

(108)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH AT HYDERABAD

O.A.NO. 291/95.

Date of Order: 10-11-95.

Between:

D.Ramachandran.

... Applicant.

and

1. The Union of India - Supply, Ministry of Commerce, Nirman Bhavan, New Delhi-11.
2. The Director General, (Supplies and Disposals) Jeevantara Building, Sansad Marg, New Delhi-1.
3. The Secretary, U.P.S.C. Dholpur House, Shahjahan Road, New Delhi.
4. Mr.A.K.Satwa.
5. Mr.V.K.Sridhar.

Respondents.

For the Applicant :- Mr. G.V.R.S.Varaprasad, Advocate.

For the Respondents: Mr. Mr.N.R.Devraj, Sr.CGSC.
S/o ~~Adv. CGSC~~

CORAM:

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

THE HON'BLE MR.RARANGARAJAN : MEMBER(ADMN)

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O.A. NO. 291/95

JUDGEMENT

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

Heard Shri GVRS Varaprasad, learned counsel for the applicant and Shri N.R.Devaraj, learned standing counsel for the respondents.

2. This is an unfortunate case where complications had arisen as the department had not brought to the notice of the Bombay Bench of Central Administrative Tribunal about the judgement dated 27.2.87 in TA 428/85 on the file of the Principal Bench of CAT at the time of consideration of the interim order in OA 155/86 on 29.9.1988 and OA 935/88 on 24.8.93, and the subsequent revision of the panels of 1978 and 1984 in implementation of the judgement ^{in TA 428/85} ~~therein in the order~~. There is no reference about the same even in the order of the Allahabad Bench of CAT in OA 1088/89 decided on 5.4.95. It is evident that the same was not brought to the notice of the Allahabad Bench also.

3. In order to appreciate the relevant pleas in regard to the relief claimed in this OA, it is just and proper to refer to the following relevant facts:-

Indian Inspection Service under the Ministry of Commerce comprises Engineering Branch, Textile Branch, Metallurgical, and Metallurgical Chemical Branch. There are three grades in these branches viz. (i) Grade-III, Assistant Director (Junior Time Scale); (ii) Grade-II, Deputy Director (Senior Time Scale); and (iii) Grade-I, Director (Junior Administrative Grade).

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Promotions from the post of Assistant Director to Deputy Director are branchwise. But the promotions from the post of Deputy Director to Director are on the basis of the integrated seniority of the Deputy Directors in all the four branches. Date of entry in the grade of Deputy Director on regular basis is the criterion for fixing the interse seniority of the Deputy Directors in all these four branches for consideration for promotion to the post of Director which is the selection.

4. While the applicant was a direct recruit of 1970 batch and joined the post of Assistant Director on 1.3.72, R-4 and R-5 are of 1971 batch and they joined as Assistant Directors on 9.3.73 and 20.2.73 respectively. All of them joined in the Engineering Branch of Indian Inspection Service. The applicant was promoted on regular basis by the order dated 10.8.78 as Deputy Director when he was in foreign service and on repatriation, he joined as Deputy Director in this Engineering Branch on 18.4.79.

5. R-4 and R-5 were promoted as Deputy Directors on adhoc basis on 18.9.79 and 3.9.79 respectively, and their service was regularised in the cadre of Deputy Director as on 22.12.84. It may be noted at this stage that the panels for promotion to the post of Deputy Director in Engineering Branch were made in 1975, 1978, and 1984 and while the applicant was empanelled in 1978 panel, R4 and R5 were empanelled in 1984 panel and hence promotion of the applicant in 1978 was given on regular basis while promotions of R4 and R5 were regularised in 1984 after they were empanelled.

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6. S/Shri O.D.Sangar, T.N.Uboveja and Roshan Lal had been appointed to the grade of Assistant Director, Engineering Branch of Indian Inspection Service on adhoc basis in 1971. They filed Writ Petition praying for direction that their services have to be regularised with effect from the date of their respective adhoc appointment to the grade of Assistant Director. That Writ Petition was transferred and registered as TA 428/85 on the file of the Principal Bench, CAT. The same was disposed of by the order dated 27.2.87 by directing the respondents therein to regularise the services of those applicants from the date of their respective appointment to the post of Assistant Director. It is stated for the official respondents that on the basis of their revised seniority, their cases were considered for promotion to the post of Deputy Director for inclusion in 1975 panel and when ultimately they were included in the said panel, the last four from the earlier 1975 panel were considered in the review panel of 1978 for the post of Deputy Directors and consequently Shri G.K.Sinha and the applicant herein could not find a place in 1978 panel, and they were included in the panel of December 1984 at Sl.Nos.1 and 2 while R4 and R5 were placed at Sl.Nos.3 and 4 of the said panel. Their seniority was rightly shown in the seniority list of Deputy Directors as on 1.4.91.

7. But it was pleaded for the official respondents that in pursuance of the interim order dated 24.8.93 in OA 935/88, filed by R4 and the interim order dated 29.9.88 in OA 155/86, filed by

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R5, R4 and R5 are shown above Shri G.K. ^{Sinha} Sharma and the applicant by reckoning the seniority of R4 and R5 from the respective date of adhoc promotion to the post of Deputy Director while the seniority of Shri GK ^{Sinha} Sharma and the applicant was reckoned from the date of their regular promotion as per the revised panel of 1984, to the post of Deputy Director.

8. Thus anomaly is apparent. It could not have been arisen if the judgement dated 27.2.87 of the Principal Bench in TA 428/85 and the consequential ^{injunction} of the panels for the post of Deputy Director were brought to the notice of the Bombay Bench

9. In view of the order dated 5.4.95 of the Allahabad Bench in OA 1088/89, Shri GK Sinha is now placed above R4 and R5.

9. As admittedly the applicant herein is senior to R4 and R5 in the cadre of Deputy Directors and as he had actually assumed the charge of Deputy Director prior to even the date of adhoc promotion of R4 and R5, it cannot be stated by any stretch of imagination that the applicant has to be treated as junior to R4 and R5 in the cadre of Deputy Directors. If this Tribunal is going to pass ^{any order} _{in the effect} that the applicant has to be placed above R4 and R5 in the cadre of Deputy Directors in the Engineering Branch, as he is admittedly senior to R4 and R5 in the cadre of Deputy Directors and as he was promoted earlier to R4 and R5 to the post of Deputy Director, it will not go against the interim orders in OA 155/86 ^{and 6495/86} on the file of Bombay Bench, CAT. This OA can be disposed of ^{here} by passing such an order.

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10. But it may be noted that an integrated seniority list of Deputy Directors in all the four branches has to be prepared for consideration for promotion to the post of Director. The date of entry on regular basis in the cadre of Deputy Director in the respective branches has to be taken as the basis for preparation of the said integrated seniority list. The question as to whether the service of adhoc promotee has to be regularised from the date of adhoc promotion depends upon the facts in each case. If the promotee was promoted on adhoc basis as per his turn and if vacancy existed from the date of adhoc promotion for the promotee and if it is a case of continuation till regularisation without interruption and if the question of pushing down does not arise on the ground that the employee from other sources has to be absorbed in this slot, then in view of the judgement of the Apex Court in Maharashtra Engineering case, relaxation has to be made from the date of adhoc promotion or from a later date at which vacancy for his regular appointment arises. The facts disclosed in the reply statement for the official respondents in this OA disclose that for want of vacancy in the post of Deputy Director in the Engineering branch, it had become necessary to delete names of Shri G.K. Sinha and the applicant from the panel of 1978, ^{while} ~~when~~, implementing the judgment dated 27.2.87 of the Principal Bench in TA 428/85 and hence they were included in the panel of 1984 and if these facts were placed before the Bombay Bench and Allahabad Bench in the OAs referred to, then the respective Benches would have naturally considered about the date from which Shri GK Sinha, R-4 and R-5 have to be regularised by keeping in view the judgement of the Maharashtra
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Engineering case.* Otherwise it will lead to another anomaly whereby placement of the Deputy Directors in the other three branches i.e. Textile, Metallurgical, and Metallurgical Chemical will be by reckoning their seniority from the date of their respective regular appointment, while the seniority of the Deputy Directors in the Engineering Branch is being reckoned from the date of adhoc promotion to the post of Deputy Director. So naturally it will be necessary for the official respondents to take appropriate steps for placing the relevant material before the Bombay Bench for consideration of the modification of the ^{and OA 935/W} interim orders in OA 155/86 and before the Allahabad Bench for consideration of the modification of the order in OA 1088/89.

11. But suffice it to observe for disposal of this OA that the ~~appellant has to be placed above all and in the grade of~~ Deputy Directors in the Engineering branch, and the date from which his regular service in the cadre of Deputy Directors has to be reckoned, for the ~~integrity~~ ^{and OA 935/W} seniority list of Deputy Directors in all the four branches, will be in accordance with the order that is going to be passed by the Allahabad Bench in OA 1088/89 and the Bombay Bench in OA 155/86 ^{and OA 935/W} after the department moves for modification of the orders referred to by initiating appropriate proceedings.

12. Before concluding, it has to be mentioned that it is not stated as to whether the ~~three~~ LPAs before the Delhi High Court as referred to in the interim order in OA 155/86 ^{Bombay Bench is still} ~~are~~ pending and whether ~~they are~~ ^{it is} having any bearing for consideration of the interse seniority of the Deputy Directors in the various branches. Any how as it is not relevant for consideration of

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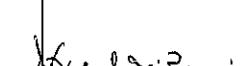
the interse seniority of the applicant, R4 and R5 in the cadre of Deputy Directors, no direction is given to the official respondents to produce the relevant record with reference to above OA.

12. Hence this OA is ordered as under:

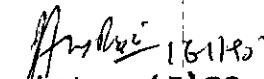
The applicant has to be placed above R-4 and R-5 in the cadre of Deputy Directors in the Engineering branch of the Indian Inspection Service. The date from which his regular service in the cadre of Deputy Directors has to be reckoned for integrated seniority list of Deputy Directors for consideration for promotion to the post of Director, has to be on the basis on which the regular service of the Shri GK Sinha, the applicant in OA 1088/89 on the file of Allahabad Bench and R-4 and R-5, respectively in OA 937/86 and the applicants in OA 155/86 on the file of Bombay Bench are going to be ordered after the department moves the said Benches for modification as referred to in this order.

13. The OA is ordered accordingly. No costs. //


(R. RANGARAJAN)
MEMBER (ADMN.)


(V. NEELADRI RAO)
VICE CHAIRMAN

Dated: 10th November, 1995.
Open court dictation.


Deputy Registrar (J) CC

vsn
To

1. The Secretary, Dept. of Supply, Union of India, Ministry of Commerce, Nirman Bhavan, New Delhi-11.
2. The Director General, (Supplies and Disposals) Jeevantara Building, Sansad Marg, New Delhi-1.
3. The Secretary, U.P.S.C. Dholpur House, Shahjahan Road, New Delhi.
4. One copy to Mr. G. V. R. S. Varaprasad, Advocate, Plot No. 15 P&T Colony, Mehidipatnam, Hyderabad.
5. One copy to Mr. N. R. Devraj, Sr. CGSC. CAT. Hyd.
6. One copy to Library, CAT. Hyd.
7. One spare copy.

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C.O.Sec C.C. by 17/11/95
Received at 16/11/95
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COMPARED BY 16/11/95
16/11/95
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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(A)

DATED: 10 - 11 - 1995

ORDER/JUDGMENT

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

in
O.A.No. 291/95

T.A.No. (W.P.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.

No Spare Copy

p.v.m.

