

50/100

X

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

M.P-65/99 ordersheet pg-1

Disposed date-24/3/99

M.P-46/98 ordersheet pg-1 to 2

Dismissed date-25/3/98

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SECTION OFFICER (Judl.)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

OA No. 301 of 96

A.P. Debakumar Applicant(s)
-Versus-

Union of India Respondent(s)

Mr. B.K. Samal, D.S. Bhattacharya, S. Samal Advocates for Applicant(s)

Mr. S. Ali, Sr. C.G.S.C. Advocates for Respondent(s)

Office Notes Date Courts' Orders

This application is in
form and within time

C. F. of Rs. 50/-

deposited vide

POSD No. 3494/92

Dated 4-12-96

D. Samal
Dy. Registrar 2.1.97

16-1-97

Notice Issued to The
Respondant No-1,

2, 3, 4 & 5 vide order

Dated - 6-1-97.

Y.N.
16.1

6-2-97

1) Written Statement has
not been filed.

2) Memo of appearance
has not been filed.

M
6/2

6.1.97

Mr D.S.Bhattacharya for the
applicant. Mr S.Ali, Sr.C.G.S.C for
the respondents.

Heard Mr Bhattacharya for
admission. Perused the contents
of the application and the reliefs
sought. Application is admitted
subject to determination of limi-
tation at the time of final hea-
ring. Issue notice on the respon-
dents by registered post. Written
statement within six weeks.

List for written statement
and further orders on 10.2.97.

Promotion to the post of
Superintending Engineer (Civil)
Division Construction Wing, All
India Radio bypassing the appli-
cant will be subject to the
result of this case. Liberty to
the respondents to apply for
alteration, modification or
cancellation of this order.

Qe
Member

pg
m
6/1

(2)

O.A. No. 301 of 1996

10.2.97

Mr. S.Ali, Sr.C.G.S.C. prays for three weeks time to file written statement. Prayer allowed.

List on 5.3.1997 for written statement and further orders.

4.3.97

CO/Statement has not been filed by the applicant.

Member

Vice-Chairman

trd

5.3.97

Mr S.Ali, learned Sr.C.G.S.C prays for further extension of time to file written statement. According to Mr Ali written statement is ready.

List on 17.3.1997 for filing written statement and further orders.

Member

Vice-Chairman

17.3.97

Mr S. Ali, learned Sr. C.G.S.C., submits that written statement has not yet been filed. He prays for one week time. As a last chance we allow one week time to file written statement.

List it on 25.3.97.

Member

Vice-Chairman

31.3.97

1) Written statement has not been filed.

2) NO appearance filed.

3) NO A/D cards has been received by the

nkm

Registry from the respondents
NOT 1 to 5.

25-3-97

Learned counsel Mr.S.Sarma for the applicant is present. Let this matter come up for orders on 1-4-97.

Vice-Chairman


lm
25/3


Mr
26/3

1.4.97

Further one week time allowed for filing of written statement as a last chance.

List on 9.4.1997 for written statement and further orders.


Member


Vice-Chairman

pg


K
2/116-4-97

9.4.97

Written statement has been filed Mr B.K.Sharma, learned counsel for the applicant prays for 10 days time to file rejoinder. Time allowed.

List on 28.4.1997 for hearing.


Member


Vice-Chairman

pg

K
11/125-4-97.

28.4.97

On the prayer of Mr S.Sarma, learned counsel for the applicant the case is adjourned to 29.4.97.


Member


Vice-Chairman

pg

29-4-97

On the prayer of Mr.S.Sarma on behalf of learned counsel Mr.B.K.Sharma appearing for the applicant case is adjourned to 1-5-97 for hearing.


Member


Vice-Chairman

lm

K
30/4

- 1) Service reports are still awaited.
2) No appearance by him h'd
3) w/ statement - he not in h'd

FD
8/4

1) Written statement filed on behalf of The Respondent No. 1, 2 & 3.

2) Vakalatnama filed by Mr. S. Ali, Sr. C.G.S.C.

K
16/4

1) Acknowledgement card has been received from the respondent NO. 1, 2 & 3.

2) No rejoinder filed.

K
25/4/97

(4)

O.A. 301/96

W/S. has been filed
15

1.5.97 On the prayer of Mr B.K.Sharma,
learned counsel for the applicant the
case is adjourned till 13.5.1997.


Member


Vice-Chairman

pg
K
2/5

W/S. has been filed
17

13.5.97 On the prayer Mr S. Sarma, learned
counsel for the applicant this case is
adjourned to 9.7.97 for hearing.


Member


Vice-Chairman

nkm
K
14/5

W/S. has been filed
13/8

9.7.97 It has been informed that Mr. S.Ali,
learned Sr. C.G.S.C. has suddenly left for Tinsukia
as his mother-in-law is ill. A mention has been made
on behalf of Mr. S.Ali. Mr. B.K.Sharma, learned
counsel appearing on behalf of the applicant has no
objection. Accordingly we adjourn the case till
14.8.97.

List on 14.8.97 for hearing.


Member


Vice-Chairman

trial
K
23/7

W/S. has been filed
14

14-8-97 Division Bench is not sitting.
Let this case be listed for hearing on
6-11-97.


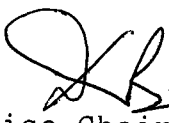

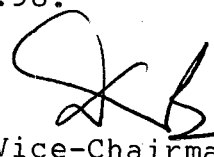



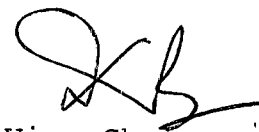
BY ORDER

6.11.97

Adjourned to 27-1-98.
By order

W/S. has been filed
11

Notes of the Registry	Date	Order of the Tribunal
<p>The case is ready for hearing as regard W/S.</p> <p>24/12.3</p> <p>W/S has been filed on R. Nos 1-3. The R. Nos 4 & 5 has not been filed.</p> <p>29/4</p> <p>W/S has been filed on R. Nos 1-3. The R. Nos 4 & 5 has not been filed.</p> <p>6/5</p> <p>The case is ready for hearing as regard Service & W/S.</p> <p>24/5</p> <p>W/S has been filed on R. Nos 1-3. The other Respondents has not been filed.</p> <p>8/6</p> <p>Pl. Comply Order dtd 3.7.98.</p> <p>W/S has been filed.</p> <p>24.7</p>	<p>27-1-98</p> <p>lm</p> <p>24/3/2</p> <p>30.4.98</p> <p>8.5.98</p> <p>19.5.98</p> <p>16.6.98</p> <p>29.6.98</p> <p>3.7.98</p> <p>nkm</p> <p>6/7</p> <p>9.7.98</p>	<p>Case is ready for hearing. List on 30-4-98 for hearing.</p> <p>Member</p> <p>Vice-Chairman</p> <p>Adjourn to 8.5.98.</p> <p>Adjourn to 19.5.98.</p> <p>Adjourn to 8.6.98.</p> <p>Adjourned to 29.6.98</p> <p>Adjourn to 3.7.98.</p> <p>On the prayer of Mr S. Ali learned Sr. C.G.S.C., the case adjourned till 9.7.98. Mr Ali shall inform the officer to be present court on that day.</p> <p>Member</p> <p>Vice-Chair</p> <p>On the prayer of Mr S. Sa learned counsel for the applicant case is adjourned till 27.7.98. records must be produced on that day</p> <p>Member</p> <p>Vice-Chair</p>

Notes of the Registry	Date	Order of the Tribunal
<p>w/s has been L.W. on R.Nos. 1-3.</p> <p>5/8 12/8</p> <p>w/s has been G.W. on R.Nos. 1-3.</p> <p>5/8 19/8</p> <p>26.10.98</p> <p>Copies of the Judgment have been issued to the parties through Regd H/A vide D.No. 3107 to 3117 dt. 26.10.98.</p>	<p>27.7.98 23</p> <p>nkm</p> <p>13.8.98 24</p> <p>nkm</p> <p>20.8.98</p> <p>nkm</p> <p>15.9.98</p> <p>trd</p>	<p>On the prayer of Mr S. Sarma, learned counsel for the applicant, let this case be listed on 13.8.98.</p> <p> Member</p> <p> Vice-Chairman</p> <p>On the prayer of Mr B.K. Sharma, learned counsel for the applicant, this case is adjourned till 20.8.98.</p> <p> Member</p> <p> Vice-Chairman</p> <p>Heard Mr B.K. Sharma, learned counsel for the applicant and Mr S. Ali, learned Sr. C.G.S.C. Hearing concluded. Judgment reserved.</p> <p> Member</p> <p> Vice-Chairman</p> <p>Judgement delivered in the open court, kept in separate sheets. The application is allowed in terms of the order. No order as to costs.</p> <p> Member</p> <p> Vice-Chairman</p>

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH ::: GUWAHATI-5.

O.A.No. 301 of 1996.

DATE OF DECISION.....15-9-1998.

!! Shri A.P. Divakaran (PETITIONER(S))

S/Shri B.K.Sharma, S.Sarma. ADVOCATE FOR THE
PETITIONER(S)

VERSUS

Union of India & Ors. RESPONDENT(S)

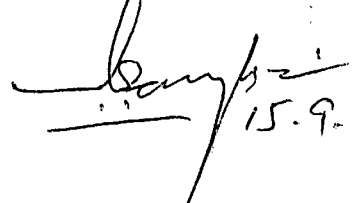
Sri S.Ali, Sr.C.G.S.C ADVOCATE FOR THE
RESPONDENTS.

THE HON'BLE JUSTICE SHRI D.N.BARUAH, VICE CHAIRMAN.

THE HON'BLE SHRI G.L.SANGLYINE, ADMINISTRATIVE MEMBER.

1. Whether Reporters of local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether the Judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble Administrative Member.


15.9.98

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 301 of 1996.

Date of Order : This the 15th Day of September, 1998.

Justice Shri D.N.Baruah, Vice-Chairman.

Shri G.L.Sanglyine, Administrative Member.

Shri A.P. Divakaran
presently working as Surveyor of Works(C),
Civil Construction Wing,
All India Radio, Guwahati. . . . Applicant.

By Advocate S/Shri B.K.Sharma, S.Sarma.

- Versus -

1. Union of India
through the Secretary to the
Government of India,
Ministry of Information & Broadcasting,
New Delhi.
2. Director General,
All India Radio,
Civil Construction Wing,
Parliament Street, New Delhi.
3. Secretary to the Govt. of India,
Department of Personnel & Training,
North Block, New Delhi.
4. Union Public Service Commission,
represented by the Chairman,
Dholpur House, Shahjahan Road,
New Delhi-11.
5. Sri K.Velukutty,
Executive Engineer(C),
Office of the Executive Engineer,
Civil Construction Wing,
AIR and TV, Trivandrum-14. . . . Respondents.

By Advocate Sri S.Ali, Sr.C.G.S.C.

O R D E R

G.L.SANGLYINE, ADMINISTRATIVE MEMBER,

The main objective of the applicant in submitting this Original Application is to get the promotion to the post of Superintending Engineer(Civil) in the Civil Construction Wing of All India Radio. The reliefs sought for by him in this application are :

- (i) The respondents be directed to regularise the ad hoc services of the applicant from

contd..

27.4.1989 to 20.6.1995 and/or to ante-date the promotion of the applicant granted to him on 20.6.1995 to the rank of Executive Engineer (Civil) making the same effective atleast from 27.4.1989 if not from 1988.

- (ii) To direct the respondents to consider the case of promotion of the applicant to the next higher grade i.e. Superintending Engineer (Civil) and not to fill up the post on deputation basis.

2. The applicant had completed eight years of regular service as Assistant Engineer(Civil) in August 1988. Therefore, according to the Recruitment Rules he was eligible for promotion to the post of Executive Engineer/Surveyor of Works on completion of eight years service as Assistant Engineer. No regular promotion was however given by the respondents. On 25.4.1989 the applicant was promoted on ad hoc basis to the grade of Executive Engineer for one year or till the post was filled up on regular basis, whichever is earlier. He continued in the post of Executive Engineer upto 31.7.1991 after which he was ordered to be reverted. He had challenged the reversion order before the Central Administrative Tribunal, Chandigarh Bench and by the interim order of the Bench he had continued as Executive Engineer on ad hoc basis till 23.2.1994 on which date the reversion order was quashed. Thereafter by the order of the Bench he had continued as ad hoc Executive Engineer till the regular promotion dated 20.6.1995. The result is that from 27.4.1989 he had continued as Executive Engineer on ad hoc basis without any break and earned ^{annual} increments in the grade of Executive Engineer till he was regularly appointed by promotion as Executive Engineer by order dated 20.6.1995.

3. Alongwith other officers the applicant was promoted from the grade of Assistant Engineer(Civil)/Assistant Surveyor of Works(Civil) to the grade of Executive Engineer(Civil)/

3

Surveyor of Works(Civil) in the Civil Construction Wing of All India Radio vide order No.26/95-B(D) dated 20.6.1995 in File No.302/1/93-B(D). According to the applicant vacancies in the grade of Executive Engineer were available since the time he was promoted to the post on ad hoc basis. He assails the failure of the respondents to hold the Departmental Promotion Committee (DPC for short) annually and the delay in holding the DPC from 1988 to 1995. This delay, according to him, has adversely affected his service prospect. Had the DPC been held in time he would have in the meantime become eligible for further promotion to the post of Superintending Engineer as he would have earned the qualifying service of five years as Executive Engineer which is relevant for consideration for promotion as Superintending Engineer. The above regular promotion order dated 20.6.1995 directed that promotion shall take effect from the date of assuming charge of the post by the promoted officer. The applicant is of the view that in the facts and circumstances of his case the promotion should have taken retrospective effect atleast, from 27.4.1989. It is his contention in this application that the period of his ad hoc service as Executive Engineer from 27.4.1989 onwards should be counted for seniority as his promotion was against available vacancy and was not de hors the rules as the ad hoc promotion was given him after passing suitability and selection. The respondents have neither denied that the applicant was due for promotion to Executive Engineer in 1988 nor that clear vacancies in the cadre of Executive Engineer were available for promotion at the relevant time. They have only pleaded that the DPC for regular promotion could not be held before 1995 due to pendency of Court cases. They have not also denied that the applicant was continuously working on ad hoc basis as Executive Engineer during the period from 27.4.1989 to 20.6.1995. Their contention however, is that the ad hoc

12

4

service rendered by the applicant cannot be counted for the purpose of qualifying service as per seniority rules so as to make the applicant eligible for promotion to the post of Superintending Engineer. The issue for consideration in this application therefore is whether this period of ad hoc service from 27.4.1989 to 20.6.1995 should count as qualifying service for determining the eligibility of the applicant for promotion to the post of Superintending Engineer. As already mentioned earlier the applicant alongwith other officers were promoted by the order dated 20.6.1995. The applicant occupies position No.2 in the aforesaid order and position No.3 in the seniority list of Executive Engineer(Civil), Civil Construction Wing, All India Radio as on 1.3.1988. Shri K.Velukutty occupied position No.1 and 2 respectively and was similarly placed with the applicant as ad hoc Executive Engineer. Shri Velukutty had submitted O.A.No.829/96 before the Ernakulam Bench of the Central Administrative Tribunal. The question which the Tribunal was called upon to decide in the case of Velukutty was whether the ad hoc service of the applicant can be counted as qualifying service, i.e. regular service for the purpose of promotion to the post of Superintending Engineer from the post of Executive Engineer. After discussing the facts of the case and relied on the decision of the Hon'ble Supreme Court in Direct Recruit Class II Engineering Officers' Association vs. State of Maharashtra and others, reported in (1990) 2 SCC 715, to the following effect :

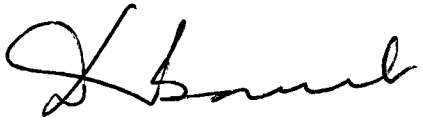
"If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted."


the Bench had held that the contention of the respondents that the service of the applicant on ad hoc basis as Executive

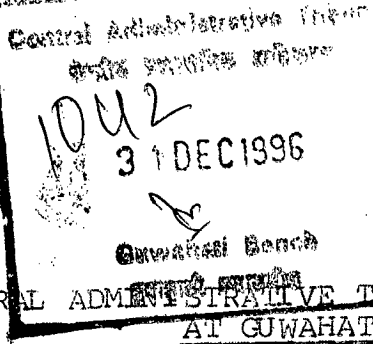
13

Engineer from 27.4.1989 cannot be counted as qualifying service cannot be accepted and that the period is to be counted as qualifying service for the purpose of considering the applicant for promotion to the post of Superintending Engineer. Pursuant to the direction of the Ernakulam Bench of the Tribunal in their order dated 18.11.1997 to consider Shri Velukutty for promotion to the post of Superintending Engineer, the respondents had implemented the order and had promoted Shri Velukutty to the post of Superintending on 8.7.1998. The facts and circumstances of the applicants are same with the case of Shri Velukutty above. Therefore, the case of the applicant is covered by the judgment in that case of Velukutty. We respectfully agree with the findings of the Ernakulam Bench of the Central Administrative Tribunal as mentioned above and hold that in the facts and circumstances of the applicant as stated earlier the period of his ad hoc promotion as Executive Engineer is to be counted for the purpose of determining qualifying service for promotion to the post of Superintending Engineer. Accordingly we direct the respondents to consider promotion of the applicant to the post of Superintending Engineer in the same manner as had been done by them in the case of Shri K. Velukutty. A final order shall be communicated by them to the applicant within 60 days from the date of receipt of this order.

The application is allowed in terms of the order. No order as to costs.


(D.N.BARUAH)
VICE CHAIRMAN


(G.L.SANGLAYNE)
ADMINISTRATIVE MEMBER



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:: GUWAHATI BENCH
AT GUWAHATI

(An application under Section 19 of the Administrative
Tribunals Act, 1985)

Title of the case : O.A. No. 301 of 1996

A.P. Divakaran ... Applicant

- Versus -

Union of India & Others ... Respondents

I N D E X

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Copy furnished to
Mr. S. Ali
Sr. C.S.C.
Disposal Room

For use in Tribunal's Office :

Date of filing : 31/12-96
Registration No. : 301/96

REGISTRAR

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: GUWAHATI BENCH
GUWAHATI

O.A. No. 301 of 1996

BETWEEN

A.P. Divakaran
son of Sh. A.P. Namboodiri
presently working as
Surveyor of Works (C),
Civil Construction Wing,
All India Radio, Guwahati.

... Applicant

AND

1. Union of India, through
the Secretary to Government of India,
Ministry of Information & Broadcasting,
New Delhi.
2. Director General,
All India Radio,
Civil Construction Wing,
Parliament Street, New Delhi
3. Secretary to the Govt. of India,
Department of Personnel & Training,
North Block, New Delhi.
4. Union Public Service Commission,
represented by the Chairman,
Dholpur House,
Shah Jahan Road, New Delhi-110 011.
5. Sri. K. Vellukatty Executive Engineer (e) *Am 30/12*
Office of the Executive Engineer (e)
Civil Construction Wing ... Respondents
AIR and TV. TRIVANDRUM - 14.

DETAILS OF APPLICATION

1. PARTICULARS OF THE ORDER AGAINST WHICH THE APPLICATION IS MADE :

The instant application is directed in respect
of order No. 26/95-B(D) dated 20.6.95 issued by the Govt.
of India, Ministry of Information and Broadcasting, promoting
the applicant and others from the rank of Assistant Engineer

(Civi)/Assistant Surveyor of Works (Civil) to the grade of Executive Engineer (Civil)/Surveyor of Works (Civil) so far as the same does not give retrospective promotion to the applicant.

2. JURISDICTION OF THE TRIBUNAL :

The applicant declares that the subject matter of the instant application is well within the jurisdiction of this Hon'ble Tribunal.

3. LIMITATION :

The applicant further declares that the instant application has been filed within the limitation period prescribed under Section 21 of the Administrative Tribunals Act, 1985.

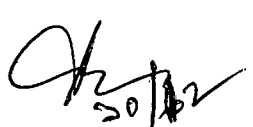
4. FACTS OF THE CASE :

4.1 That the applicant is a citizen of India and as such, he is entitled to all the rights, protections and privileges guaranteed by the Constitution of India.

4.2 That presently the applicant is posted at Civil Construction Wing of All India Radio, Guwahati and ~~xxxx~~ is holding the post of Surveyor of Works(Civil)*

4.3 That the applicant was eligible for promotion as Executive Engineer (Civil) in August 1988 on completion of 8 years of service as Asstt. Engineer (Civil) as per the

Contd....P/3.


20/12

Recruitment Rules. However, the respondents did not take any action towards such promotion of the applicant without any valid reason. Numerous representations were filed by applicant ~~by the~~ and no action was taken by the respondent on these representations. However, eventually by an order No. 12/89-B(D) dated 25.4.89, the applicant was promoted as Executive Engineer (Civil) on adhoc basis in the grade of scale Rs. 3,000 - 4500/-. The said order of promotion was stated to be for a period of one year or till the posts are filled up on regular basis whichever is earlier.

A copy of the said order of promotion dated 25.4.89, is annexed hereto as ANNEXURE-1.

4.4 That the said adhoc promotion of the applicant was further continued upto 31.7.91 by an order No. 27/91-B(D) dated 9.5.91.

A copy of the said order dated 9.5.91 is annexed hereto as ANNEXURE-2.

4.5 That by an order No. 42/91-B(D) dated 1.8.91, the applicant was sought to be reverted to the grade of Asstt. Engineer (Civil). Being aggrieved by such order of reversion, the applicant filed an application under Section 19 of the Administrative Tribunals Act, 1985 in the Central Administrative Tribunal, Chandigarh Bench. The said application was registered and numbered as O.A. No. 1209/91. While admitting the case, the Hon'ble Tribunal was pleased to pass an interim order dated 13.9.91 restraining the respondents therein from implementing the order of reversion

dated 1.8.91. Eventually the said ~~order~~ of ~~xxx~~ interim order was continued till disposal of the case.

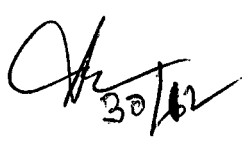
✓ A copy of the order of reversion dated 1.8.91 is annexed hereto as ANNEXURE-3.

Further a copy of the representation dated 17.9.91 forwarding therewith the Tribunal's notice and order is annexed herewith as ANNEXURE-4.

4.6 That the aforesaid case was finally heard and decided on 23.2.94 by setting aside and quashing the order of reversion. By the said judgment, it was directed while allowing the O.A. that the applicant be allowed to continue to work in the post of Executive Engineer (Civil) on adhoc basis so long as the post is available and either a person junior to the applicant is allowed to continue on adhoc basis at the post of Executive Engineer (Civil) or the post is regularly filled up in accordance with the relevant rules whichever is earlier. The applicant on receipt of the copy of the judgment of the Hon'ble Tribunal ~~xxxx~~ informed the same to the respondents vide application dated 4.4.94.

A copy of the said representation dated 4.4.94 enclosing therewith the copy of the judgment of the Hon'ble Tribunal dated 23.2.94 is ~~xxxxxxxx~~ ~~is~~ annexed as ANNEXURE-5.

Contd....P/5.


30/12

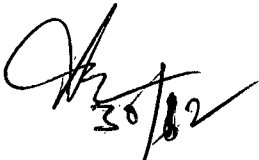
4.7 That the applicant states that in view of the aforesaid position, he continued to hold the post of Executive Engineer (Civil). Ever since his promotion effected vide Annexure-1 order dated 25.4.89. During this period he has also earned his increment and other service benefits without any break and all along continued of his promotion has been maintained.

4.8 That thereafter the applicant was promoted on regular basis by office order No. 26/95-B(D) dated 20.6.95 from the grade of Asstt. Engineer (C)/Asstt. Surveyor of Works to the grade of Executive Engineer (C)/Surveyor of Works (C). In the said order of promotion the name of the applicant appears at Sl. No. 2. and that of respondent no 5 at Sl. No. 1. Both of them including the incumbent at Sl. No 3 have been promoted against three available vacancies of 1988.

A copy of the said order dated 20.6.95 is annexed hereto as ANNEXURE-6.

4.9 That the applicant states that although he has been promoted to the rank of Executive Engineer (C)/Surveyor of Works (C) by the aforesaid order dated 20.6.95, such promotion has not been granted to him with retrospective effect. As already stated above, he was due for such promotion way back in 1988 and vacancies were also available for such promotion. There was no impediment against such promotion of the applicant and it was due to the apathy on the part of the respondents, the regular selection was not held for promotion of the applicant. As per the relevant rules holding the field, the selection for such promotion is required to be held every year. However, instead of

Contd.....P/6.


30/8/2

resorting to such regular promotion and selection, the respondents continued the application and others on adhoc basis since 1989 till the regular promotion was given on 20.6.95, seriously affecting the service career and seniority of the applicant. The respondents cannot absolve themselves from the responsibility of preparing year-wise panel. Under this fact, the annexure-6 is required to be ante-dated, i.e. to the date on which the applicant became eligible for such promotion in the year 1988. There was no earthly reason as to why the case of the applicant could not be considered in the year 1988 inasmuch as vacancies were available and there was no impediment against holding of the regular selection. By resorting to such delayed promotion, the applicant cannot be made to suffer. Furthermore, since his service was continued by the Hon'ble Tribunal initially by way of an interim order and then by the final judgment referred to above, his entire period of service in the promotion post of Executive Engineer(C)/Surveyor of Works(C) from the initial date of appointment i.e. 25.4.89 to 20.6.95 is required to be counted towards seniority.

4.10 That the applicant has made representation urging for counting of his adhoc service towards seniority and/or regularisation of the said adhoc continuous services so that the same can be counted for towards his regular promotion to the rank of Executive Engineer/Surveyor of Works. Such representation was made on 19.7.95 duly forwarded. Thereafter having not received any intimation, the applicant submitted yet another representation on 10.7.96 and the same was duly

Contd.....P/7.


30/12


forwarded.

A copy of the aforesaid representation dated 19.7.95 is annexed as ANNEXURE-7A and a copy of the representation dated 10.7.96 as forwarded by the competent authority is annexed as ANNEXURE-7B.

4.11 That the applicant states that in the meantime his further promotion to the rank of Superintending Engineer has become due. But the respondents have contemplated to fill up the post of Superintending Engineer on deputation basis. Presently three posts of Superintending Engineer (Civil) are vacant in the Civil Construction Wing and the applicant is eligible to be promoted to one such post. It will be pertinent to mention here that one Shri K. Valukutty, the promotee No.1 in the order of promotion dated 20.6.95 (Annexure-6) has already approached the Central Administrative Tribunal, Ernakulam Bench by filing an Original Application No. 829/96 making a similar grievance like that of the applicant and the Hon'ble Tribunal has been pleased to pass an interim order staying filling up of one post of Superintending Engineer (C) by deputation. The said interim order dated 23.7.96 passed by the Ernakulam Bench of the C.A.T. forwarded by the applicant therein vide his letter dated 24.7.96 is annexed hereto as ANNEXURE-8.

4.12 That the applicant begs to state that ^{by} an order No.51/96 dated 30.9.96 by which he was transferred and posted as Surveyor of Works (C) at Guwahati, he has been

Contd.....P/8.


30/12

entrusted with the current duty charge of Superintending Engineer (Civil), Civil Construction Wing, All India Radio, Guwahati also. However, the same is ~~withought~~ without any additional monetary benefit.

A copy of the said order dated 30.9.96 is annexed hereto as ANN EXURE-9.

4.13 That the applicant states that ~~xxxxxx xx xxx~~ unless and until the adhoc period of service rendered by him is counted towards seniority his case for promotion to the rank of Superintending Engineer may not be considered by the respondents. On the other hand, he is no way responsible for his prolonged continuation of his adhoc promotion. The respondents under the rules were duty bound to hold the regular selection way back in 1988 in which year, the applicant became eligible for promotion to the rank of Executive Engineer/Surveyor of Works as per the Recruitment Rules. By not holding the regular selection and preparing year-wise panel, the respondents have deprived the applicant from his legitimate promotional benefit and eventually deprivation of his seniority. It is under these circumstances the instant application has been filed for ante-dating his regular promotion to that of 1988 and consideration of his case for promotion to the rank of Superintending Engineer. As per the Recruitment Rules, an Executive Engineer is required to render 5 years of service to become eligible for promotion to the rank of Superintending Engineer. Although the applicant has completed the said requisite length of service, the respondents are trying to deny him the said

Contd.....P/9.


30/12

benefit on the ground that said period of service was on adhoc basis and not accountable towards eligibility for promotion to the rank of Superintending Engineer. On the other hand, the respondents are trying to fill up the post of Superintending Engineer on deputation basis although eligible candidates are available in the department itself.

4.14 That the applicant states that under a similar circumstance when one Shri Munshi Lal of All India Radio, Guwahati was sought to be deprived of his promotion to the rank of Chief Engineer (C)-I by way of filling up the post on deputation basis, had approached the Hon'ble Tribunal by filing O.A. 218/93. The Hon'ble Tribunal while admitting the case was pleased to pass an interim order as has been prayed for in the instant application. Under these circumstances it is a fit case for passing an interim order as has been prayed for by the applicant in the instant case.

4.15 That the applicant states that he ~~xxx~~ is in no way responsible for prolonged continuation of his adhoc promotion and in not holding the regular selection. As already stated above, he became eligible for promotion to the rank of Executive Engineer/Surveyor of Works way back in 1988 and vacancies were also available there being no impediment against such promotion and a duty having having been cast upon the respondents, there was no earthly reason to delay his regular promotion by the respondents. The apathy and non-challant attitude adopted by the respondents have delayed the promotion of the applicant to the rank of

Contd.....P/10.


30/12


Executive Engineer. Under these circumstances, the respondents were duty bound to prepare year-wise panel. Further in view of his regular promotion to the rank of Executive Engineer/Surveyor of Works vide Annexure-6 order dated 20.6.95, his such promotion is required to be ante-dated atleast to 1989 if not to 1988 with all consequential benefits of seniority, eligibility for promotion to the next higher grade etc. *The respondent no 5 has been made panel respondent as he is the only senior person above the applicant in the grade of Executive Engineer Inst.*

4.16 That the applicant states that under the similar circumstances, the department itself has implemented the judgment of the Hon'ble Central Administrative Tribunal, Allahabad Bench delivered in O.A. No. 1317/92 filed by one Shri S.C. Mathur vide O.M. 6/18/94-SI(B) dated 20.5.95. The said principle as has been laid down by the Hon'ble Tribunal having been followed by the department itself, in respect of another case, there is no earthly reason as to why similar benefit should not be extended to the applicant.

A copy of the said office memorandum dated 30.5.95 is annexed as ANNEXURE-10.

4.17 That the applicant states that in view of the aforesaid position and facts as well as of law, involved in the case, if the promotional post of Superintending Engineer is allowed to be filled up by way of deputation, the applicant will suffer irreparable loss and injury and the same may lead to multiplicity of litigation. As explained above, the applicant is fully eligible to be considered for such promotion and accordingly an interim order ~~has~~

Contd.....P/11.


30/6/95

as has been prayed for may please be granted.

4.18 That the applicant states that the respondents due to their apathy did not resort to regular selection when the same became due in the year 1988 ; but for which the applicant would have been considered way back in 1988 for regular promotion. Instead he has been granted adhoc promotion in the year 1989 and the same continued till his regular promotion in the year 1995. Under the circumstances, his seniority is required to be counted with effect from 1989 and/or his promotion given in 1995 is required to be ante-dated. The respondents are duty bound to prepare year-wise panel under the circumstance involved in the case. In any case, the applicant having been found suitable for promotion to the rank of Executive Engineer pursuant to which he has been regularly appointed vide Annexure-6 order dated 20.6.95, his such promotion is required to be ante-dated to such a date as on which he was eligible to be promoted. He cannot be made to suffer because of continued and prolonged adhoc promotion without resorting to regular selection by the respondents as contemplated under the relevant service rules.

5. GROUND FOR RELIEF WITH LEGAL PROVISIONS :

5.1 For that under the facts and circumstances, stated above, the applicant is entitled to count his seniority from 1989 to 1995 during which period he rendered adhoc services in the promotion post of Executive Engineer.

5.2 For that the principle of natural justice demands

Contd.....P/12.


30/12

that the applicant who was eligible for promotion way back in 1988 on regular basis, but was promoted on adhoc basis only in 1989 for no fault of his own and he having fulfilled the duties of Executive Engineer (C) without any break and having drawn his salary, increments and other service benefits as Executive Engineer, his promotion should be regularised with retrospective effect.

5.3 For that the respondents cannot deny the benefit of seniority to the applicant by their own inaction. Accordingly, the promotion of the applicant given in 1995 is required to be ante-dated atleast to that of 1989 when the applicant was given adhoc promotion, *against- Just* available vacancy of 1988.

5.4 For that the adhoc promotion granted to the applicant vide Annexure-1 order dated 25.4.89 having been passed on suitability and selection of the applicant and being not dehorse the rules and the same having been continued till the regular promotion order vide Annexure-6 dated 20.6.95 the said period is required to be counted towards seniority of the applicant and eventually on attaining the eligibility for further promotion, the case of the applicant is required to be considered for promotion to the rank of Superintending Engineer.

5.5 For that the respondents being guilty of their own inaction in not preparing the ~~year-wise~~ panel of the selected candidates at regular intervals as contemplated under the rules is bound to prepare year-wise panel and to give promotion on that basis.

30/62

5.6 For that the applicant having been already promoted on regular basis vide Annexure-6 order dated 20.6.96, his such promotion is required to be ante-dated atleast to the date of 25.4.89 on which date he was given adhoc promotion as against his actual eligibility for promotion in the year 1988, *against an available vacancy.*

5.7 For that the applicant, a departmental candidate being available for further promotion to the rank of Superintending Engineer, the respondents cannot fill up the said post on deputation basis to the deprivation of the departmental candidate. A deputationist also comes to the department as a stop gap arrangement and the applicant having been entrusted with the current duty charge of Superintending Engineer, there is no earthly reason as to why the applicant should not be given promotion to the post of Superintending Engineer.

5.8 For that the applicant having acquired the eligibility for promotion to the rank of Superintending Engineer, there is no earthly reason as to why he should not be given promotion to that rank instead of filling up the post of deputation post.

5.9 For that the applicant having been similarly circumstanced with that of others in respect of which the respondents have implemented the judgment of the Hon'ble Tribunal, there is no earthly reason as to why similar benefit should not be given to the applicant ~~was not~~ towards counting

Contd.....P/14.

[Signature]
30/12

of his service from 1989 to 1995 as regular and accordingly to give him seniority.

5.10 For that the respondents having not considered the representation, submitted by the applicants, same amount to admission of the contentions made by the applicant therein.

5.11 For that in any view of the matter, the impugned inaction/action on the part of the respondents are not sustainable and appropriate reliefs are required to be granted to the applicant. The applicant craves leave of the Hon'ble Tribunal to advance further grounds at the time of hearing of the instant application as may be available to him under the law.

6. DETAILS OF REMEDIES EXHAUSTED :

The applicant declares that he has no other alternative and/or efficacious remedy than to come under the protective hands of this Hon'ble Tribunal.

7. MATTERS NOT PREVIOUSLY FILED OR PENDING BEFORE ANY OTHER COURT :

The applicant further declares that he has not filed any application, writ petition or suit regarding the subject matter of this application before any other authority court or any other Bench of this Hon'ble Tribunal nor any such application, writ petition or suit is pending before any of them.

Contd.....P/15.


30/12

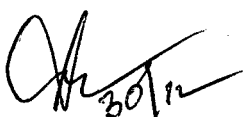
8. RELIEFS SOUGHT FOR :

In view of the facts and circumstances stated above, the applicant most respectfully prays that the instant application be admitted, records be called for and upon hearing the parties on the cause or causes that may be shown and on perusal of records, be pleased to grant the following reliefs :

- (i) The respondents be directed to regularise the adhoc services of the applicant from 27.4.89 to 20.6.95 and/or to ante-date the promotion of the applicant granted to him on 20.6.95 to the rank of Executive Engineer (Civil) making the same effective atleast from 27.4.89 if not from 1988.
- (ii) To direct the respondents to consider the case of promotion of the applicant to the next higher grade i.e. Superintending Engineer (Civil) and not to fill up the post on deputation basis.
- (iii) Cost of the application
- (iv) Any other relief or reliefs to which the applicant may be entitled as may be deemed fit and proper by the Hon'ble Tribunal under the facts and circumstances of the case.

9. INTERIM ORDER PRAYED FOR :

Pending final disposal of the O.A., the applicant prays for an interim order not to make any appointment on deputation basis from other department to the post of



Superintending Engineer (Civil) in the All India Radio (Civil Construction Wing) and to consider the case of the applicant for promotion to the rank of Superintending Engineer, against an available vacancy.

10.

The application is filed through Advocate.

11. PARTICULARS OF THE I.P.O. :

(i) I.P.O. No. : 09 349472
(ii) Date : 4. 12-96
(iii) Payable at : Guwahati.


12. LIST OF ENCLOSURES :

As stated in the Index.

V E R I F I C A T I O N

I, A.P. Divakaran, aged about 40 years, son of Late Sh. A.P. Namboodiri, Ex presently working as Executive Engineer (Civil), Civil Construction Wing, All India Radio, Guwahati, do hereby solemnly affirm and verify that the statements made in the accompanying application in paragraph 1 to 4 and 6 to 12 are true to my knowledge ; those made in paragraph 5 are true to my legal advice and I have not suppressed any material facts.

And I sign this verification on this the 30th day of ~~January~~^{Dec} 1996 at Guwahati.


30/12/96

No. 12030/3/86-CWI/B(D)/536
 Government of India
 Ministry of Information & Broadcasting

New Delhi, the 25th April, 1989.

ORDER No. 12/89-B(D)

The President is pleased to appoint the

following Assistant Engineer(Civil) of Civil Construction Wing of All India Radio to officiate on ad hoc basis, in the grade of Executive Engineer(Civil) (Rs. 3000-4500), for a period of one year or till the posts are filled on regular basis, whichever is earlier, and to post them as indicated against each, with immediate effect:-

S.No.	Name	Place of posting
1.	Shri K.P. Sankaran	Executive Engineer(Civil)-I Civil Construction Wing, Madras.
2.	Shri S.R. Mandal	Executive Engineer(Civil) Civil Construction Wing, Calcutta.
3.	Shri D.P. Mandal	Executive Engineer(Civil) Civil Construction Wing, Silchar vice Shri S.K. Deb, being repatriated on 30.4.89.
4.	Shri A.K. Khan	Executive Engineer(Civil), Civil Construction Wing, Jabalpur.
5.	Shri A.P. Sivakaran	Executive Engineer(Civil) Civil Construction Wing, Srinagar.
6.	Shri A.C. Chakraborty	Executive Engineer(Civil) Civil Construction Wing, Itanagar.
7.	Shri A.P. Mandal	Executive Engineer(Civil) Civil Construction Wing, Imphal
8.	Shri A.P. Mandal	Executive Engineer(Civil) Civil Construction Wing, Siliguri.

...P/2

Attested

Mala
 30/12

-2-

9. Shri K. Velukutty

Surveyor of Works (Civil)
Civil Construction Wing,
Madras.

2. This appointment will not bestow any claim for regular promotion and the ad-hoc service so rendered shall not count for purposes of seniority.

Sd/-

(V. K. ARORA)
Under Secretary to the Government of India
Tele: 284274

/ True Copy /

Advocate

Attached
S. Malla
30/12

No. 1203/3/86-CW.1/1(1)
Government of India
Ministry of Information and Broadcasting

New Delhi, dated 9th May, 1991

ORDER NO. 27/91-B(1)

In continuation of this Ministry's letter of even number dated 2.12.90, the President is pleased to extend the period of adhoc promotion of the following Assistant Engineers (Civil) of the Civil Construction Wing of All India Radio, to officiate in the grade of Executive Engineer (Civil) (Rs. 3000-4500) upto 31st July, 1991 or till the posts are filled on regular basis, whichever is earlier:-

- | No. | Name |
|-----|------------------------|
| 1. | Shri A. S. Chakrabarti |
| 2. | Shri K. S. Chakrabarti |
| 3. | Shri S. S. Khosla |
| 4. | Shri A. S. Liwakaran |
| 5. | Shri A. S. Chakraborty |
| 6. | Shri R. C. Das |
| 7. | Shri K. S. Mandal |
| 8. | Shri K. Velukutty |

2. This appointment will not bestow any claim for regular promotion and adhoc service so rendered shall not count for purpose of seniority.

(Sd/-) (P. M. Raju)
Under Secretary to the Government of India
Tele: 334896

- Copy to:-
1. Pay & Accounts Officer (P.A.O.), Ministry of I&B, AGCR Building, New Delhi.
 2. The Secretary, UPSC, New Delhi. The appointments are being made under regulation 4(1) of the UPSC (REC) Regulation, 1958.
 3. The Director, New Delhi.
 4. The Director, P. & A. Bldg, New Delhi.
 5. The Director, P. & A. Bldg, New Delhi.
 6. The Director, P. & A. Bldg, New Delhi.

(Sd/-) (P. M. Raju)
Under Secretary to the Govt. of India.

True Copy /

Enclosure

Attested
M. Mala
Adv. No. 20/12

No.A-12030/3/86-CW.I/B(D)
Government of India
Ministry of Information & Broadcasting

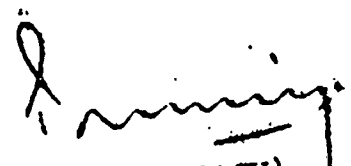
New Delhi, the 1st August, 1991.

ORDER NO.42/91-B(D)

Reference this Ministry's letter of even number dated 9.5.91 extending the period of adhoc promotion upto 31.7.91 in respect of eight Assistant Engineers in the grade of Executive Engineer(Civil).

2. The following officers stand reverted to the grade of Assistant Engineer(Civil) with effect from 1.8.91(Forenoon):-

1. Shri K.P.Sankaran
2. Shri S.R.Mandal
3. Shri A.P.Diwakaran
4. Shri A.K.Chakraborty
5. Shri A.K.Khan
6. Shri R.C.Das
7. Shri K.P.Mandal
8. Shri K.Velukutty



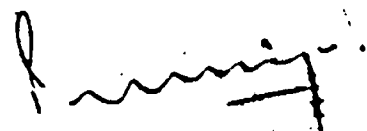
(P. M. RAJU)

UNDER SECRETARY TO THE GOVERNMENT OF INDIA
TEL. 38 4896

Recd on
6/9/91

Copy to:-

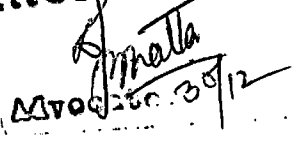
1. The Pay & Accounts Officer, IRLA Group, Ministry of I&B, AGCR Building, New Delhi.
2. The Secretary, UPSC, Dholpur House, New Delhi.
3. Engineer-in-Chief, DG:AIR, New Delhi.
4. Chief Engineer(C), CCW, AIR, PTI Building, New Delhi.
5. Officers concerned through CCW, AIR, New Delhi.
6. Vigilance Section, Ministry of I&B/DG:AIR, New Delhi.
7. Order folder.
8. Spare copies(10).



(P. M. RAJU)

UNDER SECRETARY TO THE GOVERNMENT OF INDIA

Attested.


M. M. Malla
30/12

GOVERNMENT OF INDIA
OFFICE OF THE EXECUTIVE ENGINEER (CIVIL)
CIVIL CONSTRUCTION WING: ALL INDIA RADIO
SRINAGAR.

21 - ANN 103-4

Cap. Jammal

35

No. PA-26/SND/CW/AIR/132

September 16, 1991.

17/9/91

The Secretary
Ministry of Information & Broadcasting
Shashtri Bhawan
NEW DELHI.

Subject : Interim stay granted by the Central
Administrative Tribunal, Chandigarh
Bench, Chandigarh.

Sir,

The Central Administrative Tribunal Chandigarh vide their order No. OA 1209/JK/91/3177 dated 13th September, 1991 has granted interim relief to the undersigned against reversion order issued vide your order No. A-12030/3/86-CB-1/B(D) (Annexure- A-1) dated 1st August, 1991. A copy of the CAT's order is enclosed for information and necessary action please.

Yours faithfully

(A. P. DIVAKARAN)
EXECUTIVE ENGINEER (CIVIL)

Encl: As above/

Copy to : The Chief Engineer (C), Civil Construction Wing, All India Radio, PTI Building, ~~RESECTOR~~ New Delhi for information. A copy of the order is enclosed herewith.

Shri A. K. Vohra, Superintending Engineer, CCW Circle-II, AIR, New Delhi for information. A copy of the order is enclosed herewith.

Pay & Accounts Officer, IRLA Group, Ministry of I & B, New Delhi. Copy of order is enclosed.

(A. P. Divakaran).

Attested
Amalika
Attache 30/12

NOTICE AFTER ADMISSION
WITH INTERIM RELIEF

CA 1209/JK/91/3177

Dated

13/9/91

Despatch to CAT.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, CHANDIGARH BENCH, CHANDIGARH
S.C.O. No. 102-103, SECTOR 34-A, CHANDIGARH-22.

Issued on the 13th day of September,

Registration No. CA 1209/JK/91.

Shri A.P. Diwakaran. Applicant(s)

Versus

Union of India

Respondent(s)

To

1.

Union of India through the Secretary to Government of India,
Ministry of Information and Broadcasting,
New Delhi.

2.

Director General, All India Radio, Civil Construction, 1st
Parliament Street, New Delhi.

Whereas Shri A.P. Diwakaran applicant, has filed
application under Section 19 of the Administrative Tribunal Act, 1987
to this Tribunal.

Whereas the Tribunal is of opinion that a reply of the
application is called for:

1. That you, respondent No. _____ to file three complete
sets of duly verified reply to the application alongwith documents
in a paper-book within 6 weeks.

2. That you should simultaneously endorse copy of the reply
alongwith documents as mentioned at Sr.No.(1) above to the applicant

3. You are also directed to produce the record(s) noted be-
low for the perusal of the Hon'ble Bench of the Tribunal on the date
fixed for hearing. (i) _____ (ii) _____ (iii) _____

The above application has been fixed for hearing on
14.11.1991 at 10.00 A.M., should you wish to argue anything
against the issue of Interim orders, you are at liberty to do so on
23.9.1991 or any other date is to which the case may be ad-
journd either in person or through an Advocate appointed by you
for this purpose. Also take notice that in default of your appearance
on the date fixed, the case will be heard ex-parte.

A copy of order dated 13.9.1991 passed by the Central
Administrative Tribunal, Chandigarh Bench, Chandigarh is forwarded
herewith for immediate compliance/information/necessary action.

Witness the Hon'ble Vice Chairman/Hon'ble Members, Cent-
ral Administrative Tribunal, Chandigarh Bench, Chandigarh this the 13th
day of September, 1991.

Encls: 1. Copy of Petition with Annexures.
2. Attested Copy of order
dated 13.9.1991.

Purn Saini
SECTION OFFICER
(JUDL-I)

Attested Shri A.P. Diwakaran, applicant.

Advocate 30/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

CHANDIGARH BENCH
CHANDIGARH

23-

O.A./T.A. No. 1208/Tx/1991

ANNEXURE- 4

(Contd)

3X

P. P. Divakaran Applicant (s)

Versus

Union of India Respondent (s)

Orders

Date

13-9-91

Present: Mr. R. K. Sharma, counsel for the applicant

Heard.

Admit.

2. Issue notice to the respondents for filing reply within 6 weeks; rejoinder, if any, within 2 weeks thereafter List before the Registrar on 14-11-91.

4. Issue dasti notice for interim relief to the respondents returnable on 23-9-91 at Jammu. Meanwhile, ad-interim order, restraining the respondents from implementing the impugned order dated 1-8-91 (Annexure 4) qua the applicant, if the same has not already been implemented, till 23-9-91, is issued.

(B. S. Sekhon) VC.

M. M. Mathur) AM.

CERTIFIED TO BE TRUE COPY

P. P. Divakaran
Counsel for the Applicant
Central Administrative Tribunal,
Chandigarh Bench, Chandigarh

Attested.

M. M. Mathur
Attorney

30/12

- 24 -

ANNEXURE-5

Bharat Sarkar
Karayalaya Mukhya Abhiyanta (Civil)-II
Lok Nirman Sakarsh: Nasilvani

7th floor, Soodhna Bhawan,
C.G.O. Complex, Lodhi Road,
New Delhi-110 003.

NO: SSW-III/SW(M)/Staff/94-95/40-42 Dated the, 04-4-94

To

The Secretary,
Ministry of Information & Broadcasting,
Shastri Bhawan,
New Delhi-2

Subject: The Central Administrative Tribunal, Chandigarh Order.

...

Sir,

This is in continuation to the intorium stay granted by C.A.T., Chandigarh vide their order dt.13-9-91 and intimated by no vide Ir.No.PA/26/SND/CA/AIR/132, dt.17-9-91. The Chandigarh Bench of C.A.T. has quashed the reversion order No: A-12030/3/86/CA-I/B(D), dt.1-0-91 and allowed me to continue MM to work on the post of Executive Engineer(C) on Adhoc basis so long as a post is available and either a person junior to me is allowed to continue on Adhoc basis on the post of EE(C) or the post is regularly filled up in accordance with the relevant recruitment rules whichever is earlier. One copy of the final order No. PA/1201/UK/91 dt.23-2-94 issued by the Registrar C.A.T., Chandigarh vide their despatch No. 2754, dt.24-3-94 is enclosed for information and necessary action.

Yours faithfully,

(A.P. Sivakaran)
Surveyor of Works-III(C)
Telo No: 4364496

Encl: As above.

Copy to:-

1. The Director General, Civil Construction Wing, All India Radio, P.T.I. Building, 2nd floor, New Delhi, for information and necessary action. Necessary orders may please be issued to all concerned including P.A.O., IKA Group, Ministry of I & B, New Delhi. One copy is enclosed for necessary action.
2. The Superintending Surveyor of Works-III(C), COW, AIR, New Delhi for information.

*17KN

Surveyor of Works-III(C)

Attested

30/4

Document No.

2754

-25-

Dated

26.01.84

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, CHANDIGARH BENCH,
CHANDIGARH, S.C. U.N.O. 102-103, SECTOR 34-A, CHANDIGARH.

39

ANNEXURE- 5

From

The Registrar,
Central Administrative Tribunal,
Chandigarh Bench, CHANDIGARH.

To

Ms R. K. Sharma A1/

371 20A 102.

ORIGINAL/TRANSFER APPLICATION NO.

209/51/81

A.P. Divakar

APPLICANT(S)

VERSUS

Govt

RESPONDENT(S)

Sir

I am directed to forward herewith a copy of Judgement/Order
dated 23/12/81 passed by a Bench of this Hon'ble Tribunal,
comprising of Hon'ble Mr. P.C. Jain, Vice Chairman & Hon'ble Mr. A.V.
Haridasan, J.M. in the above noted case for information/compliance
and necessary action, if any.

Encl: As above.



Yours faithfully,

For Registrar.

Attested.

Malla
30/12

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CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH
CIRCUIT AT JAMMU

OA 1209/JK/91

Date of order 23-2-94

A.P.Divakaran

....

Applicant

versus

1. Union of India through Secretary,
to Govt. of India,
Ministry of Information and Broad-
casting, New Delhi.

2. Director General,
All India Radio, Civil Construction
Wing, Parliament Street, New Delhi.

----- Respondents

CORAM: Hon'ble Mr. P.C.Jain, Vice Chairman
Hon'ble Mr. A.V.Haridasan, Judicial Member.

For the applicant - Mr. R.K.Sharma, Advocate.

For the respondents - Mr. Arun Walia, Advocate.

O R D E R (Oral)

(delivered by Hon'ble Mr. P.C.Jain, V.C.)

...

The applicant initially joined the All India Radio as Junior Engineer(Civil) on 12-5-72. He passed the Section 'A' and Section 'B' of Institution of Engineers India (for short 'AMIE') examination in 1978 and was promoted as Assistant Engineer(Civil) on 23-8-80. He was appointed to officiate on ad hoc basis in the grade of Executive Engineer(Civil) (Rs. 3000-4500) for a period of one year or till the post was filled on regular basis,

30/12

whichever is earlier by order No. 12/89-B(D) dated 25-4-89 (Annexure A-5). This appointment was extended from time to time, the last extension being upto 31-7-91 or till the post was filled on regular basis whichever is earlier, by order No. 27/91-B(D) dated 9-5-91. The grievance of the applicant in this OA under Section 19 of the Administrative Tribunals Act, 1985 is against Order No. 42/91-B(D) dated 1-8-91 (Annexure A-1) by which the applicant alongwith 7 others stood reverted to the grade of Assistant Engineer (Civil) w.s.f. 1-8-91 (forenoon). He has also impugned the order dated 16-8-91 (Annexure A-2) to the extent it ordered the posting of the applicant as Assistant Engineer but required ^{him to} also to look after the charge of the Executive Engineer (Civil) in addition to his own duties without any extra remuneration. He has, therefore, prayed for quashing the impugned orders dated 1-8-91 (Annexure A-1) and dated 16-8-91 (Annexure A-2) to the extent these adversely affect him and for a direction to the respondents to allow him to continue ^{as} as Executive Engineer (Civil) on ad hoc basis till finalisation of his case for regular promotion through U.P.S.C. or till the filling in of the vacancy in accordance with the All India Radio, Civil Construction Wing (Group 'A' and Group 'B' posts) Recruitment Rules, 1988 (copy at Annexure A-3).

2. By an order passed on 13-9-91, the Tribunal restrained the respondents from implementing the impugned order dated 1-8-91 (Annexure A-1) qua the applicant,

if the same had already not been implemented, till the next date. This interim order has continued since then.

3. The respondents have contested the OA by filing their return to which a rejoinder has also been filed by the applicant.

3. We have perused the material on record and also heard the learned counsel for the parties.

4. It is not in dispute that in accordance with the relevant Recruitment Rules, the applicant had become eligible for consideration for appointment to the post of Executive Engineer(Civil) on 24-8-88 and he was promoted to officiate on that post on ad hoc basis by the order dated 25-4-89(Annexure A-5).

It is also not in dispute that the applicant has continued to work as Executive Engineer(Civil) till date. The learned counsel for the applicant submitted that during the pendency of this OA, two important developments have taken place. Firstly, Sh. K.Velukutty who was also ordered to be reverted by the same impugned order by which the applicant was reverted from the post of E.E.(Civil) to the post of A.E.(Civil), filed OA No.816 of 1991 before the Madras Bench of the Tribunal assailing the same order of reversion, and by the order dated 15-7-92(copy at Annexure A-7) the reversion of the applicant therein was quashed and the interim order staying the reversion of the applicant and allowing him to continue as Executive Engineer was made absolute. Further, it was

Attested

[Signature]
30/12

also directed that the applicant shall be treated as having continued in his ad hoc officiation as if the impugned order dated 1-8-91 had never been issued.

3 Secondly, by the order dated 21-12-93 issued by the Director General, All India Radio (Civil Construction Wing), 34 Assistant Surveyor of Works/Assistant Engineer (Civil) have been promoted, on ad hoc basis to the cadre of Executive Engineer (Civil) in the pay scale of Rs. 3000-4500, for a period of one year or till the posts are filled up on regular basis and that the Assistant Engineers included in this promotion order are junior to the applicant as per the tentative seniority list of Assistant Engineers (Civil) which was circulated by Memo. dated 15-3-89 (Annexure A-4). It is further submitted that six ^{other} officers who were reverted by the same impugned order dated 1-8-91 are included in this promotion order, and the 7th continued to working on the promotional post in accordance with the judgment of the Madras Bench of the Tribunal, already referred to above. He, therefore, contended that there is no basis whatsoever for the impugned order in this case . . . not being quashed and the applicant ^{is being} also allowed to continue as Executive Engineer (Civil) on ad hoc basis till the post is filled up on regular basis in accordance with the relevant Recruitment Rules.

5. Learned counsel for the respondents does not dispute these facts. He concedes that the case of the applicant is fully covered by the judgment of the Madras

Bench of the Tribunal in the case of 'K. Velu Kutty' (supra). 44

6. In view of what is stated above, this OA is allowed and the impugned order dated 1-8-91 insofar as it relates to the applicant is hereby quashed. The respondents are directed to allow the applicant to continue to work on the post of Executive Engineer (Civil) on ad hoc basis so long as a post is available and either a person junior to the applicant is allowed to continue on ad hoc basis on the post of Executive Engineer (Civil) or the post is regularly filled up in accordance with the relevant Recruitment Rules, whichever is earlier. No costs.

(A.V. Haridasan) JM

(P.C. Jain) VC

Attached
J. Mallick
30/12

23-29737284

No.302/1793-B(D)

Government of India

Ministry of Information and Broadcasting

ANNEXURE-6

New Delhi, dated 20.6.1995

ORDER NO.26/95-B(D)

The President is pleased to appoint the following officers officiating in the grade of Assistant Engineer(Civil)/Assistant Surveyor of Works(Civil)/(Rs.2000-3500) to officiate in the grade of Executive Engineer(Civil)/Surveyor of Works(Civil) in the pay scale of Rs.3000-4500 in Civil Construction Wing of All India Radio with effect from the date they assume charge of their respective posts as indicated against each:

S.No.	Name of the officers	Present posting	New posting and designation
1.	Sh. K. Velukutty	CCW, Trivandrum	EE(C), CCW, Trivandrum
2.	Sh. A.P. Diwakaran	SSW.III Unit, Delhi	SW(C), SSW.III Unit, Delhi
3.	Sh. A.K. Chakraborty	SSW.III Unit, Delhi	SW(C), SSW.III Unit, Delhi
4.	Sh. A.K. Chetnani	CCW, Jodhpur	EE(C), CCW, Jodhpur
5.	Sh. Jagdish Bhagat	FTII, Calcutta	EE(C), Project Manager, FTII, Calcutta
6.	Sh. Ajay Tiwari	SSW.I Unit, Delhi	SW(C), Bombay Circle
7.	Sh. D.S.K. Bhagwan	Mandi House Project Division, Delhi	EE(C), Mandi House, Project Division, Delhi
8.	Sh. H.K. Padmakar	CCW, Guwahati	SW(C), SSW.I Unit, Delhi
9.	Sh. T. Nankan	SSW.III Unit, Delhi	SW(C), SSW.III Unit, Delhi
10.	Sh. Ashok V. Naik	CCW, Panaji	EE(C), CCW, Panaji
11.	Sh. Oa Prakash	CCW, Bombay	EE(C), CCW, Bombay
12.	Sh. A.K. Mukhopadhyay	CCW, Silchar	EE(C), CCW, Silchar
13.	Sh. R.K. Singh	CCW, Hyderabad	EE(C), CCW, Hyderabad

Contd.....2/-

Noted
Signature
Date

46

2 (07-06-1995)
1001/13/1995

THIS SECRETARY'S OFFICE IS NOTIFIED TO THE

1. Sh. R.M. Garg SSW.I, Unit, SW(C), SSW.I Unit, Delhi
2. Sh. A.K. Verma Delhi Circle-II SW(C), Delhi Circle-II
3. Sh. K. Babujanardhanan SSW.II Unit, SW(C), SSW.II Unit, Delhi

16. Sh. K. Babujanardhanan SSW.II Unit, SW(C), SSW.II Unit, Delhi
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18. Sh. K. Babujanardhanan SSW.II Unit, SW(C), SSW.II Unit, Delhi
19. Sh. K. Babujanardhanan SSW.II Unit, SW(C), SSW.II Unit, Delhi
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100. Sh. K. Babujanardhanan SSW.II Unit, SW(C), SSW.II Unit, Delhi

- Copy to: (1) Director General, All India Radio, New Delhi.
(2) Director General, Doordarshan, New Delhi.
(3) E-in-C, DG: AIR/E-in-C, DG: Doordarshan, N. Delhi.
(4) Chief Engineer (Civil), CCW, New Delhi.
(5) Pay & Accounts Officer (IRLA), Min. of I&B, AGCR Bldg., New Delhi.
(6) P&AO, AIR, New Delhi, Calcutta, Bombay, Trivandrum, Guwahati and Hyderabad.
(7) Vigilance Section, Min. of I&B/DG: AIR/DG: DDN.
(8) Officers concerned (through CCW).
(9) Secretary, UPSC, with reference to Commission's letter, No. P.1/19(11)/93-AU.6 dated 22.5.95.
(10) Order Folder.
(11) Spare Copies (15).

(Suman Chatterjee)
SECTION OFFICER
PH : 389695

20-5-95
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-/S.....

ANNEXURE- 7(1)

From :- A.P. Divakaran,
Surveyor of Works (Civil),
Civil Construction Wing,
All India Radio,
New Delhi.

To,

The Secretary,
Ministry of Information & Broadcasting,
Shastri Bhawan,
New Delhi-110 001.

(THROUGH PROPER CHANNEL)

Subject:- Regularisation of Adhoc continuous service into
Regular service and considering for promotion
as SE(C) in Civil Construction Wing, All India
Radio.

Sir,

I beg to submit the following representation for your
kind attention and favourable consideration.

I had been promoted on adhoc basis as Ex. Engineer (Civil)
Civil Construction Wing, All India Radio by the Ministry of I & B
vide their office order No.12/B(D) dated 25.4.89 (copy enclosed)
and joined in Sri Nagar (J&K) on 27.4.89.

Vide Central Administrative Tribunal Chandigarh order
dated 23.2.94 (copy enclosed) I have been permitted to continue
on adhoc basis from 27.4.89 without break till I was promoted on
regular basis. Based on the above order, I was continuing on
adhoc basis and am drawing my regular annual increments also.

copied

I have been promoted on regular basis by Ministry of I & B
vide their order No.26/B(D) dated 20.6.95 (copy enclosed).
Natural justice demands that the adhoc service rendered by me
should be considered as regular service. The Supreme Court also
opened vide various orders that continuous period of adhoc
service should be counted for seniority and promotion (copy of
Swami's Hand Book page 211 on "Promotions & Seniority" is
enclosed).

Recently in one of the judgements CAT Allahabad, vide
order dated 30.11.92 directed that the adhoc service rendered by
Sh. S.C. Mathur, Pex. in All India Radio be counted towards
continuous appointment (copy of DG, AIR office memo dated 30.5.95
is enclosed).

In the light of above judgement I am fully eligible to
get continuous service from 27.4.89 onwards when I was first

Accepted.
S. Mathur
30/12

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promoted on adhoc basis till my regular promotion on 20.6.95.

I would like to invite the attention that the Ministry of I & B called application for three vacant posts of Suptdg. Engineer(Civil) in the Civil Construction Wing of All India Radio on transfer on deputation basis as published in the Employment News dated 07.1.95. A representation by the undersigned alongwith necessary application had been submitted to the Ministry of I & B on 18.1.95 to avoid the recruitment on deputation basis and give a chance to the eligible departmental EEs like me to serve the department in more responsible capacity (copy enclosed). Therefore I would like to humbly submit that -

1. In view of the various Court judgement, my past adhoc service as EE(Civil) from 25.4.89 to 20.6.95 may please be considered as regular service. *and necessary orders issued*

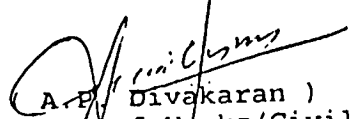
2. I may please be considered for the post of SE(Civil) as I am fulfilling all the requirements for the post of SE(Civil). Three posts of SE(C) are vacant at present in the Civil Construction Wing.

My humble request is that the above points may please be considered sympathetically and give me a chance to serve the department in a more responsible capacity.

Expecting a favourable reply.

Thanking you,

Yours faithfully,


(A.D. Divakaran)
Surveyor of Works(Civil),
Civil Construction Wing,
All India Radio,
New Delhi.

Dated :19.7.95.

Tel. No. 4364496

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Ameslog.

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ANNEXURE- 7(2)

Government of India
Office of the Chief Engineer (II)
Civil Construction Wing : All India Radio

u9

6th floor, Sancha Bhawan,
CGO Complex, New Delhi-03.

No.CE-II/PS/96

Dated :

The Chief Engineer (C)-I,
CCW, All India Radio,
2nd floor, PTI Building,
New Delhi - 110 001.

Subject : Regularisation of ad-hoc continuous service into
regular service.

Sir,

I am forwarding herewith an application received from Shri.
A.P. Divakaran, SW (C) of my office, which is self-explanatory.

As stated by Shri. Divakaran in his application, the Ministry
is considering the deputation of SEs from other department, to
fill up the existing vacancies, while eligible hands are already
available with the Department, it will be in the interest of
both, justice as well as Department, if the case of Shri.
Divakaran is taken up with the Ministry at an early date.

I, therefore, request that necessary action may be taken in
the matter.

Yours faithfully,

Encl. : A/A

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15/7
Lt. Col.
(Dalip S. Manchanda)
Chief Engineer (II)

9/c

Recd.
R
17/7/96

Attested.

[Signature]
Advocate. 30/7

- 33 -
Government of India
Office of the Chief Engineer (Civil)-II
Civil Construction Wing: All India Radio

10-14
ANNEXURE-7(2)

7th floor, Soochna Bhawan
Lodi Road, New Delhi-3.

No. SSW-III/SW-I/Staff/95-96

Dated: 10-7-96

The Chief Engineer (C)-I,
Civil Construction Wing,
All India Radio,
2nd floor, PTI Bldg.,
Parliament Street,
New Delhi-1-

(Through Proper Channel)

Subject: Regularisation of Ad-hoc continuous service
into regular service

.....

Sir,

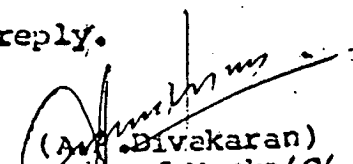
Please refer to SSW-III office letter No.
SSW-III/21(19)/93-S/782 dtd. 24.7.95 forwarding an
application of the undersigned on the above subject.

One copy of the above representation is again
submitted alongwith all the necessary enclosures for
onward submission to the Secretary, Ministry of I & B,
Shastri Bhawan, New Delhi. Almost six months have passed
and no reply in this regard has been obtained. It is
requested to kindly regularise my ad-hoc services from
27.4.89 to 20.6.95 and issue necessary orders.

It is learnt that the Ministry of I & B is
considering deputation of SEs from other departments
to fill up the existing vacancies while eligible haddas
are already available with the department. The matter
may please be taken up with the Ministry and the depart-
mental candidates may please be considered.

Expecting a favourable reply.

Encl: as above


(A. Divakaran)
Surveyor of Works (C)

Attested.


30/7/96

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SSW

BY SPEED POST

8

GOVERNMENT OF INDIA
OFFICE OF THE EXECUTIVE ENGINEER(C)
CIVIL CONSTRUCTION WING : AIR & TV
TRIVANDRUM-14

NO.EE(C)/TVM/21(2)/96-S/KV/

Dated, the 24th July/96

The Secretary,
Ministry of Information & Broadcasting,
Shastri Bhavan,
'A' Wing,
New Delhi-110001.

Sub :- Selection of Superintending Engineer(Civil)
on deputation in the Civil Construction Wing
All India Radio.

sir,

Kindly refer to my representation dated 16.7.96
to consider me for promotion to one of the existing vacancies
of Superintending Engineer (Civil) and requesting your
goodself to issue necessary orders to stop the selection
and order of posting of Superintending Engineer(Civil) on
deputation.

Since the posting of Superintending Engineer(Civil)
on deputation will affect my promotions, an application was
made by me to the Central Administrative Tribunal, Ernakulam
bench. The Hon'ble Administrative Tribunal was pleased to
issue a favourable order on my application No.829/96 that
"filling up of one post of Superintending Engineer (Civil)
by deputation will stand-stayed for one month".

A copy of the order is enclosed herewith.

Thanking you,

Yours faithfully,

(K. VELUKUTTY)
EXECUTIVE ENGINEER(C)

Copy to :-

- 1) The Director General, All India Radio, Akashvani
Bhavan, New Delhi-110001 for kind information and
necessary action.
- 2) ✓ Shri G.S.S.Sharma, Chief Engineer(C)-I, Civil Construction
Wing, All India Radio, Sanchana Bhavan, New Delhi-110001
(By Fax mail). No. 001-5710054
- 3) The Superintending Engineer(C), Civil Construction
Wing, All India Radio, PE No:418, Chappak, Madras-3
for kind information.

24/7/96
EXECUTIVE ENGINEER(C)

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Attested
S. Malla
3/12

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SS will
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CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

TUESDAY, THE 23RD DAY OF JULY, 1996.

P R E S E N T

Hon'ble Mr. Justice Chettur Sankaran Nair Vice Chairman
and

Hon'ble Mr. P.V. Venkatakrishnan Administrative Member

ORIGINAL APPLICATION NO. 822/96

K. Velukutty

: Applicant (a)

Versus

: Respondent (a)

UDI, rep. by the Secy., M/o

Information and Broadcasting, Shasthri Bhavan, N. Delhi & Anr.

: Counsel for applicant (a)

Mr. KRB Kaimal

: Counsel for respondent (a)

Mr. TR Ramachandran Nair

O R D E R

Admit. Issue notice.

Filling up of one post of Superintending Engineer (Civil) by deputation will stand stayed for one month.

Sd/-
P.V. Venkatakrishnan
Administrative Member

Sd/-
Chettur Sankaran Nair (J)
Vice Chairman



CERTIFIED TRUE COPY
Date 23/7/96

Deputy Registrar

- To
1. K. Velukutty, applicant. ✓ C/o Mr. KRB Kaimal, Advocate, Ernakulam.
 2. UDI, rep. by the Secy., M/o Information and Broadcasting, Shasthri Bhavan, New Delhi. (R-1)
 3. The Director General, All India Radio, New Delhi. (R-2)
C/o Mr. TR Ramachandran Nair, ACGSC, Ernakulam.

Attest.

[Signature]
23/7/96

36
GOVERNMENT OF INDIA
DIRECTORATE GENERAL : ALL INDIA RADIO
CIVIL CONSTRUCTION WING

ANN RE-9

No.A-22012/1/94/CW.I

Dated : sept. 30, 1996

Second Floor
PTI Building
New Delhi.

ORDER No. 51/96

Shri A.P. Divakaran, SW(C), SSW-III Unit, CCW:AIR, Soochna Bhawan, New Delhi is hereby transferred and posted as SW(C)-II, Guwahati Circle, CCW:AIR in public interest with immediate effect.

2. Shri A.P. Divakaran is entrusted with the Current Duty charge of SE(Civil), CCW:AIR Guwahati also, without any additional monetary benefits. The Current Duty Charge arrangement to Shri Divakaran will not bestow any claim for regular/adhoc promotion and Current Duty Charge, so rendered, shall not count for the purpose of seniority. The CDC arrangement can be terminated at any time without assigning any reason or giving notice.

3. One post of EE(Quality Control) is diverted to Guwahati Circle as SW(C)-II till further orders against which Shri A.P. Divakaran is posted.

4. This issues with the aproval of DG:AIR.

[Signature]
20.09.96

A.K. SINHA
ENGINEER OFFICER-I TO CE-I
for DIRECTOR GENERAL:AIR

Copy to :

- ✓ 1. Shri A.P.Divakaran, SW(C),SSW-III Unit, CCW:AIR, Soochna Bhawan, New Delhi.
2. The Pay & Accounts Officer, IRLA, Ministry of Information and Broadcasting, New Delhi.
3. PS to DG:AIR/PS to DG:PD/E-in-C,AIR & Doordarshan.
4. All Chief Engineer(AIR)/(Doordarshan)/CE-I/CE-II/Chief Architect/All Senior Architects
5. SSW.I/SSW.II/SSW.III/SE(T)/SSW(E)
6. Under Secretary(BD), Min. of I&B, New Delhi
7. All SEs (Civil & Elect.)/Sr.F.O/EO.II/F.O
8. All EEs(Civil & Elect.)/All SWs(Hqs.)
9. Vig.Section (M/o I&B)/Vig.Section(DG:AIR)/Welfare Sec/Security Cell/Reception (DG:AIR)
10. All Sections/Unit of CCW(Hqs.)/R&I(CCW)/R&I(DG:AIR)
11. C/R Folder in CW.I Section.
12. Spare copies - 10 Nos.

[Signature]
Section Officer
for Director General:AIR

Amended.

[Signature]
30/12

No.6/18/94-SI(B)

New Delhi, dated. 30.5.95.

Office Memorandum

Subject : Implementation of judgement in OA
No.1317-92-refixation of Seniority
of Sh. S.C. Mathur, ASD, AIR, Jhalawar,
in the grade of Programme Executive.

The Hon'ble CAT Allahabad in its judgement dated 30.11.92 directed that the ad-hoc service rendered by Shri S.C. Mathur in the grade of PEX for the period 28.10.76 to 31.12.78 be counted towards continuous appointment and accordingly place him at correct number in the Seniority List. Accordingly, the Seniority of Shri Mathur in the grade of PEX has been revised and his name now figures between Sh. K.R.S. Rao, PEX and Sh. C. Subramanian, FRO (Serial No.70 and serial No.71) of the Combined Seniority List of Programme Executives circulated vide OM No.4(47)92-SI(B) dated 30th Oct.'92. In the revised Combined Seniority List of PEXs now circulated vide OM No.4/230/94-SI(B) dated 4.5.95, his name would figure between Smt. A.Z. Fanai, PEX and Sh.J.K. Gupta, FRO (Serial No.57 and serial No.58). This is for information of all concerned.

2. The revision of the Seniority as aforesaid is provisional and will be subject to outcome of SLP pending adjudication in Supreme Court.

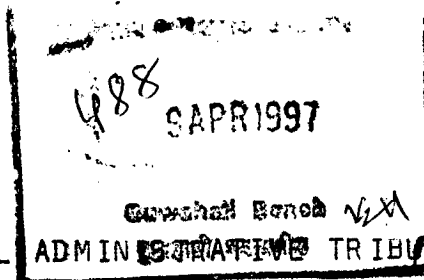
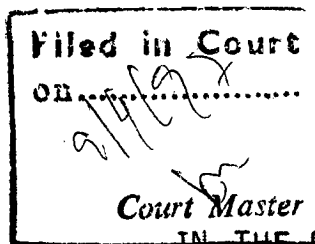
(T. S. NEGI)
Dy. Director of Administration.
for Director General.

1. Copy to All AIR Station/Office.
2. All AEs in the Directorate.
3. SI(A) Section DG: AIR for further necessary action.
4. Sh. S.C. Mathur, ASD, AIR, Jhalawar.
5. DG; Doordarshan (Sh. B. Dutt, DDA) with 50 copies for circulation to all concerned.

Dash

for Director General.

Attested
J. Malhotra
Advocate
30/12



38

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:

GUWAHATI BENCH: GUWAHATI.

U. A. No. 301/96

Sri A.P. Divakaran,

-Versus-

Union of India & others.

Filed by:

Mr. SHAUKAT ALI 9/4/97

Mr. Central Govt. Standing Counsel
Central Administrative Tribunal
Guwahati Bench

-AND -

IN THE MATTER OF:

Written Statements submitted by the
Respondents No.1, 2 & 3 .

(WRITTEN STATEMENTS)

The humble Respondent beg to submit
their Written Statements as follows :-

- 1) That, with regard to the statements made in paragraphs 1,2 & 3 of the application the Respondents have no comments.
- 2) That, with regard to the statements made in paragraphs 4.1 & 4.2 of the application the Respondents have no comments the same being matters of record .
- 3) That, with regard to the statements made in paragraph 4.3 of the application the respondents beg to state that the respondents have no comments the same being matters of record . The Respondents

(Contd.)

R
Answer
Adv.
9.4.97

- 2 -

further state that due to administrative difficulties and court cases filed by the diploma holder Assistant Engineers, in O.A. No. 164/88 in the ~~Rxxxxxx~~. Central Administrative Tribunal, Principal Bench, New Delhi, proposal for promotion to the post of Executive Engineer(C) on regular basis could not be initiated before 1993.

4) That, with regard to the statementd made in para 4.4 to 4.8 of the application the ~~apxxi~~ Respondents have no comments the same being matters of record and beyond records and beyond records nothing is admitted .

5) That, with regard to the statements made in para 4.9 of the application the Respondents beg to state that it is admitted that the applicant became eligible for promotion to the grade of Executive Engineer (C) in 1988, but as stated above, due to court cases, the DPC proposal for making promotions to this grade could not be initiated before 1993. The process of DPC involved consultations with U.P.S.C. The process ultimately culminated in convening of the DPC in May, 1995. The applicant was subsequently promoted. As per extant rules, ad-hoc service cannot be counted for the purpose of reckoning qualifying service. Hence, the period 25-4-89 to 20-6-95 as claimed by the applicant cannot be counted for the purpose of seniority.

6) That, with regard to the statements made in para 4.10 of the application the Respondents

(Con d.)

- 3 -

beg to state that the representation submitted by the applicant was duly considered and it was not found possible to count the ad-hoc service rendered by him for the purpose of seniority etc.

7) That, with regard to the statements made in paragraph 4.11 of the application the Respondents beg to state that as stated earlier, the ad-hoc service rendered by the applicant in the Grade of Executive Engineer(C) are not countable for computing his seniority towards his regular promotion to the next higher grade of Superintending Engineer(C) .

However, keeping in view the directions passed by the Hon'ble Central Administrative Tribunal, Ernakulam Bench, in O.A. No. 829/96 the department has kept filling up one vacancy in the grade of Superintending Engineer (C) in abeyance.

8) That, with regard to the statements made in paragraph 4.12 of the application the Respondents beg to state that they have no comments the same being matters of record.

9) That, with regard to the statements made in para 4.23 of the application the respondents beg to state that the contention of the applicant in so far it relates to the period of ad-hoc service is concerned, is admitted. However, due to pending court case- the DPC for making promotion of the applicant along with eligible officers could not be held before 1995. As the recommendation of the DPC cannot have retrospective effect, ante-dating of the applicant's promotion to the grade of ...

Executive Engineer (C) is not possible. Since no eligible departmental officers were available for promotion to the Grade of Superintending Engineer (C), the department had to resort to filing up the verification in this grade by adopting alternative method provided in Recruitment Rules.
(Copy of D.P.C. required provided in the R/Es.)

10) That, with regard to the statements made in para 4.14 of the application the respondents beg to state that the facts and circumstances of the case in O.A. No. 218/93 filed by Sh. Munshi Lal in this Hon'ble Tribunal were totally different as there was no case for giving benefit of ad-hoc service and therefore, the circumstances of the case do not match with those in the instant O.A. Hence, no such orders either interim or final, as has been prayed, seem to be required in the instant O.A.

11) That, with regard to statements made in para 4.15 of the application the respondents beg to state that the contention of the applicant in as much as it relates to non-challenged attitude of the department is denied. It may be stated that the delay in holding DPC was due to pending of court case and hence beyond the control of the department vide O.A. No. 764/ 88. A copy of ~~fix~~ final outcome of this O.A. is annexed as Annexure- 1.

12) That, with regard to the statements made in para 4.16 of the application, the Respondents beg

(Contd.)

to state that the benefit of the judgment delivered on a particular case cannot be extended to all unless such a decision is taken by the Govt. by making ~~similar~~ suitable amendments of rules .

Moreover, the department has implemented the ~~xxxxxx~~ Hon'ble Tribunal's abovementioned judgment dated 30-11-92 and this benefit is provisional and subject to outcome of SLP pending adjudication in the supreme Court,

A copy of the interim Stay Order dated 30-3-96 passed by the Hon'ble Supreme Court is annexed as Annexure-II to this written statement.

13) That, with regard to the statements made in para 4.17 of the application, the Respondents beg to state that, since as per existing seniority rules, the ad-hoc service cannot be counted for the purpose of seniority . The applicant has not completed minimum eligibility service prescribed for promotion to the Grade of Superintending Engineer(Civil) and also because no other eligible Departmental Officer is available to fill up the vacancies in the grade of Superintending Engineer(C) by promotion, the Ministry reported to filling up of vacancies in the Grade of Superintending Engineer(Civil) reported to be filled up by transfer on deputation basis. This alternative method of filling up the vacancies in this grade is prescribed in the R/Rs. for the post of Superintending Engineer(C). In view

(Contd.)

- 6 -

of the foregoing , no interim relief as sought by the applicant could be allowed .

14) That, with regard to statements made in para 4.18 of the application , the Respondents beg to state that it is not correct that due to apathy of the Respondents they did not resort to regular selection when the same became due in the year 1988 but the delay in convening DPC for making promotions to the grade of Executive Engineer (C) was due to pending court cases and as such the department could do little to consider promotion of the applicants .

15) That, with regard to statements made in para 5 of the application regarding grounds for reliefs with legal provisions, the Respondents submit that none of the grounds is maintainable in law as well as in facts and as such the application is liable to be dismissed.

16) That, with regard to the statements made in paragraph 6 & 7 of the application, the Respondents have no comments.

17) That, with regard to the statements made in para 8 of the application regarding reliefs sought for, the Respondents beg to state that the applicant is not entitled to any of the relief sought for in the paragraph and as such the application is liable to be dismissed .

18) That , with regard to the statements made in para 9 of the application, the Respondents beg to state that the applicant ~~being~~^{is} not eligible for promotion to the post of Superintending Engineer (Civil)s^o question of granting interim relief does not arise.

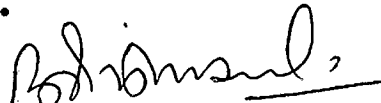
19) That, with regard to the statements made in paras 11 & 12 of the application, the Respondents have no comments.

20) The Respondents beg to submit that the Application has no merit and as such the same is liable to be dismissed.

VERIFICATION

I, Shri D.K. Mishra, Working as Executive Engineer in the Office of the Civil Construction Wing, All India Radio being authorised do hereby solemnly declare that the facts stated above from paragraphs 1 to 14 , 16 & 18 are true to the best of my knowledge and the statements made in other paras are my humble submissions before this Hon'ble Tribunal

I sign the verification on this 9th day of April 1997 at Guwahati .


Declarant.

(D . K . MISHRA)

Amended

CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

Case No. 107
199

DATE OF DECISION 08.02.1999

Respondent
Advocate for the Respondent
Advocate for the Petitioner
Advocate for the Respondent
Advocate for the Respondent

ADMINISTRATIVE MEMBER

May be allowed to see the Judgment? Yes
May be circulated to other Benches of the Tribunal? No

DECISION

By Hon'ble Mr. J. K. Karthi

The Applicant Association represents the Junior
Engineers of the Civil Construction Wing,
their grievance relates to the
Diploma where Junior Engineers have been placed at a disadvantage
of promotion to the posts of Assistant Engineers
and Junior Engineers.

Under the unamended rules, Junior Engineers with 2 years
were eligible for promotion as Assistant Engineers and
Q—

Assistant Engineers with 8 years service were eligible for promotion as Executive Engineers. There was no distinction between Junior Engineers (Electrical), Civil, Diploma or Degree Holders.

2. Under the extended rules, for promotion to the post of Assistant Engineer, a Junior Engineer with a diploma should have 8 years regular service as Junior Engineer and a degree-holder Junior Engineer will be eligible for promotion with 5 years regular service in the grade. For promotion to the post of Executive Engineer only Assistant Engineers who have a degree will be eligible. Assistant Engineers with a diploma, are not eligible for promotion to the post of Executive Engineer.

3. The applicant has stated that the Civil Construction Wing, All India Radio, i.e., Respondent is working on the pattern of C.F.M.B. and the C.E.M.B. and other rules applicable to the C.F.M.B. are indirectly made applicable to the staff employed in similar categories, by the Respondent. As a matter of fact, Respondents have described their organisation as a unit of the C.F.M.B.

4. No such amendment as envisaged in the suggested recruitment rules exists in the other organisations e.g. C.F.M.B., R.T. Department etc.

C

The respondents have stated in their counter-
 statement that at the time of promulgation of earlier
 recruitment rules dated 9.1.1952, the work of
 All India Radio was a very big organization
 and, very much lesser quantity of work.
 Subsequently, however, the workload increased steadily
 and the department expanded very fast. Unlike other
 Government construction organizations, Civil
 Construction Wing of All India Radio has been handling
 large works, of highly specialised nature like 120
 ft. towers, studio and transmitter buildings etc. etc.
 Hence, the course of past few years it has been felt that
 there would be sufficient Engineering expertise at
 various levels to handle designing and execution of
 highly intricate structures. There is need of adequate
 number of Graduate Engineers even at the level of Junior
 Engineers for proper functioning of the department. In
 the recruitment rules, for the post of Assistant
 Engineer, eligibility period for promotion for Junior
 Engineers holding degree in Engineering has been kept at
 3 years as against 6 years in respect of diploma holder
 candidates. The main reasons for this distinction
 are as under:-

In the new Recruitment Rules for the post of
 Assistant Engineer promotion quota has been increased
 from 50% to 60% thus reducing direct recruitment quota

to ~~the~~ direct recruits through
Union Public Service Commission are inevitably,
Graduates, differential promotion, or not,
etc. The intake of Graduate Engineers is, therefore,
likely to be reduced.

(ii) In view of the nature of jobs being handled
in Civil Construction Wing it is important that the
posts of Assistant Engineers should be filled by
persons who have good deal of technical and in-
depth knowledge of the subject, which can be
acquired by a systematic study in an institution
as in the case of Graduates, plus they should also
have practical experience in the field. There is
also need of having adequate number of Graduate
Engineers at the level of Assistant Engineers. The
distinction in eligibility period, as now provided, will
not only provide incentive to the degree holders for
initial recruitment at the level of AE but shall also
take care for the reduction in the intake of graduate
officers at the level of AE due to reduction in direct
recruitment quota.

(iii) Department, with this change in the
recruitment rules, is likely to have adequate number of
graduate officers essential for handling design as well
as execution jobs of complicated structures.

(iv) The duties performed by a Graduate JE are, not exactly similar to those performed by a Diploma holder JE. Whereas a graduate JE can handle design jobs of draftsmen and can supervise execution of specialised structures, a diploma holder JE cannot perform these functions as he is not adequately qualified for the same. Because of higher qualification and nature of duties being performed by graduate JEs the eligibility period for promotion to the post of AE has been kept as 5 years as against 8 years for diploma holders, because it is felt that this larger length of experience will add up to his technical knowledge and equate him with a Graduate JE and make him fit for the job requirements of the post of AE.

However, no separate quota is kept for promotion purposes and graduate as well as diploma holder officers, after completing respective eligibility period of 5 and 8 years, are treated at par for promotion.

(v) This, in the long run, would be beneficial for building up the cadre and developing necessary expertise within the department which is handling highly specialised works unlike other Government construction organisations which are handling execution of normal building structures.

(vi) It is submitted that the provision of longer

period of service in the case of diploma holders, as compared to graduate Engineers, is obligated by the higher responsibilities of positions of the next higher post of Assistant Engineers.

As regard the post of Executive Engineer (C/E) the old recruitment rules provide for method of recruitment as "50% by promotion failing which by transfer or deputation and 50% by direct recruitment". Whereas minimum qualification of Degree in Engineering was kept for direct recruits it was not made applicable to departmental promotees. However, as stated above, C.E. is handling major works of specialised nature requiring high degree of expertise. Moreover, as per duties as Executive Engineer should have minimum qualification of Degree in Engineering to perform his functions satisfactorily. An Executive Engineer when posted in Planning Office is required to check the designs of projects and when posted in Field Office is required to supervise the execution of major works. To perform these functions a thorough knowledge of Engineering is essential which can be attained only after acquiring a minimum of Degree in Engineering. While taking up the modification of Recruitment Rules with DIB and DBO, the duties and

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functions of various posts in the grade of Executive Engineer (C)/Executive Engineer (E) were reviewed and it was not found possible to reduce any of these grades which can be handled by a Diploma holder.

6. The respondents have stated that Civil Construction Wing of All India Radio is following Central Public Works Department manual/codes for technical functioning, i.e., in respect of execution of works. However, it is not correct that organisational set-up of Civil Construction Wing is a replica of Central Public Works Department or any other organisation. In fact every organisation has its own set-up and even different sets of Recruitment Rules depending upon cadre strength and other functional and administrative aspects. To quote earlier recruitment rules of Civil Construction Wing: All India Radio for the post of Assistant Engineer/Executive Engineer mentioned by the applicant, do not tally with those of Central Public Works Department. It is, therefore, not possible for an organisation to follow Recruitment Rules of any other organisation in toto. Every organisation may frame its own Recruitment Rules to fit into functional and administrative requirements.

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As explained above the Recruitment Rules of various categories in any organisation, are prepared to fit into its functional and administrative requirements for effective and efficient working, in accordance with the guidelines on the subject. The existing recruitment rules for the post of Executive Engineer in Central Public Works Department, also provide distinction between degree and diploma holders for consideration of promotion from Assistant Engineer. As per these rules departmental Assistant Engineers having degree and 8 years regular experience in the grade are eligible for promotion, whereas only outstanding diploma holder Assistant Engineers are to be considered for promotion after completion of 10 years regular service in the grade. Thus these rules even tend to discriminate one diploma holder from the other based, on the basis of grading as outstanding and not on firm grounds like qualification or eligibility period.

The proposals for the modifications of Recruitment Rules in respect of various cadres of Civil Construction wings All India Radio were taken up in the year 1982. The new rules have been promulgated after thorough review of all the aspects and after series of discussions/meetings in the

Ministry of Information and Broadcasting, Department
of Personnel & Union Public Service Commission.

1. The applicant has contended that the
revoked Recruitment Rules are arbitrary and
discriminatory while the respondents have contended
that they are valid and constitutional. We have gone
through the records of the case carefully and have
considered the rival contentions. We have also duly
considered the numerous decisions relied upon by
both sides. In *Hoop Chand Adlakha Vs. D.D.A.*,
1951(2) SCALE 897 at 902, the Supreme Court observed
that the idea of equality in the matter of promotion
can be predicated only when the candidates for
promotion are drawn from the same source. If the
difference in the qualification has a reasonable
relation to the nature of duties and responsibilities,
that go with and are attendant upon the promotional post,

Cases relied upon by the applicants:-

State of J.K. Vs. Jilok Nath Khoso, AIR
1974 SC 1; AIR 1968 SC 718; AIR 1979 SC 621;
AIR 1951 SC 840; 1965(4) SCC 369; 1908(1)
SCC 440; JT 1939(2) SC 519; AIR 1929 SC 1624;
1972 SLJ 44; 1967(3) SLJ 34; AIR 1966 SC 1839;
1980(4) 225; 1980 Sup. SCC 559; AIR 1989(1)
SC 427; AIR 1989 SC 139.

Cases relied upon by the respondents:-

AIR 1974 SC 1; 1997(1) ATN. (I.M. Kohli & Ors. Vs.
U.O.I. & Others); Decision of the Tribunal dt.
21.7.1999 in O.A. 333 of 1980; J. Narayanan Potty
and Others Vs. the Union of India.

the more advantageous treatment of those who possess higher technical qualifications can be legislated on the basis of classification. There may, conceivably, be some cases where the differences in the educational qualifications may not be sufficient to give any preferential treatment to one class of persons as against another. Hence the classification is reasonable or not must, therefore, necessarily depend upon facts of each case and the circumstances obtaining at the relevant time.

E. In State of J.A. vs. Indrani Nath Khosla & Others, AIR 1974 SC 1, it was observed that "it cannot be laid down as an inflexible rule that whenever any classification is made on the basis of variant educational qualifications, such classification must be held to be valid irrespective of the nature and purpose of the qualification or the quality and extent of the differences in the educational qualifications". In that case, Graduate Engineers and Diploma Holders were in a common cadre of Assistant Engineers. But for the purposes of further promotion to the higher cadre of Executive Engineers only the Graduates were held eligible. Diploma Holders

are barred for promotion. Upholding this, the Supreme Court observed that "the classification is made with a view to achieving administrative efficiency in the Engineering service. If this is the object, the classification is clearly correlated to it for higher education qualifications are at least presumption evidence of a higher mental equipment".

9. In Josephband Adlakhe's case, the Supreme Court observed that "State consistent with the requirements of the promotional posts and in the interest of the efficiency of the service, is not precluded from conferring eligibility on Diploma holders conditioning it by other requirements which e.g., as here, include certain quantum of service experience". It was further observed that "unless the provision is shown to be arbitrary, capricious, or to bring about grossly unfair results, judicial policy should be one of judicial restraint".

10. Thus, the question whether the classification is reasonable or not would depend on the facts of each case.

11. In the instant case, the respondents have stated that the nature & quantum of work of the Civil Construction wing of All India Radio have increased

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Under the circumstances, in course of time. For handling major
general work of highly specialized nature, there
is need for adequate number of Graduate Engineers for the
smooth functioning of the Department. After review of the
matter in consultation with the Department of Personnel &
Training and the USC, they have not found it possible to
create any post in the grade of Executive Engineer which
can be held by a Diploma Holder. The prescription of
different quantum of service experience in the post of
Junior Engineer for promotion to the post of Assistant
Engineer also appears to be reasonable in the instant case.
In fact, the recruitment rules of corresponding posts
in the IIT Deptt. and CHD are not comparable to those of
the required recruitment rules in the All India Radio is
also not relevant. The other contentions raised by the
applicant relating to stagnation and need for adequate
employment opportunities for Diploma Holders are
essentially matters of policy.

12. At the same time, we feel that Diploma Holders
can improve their prospects for promotion to the post of
Executive Engineer by acquiring A.M.E. etc. which is
equivalent to a Degree. The respondents should also

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consider providing adequate incentives and facilities to them in this regard.

In the light of the foregoing discussion, we are of the view that the application is devoid of any merit and the same is dismissed. There will be no order as to costs.

A -

(D.K. CHAKRABARTY) 10/77
ADJUTANT GENERAL

(D.K. CHAKRABARTY)
VICE CHAIRMAN

1212701

SUPREME COURT OF INDIA

RECORD OF PROCEEDINGS

(3158)

Petition(s) for Special Leave to Appeal(Civil).....CC 22715/93
(From the judgment and order dated 30/11/92 in OA 1311/92
of The CAT, Allahabad Bench)

UNION OF INDIA AND ORS.

VERSUS

Petitioner (s),

Respondent (s)

SATISH CHANDRA MATHUR

(With Appln(s). for c/delay in filing SLP and Intervention)
(With Office Report)

Date : 30/09/96 This Petition was called on for hearing today.

CORAM : HON'BLE THE CHIEF JUSTICE
HON'BLE MRS. JUSTICE SUJATA V. MAHOJAR

For Petitioner (s)

For Respondent (s)

Mr. MM. Gargwami, Sr. Adv.
Mr. MA. Qadri, Adv.
Mr. VK. Verma,
Mr. KMMX Arvind Kumar, Adv.
Ms. Lami Arvind, Adv.
Mr. PM. Puri, Adv.

UPON hearing counsel the Court made the following
ORDER -

Special leave granted.

Printing dispensed with.

Appeal to be heard on SLP Paper Book with liberty
to the parties to file additional documents, if any, within
four weeks.

Intervention applications are allowed.

Further implementation of the impugned order will
remain stayed.

(S. Thapar)
PS to Registrar

(Gian Chand)
A.R.

30/9.

Attested.

के. सी. खोसला/K.C. KHOSLA
निदेशक (प्र. एवं वि.) / Dir. (A&F)
आकाशवाणी, नई दिल्ली/DG: AIR
नई दिल्ली/New Delhi
दूरभाष नं./Tel. 3718174

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Section Office

SECRET

Attested.

के. सी. खोसला/K.C. KHOSLA
 निदेश (ग. नं. नि.) / Dir. (G & F)
 आवासन एवं परिवहन विभाग/DOAIR
 नई दिल्ली/New Delhi
 दूरभाष नं./Tel. 3718174

24/10