

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

O.A No. 4100/2013

New Delhi this the 1st day of February, 2016

**Hon'ble Shri A. K. Bhardwaj, Member (J)
Hon'ble Shri. V. N. Gaur, Member (A)**

1. Jayaprasad C S/o Sh. V.C. Nair
R/o Flat No.07, Kimaya Residency,
Bhau Patil Road, Bopodi, Pune-411020.
2. D.D. Deshpande
S/o Sh. Dinkar V. Deshpande,
R/o A/38, Swanand Society, Sahakar Nagar-2,
Parvati, Pune-411009.
3. A.D. Deshpande S/o Sh. Dasrao G. Deshpande,
R/o Flat No.8, Kaustubh Apartment,
59/64, Kasba Peth, Pune-411011.
4. K. Subba Rao, S/o Sh. Bhaskara Rao
R/o Flat 10, Sayali Apts, Plot A/85,
Kasturba Society, Vishrantwadi, Pune-411015.
5. Subhash. S/o Sh. P.V. Narayanan,
R/o B-15, Shree Residency,
Opp. Ganesh Mandir, Dapodi, Pune-411012.
6. Bhima L. Sawai S/o Sh. Lala D. Sawai,
R/o Flat No.5, Arihant Sankul 'A',
Sai Chowk, New Sangavi, Pune-61.
7. Kiran R. Joshi s/o Sh. Rajaram M. Joshi,
R/o Ashray, Survey No.4/1/2A/1/6, Samarth Nagar,
Dighi, Pune-411015.
8. Mahendra, S/o Sh. Rajendra Deogaonkar,
R/o Arihant Society, 110 Mangalwar Peth,
Pune-411011.
9. N.Harikumar S/o Sh. Narayana Pillai,
R/o A-1/204 Tirupati Campus, PH-III
Adarsh Colony, Lane-2, Tingare Nagar,

Pune-411015.

10. Sanjay Ghodke S/o Sh. Arjun H. Ghodke, R/o C-20, Ganesh Park, Sinhagad Road, Manik Baug, Hingane Khurd, Pune-411051.
11. Raj Ahivale S/o Shripad M. Ahivale R/o 194/851, Sant Tukaram Nagar, Pimpri, Pune-411018.
12. Shanti Lal S/o Malhari Y. Sonawane, R/o Survey No.079, Sudarshan Nagar, Pimple Gurav, Pune-411061.
13. Johny Methew S/o Methew T.C. R/o Mary Nalayam Survey No.52/2, Bhairav Nagar, Vishranthwadi, Pune-411015.
14. Ashok Kumar S/o Sh. Laxman Rao Shelke, R/o 31/2/1, Shivram Nagar, Near St. Thomas Church, Pimple Gurav, Pune-411061.Applicants

(By Advocate : Mr. Yogesh Sharma)

Versus

1. Union of India through The Secretary, Ministry of Defence, Govt. of India, South Block, New Delhi-11.
2. Master General of Ordnance, Integrated HQ of MOD (Army), DHQ PO, New Delhi-11
3. The Director General (EME), Directorate General of EME, (EME Civ-4), Master General of Ordnance Branch, Integrated HQ of MOD (Army), DHQ PO, New Delhi-11
4. Commandant & MD
512 Army Base Workshop
Kirkee, Pune-411 003.

5. Records Officer,
EME Records,
Secundrabad,
Andhra Pradesh
6. Chairman/Secretary
Union Public Service Commission
New Delhi.
7. Sh. Ashok Kumar Panda,
Assistant Exec. Engineer,
Through the Jt. Director EME (Civ.)
Directorate General of EME, (EME Civ-4),
Master General of Ordnance Branch,
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DHQ PO, New Delhi-11
8. Sh. R. Jaya Kumar,
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9. Sh. S. Chandrakant Swamy,
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10. Sh. Narendra Singh,
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11. Sh. Satyakam Srivastava,
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12. Sh. Manoj Kumar Dubey,
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14. J. Narasimhan
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Master General of Ordnance Branch,
Integrated HQ of MOD (Army),
DHQ PO, New Delhi-11Respondents

(By Advocate : Mr. R. N. Singh for R-1 to 5, Mr. D. S. Mahendru for R-6 and Mr. S. K. Gupta for R-7 to 14)

O R D E R (ORAL)

A. K. Bhardwaj, Member (J)

Mr. S. K. Gupta, learned counsel for all the private respondents no. 7 to 14 produced a copy of the order dated 25.08.2015 passed by this Tribunal in O.A No. 1459/2011 and submitted that the controversy involved in the present O.A is in all fours of the said order. The relevant except of the order reads thus:-

"10. In view of the aforementioned, we are of the considered view that since being diploma holder the applicant was required to possess 5 years service and by the year 2009-10 he had not completed the required length of service, he was correctly not found eligible for next promotion and respondent No.6 being eligible for next promotion was given such promotion from due date validly.

7. As far as the judgment of Hon'ble Supreme Court in Union of India v. Sadhana Khanna (Smt.) (supra) is concerned, in the said case, after completion of 8 years of regular service in the grade of Assistant the respondent was granted short term promotion to the grade of Section Officer on 24.7.1991 but her junior had been included in the select list for regular promotion. The explanation given by the appellants before the Honble Supreme Court for her non inclusion in the select was that she was short of the minimum qualifying service of 8 years by 12 days. In the wake, following the law declared by in R. Prabha Devi v. Govt. of India, (1988) 2 SCC 233, their Lordships viewed that once the juniors were included in the select list, senior cannot be ignored. Paragraphs 8 to 12 of the judgment read thus:-

"8. In the counter affidavit filed before the Tribunal the appellant herein (respondent before the Tribunal) alleged that the respondent was not eligible for inclusion in the Select List of 1991, since on 1.7.1991 she was short of the minimum eligibility service requirement of eight years by twelve days. The respondent joined as Assistant on 13.7.1983 and as such she could not be placed on the select list.

9. The Tribunal allowed the O.A. by its order dated 24.9.1999. In the said O.A. it was hold that the Department of Personnel and Training had issued an

Office Memorandum dated 19.7.1989 soon after the decision of this Court in R. Prabha Devi and others vs. Government of India Through Secretary, Ministry of Personnel and Training, Administrative Reforms and others 1988(2) SCC 233 stating that where the junior had completed the eligibility requirement of promotion then their seniors will also be considered even if they have not completed the eligibility period.

10. The appellant filed a writ petition before the Delhi High Court which was dismissed and hence this appeal.

11. It may be noted that the respondent was offered appointment vide letter dated 5.7.1983 which is after 1.7.1983 from which the eligibility was to be counted. Hence, it is the Department which is to blame for sending the letter offering appointment after 1.7.1983. In fact, some of the candidates who were junior to the respondent were issued letters offering appointment prior to 1.7.1983. Hence it was the Department which is to blame for this. Moreover, in view of the Office Memorandum of the Department of Personnel and Training dated 18.3.1988 and 19.7.1989 the respondent was also to be considered, otherwise a very incongruous situation would arise namely that the junior will be considered for promotion but the senior will not.

12. In view of the above there is no merit in this appeal and it is dismissed."

8. In the said case, it was not so that the qualifying service for the junior and senior was different. The judgment was in distinct facts. As has been ruled by the Honble Supreme Court in Collector of Central Excise, Calcutta v. M/s Alnoori Tobacco Products & another, 2004 (6) SCALE 232, a judicial precedent need to be applied not

as statute but with due regard to the facts of the case in which the precedent is laid and the facts in which decision is to be taken. Relevant excerpt of the judgment reads thus:-

"12. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. V. Horton (1951 AC 737 at p.761), Lord Mac Dermot observed:

"The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge."

13. In *Home Office v. Dorset Yacht Co.* (1970 (2) All ER 294) Lord Reid said, "Lord Atkin's speech.....is not to be treated as if it was a statute definition It will require qualification in new circumstances." Megarry, J in (1971) 1 WLR 1062 observed: "One must not, of course, construe even a reserved judgment of Russell L.J. as if it were an Act of Parliament." And, in *Herrington v. British Railways Board* (1972 (2) WLR 537) Lord Morris said:

"There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case."

14. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

15. The following words of Lord Denning in the matter of applying precedents have become *locus classicus*:

"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

9. It was also the argument put forth by the learned counsel for applicant that earlier in terms of the order dated 11.1.2012 this Tribunal allowed the present OA. Once the order was challenged before Honble High Court of Delhi by way of W.P. (C) No.3957/2013 and was reversed, no reliance can be placed on the same. Nevertheless, we are of the view that once the qualifying service required to be possessed by diploma and degree holders for promotion to the next post, i.e., Assistant Executive Engineer is different, the respondents should evolve some such methodology, which could avoid creation of feeling in the mind of a senior that he was superseded in promotion by his junior. One of such methodologies may be to keep separate seniority list for diploma holder and degree holder and to fix the quota for their promotion to the post of Assistant Engineer.

10. Subject to these observations, OA is dismissed. No costs."
3. Learned counsel for the applicants could not distinguish the aforementioned order relied upon by the learned counsel for the private respondents.
4. Following the said order passed by the Tribunal, we dismiss the present O.A. No costs.

(V. N. Gaur)
Member (A)

(A. K. Bhardwaj)
Member (J)

/Mbt/