

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

ORIGINAL APPLICATION NO. 1176 OF 1999

DATE OF ORDER : 8.3.2001

Between:

Smt S.Q. Nasreen Quadri

...Applicant

AND

1. Union of India,
rep. by Secretary to Government,
Department of Telecommunications,
Ministry of Communications,
20 Ashoka Road, Sanchar Bhavan,
New Delhi .
2. The Sr. Deputy Director General,
(BW), Deptt. of Telecommunications,
Sanchar Bhavan, 20 Ashoka Road,
New Delhi - 110001.
3. The Deputy Secretary(CW),
Dept. of Telecommunications,
Sanchar Bhavan, 20 Ashoka Road,
New Delhi - 110001.
4. Sri S.K. Babbar,
Surveyor of Works (C&TCC),
Jaipur.
5. Sri P.K.Jain,
Deputy Director (BS),
ALTTC, Ghaziabad.
6. Niraj Goel,
Executive Engineer,
Telecom Civil Division, Jammu.
7. Sri B. Venugopal, Executive Engineer(C),
Telecom Civil Division ,
Tirupathi.

...Respondents.

Counsel for the applicant : Mr V. Venkateswara Rao

Counsel for the respondents : Mr V. Rajeshwar Rao, CGSC

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THE HON'BLE MR JUSTICE V.RAJAGOPALA REDDY : VICE CHAIRMAN

THE HON'BLE MR M.V.NATARAJAN : MEMBER(A)

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(per Hon'ble Mr Justice V. Rajagopala Reddy, Vice Chairman)).

Heard the counsel for the applicant and the respondents. The private respondents, those served, were not represented by any counsel.

2. The OA is filed aggrieved by the order dated 9.8.99 (page 44) by which the applicant's juniors were promoted to the grade of Superintending Engineer (Civil) on adhoc basis. The applicant also prays, *treats her as having been originally promoted to the grade of Executive Engineer* on regular basis w.e.f. 1986, ~~and~~ for promotion to the grade of Superintending Engineer against the vacancy which arose in 1991 with all consequential benefits.

3. The applicant was initially appointed as Assistant Engineer(C) by way of direct recruitment in 1978. The next promotion was to the grade of Executive Engineer (C). She was later on promoted *in 1991. But, to the post of Executive Engineer (Civil) as per the Recruitment Rules, an Assistant Engineer who has put in 8 years of service will be eligible to be considered for promotion to the grade of Executive Engineer (Civil).* The applicant became eligible to be promoted to the grade of Executive Engineer(Civil) in the year 1986 in as much as she completed the required 8 years of service by 1.4.86. The posts of Executive Engineer are filled in from 3 feeder categories namely; directly recruited Assistant Executive Engineers and directly recruited Assistant Engineers and the promotee Assistant Engineers in the ratio of 66 2/3% and 33 1/3% amongst the Assistant Executive Engineers and Assistant Engineers. As per the method of filling of the vacancies of Executive Engineers the grade of Executive Engineers is non selection as far as Assistant Executive Engineers

are concerned and it was selection in so far as the Assistant Engineers are concerned, as per the Recruitment Rules of 1976. Hence, the process of filling up of the posts of Assistant Engineers by ^{normally} promotion was not being completed as soon as the vacancy arose, for want of meeting of the DPC. It is submitted by the applicant that from 1978 to 1997, no selection was held to fill up the posts of Executive Engineers from Assistant Engineers. D.P.C.s were not held between 1978 to 1997 on the ground that the seniority amongst Asstt. Engineers was under dispute among the directly recruited Assistant Engineers and promotees. Ultimately, the same was settled by the Tribunal in OA 1104/94 and the department circulated a provisional seniority list of the Executive Engineers as on 1.11.94. It is stated that year-wise breakup was given in the said letter dated 25.11.94.

4. The applicant was promoted to the grade of Executive Engineer on adhoc basis on 12.11.92 and since then, she has been performing the duties of Executive Engineer. Thereafter, ~~she has been promoted to the grade of Executive Engineer on regular basis on 20.3.97~~. Thereafter, the D.P.C. met on 3/4/5.2.1997 for promotion of the Assistant Engineers to the post of Executive Engineers to fill up all the vacancies that arose from 1976 to 1997 and the applicant was regularly promoted w.e.f. 20.3.97 by the notification dated 11.4.97. It is, however, the grievance of the applicant that she should have been promoted as Executive Engineer on regular basis against the vacancies of Executive Engineers earmarked for the year 1986 and hence, her regular promotion should relate back to the year ^{but} 1986 ~~and~~ that the respondents have promoted the applicant w.e.f. ~~only~~ 1997 which is arbitrary and contrary to the recruitment rules.

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5. The applicant, therefore, filed the present OA seeking promotion w.e.f. 1986 to the post of Executive Engineer and to consider her for the higher promotion to the post of Superintending Engineer tending/taking into consideration the qualifying service of Executive Engineer from 1986.

6. The officials respondents filed a reply and contested the OA. It is, however, admitted that the vacancies for the post of Executive Engineer arose in 1986 for which the applicant was eligible. It was due to the protracted litigation over the issue of seniority in the grade ~~as~~ by Asstt. Engineer(C) that the case for regular promotion from that grade of Executive Engineer(C) could not be taken up till the issue of final seniority list on 20.6.94. The DPC met in February'97 and all the vacancies that arose from 1976 to 1997 were filled up simultaneously and the applicant was promoted in March'97 ^{but} and she was ~~also~~ given the benefit of seniority w.e.f. 1986. It is, however, stated that the applicant is not entitled for the deemed date of regular promotion as Executive Engineer w.e.f. 1986 in view of the DP&T guidelines dated 10.4.89. She was accordingly, promoted ~~ex parte~~ prospectively from the date the notification was issued.

7. We have given careful consideration to ~~all~~ the arguments advanced by the learned counsels on either side. We have perused the minutes of selection under question in this OA. The dispute that arises in this case ^{lies in a} ~~is of~~ very short compass. The applicant is mainly aggrieved by the impugned order in promoting her juniors to the grade of Superintending Engineer. The applicant was ^{superceded} ~~not promoted~~ only on the ground that she had not completed 5 years of regular service which is the qualifying period for the purposes of

of promotion to the grade of Superintending Engineer. The lr. counsel for the applicant lays stress on her appointment on adhoc basis in ~~1992~~ to the grade of Executive Engineer and prays for counting the adhoc service from 1992 to 1997 for the purposes of her regularisation and thus contends that ^{as} ~~she~~ had completed ~~the~~ 5 years of regular service ^{and} that she should be treated as having completed 5 years of qualifying period for promotion to the post of Superintending Engineer. This contention is refuted by the lr. counsel for the respondents on the ground that the promotion in 1992 was only as a stop-gap arrangement and that no clear vacancy arose in 1992 and the said promotion was not made in accordance with the rules by a DPC considering all the eligible candidates. It should be noted that the respondents had come forward admitting that there ^{were} ~~was~~ clear vacancies in the grade of Executive Engineers right from 1986 and it is their case that they could not be filled up on the ground that the seniority list of Executive Engineers was not finalised. Thus, the fact remains that from 1986 onwards there ^{were} ~~was~~ clear vacancies of Executive Engineers and the vacancies were not filled up for the reasons that the seniority list was not finalised. It is also not in dispute that the applicant was eligible for being promoted to the post of Executive Engineer in 1986 itself when ~~she~~ had completed 8 years of service in the grade of Assistant Engineer.

8. A ~~perusal~~ ^{perusal} of the DPC minutes which met in February 1997, ~~it~~ shows that right from 1976 upto 1993-94, the ~~applicant and~~ ~~other~~ eligible candidates were considered against the ~~same~~ vacancies and year-wise panels were prepared from 1977 and the applicant was one of the employees found suitable for promotion ^{against a Vacancy in 1988} and was recommended to be included in the panel for promotion to the grade of

Executive Engineer(Civil). Her name was shown in the panel of 1986. The notification dated 11.4.97 was issued promoting the applicant and others to the grade of Executive Engineer(Civil) on regular basis only w.e.f. 20.3.97. The applicant, thereafter, made a representation on 19.8.98 seeking deemed date of regularisation w.e.f. 1986 on the ground that she had been selected in the year-wise panel prepared for the year 1986 for promotion but the same does not appear to have been responded to. The above proceedings, therefore, clearly show that the applicant was assessed and found suitable for promotion in 1986 itself and was empanelled in the year-wise panel of 1986. Thus, she was lawfully entitled to have been promoted w.e.f. 1986 giving retrospective notional promotion. The only reason given by the respondents for not giving retrospective promotion is on the basis of the DP&T proceedings dated 10.4.89 where it is stated in Para 6.4.4. as under:-

Para 6.4.4.

Promotions only prospective:- While promotions will be made in the order of the consolidated select list, such promotions will have only prospective effect even in cases where the vacancies relate to earlier year(s).

9. In our view, the above instructions will not come in the way to grant deemed promotion with retrospective effect. As the applicant had been assessed and promoted against the clear vacancy of 1986 and year-wise panels have also been prepared by the DPC, it is incumbent upon the competent authority to have promoted the applicant w.e.f. the date she was found suitable.



Long delay caused in filling up the vacancies should in no way prejudice the applicant who was not at all responsible for the delay in DPC to have met and fill up the vacancies that arose in 1986. It may be that the respondents also may not be responsible for the delay in filling up of the posts. But when once the DPC meets to fill up the vacancies that exist, the vacancies that fell vacant during earlier years, the year-wise panels should be prepared and not only that, promotions also should be made in accordance with the date on which they were found suitable for promotion. It is also seen in this case that a review DPC was constituted and after further assessment, the applicant was placed in the panel of the year 1988. Mere placement in the panel will not have any advantage to the applicant except when she was given the benefit on account of such placement. It is also brought to our notice that the applicant was assigned seniority w.e.f. 1986 which may, perhaps, be altered to 1988. As the seniority should normally be reckoned from the date of joining service, it follows that the applicant should be deemed to be in service in 1988, even though no order was passed to that effect, by implication, it has to be held that the applicant was deemed to have been promoted to the grade of Executive Engineer(Civil) with retrospective effect from 1988, on notional basis.

10. The applicant is now denied the promotion to the grade of Superintending Engineer only on the ground that she has not completed 5 years of qualifying service in the grade of Executive Engineer. As per the Recruitment Rules, an Executive Engineer with 5 years service in the grade rendered after appointment thereto on a regular basis is entitled for promotion to the

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grade of Superintending Engineer. It is the case of the respondents that as the applicant was promoted in 1997, she had not rendered 5 years of service as Executive Engineer, hence, she is not qualified to be promoted as Superintending Engineer. But, as we have held supra that she was deemed to have been promoted w.e.f. 1988, she can be said to have rendered the qualifying service of 5 years. The next question to be considered is whether the deemed promotion to the post of Executive Engineer can be treated as service on regular basis in terms of the recruitment rules.

11. In OA 1826/2000 (Shri Ramanjaneyulu Vs Union Public Service Commission) and others and batch disposed of on 20.2.2001, the question arose whether the State Civil Service Officer " has completed not less than 8 years of service (whether officiating or substantive) " to enable his name to be considered for selection to IAS, as per the proviso to regulation 5(2) Indian Administrative Service (Appointment by promotion) Regulation 1955. We have held that qualifying service of 8 years (officiating or substantive) should reckon from the notional date of appointment or notional date of promotion. While coming to that conclusion, we have relied upon the decision of the Hon'ble Supreme Court in "Union of India Vs K.B.Rajoria (2000) 3 SCC 562 where it held that regular service does not mean actual service and the eligibility to any post or promotion could be determined with reference to the notional promotion granted from a retrospective date. The Hon'ble Supreme Court also held that a wrong done to an officer should be set right by a subsequent order by granting him promotion retrospectively, and when justice has been rendered, it was wholly un-just for not taking into consideration the correct date of promotion. The Hon'ble Supreme Court also held that

a regular service in the grade does not mean actual physical service and that notional promotion could not be considered as irregular.

12. The learned standing counsel for the respondents Mr V. Rajeshwar Rao places reliance in Civil Appeal No. 5086 of 1994 (M.K. Shanmugam Vs Union of India) to contend that unless an employee had completed not less than 15 years of adhoc service, the said employee is not entitled to count the said period of adhoc service for the purposes of seniority. In our view, this judgement is on entirely different issue of the counting of the period of the adhoc service. We have decided the instant case without reference to the adhoc service of the applicant from 1992 but with reference to the date of the suitability and consequent promotion of the applicant for promotion against the clear vacancy and on that ground, she was promoted in 1997.

13. In view of the above, the applicant is entitled for deemed promotion with retrospective effect from 1988 on notional basis and the said date is to be taken into consideration for counting the qualifying period of 5 years for promotion as Superintending Engineer. Thus counted, she is entitled to have been found as completed the required period of eligibility for promotion to the Superintending post of ~~Civil /~~ Engineer. In view of the above, the respondents are directed to consider the case of the applicant for promotion to the grade of Superintending ~~Civil /~~ Engineer by convening a review DPC w.e.f. the date when her juniors were promoted as Superintending Engineer and to promote the applicant either on adhoc or on regular basis. This exercise should be done within a period of 3 months

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from the date of receipt of a copy of this order.

14. The OA is accordingly allowed. In the circumstances, we do not order any costs.

M.V.Natarajan
(M.V.NATARAJAN)
MEMBER (A)

Ambrayagopal Reddy
(V.RAJAGOPALA REDDY)
VICE CHAIRMAN

DATED 8th March, 2001
Dictated in Open Court

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