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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:  
AT HYDERABAD

ORIGINAL APPLICATION NO.1063 of 1997

DATE OF ORDER: 17th DECEMBER, 1998

BETWEEN:

RACHAIAH

.. APPLICANT

AND

1. The General Manager,  
Ordnance Factory Project,  
Yeddu-mailaram,  
Medak District - 502 205,
2. Ch.Umamaheswara Rao,
3. C.Satyanarayana Reddy,
4. S.Ganesh,
5. U.Prakash Rao,
6. K.Venkat Rao,
7. M.Ramachander Rao,
8. J.Shiva Prasad.

.. RESPONDENTS

COUNSEL FOR THE APPLICANT: Mr.T.P.ACHARYA

COUNSEL FOR THE RESPONDENTS: Mr.V.RAJESWARA RAO for R-1

CORAM:

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

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

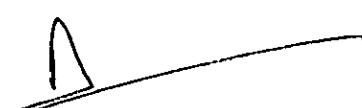
JUDGEMENT

ORAL ORDER (PER HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMN.))

Heard Mr.T.P.Acharya, learned counsel for the applicant and Mr.V.Rajeswara Rao, learned standing counsel for the official respondent. Notice is not received by R2. Notice has been served on R-3 to R-8 but they were called absent.

2. The applicant in this OA is diploma holder in Electrical Engineering i.e, LEE (Polytechnic). His name

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was sponsored by the Employment Exchange to R-1 organisation for consideration for posting in the post of Supervisor-B Electrical during the year 1985 along with others. Interview was conducted on 24.9.85. The applicant was issued with posting orders posting him in the post of Supervisor-B Electrical by the order dated 15.5.86 (Annexure I at page 11 to the OA). He reported for duty on 20.5.86. A provisional seniority list of Chargeman Gr.II (Technical) was circulated by the circular No.02/00074/Estt., dated 29.6.96 (Annexure-III at page 14 to the OA). In that list, the name of the applicant was shown at Sl.No.18 whereas the private respondents 2 to 8 were shown above him. The applicant submitted a representation for correcting his seniority position and showing him above the private respondents 2 to 8 by his representation dated 23.11.96 (Annexure-IV at page 17 to the OA). That was replied by the impugned letter No.02/00074/NG/Estt., dated 10.12.96 (Annexure-V at page 18 to the OA) rejecting his case on the ground that the seniority of the direct recruits is determined by merit position of the candidates in the selection list and not on the basis of joining duty by the selected candidates. He has been assigned seniority on the basis of the Govt. instructions. Once again the applicant represented his case and that was replied by the letter dated 23.7.97 stating that his case was considered and his seniority is fixed as per his merit position in the selection list. The Government orders as circulated by O.M.NO.9/23/71-Estt.(D) dated 6.6.78 are being implemented from the date of receipt of the same from higher authorities.

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3. This OA is filed to set-aside the seniority list of Chargeman Gr.II/Electrical as on 1.4.96 issued by the Circular No.02/00074/Estt., dated 10.12.96 and for consequential direction to revise the seniority placing the applicant herein above the respondents 2 to 8 herein and promote the applicant to the post of Chargeman Gr.I from the date the 2nd respondent herein was promoted as such with all consequential benefits of pay and allowances, seniority etc.

4. A reply has been filed in this OA. It is very clear that the applicant was last in the selection list as can be seen from Para 3 of the reply at page 2. The date of joining the duty of the applicant and the private respondents has been indicated in the Para 4 of the reply. <sup>name of the</sup> There is no doubt that the applicant joined the service as first candidate whereas the private respondents joined later than him. The respondents in the reply submitted that consideration was shown to the applicant herein as he was a Physically Handicapped candidate and hence he was given appointment in the first vacancy that arose after the issue of the selection list and others even though they were senior to him in the merit selection list were given in the subsequent vacancies and hence they joined later than the applicant. That consideration shown to the applicant will not in any way alter the seniority position as given in the merit selection list. Hence showing the applicant below the private respondents on the basis of the merit selection list is in order and cannot be challenged. Further it is also added that the applicant was, by mistake, appointed first as there were no posts reserved

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for Physically Handicapped persons. In order to rectify the mistake and not perpetuate the same, the seniority list was issued showing the applicant in accordance with the merit selection list.

5. We heard both sides. When there is no reservation of the post for the Physically Handicapped, the official respondents have no right to appoint the applicant when he is not first in the selection list for posting him against the vacancy that occurred immediately after the selection list was published. The respondent-authorities should have followed the merit position in the selection list and appointed the selected candidate as and when vacancy arose as per the merit selection list. Though the official respondent submits that it is a mistake, we do not consider it as a mistake. It was done so as to favour the applicant as he was Physically Handicapped. That favouritism shown to the applicant cannot be taken away by placing him below in the seniority list on the pretext that he was last in the merit selection list. Hence the action taken by the official respondent in appointing the applicant first in the post of Supervisor (T) should be continued further also keeping his seniority on the basis of the date of joining and not on the basis of merit selection list. The submission of the respondents that it is an error, appears to be an after thought and such after thought cannot be allowed to creep in so as to refuse the opportunity of an employee to go up in the ladder. If a favour was shown to the applicant as he was Physically Handicapped, the same should have been indicated in the posting order and also observed in the posting order that the favour shown to him <sup>would</sup> not give him any higher

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seniority other than the merit list seniority. No such remark is available in his posting order.

6. Even though the official respondent submits that the OM dated 6.6.78 was not infringed as all the private respondents had joined immediately after they were issued with appointment orders, the very fact that the applicant was appointed first, should give him the right to get seniority in that cadre. If the respondents wanted to fill up the post as and when vacancy arose, they should have followed the merit selection list and should not have given order of appointment to the applicant at the first opportunity. Having given permission to the applicant to join earlier to the private respondents ignoring the merit selection list, the respondents cannot deny his seniority position and his seniority should be reckoned as per the date of entry of the applicant in the service.

7. In view of what is stated above, we feel that the provisional seniority list issued on 29.6.96 needs correction and the applicant should be shown above the private respondents and the consequential benefits that accrue to the applicant on the basis of the above direction should be given to him within a period of four months from the date of receipt of a copy of this order.

7. In the result, following direction is given:-

(i) The impugned order NO.02/00074/NG/Estt., dated 10.12.96 (Annexure-V at page 18 to the OA) and No.02/00074/NG/Estt., dated 23.7.97 (Annexure-XI at page 26 to the OA) are set-aside;

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(ii) The applicant should be shown above the private respondents in the seniority list issued on 29.6.96 and

(iii) The applicant is entitled for consequential benefits on the basis of the above seniority given to him in pursuance of the orders given in para (ii) above.

8. Time for implementation is four months from the date of receipt of a copy of this order.

9. The OA is ordered accordingly. No order as to costs.

P.B.S.JAI PARAMESHWAR)  
MEMBER (JUDL.)

17.12.98

(R.RANGARAJAN)  
MEMBER (ADMN.)

DATED: 17th December, 1998  
Dictated in the open court

vsn

7/1/99

II COURT

Copy to :-

1) D.R(A)

2) Spare copy.

TYPED BY  
COMPARED BY

CHECKED BY  
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH HYDERABAD

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

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AND

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

DATED: 17-12-98

ORDER/JUDGMENT

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

in

OA.NO. 1063/97

ADMITTED AND INTERIM DIRECTIONS ISSUED

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS

SRR

