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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

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O.A. 1129/97 Date of decision: 11.8.99

B.Juanes ..Applicant

Vs.

1. The Secretary,
   Ministry of Defence,
   Govt. of India,
   New Delhi.

2. The Admiral Supdt.
   Naval Dockyard,
   Visakhapatnam. ..Respondents

Counsel for the Applicant : Mr.K. Sudhakar Reddy.

Counsel for the Respondents : Mr.V. Rajeshwara Rao, Addl.CGSC

Coram:

Hon.ble Shri R. Rangarajan, Member (A)

Hon.ble Shri B.S. Jai Parameshwar, Member (J)

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ORDER

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

100

O.A. 1129/97 Date:

O R D E R

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

Heard Mr. K. Sudhakar Reddy, learned counsel for the Applicant and Mr. V. Rajeshwar Rao, learned counsel for the Respondents.

2. This is an application u/s. 19 of the Administrative Tribunals Act. The Application was filed on 22-4-1997,

3. The Applicant was appointed as Senior Chargeman (Electrical) w.e.f. 15-9-1981 in the office of the 2nd Respondent. He was promoted as Foreman in the year 1987 and as Senior Foreman in the year 1994.

4. The Applicant submits that the respondent authorities issued a combined seniority list of Foremen (Production, Planning and Control cadre) (in short PPC) on 12-11-1990 in which one P. Narsinga Rao (ST) and K. Ganesh Kumar(SC) were shown above the Applicant and on the basis of the said seniority list the above mentioned two officials were considered for promotion to the post of Senior Foreman and were promoted as such w.e.f. 31-1-1991.

5. The Applicant submits that few officials being aggrieved by the combined seniority list dt. 12-11-1990 had approached this Tribunal in OA 974/90. The said OA was disposed of on 16-12-1993 directing the respondents to revise the seniority list dt. 12-11-1990 in conformity with para 4(b) of the OM dt. 24-12-1980. Accordingly, the respondents issued a revised seniority list ofForemen (PPC) on 3-2-1994. The Applicant submits that in the said revised seniority list, the names of P. Narsinga Rao and K. Ganesh Kumar did not figure, and his name was shown at Sr. No. 12.

..2/-

6. On the basis of the revised seniority list dt. 3-2-94 the Applicant claims that he was the only SC candidate who was eligible and senior to the above mentioned persons and was fit for consideration for promotion to the post of Senior Foreman on 31-1-1991 but due to the wrong placement in the earlier seniority list, dt. 12-11-1990 his case was not considered for promotion.

7. However, his case was considered for promotion only w.e.f. 17-2-94.

8. The Applicant submits that he approached the respondent authorities to consider his case for promotion as Sr. Foreman w.e.f. 31-1-1991 but the respondents did not consider his case for promotion with retrospective effect. He submits that he is the senior to the above mentioned two persons and his promotion prospects are likely to be affected unless his promotion in the cadre of Foreman (PPC) is rectified and seniority is restored above the said two officials. The action of the respondent authorities in not restoring the seniority of the Applicant and not giving promotion with retrospective effect w.e.f. 31-1-1991 as per the revised seniority list dt. 3-2-94 is illegal, arbitrary and in violation of Article 14 and 16 of the Constitution of India.

9. Hence he has filed this application praying for a direction to the respondent authorities to consider his name for promotion to the post of Senior Foreman (PPC) as per the revised seniority list issued by the respondent vide office letter No. PIR/1916/TSS dated 3-2-94 w.e.f. 31-1-1991, the date on which his juniors were promoted with all consequential benefits such as seniority, arrears of pay etc.

..3/-

10. The Respondents have filed a reply statement stating that the Applicant was initially appointed as Electrical Fitter Gr.II on 13-9-1974 and he was appointed as Despatch Expeditor (re-designated as Senior Chargeman(PPC)) on 15-9-1981. He was promoted as Foreman PPC on 1-6-1987 and as Senior Foreman w.e.f. 17-2-1994.

11. They submit that as per the directions given in OA 974/90 they revised the seniority list as on 3-2-1994 and circulated vide Dockyard letter dt. 3-2-94 (Ex.R-2). They submit that by then the two officials viz. P. Narsinga Rao and Shri K. Ganesh Kumar were already promoted as Sr.Foreman w.e.f. 31-1-1991 and hence their names were not included in the revised seniority list. They submit that non inclusion of their names in the revised seniority list was the subject matter in OA 1421/94 filed by one KTPE Sarma and the Applicant herein was one of the respondent (R-5) in the said OA. It is stated that this Tribunal upheld the seniority list prepared and circulated on 3-2-1994 (as per Ex.R-3) The Applicant is fully aware of the reasons for not including the names of those two officials in the revised seniority list. The Applicant has suppressed this fact and is claiming that his case should be considered for promotion as Senior Foreman as on 31-1-1991 based on the revised seniority list prepared and circulated on 3-2-1994.

12. They submit that the Applicant had filed a Review Application RA No. 37/94 praying for review of the order dt. 16-12-93 in OA 974/90, but by then one of the respondents in the said OA had approached the Hon. Supreme Court in SLP No.20156/94 and the SLP was pending. Taking those facts into consideration, the Tribunal declined to review the order dt. 16-12-93.

..4/-

Thus the respondents submit that the claim of the Applicant is not tenable. He is misleading the Tribunal by not disclosing the fact that he was aware of the reasons for not including the names of the two officials who were promoted as Senior Foreman on 31-1-1991 in the revised seniority list dt. 3-2-1994. They submit that the Applicant was promoted as Senior Foreman on 17-2-1994 on the basis of the revised seniority list dt. 3-2-1994.

13. They submit that P. Narsinga Rao and K. Ganesh Kumar were always senior to him and accordingly they were promoted on 31-1-91 as Senior Foreman (PPC) and subsequently the Applicant was promoted to that post on 17-2-94, as per his turn.

14. Further the Respondents state that in compliance with the directions given in OA 974/90 they constituted a committee to review the proceedings of the DPC convened during the year 1984 and 1987 based on which the seniority list of Foreman was published on 12th November, 90 and which was required to be reviewed as per the directions given in the said OA and the revised seniority list was prepared taking into account the following criteria:

(a) Date of initial appointment as Senior Chargeman (PPC)

(b) Year-wise qualified and eligible personnel for promotion as Foreman (PPC)

(c) Grading given by the Departmental Promotion Committee during 1984-87.

..5/-

That the Govt. of India had sanctioned 20 posts of Foreman (PPC) after identifying the necessity in the Yard, that keeping in view of the functional/operational commitments the above 20 posts were filled in a phased manner since 1981 but the posts released for promotion to the grade of Foreman (PPC) year-wise were as under:

Year	Posts Sanctioned	Already borne		Filled by promotion	Total borne	Balance
1984	20	3	+	1	4	16
1985		4	+	2	6	14
1986		6	+	0	6	14
1987		6	+	11	17	3

That the revised seniority list dt. 3.2.94 has been done strictly in accordance with the rules and also the para 4(b) of the OM dated 24-12-1980. Thus they submit that the Applicant merely on the ground of non inclusion of P.Narasinga Rao and Ganesh Kumar in the revised seniority list cannot claim promotion with retrospective effect from 31-1-1991. Thus they pray for the dismissal of the OA.

15. The Applicant has filed rejoinder with material documents. The rejoinder is lengthy than the OA itself. It is his contention that earlier Foreman (PPC) were under different trades viz. Engineering, Electrical, Construction and Weapons. It is his case that till May,1990 the seniority lists were prepared separately for each trades. The Applicant comes from Electrical trade. It is his grievance that the respondent authorities changed over the pattern of preparing the seniority lists tradewise for the first time in November,1990. It is stated that between 78-90 the seniority list of Chargeman PPC as well as Foreman PPC were maintained separately and tradewise identically. He submits that the first combined seniority list prepared by the department combining all these trades came up for consideration before this Tribunal in OA 388/94 decided on 21-4-97 page 45 to the rejoinder, that in that OA this Tribunal deprecated the manner of combining the different trades and preparing the common seniority list. He claims to be senior to P.Narasinga Rao and Ganesh

Kumar. The Applicant was appointed as Senior Chargeman (previously designated as Despatch Expeditor) w.e.f. 15.9.81. He has produced certain documents to prove that he was senior to those two officials. Even in the confirmation of Technical Supervisor staff issued on 6-5-86 it is disclosed that the name of Applicant appeared at Sr.No.42 whereas the name of P.Narasinga Rao appeared at Sl. No. 44.

16. Thus the Applicant consistently claims that he is senior to P. Narasinga Rao and Ganesh Kumar. However, when the respondents prepared the combined seniority list dt. 12-11-90 the officials viz. Narasinga Rao and Ganesh Kumar were shown as seniors to the Applicant. It is stated that the respondents are misleading the Tribunal without explaining the manner in which they prepared the combined seniority list of Foreman (PPC) drawing from different trades. No doubt the date of appointment of the applicant and P.Narsinga Rao are the same 15-9-1981 but whereas the date of appointment of Ganesh Kumar is quite different. May be at the time of consideration his case for promotion to the post of Foreman (PPC) the DPC might have graded down. It is not possible for us to assume or presume certain things. It is for the respondents to specifically state the manner in which they prepared the combined seniority list drawing officials from different trades of Foreman PPC.

17. The main controversy arose on account of non-inclusion of the names of P.Narasinga Rao and Ganesh Kumar in the revised seniority list dt. 3-2-94. In the seniority list the name of the Applicant was shown at Sr.No. 12. The Applicant belongs to SC community.

18. On the basis of his placement at Sr.No.12 in the revised seniority list dt. 3-2-94 and on account of non inclusion of P.Narasinga Rao and Ganesh Kumar in the said seniority list, the Applicant claims to be seniormost and was denied promotion w.e.f.31.1.1991 on account of his wrong placement in the seniority list dt. 12.11.90 and that his case for promotion from an earlier date has to be considered.

19. The question of non-inclusion of Narasinga Rao and Ganesh Kumar in the revised seniority list dt. 3-2-94 came up for consideration before this Tribunal in OA 1421/94. In that OA the respondents took a contention that the revised seniority list dt. 3.2.94 was prepared as on 3-2-94 and on that date, the said officials viz., P.Narasinga Rao and Ganesh Kumar were not in the cadre of Foreman and they were already promoted as senior foreman. Accepting the said contention of the respondents the Tribunal in the said OA decided on 25-11-1994 observed in para 4 as follows :

> "4. It is next contended for the Applicant that as the names of R3 and R4 herein that is Shri Padi Narsinga Rao andShri K. Ganesh Kumar were shown in the seniority list which was filed along with the OA 974/90, their names should have been shown in the revised seniority list of Foreman published on 3-2-94. But we cannot accede to the said contention. It is true that by the date of filing of OA 974/90 Shri Padi Narsinga Rao and Shri K. Ganesh Kumar were promoted to the post of Senior Foreman during the pendency of the said OA but they were not impleaded as Respondents in OA 974/90. Further it is also not a case where the Applicants in OA 974/90 claimed seniority over Shri Padi Narsinga Rao and Shri K. Ganesh Kumar in the cadre of Foreman. But as by the date of filing of the said OA, they were only in the cadre of Foremen, their names were also shown in the seniority list of Foremen that was filed along with the OA. But when by 3-2-94 the date of revised seniority list, Shri Padi Narsinga Rao and Shri Ganesh Kumar were already promoted and thus they were not in the cadre of Foremen, their names were not shown in the said seniority list of Foremen. Thus there is no irregularity of illegality when their names were not shown in the seniority

list of Foremen published on 3-2-94 especially when their seniority was not challenged in OA 974/90.""

20. In fact when P. Narsinga Rao and Ganesh Kumar were promoted on the basis of the disputed seniority list dt. 12-11-90 the Applicant had filed OA 189/91. During the course of arguments the Applicant took a stand that while preparing the disputed seniority list roster point was not considered. In OA 974/90, this point was not considered by this Tribunal. Therefore the Tribunal while considering OA 189/91 felt it proper to consider the same in a review application to review the order dt. 16-12-1993 in OA 974/90 and directed the Applicant to file a Review Application. Accordingly, the Applicant filed RA 37/94 praying for review of the order dt. 16-12-93 in OA 974/90. By then K. Sadasiva Rao who was one of the respondents in the said OA had challenged the order dt. 16-12-1993 in OA 974/90 before the Hon. Supreme Court. Hence when the matter was pending adjudication before the Hon. Supreme Court, this Tribunal declined to entertain the application for review filed by the Applicant. Thus the question of seniority between the Applicant and P. Narsinga Rao and Ganesh Kumar could not be decided and settled.

21. Even though the respondents consistently urging that P. Narsinga Rao and Ganesh Kumar were seniors to the Applicant they have not placed any material on record to show how they became seniors to the applicant. Whether they became seniors to the Applicant on account of select panel prepared by the DPC at the time of considering the cases for the post of Foreman (PPC) or whether they were seniors on the basis of the merit list

prepared at the time of their appointment. It is to be noted that the Applicant was a direct recruitee to the post of Senior Chargeman. At that time there were senior Chargemen in different trades. Likewise, Foremen (PPC) cadre also was there in different trades. Till 78-90 the respondents had prepared the seniority list independently tradewise. The dispute arose on account of preparing the combined seniority list in the year 1990.

22. No doubt this Tribunal accepted the theory of the respondents for non-inclusion of the name of Sri P. Narsinga Rao and Ganesh Kumar in the revised seniority list dt. 3-2-94.

23. We may consider the same from a different angle. The Applicant has produced the order of promotion of P. Narsinga Rao and Ganesh Kumar dt. 29-4-91. As already observed these two officials were promoted w.e.f. 31-1-1991. In para 5 of the order of promotion it has been stated as follows:

> "5. The above promotions are subject to the finalisation of pending CAT/Court cases etc. if any. Also the promotion in respect of SFM(PPC) is subject to the outcome of OA Nos.974/90, 1019/90 and 189/91 filed by S/Shri NI Nicodemus, BCA Banerjee and B. Juanes respectively."

When that was so, the respondents while revising the seniority list need not have included their names in the revised list dt. 3-2-94, but should have added a note below to that seniority list to the effect as to whether the placement of those officials in the disputed seniority list dt. 12-11-90 was correct and whether their promotions w.e.f. 31-1-91 were regular. When they

specifically indicated that their promotions were issued pending adjudication on the basis of the disputed seniority list dt. 12-11-90 it was quite fair on the part of the respondents to indicate specifically whether their promotions on the basis of disputed seniority list was correct or not. No doubt we have accepted their contention that on the date of preparation of revised seniority list they were working in the higher post of Sr. Foreman and therefore their names need not be included in the seniority list dt. 3-2-94.

24. But the respondents failed to place before us any convincing material to contend that the said officials viz. P. Narsinga Rao and Ganesh Kumar were seniors to the Applicant.

25. Merely because of the revision of the seniority list dt. 3-2-94 and merely because the Applicant happened to be at Sr.No.12 and the seniormost in the reserved category we cannot direct the respondents to promote him from an earlier date viz. 31-1-91. The Applicant was promoted as Sr.Foreman w.e.f. 17-2-1994. It appears that the Applicant on the basis of the revised seniority list dt. 3-2-94 submitted to the respondent authorities that his promotion was not considered earlier on account of his wrong placement in the seniority list dt. 12-11-90 and that his case may be considered on par with his juniors. Admittedly, the Applicant was claiming seniority over those two officials. Therefore we cannot direct the respondents to promote the Applicant on par with P. Narsinga Rao and Ganesh Kumar w.e.f. a retrospective dated i.e. 31-1-1991, unless, his placement is finally determined.

26. In order to meet the ends of justice we feel it proper to direct the respondents to consider the claim of the Applicant as to his seniority between himself and P. Narsinga Rao and Ganesh Kumar. If the Applicant has not submitted a detailed representation claiming his seniority, the Applicant may now submit a detailed representation bringing out his position earlier to 1990 and the position of P. Narsinga Rao and Ganesh Kumar then and place sufficient material to convince the respondent authorities about his claim for seniority over those two officials. If such a representation is received the respondent authorities shall consider and give a suitable reply indicating the following particulars:

(a) How P. Narsinga Rao and Ganesh Kumar became seniors to the applicant ?

(b) the manner in which they prepared the combined seniority list dt. 12-11-90 drawing Foremen (PPC) from different trades;

(c) On such examination if the respondents come to the conclusion that the Applicant is senior to those two officials then his promotion must be given retrospectively w.e.f. 31-1-91. In such an event his pay must be notionally fixed in the cadre of Senior Foreman from 31-1-91 and the Applicant shall be entitled to monetary benefits only from 22-4-96 i.e. one year prior to the filing of this OA.

27. Hence we feel it proper to issue the following directions:

(i) The Applicant, if so advised, may submit a detailed representation with necessary documents to support his claim for seniority over P. Narsinga Rao and Ganesh Kumar. He shall submit the said representation within one month from the date of receipt of a copy of this order;

(ii) The competent authority shall on receipt of the said representation consider and inform the applicant suitably. The competent authority shall take into consideration the representation of the applicant after giving notice to P. Narsinga Rao and Ganesh Kumar. The competent authority shall take into consideration the facts mentioned in the body of the order while deciding the representation of the Applicant. In case the applicant establishes his claim for seniority over P. Narsinga Rao and Ganesh Kumar then they shall promote the Applicant with retrospective dated viz. 31-1-91 and monetary benefits shall be given to him only from 22-4-96 i.e. one year prior to the date of the filing of the OA.

28. Time for compliance four months from the date of receipt of a detailed representation from the Applicant.

29. With the above directions the OA is disposed of leaving the parties to bear their own costs.

(B.S. JAI PARAMESHWAR)
Member (J)

11.8.99

(R. RANGARAJAN)
Member (A)

MD

COPY TO:-

1. HDHNJ
2. HRRN M (A)
3. HBSJP M (J)
4. D.R. (A)
5. SPARE
6. ADVOCATE
7. STANDING COUNSEL

1st AND II nd COURT

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : HYDERABAD.

THE HON'BLE MR.JUSTICE D.H. NASIR
VICE - CHAIRMAN

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

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

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ORDER DATE: 11/8/99

MA/RA/CP~~.NO~~
IN
OA.NO. 1129/97

ADMITTED AND INTERIM DIRECTIONS ISSUED

ALLOWED

C.P. CLOSED

R.A. CLOSED

O.A. CLOSED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS

7 copies