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Date of Decision: 26.11.99

OA 8/2000

Brijesh Kumar Yadav, Executive Engineer, Postal Civil Division, IInd Floor, Head Post Office Building, Shastri Nagar, Jaipur.

... Applicant

Versus

1. Union of India through Secretary, Department of Telecommunication Services, Sanchar Bhawan, 20-Ashok Road, New Delhi.
2. Sr.Dy.Director General (BW), Deptt.of Telecommunication Services, Sanchar Bhawan, Ashok Road, New Delhi.
3. Secretary, Department of Personnel & Training, North Block, New Delhi.
4. Secretary, UPSC, Shahjahan Road, New Delhi.

... Respondents

CORAM:

HON'BLE MR.JUSTICE G.L.GUPTA, VICE CHAIRMAN

HON'BLE MR.A.P.NAGRATH, ADM.MEMBER

For the Applicant

... Mr.S.K.Jain

For Respondents No.1to3

... Mr.Bhanwar Bagri

For Respondent No.4

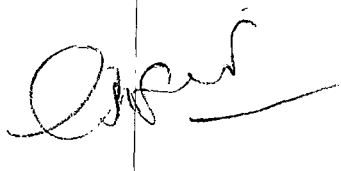
... Mr.Vinod Goyal, Adv. brief holder for Mr.Virendra Lodha

O R D E R

PER MR.JUSTICE G.L.GUPTA

Through this OA, filed on 30.12.99, the applicant sought the following reliefs :

- "a) direction to the respondents by which the seniority list of Executive Engineers (Civil) dated 11.1.99 issued by the Sr.Dy.Director General, Department of Telecommunication, be modified as per the spirit of OM dated 25.11.98 by replacing the names of AEs with regular 44 EEs regularised by UPSC;
- b) direction by which declare that the applicants deemed to have been promoted as Executive Engineer (Civil) on regular basis w.e.f. the years of vacancies against which he has been considered and selected for promotion (i.e. 1988) and not from the date of DPC. Further they are to be considered on the basis for the purpose of seniority and promotion to the post of Superintending Engineer (Civil);
- c) direction to the respondents to prepare the seniority list in accordance with the provisions of Recruitment Rules with select list dated 11.4.97;
- d) direction to the respondents by which the respondents be restrained from holding Review DPC considering retirees as

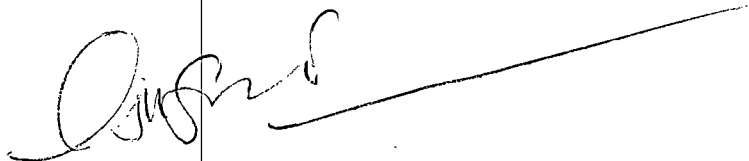


in view of Memorandum dated 12.10.98."

On 23.4.2002, the learned counsel for the applicant submitted that he did not want to press the relief mentioned at clause (a) and, therefore, the same stands deleted.

2. The case for the applicant can be summarised as follows. He was selected on the post of Assistant Engineer (Civil) on the basis of Engineering Services Examination, 1997, conducted by the UPSC. He joined on 12.12.79. The promotional post of Assistant Engineer (Civil) is Executive Engineer (Civil). The cadre of Executive Engineer (Civil) consists of officers promoted from the grade of Asstt.Executive Engineers (Civil) and Asstt.Engineers (Civil) in the ratio of 2:1. The method of promotion of Asstt.Executive Engineers (Civil) to the grade of Executive Engineer (Civil) is non-selection but the promotion of Asstt.Engineer (Civil) to the Executive Engineer (Civil) is on the basis of selection on merit.

3. The case for the applicant is that the respondents did not hold regular DPC for promotion from amongst the feeder cadre of Asstt. Engineers (Civil) and it was held for the first time in February, 1997 and select list consisting the names of 44 officers was notified vide notification dated 11.4.97 (Ann.A/4). Promotions were made effective from 20.3.97 and the name of the applicant appeared in the said order (Ann.A/4) at S.No.29. It is stated that the applicant was selected by the DPC against the vacancy of the year 1988, which fact can be verified from the seniority list dated 25.11.94 (Ann.A/5), and his regular promotion in the cadre of Executive Engineer (Civil) should be considered from 1988 so that he could get promotion on the post of Superintending Engineer on the basis of his regular service of five years. It is further stated that the applicant was on deputation in the grade of Executive Engineer (Civil) in April, 1990 and when he returned from deputation in March, 1995, he noticed that junior persons had been promoted to the post of Executive Engineer but no proforma promotion was given to him. He, therefore, made representation on 30.6.98 (Ann.A/7) and further representation on 24.8.98 (Ann.A/8). The further case for the applicant is that the respondents issued seniority list of the Executive Engineers on 11.1.99 in the garb of the memorandum dated 12.10.98. The applicant made representation against the said seniority list stating that his name should have been shown at S.No.103, below Shri B.B.Gupta and above Shri B.P.Singh, but the respondents failed to give reply of the said representation.



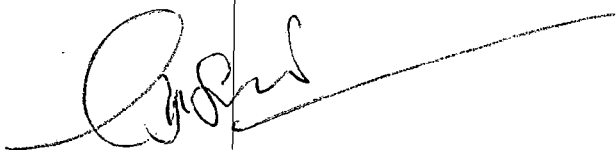
4. In the reply filed by the respondents, it is stated that various cases were pending before the Tribunals regarding fixation of seniority of the Asstt. Engineers (Civil) and after the matter was decided a provisional seniority list of Asstt. Engineers (Civil) was circulated in May, 1993 inviting objections and a modified seniority list was issued on 20.6.94. It is averred that the DPC for promotion of Asstt. Engineers (Civil) to the grade of Executive Engineer (Civil) against 1/3rd quota was held in February, 1997 and as per the instructions of the DOPT vide OM dated 10.4.89 the promotions have only prospective effect even where the vacancies related to the earlier years. It is further stated that the seniority list of the Executive Engineers (Civil) was published on 11.1.89 and the applicant was given promotion w.e.f. 20.3.97. It is the case for the respondents that the applicant had not rendered five years regular service in the grade of Executive Engineer (Civil) and, therefore, he was not eligible for consideration for promotion as Superintending Engineer. It is also the case for the respondents that the applicant had gone on deputation on his own volition and he was at liberty to return to the parent department if he felt that he was being denied the benefit of promotion.

5. In the rejoinder, the applicant has tried to reiterate the facts stated in the OA. Reply to the rejoinder has also been filed.

6. We have heard the learned counsel for the parties and perused the documents placed on record.

7. As already stated, the main relief claimed by the applicant under clause (a) of para-8 has been deleted on the request of the learned counsel for the applicant. In this connection, it may be pointed out that the Bangalore Bench of this Tribunal vide order dated 3.8.2000, passed in the case of P.Srinivasan v. Union of India & Anr., OA 887/99, has quashed the seniority list dated 11.1.99, whereby the applicant therein was treated to have been given promotion from 20.3.97, and it became necessary for the respondents to have prepared a fresh seniority list keeping in view the various decisions of the Tribunal.

8. It was brought to our notice by the learned counsel for the respondents that on the basis of the decisions of various Benches of the Tribunal in the matter in respect of the seniority list dated 11.1.99 and the notification dated 11.4.97, the respondents have issued fresh provisional seniority list vide memorandum dated 27.2.2002, in which the name of the applicant has been shown at S.No.210 and he has been treated



to have been given promotion to the post of Executive Engineer w.e.f. 1.10.92.

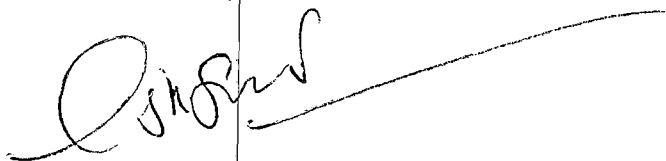
9. The respondents had placed this document on record by way of MA 206/2002, filed on 21.5.2002. The said MA was allowed. The applicant has not sought amendment in the OA seeking relief on the basis of this list. It may be due to the fact that the seniority list is provisional and the final list has not yet been issued. Be that as it may, now the applicant has been given promotion w.e.f. 1.10.92, instead of 20.3.97. Fresh cause of action has arisen to the applicant. If he is aggrieved of the date of promotion to the post of Executive Engineer in the final seniority list, he shall be at liberty to challenge the same.

10. For the present it may be stated that no relief can be granted to the applicant in this OA as the seniority list dated 11.1.99, which was the foundation of the case for the applicant, has been quashed and the applicant has given up the relief in that regard.

11. The learned counsel for the applicant contended that the applicant should be granted relief on the basis of the judgements rendered in the case of K.Verghese & Anr. v. Union of India & Ors., OA 161/2001, decided by the Madras Bench of this Tribunal on 12.7.2001, and the case of Smt.S.O.Nasreen Quadri v. Union of India & Ors., decided by the Hyderabad Bench of the Tribunal in OA 1176/99 on 8.3.2001.

12. As to the case of K.Verghese & Anr. (supra), it may be stated that the fact situation in that case was very different. In that case the respondents had changed the date of regular promotion given vide order dated 11.4.97 by issuing the order dated 16.1.2001. It was found by the Tribunal that no show cause notice had been given to the applicants therein before changing the date of regular appointment as Executive Engineer. In that context, the order dated 16.1.2001 was quashed. The effect of the said order was that the order dated 11.4.97 stood restored. It is not understood as to how this case helps the applicant in getting promotion to the post of Executive Engineer on regular basis from 1988.

As to the case of Smt.Quadri (supra), it may be stated that the Tribunal had perused the DPC minutes wherein in respect of Smt.Quadri a specific recommendation had been made that she was to be given promotion on regular basis from 1986. It is on this basis that directions were given in that case. In the instant case, it is not brought to our notice that the DPC had recommended the applicant for promotion w.e.f. 1988.



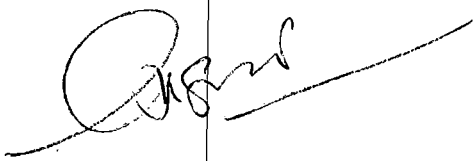
14. It may be pointed out that in the order dated 11.4.97 no date of promotion was allotted to the applicant. In any case, if the DPC had recommended promotion of the applicant w.e.f. 1988, the same has to be kept in mind by the respondents while deciding the representation (Ann.A/7).

15. The question of promotion from the post of Executive Engineer to the post of Superintending Engineer cannot be considered unless applicant's representation for giving him regular promotion on the post of Executive Engineer from 1988 is accepted. It is brought to our notice that the applicant is enjoying promotion to the post of Superintending Engineer on ad hoc basis. It is evident that the applicant is not suffering financially.

16. The learned counsel for the applicant has relied on some rulings laying down the law that the ruling of the coordinate Benches, High Court and the Supreme Court should be followed by this Tribunal. There can be hardly any scope of contending otherwise. The Tribunal is bound by the decisions of the Supreme Court as also by the decisions rendered by the various coordinate Benches or the Full Bench of this Tribunal. We have not taken a view different than the one taken by the Hyderabad Bench, Bangalore Bench or the Madras Bench of this Tribunal and, therefore, these rulings are of no significance.

17. As to the case of Union of India & Ors. v. K.B.Rajoria, (2000) 3 SCC 562, relied by the learned counsel for the applicant, it may be stated that that was the case where the applicant therein had been wrongly superseded in February, 1995 for promotion as Additional Director General but the wrong was set right by an order passed in 1998 by giving him promotion retrospectively w.e.f. February, 1995. It was in these circumstances that it was held that the eligibility condition for promotion as Director General was fulfilled because the promotion was to be counted from 22.2.95 and not from the date of actual promotion i.e. 10.6.98.

18. One of the contentions of the learned counsel for the applicant was that in view of para-6 of the OM dated 11.1.99 (Ann.A/1), the retirees could not be considered by the review DPC. As already stated, the seniority list issued vide order Ann.A/1 has already been quashed. When the DPC was not held in time and in the meantime some of the persons have retired, it is just and proper that the persons who have



retired are also considered by the review DPC. In this connection, our attention was also drawn to the memorandum dated 12.10.98 (Ann.A/9) to convass that the retired persons are not required to be considered.

The Memorandum dated 12.10.1998 clearly says that all the retired persons, whose names fall in the zone of consideration, should also be considered for promotion. There is no cause to hold that the directions made in this OM are illegal, arbitrary and violative of Articles 14 and 16 of the Constitution. It has been directed in the Memorandum that persons including retirees, who fall in the zone of consideration, should be considered. It may be that it was also stated in the OM that retired officials would have no right of actual promotion, but that does not mean that their promotion should not be considered. If they are kept in the zone of consideration, it is possible that the persons junior to them do not come in the zone of consideration and in that circumstance promotion of juniors cannot be considered.

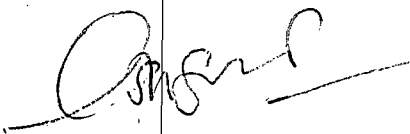
19. Therefore, the relief claimed under clause (d) cannot be given to the applicant.

20. In the instant case, the respondents' version is that the applicant had been given promotion on the post of Executive Engineer on ad hoc basis. It is not averred by the applicant that the respondents have now accepted the case for the applicant that the promotion would relate back to 1988. Therefore, it cannot be found that the applicant had become eligible to get promotion to the post of Superintending Engineer by putting in more than five years service as Executive Engineer.

21. As already stated, the matter is required to be considered by the respondents afresh and thereafter the applicant can approach the Tribunal, if he is aggrieved by the decision on his representation.

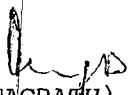
22. It is noticed that the applicant had made representation (Ann. A/7) claiming promotion to the post of Executive Engineer from the date the vacancy had occurred. The said representation has not been decided by the respondents. It is a fit case in which the respondents should be given direction to dispose of the representation of the applicant within a fixed time limit.

23. For the reasons stated above, we direct the respondents to decide the representation of the applicant (Ann.A/7) within a period of four months from the date of communication of this order keeping in view the



various decisions of the Tribunal and the date given in the seniority list dated 27.2.2002, if the respondents have not published the final seniority list of the Executive Engineers (Civil) after 27.2.2002. If final seniority list has been published after 27.02.2002 then the date of promotion of the applicant given in that list be kept in view while deciding the representation.

24. The OA stands disposed of accordingly. No order as to costs.

  
(A.P.NAGRATH)

MEMBER (A)

  
(G.L.GUPTA)

VICE CHAIRMAN