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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

O.A.No.10520F 1997.

DATE OF ORDER:

9/4/99

BETWEEN:

Gopal Sarkar.

.....Applicant

a n d

1. The Union of India, rep. by its
Secretary, Ministry of Finance,
Department of Economic Affairs,
North Block, New Delhi.
2. The General Manager,
Security Printing Press,
Mint Compound, Saifabad, Hyderabad.
3. K.Narasinga Rao, Technical Officer,
Security Printing Press, Mint Compound,
Saifabad, Hyderabad.
4. Dalchand Raghav, Technical Officer,
Security Printing Press, Mint Compound,
Saifabad, Hyderabad.

.....Respondents

COUNSEL FOR THE APPLICANT :: Mr.R.Briz Mohan Singh

COUNSEL FOR THE RESPONDENTS:: Mr.V.Rajeshwara Rao for R-1&2
:: Mr.N.Rammohan Rao for R.3&R.4

CORAM:

THE HON'BLE SRI R.RANGARAJAN, MEMBER (ADMN)

A N D

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

: O R D E R :

(AS PER HON'BLE SRI R.RANGARAJAN, MEMBER (ADMN))

Heard Mr.R.Briz Mohan Singh, learned Counsel for the
Applicant, Mr.V.Rajeshwara Rao, learned Standing Counsel
for the Official Respondents, and Mr.Siva for Mr.N.Rammohan-
Rao, learned Counsel for the Private Respondents 3 and 4.

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2. The applicant in this OA applied for the post of Technical Officer through UPSC and he was selected by Proceedings No.SPP/AI/TO-GS/92/2530, dated:4-9-1992 (Annexure.A1 to the OA), and was posted as Technical Officer under Respondent No.2 Organisation in the scale of pay of Rs.2000-3500/-. He joined that post on 1-10-1992 and is continuing in that post till now. In the Memorandum dated:4-9-1992, the condition of his seniority is stated as "His seniority will be as per inter-se seniority".

3. The recruitment rule to Group-'A' and Group-'B' posts in the Security Printing Press, Hyderabad, was notified by the Notification No.F.12(21)82-Cy., dated:5-8-1985 (Annexure.A-5, page.20 to the OA). The rules under that notification is called as "the Security Printing Press, Hyderabad(Group-'A' and Group-'B' posts) Recruitment Rules, 1985". It is also stated that the rules will come into force from the date of publication in the official gazette. The above rule was framed in exercise of the powers conferred by the proviso to Article 309 of the Constitution. The Technical Officer is one of the post for which recruitment rules are included in the above said rules. As per the recruitment rules, it is seen that there are five posts of Technical Officer. Column no.11 of that rule under the recruitment rules for Technical Officer shows the method of filling up of that post. The mode of filling are:-

- (i) 75% by promotion failing which by transfer on deputation;
- (ii) 25% by direct recruitment.

The note under that Column reads as below:-

"Note:- The suitability of the Officer holding the post of Technical Officer on deputation basis with three years regular service in the grade of Junior Supervisor or Overseer in his parent Organisation on the date of commencement of these rules shall be initially assessed by the UPSC for regular absorption and if, found suitable, he shall be deemed to have been appointed to the post of Technical Officer on regular basis at its initial constitution under these rules."

4. A provisional seniority list was issued calling for objections regarding the factual information like, seniority, date of birth etc., from those/who are included in that provisional seniority list. That provisional seniority list was issued by Notice bearing No.SPP/AI/3600/95/6031, dated:27-11-1995 (Annexure.A2, page.14 to the OA). That provisional seniority list was finalised by the Notice bearing No.SPP/AI/3600/96/107, dated: 6-4-1996 (Annexure.A3, page.16 to the OA). In that seniority list, the name of the applicant is shown at Serial No.5, whereas the private respondents 3 and 4 are shown at serial nos.3 and 4 respectively.

5. The applicant submits that he had orally represented to Respondent No.2 to show him at Serial No.3 instead of at Serial No.5, after the issue of the provisional seniority list. As Respondent No.2 promised him that the correction would be done before the final seniority list is published, he did not submit any objection to the provisional seniority list but the Respondent No.2 has not kept his word and issued the final seniority list showing the applicant below

that of the private respondents 3 and 4. After the publication of the final seniority list, the applicant submitted a representation dated:19-4-1996 (Annexure.A.4, page.18 to the OA) for recasting the seniority list dated: 6-4-1996, showing him above the private respondents 3 and 4. It is stated that no reply had been received by him for that representation.

6. This OA is filed for a declaration that the seniority list dated:6-4-1996 issued under Proceedings No.SPP/AI/3600/96 in the category of Technical Officer in the 2nd Respondent Organisation and the placement of the applicant at Serial No.5 instead of at Serial No.3 or 4 and the promotion of Respondent No.4 by Proceedings No.1/8/95-Cy.I(SPP), dated: 24-11-1997 of the Respondent No.1 and the consequential orders of the Respondent No.2 is illegal, arbitrary, unjust, unfair and erroneous and also violative of Articles 14 and 16 of the Constitution of India, and for a consequential direction to the respondents 1 and 2 to revise the seniority list dated:6-4-1996 issued under Proceedings No.SPP/AI/3600/96 in the category of Technical Officer in the Respondent No.2 Organisation by placing the applicant at Serial No.3 or 4.

7. In the MA.No.681 of 1998 in this OA there was a prayer for suspension of promotion of Respondent No.4. That prayer was not granted as Respondent No.4 had already been promoted.

8: A reply has been filed in this OA. The respondents in that/^{reply} submit as follows:-

1) The applicant was posted against the direct recruitment quota. As per the initial constitution of the recruitment rules for Technical Officer, three transferees viz.,

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S/Shri G.Perumal, M.C.Sonawani and Mukul Chatterjee were appointed to the post of Technical Officer on regular basis in its initial constitution, under ^{these} rules in accordance with the note for filling up the post. Thereafter, due to the introduction of the recruitment rules for Technical Officer, the promotees were appointed against the 75% quota earmarked for filling up the post by promotion. Against the 75% quota, Respondent No.3 was appointed initially on adhoc basis by the Diary Order No.16, dated:17-3-1988 (Annexure.R-I to the reply). Similarly, the Respondent No.4 was also appointed on adhoc basis initially by Order dated: 19-3-1988. Both of them were initially appointed on adhoc basis as they fulfilled ^{the} necessary conditions for promotion against the promotional quota. But they could not be shown as having been promoted on a regular basis due to the non-regularisation of their services in the feeder post on account of delay in notification of the recruitment rules of Group-'C' post. Their services were regularised as Technical Officer with effect from 19-3-1988 and 7-4-1992 by Dairy Order No.52, dated:27-2-1995 (Annexure.R-2, page.22 to the Reply). Thus the promotional quota ^{roster} after the initial constitution of the recruitment rules ^{was} started with/R-3 and R-4. The first three posts against the 75% quota has to be filled by promotees. However, by oversight an Indent was placed on UPSC for direct recruitment even though the third post ^a has to be filled by/promotee. In any case, having placed an Indent for direct recruitment when the applicant was selected, he was posted as Technical Officer without any hesitation and he joined that post on 1-10-1992

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after the regularisation of the Respondent No.3 and Respondent No.4. The regularisation of R-3 and R-4 with effect from the date of their adhoc promotion was issued by an Order dated:27-2-1995 after the applicant had joined the service in view of the fact that they were by then not confirmed in the Group-'C' post due to delay in the notification of the recruitment rules of Group-'C' post. As Respondent No.3 and Respondent No.4 have been selected in accordance with the rules, their absorption should be ^{been} treated as having/regularised with effect from the date of their adhoc promotion. Hence, there is no irregularity in showing the Private Respondents 3 and 4 above that of the applicant in the impugned seniority list dated:6-4-1996.

11) The three Officers viz., S/Shri G.Perumal, M.C.Senawane, and Mukul Chatterjee came on transfer as Technical Officers while they were working as Junior Supervisors in their parent department. They were regularised on the basis of the recommendations of the UPSC by the President by Order bearing No.12/4/82-CY/SPP), dated:1-4-1987 (Annexure.R-V, page.27 to the reply), under the initial constitution of the category of the Technical Officer under the rules treating them as permanent transferees. The appointments of S/Shri G.Perumal, M.C.Senawane and Mukul Chatterjee, does not come under the rotational roster as they were appointed as permanent transferees under the initial constitution Clause of recruitment rules as per the note following the extent instructions. They possessed the requisite qualification and hence, regularising their services under the initial constitution clause to the recruitment rules is in

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order and they cannot be treated as having been promoted against the 75% quota. Hence, the promotion against the 75% quota started with Respondent No.3 and the three posts should have been filled under promotional quota. But instead of doing that by oversight the applicant was posted against the roster point no.5 and that was allowed to continue without down-grading the seniority of the applicant in accordance with the general Principle No.6 and the illustration given under it in Swamy's Compilation Seniority and Promotion of Central Government Servants, which is enclosed as Annexure.R-IV to the reply).

9. The Respondents 3 and 4 had filed their affidavits. The affidavits are more or less on the same lines.

10. A common Rejoinder has been filed by the applicant. In the rejoinder it has been contested that S/Shri G.Perumal, M.C.Sonawane and Mukul Chatterjee fall under the category of "Promotion or Transfer on Deputation" against the 75% quota. The General Principle No.6 of the Swamy's Compilation should be read with Rule.7(iii) of the said Compilation and if it is^{so} read, the fourth vacancy that has arisen should be filled by a direct recruit. As the applicant is a direct recruit, the question of showing Respondents 3 and 4 above him does not arise as Respondents 3 and 4 were promoted as per recruitment rules in the rotation of vacancies that has arisen for promotion after filling up the roster Point No.4 by a direct recruit. The applicant being

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a direct recruit, should be shown above that of Private Respondents 3 and 4 against the roster point no.4 as that roster point was to be filled by a direct recruit. The Rule.6 under Swamy's Compilation should not be read in isolation and it has to be read along with Rule.7(ii) and (iii) of the Swamy's Compilation. The Rule.6 and Rule.7 (ii) & (iii) reads as follows:-

"6. Relative seniority of Direct Recruits and Promotees:-

The relative seniority of direct recruits and of promotees shall be determined according to the rotation of vacancies between direct recruits and promotees which shall be based on the quotas of vacancies reserved for direct recruitment and promotion respectively in the Recruitment Rules.

7. Transferees.-

(ii) Where such transfers are effected against specific quotas prescribed in the recruitment rules therefor, the relative seniority of such transferees vis-a-vis direct recruits and promotees shall be determined according to the rotation of vacancies which shall be based on the quotas reserved for transfer, direct recruitment and promotion respectively in the recruitment rules.

(iii) Where a person is appointed by transfer in accordance with a provision in the recruitment rules providing for such a transfer in the event of non-availability of a suitable candidate by direct recruitment or promotion, such transferee shall be grouped with direct recruits or promotees, as the case may be, for the purpose of para.6 above. He shall be ranked below all direct recruits or promotees, as the case may be, selected on the same occasion."

11. If the rule is read as stated above then the question of showing the applicant below the Respondents 3 and 4 does

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not arise and hence, the impugned seniority list has to be recasted showing the applicant above that of Respondents 3 and 4.

12. The main controversy in this DA can be resolved if it is decided whether the posting of S/Shri G.Perumal, M.C.Sonawane and Mukul Chatterjee comes under the initial constitution under the rules as per the note. If it is decided that the above three Officials do not come under the purview of 75% quota of promotion, then the roster itself starts with Point No.1 and the first three points in that roster has to be filled by promotees. In that case, ^{the} Respondents 3 and 4 are to be given promotion first and then only the direct recruits. In that case, the applicant will rank Junior to the Respondents 3 and 4. Hence, the only interpretation that is required is whether S/Shri G.Perumal, M.C.Sonawane and Mukul Chatterjee were posted against the 75% promotional quota or were absorbed on regular basis at its initial constitution as per note extracted above.

13. We have read the various documents produced before us. The note for filling up the post of Technical Officer as per the impugned notification dated:5-8-1985 is clear. For clarity sake the contents of the note is reproduced below once again:-

"Note:- The suitability of the Officer holding the post of Technical Officer on deputation basis with three years regular service in the grade of Junior Supervisor or Overseer in his parent Organisation on the date of commencement of these rules shall be initially assessed by the UPSC for regular absorption and if, found

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suitable, he shall be deemed to have been appointed to the post of Technical Officer on regular basis at its initial constitution under these rules."

14. As per the contents of this note, employees who are already working as Technical Officers can be appointed to the post of Technical Officer on regular basis at its initial constitution under the rules provided they fulfill the following conditions. The conditions are:-

- (i) The Technical Officer under deputation basis possesses three years of regular service in the grade of Junior Supervisor or Overseer in his parent department/Organisation on commencement of these rules;
- (ii) Should be initially assessed by UPSC for regular absorption; and
- (iii) If found suitable, he shall be deemed to have been appointed to the post of Technical Officer on regular basis at its initial constitution.

15. To examine the above conditions in case of S/Shri G.Perumal, M.C.Sonawane and Mukul Chatterjee, a careful perusal of the provisional seniority list issued on 27-11-1995 and the final seniority list issued on 6-4-1996 is necessary. It is seen from those lists that S/Shri M.C.Sonawane and Mukul Chatterjee were Junior Supervisors with effect from 2-4-1980 in the previous grade i.e., Rs.1600-2660/- in their parent Organisation. Thus they had completed the three years service required for considering them for regular absorption under the recruitment rules as embodied in the note reproduced above. Similar is the case of Sri G.Perumal.

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16. The three Officers viz., S/Shri G.Perumal, M.C.Sonawane and Mukul Chatterjee were appointed by the President in the Security Printing Press to the post and the pay scales as shown in the appointment order on transfer basis with effect from 5-8-1985 until further orders, vide Order No.12/4/82-CY(SPP), dated:1-4-1987 (Annexure.R-V to the Reply). The President normally appoints an Officer in the Government of India only after getting the recommendations from the UPSC. Even though the recommendations of the UPSC is not produced, the very fact that the three Officers had been appointed by the President, it has to be held that the three Officers were recommended by the UPSC and considering that recommendations they were appointed by the President.

17. Normally the Technical Officer post being a Group-'B' post in the Department, it may not require President's approval. Only in the case of transferees and absorption under initial constitution of a cadre the approval of the President is taken. In the present case even though the UPSC's recommendations were not enclosed, it has to be held that as the President had approved the appointment of the three Officers, ~~and that was done~~ with the recommendations of the UPSC, the absorption of the three Officers under these circumstances cannot be treated as absorption against the 75% quota in view of the reasons stated above. Hence, it has to be held that the three Officers viz., S/Shri G.Perumal, M.C.Sonawane and Mukul Chatterjee were appointed as Technical Officers under the initial constitution of the Technical Officer cadre as per the notification dated:5-8-1985 following the stipulation indicated in the note extracted above. In that view they do not

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come under the proviso of the 75% quota of promotion. If that is the view then the General Principle no.6 Read with Rule.7(ii) and (iii) has no role to play. As it is decided that the three Officers viz., S/Shri G.Perumal, M.C.Sonawane and Mukul Chatterjee were appointed in its initial constitution under the rules, they no longer come under the promotion quota rosters of 1,2 and 3. The roster against 75% quota starts only when the appointment of Respondent No.3 is made and the fourth point is consumed in the roster point no.4 ^{when R-4} ~~when he~~ was appointed. The applicant being a direct recruit must necessarily take his place below that of Respondent No.3 and Respondent no.4. He cannot aspire to get seniority above that of Respondent no.3 and Respondent no.4, in view of the ^{rule} position existing in filling up the post of Technical Officer right from the initial constitution of the Technical Officer cadre under Respondent no.2.

18. The Presidential Order appointing S/Shri G.Perumal, Sonawane and Mukul Chatterjee was issued way back on 1-4-1987 ~~realising services~~ under the initial constitution of the rules with effect from 5-8-1985. When such a Presidential Order exists "that Presidential Order cannot be changed by an Order of any Department", (reported in 1991(1) CAT 323 in AIR & D.D. TECHNICAL EMPLOYEES ASSOCIATION Vs UNION OF INDIA & OTHERS). The applicant was not in service when that Presidential Order was issued. The indent on UPSC for direct recruitment was

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after the issue of
placed ~~earlier to~~ the Presidential Order and also
the presidential order was issued
much earlier to the actual appointment of the applicant.
Hence, challenge ~~to~~ ^{is} that Presidential Order at this stage
may not arise.

19. In AIR 1999 SC 517 in UNION OF INDIA Vs KISHORILAL BABLANI, the Apex Court has held as follows:-

"Challenging an appointment after more than 10 years is not acceptable. Such appointments made out should not be disturbed. Such delayed challenge of appointments defeats ~~the~~ the equity. Reopening process of selection and notification of vacancies after such delay is also not in the interest of proper functioning and morale of the concerned services".

20. Though Respondent No.3 and Respondent No.4 were appointed initially on adhoc basis, they were regularised by Office Order dated:27-2-1995. Having regularised the services of the Respondent no.3 and Respondent no.4 by Office Order dated:27-2-1995, whether they can be given retrospective promotions with effect from 19-3-1988 and 7-4-1992 is the next point for consideration. No doubt both the Respondents 3 and 4 were appointed on adhoc basis in the year 1988 and 1992. The adhoc promotion was necessitated as stated by the respondents due to the delay in regularising their services in Group 'C' cadre on account of the delay in the issue of the notification of the recruitment rules of Group-'C' post. As the delay

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is attributable due to non-finalisation in the notification of the recruitment rules to Group-'C' post, the same should not come in the way of the respondents 3 and 4 to deny them the regular promotion from an earlier date i.e., from the date of their adhoc promotion. It is to be noted here that they were promoted on adhoc basis following the extant rules. No material has been produced by the applicant to show that they were appointed on adhoc basis without following the rules. Hence, having appointed the Respondent no.3 and Respondent no.4 in accordance with the rules to the post of Technical Officer, they cannot stand to loose by showing them as having been promoted at a later date. Even if they were promoted regularly from the later date, their seniority counts from the date of their adhoc promotion as they were initially promoted on adhoc basis following the extant rules in view of the directions given in DIRECT RECRUITS CLASS-II ENGINEERING OFFICERS ASSOCIATION Vs STATE OF MAHARASTRA (reported in AIR 1990 SC 1607).

21. Even though they were given promotions from the year 1988 and 1992, whether they can come under the Serial No.3 and 4 of the impugned Seniority List dated: the 6-4-1996, is/next point to be examined. As it has already been stated that ^{the} Respondent no.3 and Respondent no.4 were appointed against the promotional quota of 75% for the first time. Hence, their promotion is treated as against the roster points 1 and 2 of the first cycle for promotion against the promotional quota. In that

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view, the applicant being a direct recruit must come below them against the first cycle of the direct recruitment quota to the post of Technical Officer as per rules. Hence, showing the name of the applicant below that of Respondents 3 and 4 in the Seniority List does not appear to be against the rules.

22. In view of what is stated above, we find that there is no merit in this OA. Hence, the OA is liable to be dismissed, and accordingly, it is dismissed.

23. Before we part with this OA, we would like to observe as follows:-

24. We have asked the respondent-Organisation to produce the records to see in regard to the notings made while placing an Indent on the UPSC for direct recruitment. The respondents have produced the xerox copies of some of the Letters which in our opinion are not the appropriate records. It is not understood as to why the File containing those xerox letters ^{Case could not} ~~cannot~~ be produced. The respondents in their reply state that S/Shri G.Parumal, M.C.Sonawane and Mukul Chatterjee were appointed as per the UPSC's recommendations. If so, they could have easily produced the File containing the letters by which their cases were recommended to the UPSC and the recommendations of the UPSC to substantiate their cases. Unfortunately, the respondents took no pains to produce those details, if they are unable to produce the File by which the Indent for direct recruitment was placed on U.P.S.C. In that view, we feel that

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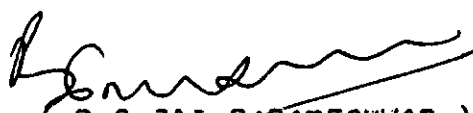
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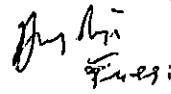
the respondents are not very careful in producing the necessary records. This view leads us to believe that the respondents are not disposing of the disputes that arise in their Organisation purposefully based on records/ mentioned above. But even though the records ^{have not made before} available for us, we do not feel that the case has to be allowed on that score as the case has been analysed ^{thread bare} as above. We caution the respondents especially ^{the} Respondent No.1 to issue suitable instructions to Respondent No.2 Organisation for maintaining the records properly and resolve the disputes arising in that unit expeditiously. No costs.


(B.S. JAI PARAMESHWAR)
MEMBER (JUDG)
9.4.99


(R. RANGARAJAN)
MEMBER (ADMN)

DATED: this the 9th day of April, 1999

DSN



COPY TO:-

1. HDHND
2. HHRP M(A)
3. HBSJP M(J)
4. B.R.(A)
5. SPARE

21/4/99
1ST AND 2ND 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. H. RAJENDRA PRASAD :
MEMBER (A)

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

THE HON'BLE MR. B. S. JAI PARAMESWAR :
MEMBER (J)

DATED: 9/4/99

ORDER / JUDGEMENT

MA./R.A./C.P.No.

IN

C.A. No.

1052/97

ADMITTED AND INTERIM DIRECTIONS
ISSUED.

ALLOWED.

C.P. CLOSED.

R.A. CLOSED.

DISPOSED OF WITH

DISMISSED.

DISMISSED AS WITHDRAWN.

ORDERED/REJECTED.

NO ORDER AS TO COSTS

SRR

केन्द्रीय प्रशासनिक अधिकरण Central Administrative Tribunal दफ़्त / DESPATCH 16 APR 1999 HYDERABAD BENCH

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