

Central Administrative Tribunal
Jaipur Bench, JAIPUR

OA.487/2006

This the 27th day of January, 2010

Hon'ble Dr. K.S.Sugathan, Member (Administrative)
Hon'ble Dr. K.B.Suresh, Member (Judicial)

Mr. Arvind Kumar Vijay S/o Shri J.N. Gupta, aged about 44 years, resident of 69 , Dan Bari, Jawahar Nagar, Kota. Presently working as Junior Engineer (Civil) Civil Construction Wing, All India Radio, Kota.

...Applicant

(By Advocate: Shri Rajvir Sharma)

- VERSUS -

1. Union of India through its Secretary, Ministry of Information and Broad Casting Shastri Bhawan, New Delhi.
2. Prasar Bharti Broad Casting Corporation of India, through its Director General Akashvani Bhawan, First Floor, Sansad Marg, New Delhi.
3. Director General, All India Radio, Akashvani Bhawan, First Floor, Sansad Marg, New Delhi.
4. Executive Engineer (Civil) Civil Construction Wing, All India Radio, T.V. Studio Complex, Jhalana Dungri, Jaipur, Rajasthan

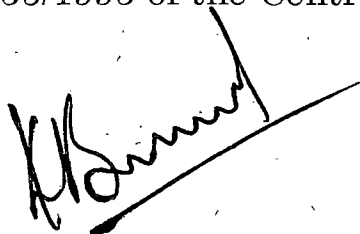
.....Respondents

(By Advocate: Shri D.C.Sharma)

ORDER

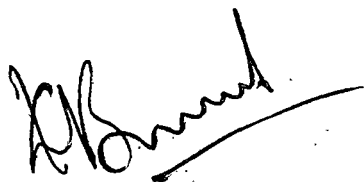
(By Hon'ble Dr. K.B. Suresh,M(J):-

The applicant seeks that he may be promoted as Assistant Engineer following his attainment of a degree in Engineering and completion of a period of five years in the grade of Junior Engineer. The applicant would rely on the judgment in OA No. 2055/1995 of the Central Administrative Tribunal, Principal Bench

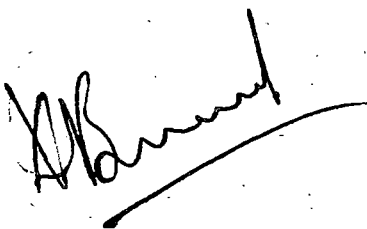


at New Delhi. He would found his right based on legal dictum as developed by the said judgment, ofcourse he is bound in the legal wisdom enunciated by the Hon'ble Supreme Court of India and following the decision in OA No.1638/1995 of the same Bench. The first judgment on which the applicant relies was a view that for promotion as Assistant Engineer is to be made on completion of five years of regular service in the grade cadre of Junior Engineer irrespective of their acquisition of Degree in Engineering based on other judgment which he himself had produced. The Bench has held that date of acquisition of degree is not relevant.

2. These proceedings has a genesis, apparently in OA No.1057/1989 of the Calcutta Bench which held that a composite of degree holder and diploma holder with five years of regular service being eligible for promotion to the post of Assistant Engineer are not tenable and not in consonance with the rules and directed to hold review DPC. Against the order of the Calcutta Bench, the UOI filed SLP No. 27230/94 and this was dismissed by the Hon'ble Supreme Court vide its order dated 9.11.1995. This resulted in the reversal of several Assistant Engineers who were already promoted following the extant rules and thereupon, being aggrieved; they approached legal authorities and relied upon the Apex Court's ruling in N. Suresh Nathen & another Vs. UOI & Ors. AIR 1992 SC 564. The Calcutta Bench in

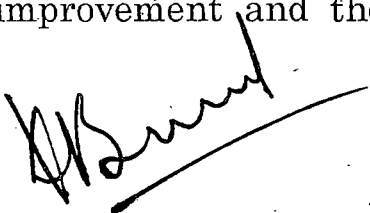


its order dated 6.5.1994 in OA NO. 1078/1989 has held that the five years' experience as a qualification as J.E. has to be counted from the date of acquisition of a Degree in Engineering and this view was accepted by the Hon'ble Supreme Court by this dismissal of SLP. The Assistant Engineers as noted above were disturbed and reverted and thereupon those who were aggrieved approached by a Review Application the Central Administrative Tribunal, Calcutta Bench and vide its order dated 09.04.1994, the RA was rejected. Thereupon they filed SLP No. 21236/1995 which was disposed of as withdrawn with liberty to approach lower forum. Thus, those who were aggrieved filed OA NO. 2055/1999 seeking a declaration that the five years regular service contemplated in the rules means five years regular service in the grade irrespective of the date of acquisition of the Degree in Engineering which is the criteria for the earlier view. On this new legal challenge produced before them the CAT, Calcutta Bench doubted its own earlier judgment and recommended that the matter be heard by a Larger Bench. The Larger Bench was constituted thereupon, on two points, one being whether irrespective of the date of acquisition of the Degree in relation to the five years regular service is to be counted and whether the view taken by the Calcutta Bench can survive the effect of the decision of the Hon'ble Supreme Court in M.B. Joshi's case 1993(2) 419 and Stephen Joseph's case 1997



(4) SCC 753. The Full Bench of the CAT, P.B. heard OA No. 2055/1995 filed by Jagdish Chandra & Ors Vs. UOI & Ors along with the OA 409/1995 Pradyut Kumar Vs. UOI & Ors. On this same issue and after discussing various Hon'ble Supreme Court's rulings extensively including Suresh Nathan's case which has been relied upon heavily by the CAT, Calcutta Bench in its order dated 09.04.1994, the Full Bench in its order dated 06.12.99 answered the reference in the negative and therefore irrespective of the date of acquisition of degree; the qualificatory Bench Mark is five years regular service in the grade of JE and nothing more. This is more so in view of the judgment of the Apex Court in A.K.Raghumani & Ors. Vs. Gopal Nath and ors. 2000 (3) SCALE 39. Therefore the judgments produced by the applicant are against him.

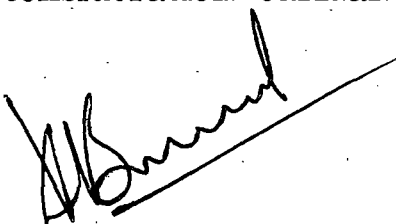
3. The respondents raised several objections, the first being that at the time of the appointment, the applicant was a diploma holder. As to what is the extent of validity and relevance of this objection cannot be understood. Thereafter they choose to point out that the higher qualification obtained by the applicant is irrelevant on the ground that he had not chosen to get their permission before getting additional qualification. Obviously constitutional and provisions allowed and promoted self improvement and the respondent can not be allowed to oppose



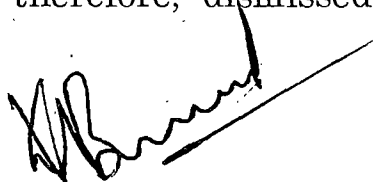
basic human rights of the citizen even if he is their employee. The next objection is that the applicant was not promoted only because the vacancies were not available and they are taking all steps to promote him as soon as the vacancies are made available. This seems to be the only worthwhile objection taken by the respondents.

4. After examining the matter carefully and at length, we find the appointment of a degree holder in engineering on completion of five years regular service in the grade of JE is a qualificatory Bench Mark to provide for the selection of meritorious for the promotional post but thereafter seniority among those who are qualified is the yardstick is to be followed and as soon as the applicant's turn comes among those qualified, we have no doubt that the applicant will also be promoted.

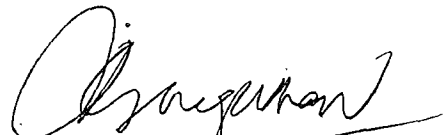
5. But the at the same time the date of acquisition of the degree has no further relevance following the decision of the Hon'ble Apex Court and the Full Bench's decision of the Principal Bench at New Delhi subject to the further decision of Apex Court. Therefore, other than recording the statement of the respondents that applicant will also be promoted in accordance with the seniority and that he had obtained for himself a position in the zone of consideration earmarked by five years of regular service and

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qualificatory degree in engineering, he will also be promoted. Nothing more needs be said about the claim of the applicant. To consider his seniority from the date of his acquisition of Degree can not be entertained in view of the above binding decision the OA is, therefore, dismissed with no order as to costs.



(Dr. K.B.Suresh)
Member (Judicial)



(Dr. K.S.Sugathan)
Member (Administrative)

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