Sarwar, their immediate junior was deputed for training. But they have filed this O.A. on 13.7.1995. In our humble view, there is inordinate laches on the part of the applicants.

14. Coming to the O.M. dated 4.11.1992, it is clear that in para-4 of the O.M. the DoPT has clearly stated the seniority already determined according to the then existing principles on the date of issue of these orders,

shall not be re-opened even if in some cases seniority has already been challenged or is in dispute and it will continue to be determined on the basis of the principles already existing prior to 4.11.1992. As on the date of issue of this O.M., the seniority of the applicants was not in dispute. The applicants had not approached any judicial forum questioning their belated confirmation and also their placement on the basis of the dates of their confirmation. When that is so, para-4 of the O.M. is clearly applicable to the case of the applicants. Therefore, on the basis of the judgment dated 2.5.1990 the applicants cannot derive any benefit. Their contention that the principle enunciated by the Hon'ble Supreme Court can be applied retrospectively cannot be accepted. Retrospective operation can only be made to the parties to the proceedings. The principle can only be adopted prospectively. That the DoPT earlier to 2.5.1990 had adopted the principle of date of confirmation for fixing the seniority. When the Hon'ble Supreme Court enunciated the legal position on 2.5.1990, immediately the DoPT issued the O.M. dated 4.11.1992. Therefore, we cannot find fault with the respondents.

15. Between 8.1.1990 and 12.4.1993 the applicants had not at all approached any judicial forum questioning their belated confirmation and their seniority. Even from the representation of the first applicant dated 20.10.1994 (p.22 of the OA) it appears that he had submitted representations on 28.12.1987, 1.3.1988, 2.3.1992, 31.3.1994 and 13.5.1994. Copies of these representations are not enclosed to the O.A. Likewise, the applicant No.2 appears to have submitted his first representation on 31.7.1993. It is to be noted that they were confirmed on 1.3.1987 and 1.4.1988 and they were aggrieved by the belated confirmation. The decision in the case of Shivkumar Sharma v. Haryana State Electricity Board was decided on 27.7.1988. That means, immediately after the

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belated confirmation of the applicants, the Hon'ble Supreme Court laid down the law that the date of confirmation is not the basis for fixing the seniority and that the date of appointment is the basis and further directed the respondents in that case to issue a fresh seniority list placing the appellant at a place taking his date of appointment into consideration. Therefore, we humbly feel that the applicants should have approached the legal forum immediately thereafter. They have not done so. Mere submission of representation after representations may not, in our humble view, enure to the benefit of the applicants. Further in view of para-4 of the O.M. dated 4.11.1992 it may not be reasonable for us to direct the respondents to revise the seniority in the cadre of Lineman.

16. The learned counsel for the applicants in support of their contention relied upon the decision of this Tribunal in O.A.No.381/92 (Ch.V.Subba Rao v. Union of India and others) decided on 28.7.1993. In that case, this Tribunal considered the notification dated 4.11.1992 as well as proviso to para-4 of the O.M. dated 22.12.1959. The proviso to para-4 of the O.M. dated 22.12.1959 stated that the date of confirmation will decide the seniority and not the original merit list. This Tribunal taking into consideration the decision of the Hon'ble Supreme Court in the case of The Direct Recruit Class-II Engineering Officers' Association v. State of Maharashtra & others, reported in AIR 1990(2) SC 607 and in the case of R.L.Bansal & Ors v. Union of India and Ors, reported in AIR 1993 SC 978. This decision was rendered on 28.7.1993.

17. The learned counsel for the applicants relied on the decision of this Tribunal in O.A.No.1134/91 decided

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on 17.2.1994 (A. Subba Rao v. The Chief Commissioner of Income Tax, A.P. and others). In this O.A. the decision in O.A.No.381/92 was followed.

18. The applicants are not entitled to any of the reliefs only because of their laches on their part. They have failed to agitate and assert their service rights within the reasonable time. In view of para-4 of the O.M. dated 4.11.1992 it may not be proper for this Tribunal to give direction to the respondents to revise the seniority list finalised in the year 1988. We cannot give any reliefs to the applicants only on the ground of their laches.

the way of the respondents, if they choose, to give necessary relief to the applicants.

19. Hence we are of the opinion that the O.A. is liable to be rejected only on the ground of laches on the

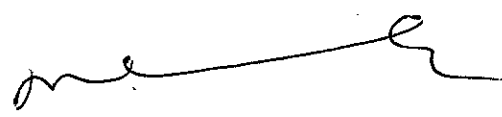
Accordingly, the O.A. is dismissed. Parties are


MEMBER (JUDICIAL)

31.7.98

Dated the 31st July, 1998.

DJ/


MEMBER (P. BANGABAJAN)

DR 31.7.98

Copy to:

1. The Sub Divisional Officer, Phones, Hanumakonda.
2. The Sub Divisional Officer, Telecommunications, Warangal.
3. The Telecom District Manager, Warangal.
4. The Chief General Manager, Telecom, A.P. Circle, Doorsanchar Bhavan, Nampalli Station Road, Hyderabad.
5. One copy to Mr. K. Venkateswara Rao, Advocate, CAT, Hyderabad.
6. One copy to Mr. V. Rajeswara Rao, Addl. CGSC, CAT, Hyderabad.
7. One copy to D.R(A), CAT, Hyderabad.
8. One duplicate copy.
9. one copy to HBSTP, H(J) CAT, Hyd.

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4/8/98

II COURT

TYPED BY _____ CHECKED BY _____
COMPARED BY _____ APPROVED BY _____

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

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

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

DATED: 31.7.98

ORDER/JUDGMENT

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

in

C.A.NO. 860/95

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

DISMISSED FOR DEFAULT

ORDERED/REJECTED

NO ORDER AS TO COSTS

YLKR

केन्द्रीय प्रशासनिक अपील निकाय
Central Administrative Tribunal
दस्तावेज / DESPATCH
4 AUG 1998
हैदराबाद बेंच
HYDERABAD BENCH