

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No.564 of 2003

New Delhi, this the 12<sup>th</sup> day of September, 2003

HON'BLE MR.KULDIP SINGH, MEMBER (JUDL)  
HON'BLE MR.R.K. UPADHYAYA, MEMBER (A)

V. Velayutham  
Chief Engineer,  
Ministry of Road Transport and Highways,  
Transport Bhavan,  
1 Sansad Marg,  
New Delhi-110 001.

....Applicant

(By Advocate: Shri R. Ventakramani, Sr. Counsel with  
Shri K.B.S. Rajan and Shri Ashok  
Parigrabi, Counsel)

Versus

1. The Union of India through  
Secretary to the Government of India  
Ministry of Road Transport and Highways,  
Transport Bhavan,  
1 Sansad Marg,  
New Delhi.

2. Shri Indu Prakash  
Chief Engineer (Roads)  
Ministry of Road Transport & Highways,  
Room No.209, Transport Bhavan,  
No.1 Sansad Marg,  
New Delhi.

.. Respondents

By Advocate: Shri M.M. Sudan, Senior Counsel for  
respondent No.1.

Shri Krishan Kumar, Counsel for respondent  
No.2.

O R D E R

Hon'ble Mr. Kuldip Singh, Member (J)

The short question involved in this OA is whether the judgment passed in OA No.2159/2002 by this Tribunal is judgment in rem or judgment in personum.

2. The facts in brief are that the applicant was initially appointed as Assistant Executive Engineer after qualifying the combined Engineering Services Examination, 1971.

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3. As far promotion to the post of Chief Engineer is concerned, the Recruitment Rules provided that "appointment to the Higher Administrative Group 'A' Level II posts (that is today, the grade of Chief Engineer, Level II) on the Roads or Bridges or Mechanical sides shall be made by selection on merit from amongst officers with not less than five years regular continuous service in the grade of Superintending Engineer on the Roads or Bridges or Mechanical side as the case may be.

4. It is further submitted that till 1995 the criteria for promotion to the post of Chief Engineer, i.e., experience in a particular side had been retained. However, scope for selection was enlarged by making those who had experience of 17 years in Group 'A' including 4 years in JAG eligible for promotion meaning thereby that for filling up the post of Chief Engineer (Road) in the event of non-availability of Superintending Engineer with 8 years of service in that side, Superintending Engineers with overall service of 17 years in Group A (of which four years should be in the grade of Superintending Engineer) would be considered. Thus it was an alternative qualification which was being considered.

5. Applicant was also promoted as Chief Engineer in 1997 on ad hoc basis and on regular basis w.e.f. 6.8.1998. There were different posting orders in respect of CE (Roads) and CE (Bridges) while the third was CE (Simplicitor).

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6. Respondents had issued one common seniority list on 13.2.2002 in which the name of the applicant had been shown junior to two other Chief Engineers. The said seniority list was challenged vide OA 2159/2002 by Shri V.K. Sinha, Chief Engineer on the ground that promotions were made by bifurcating the seniority list of SEs (Roads) and SE (Bridges) which in turn was based on fortuitous situations and further that since it was the fulfilment of the overall experience in Group 'A' post that was invoked in all the cases of promotion to the post of Chief Engineer so such promotion to the post of Chief Engineer should have been the basis of a common seniority list in the grade of Superintending Engineer.

7. It was further contended that with the 1998 Amendment to the Recruitment Rules there cannot be any post of Chief Engineer (Roads) or Chief Engineer (Bridges) and as such two of the three promotion orders dated 6.8.1998 became totally invalid as these were not based on common seniority of SE.

8. The Tribunal allowed the said OA and quashed the order dated 22.9.97 (ad hoc promotion to the post of Chief Engineer) regular promotion to the post of Chief Engineer (Roads) as well as the seniority list dated 13.2.2002 and the official respondents were directed to recast the seniority list of Chief Engineer (without any reference to Roads or Bridges) and that for this purpose review DPCs were to be conducted to consider the eligible Superintending Engineers from out of the common seniority in that post. so the applicant submits that the logical consequence of the said judgment is to consider all those

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who hold the said post as contained in the seniority list of 13.2.2002 for promotion to the post of Chief Engineer and the said seniority list is to be rescheduled taking into account the common seniority list in the grade of Superintending Engineers.

9. It is further stated that said judgment applies to those who are presently in service but cannot be applied to those who have already superannuated.

10. The applicant further apprehends that the respondents might restrict the implementation of the said judgment only with reference to the applicant therein in which event anomalous situation of following two criteria would be implemented. It is submitted that since there is only one cadre of Civil Engineering the artificial distinction as Roads/Bridges maintaining for a temporary period cannot govern the seniority or other conditions of service.

11. Moreover no option has been asked for while posting any Superintending Engineer in a particular side such as roads and Bridges and the judgment dated 17.12.2002 in OA 2159/2002 should be implemented by drawing a single seniority from 1990 in respect of all the Superintending Engineers and promotions should be made out of this common seniority for the post of Chief Engineers so it is prayed that the respondents should be directed to redraw the seniority list with reference to all the Chief Engineers whose names figure in the seniority list dated 13.2.2002 which has been quashed and set aside.

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12. The respondents are contesting the OA. The respondents reiterate that there were two directorates known as the Roads Directorate and Bridges Directorate from the very beginning. The posts of Chief Engineer were designated as Chief Engineer (Roads) and Chief Engineer (Bridges). The initial recruitment at the level of Assistant Executive Engineer was made through UPSC and an integrated (common) seniority list was being maintained but the applicant was allocated to both the Directorates. There is no denial of amending of the rules from time to time as alleged by the applicant also.

13. It is also pointed out that at many stages it has happened that a senior officer in one Directorate may not have been promoted as Chief Engineer on account of non-availability of vacancies whereas a junior officer posted in the other directorate may have got promotion earlier to his initially recruited senior officer on account of availability of vacancies.

14. The department had also taken a plea that though DPC was held on the same date for Chief Engineer (Roads) and Chief Engineer (Bridges) but they were given seniority as per the appointment in a particular grade and it is a common principle that inter-se seniority in a grade combining its various branches, is fixed from the date of appointment in that grade.

15. In such a seniority list of 1.1.1999 V.K. Sinha was shown junior to respondent No.2 and 3 in OA 2159/2002. He made representations which was turned

down. He filed OA No. 2159/2002 and the court quashed the seniority list of Chief Engineers dated 13.2.2002 and promotion orders of respondents 2 and 3 with a direction to redraw the seniority list of Chief Engineers in accordance with the Superintending Engineers in existence before promotion to the posts of Chief Engineer was made and the Tribunal further directed to consider the claim of the applicant in that OA for promotion to the higher level posts of Member, National Highways Authority of India (NHAI) and Additional Director General (ADG) on the basis of seniority list to be redrawn for the post of Chief Engineer.

16. The respondents further pleaded that they have challenged the order passed by the Tribunal before the Hon'ble High Court of Delhi.

17. The Hon'ble High Court in its interim order on CM No. 3092/2003 passed the order that "the process of preparation of fresh seniority list in terms of the impugned order of the Tribunal may continue but no further promotions shall be made without the leave of the court".

18. Now as far the applicability of the said judgment in the case of the applicant is concerned, the learned counsel for the respondents pointed out that the applicant in OA 2159/2002 had also challenged the appointment of his immediate two superiors who were respondents in that OA and the court had also quashed and set aside the order vide which those private respondents were promoted to the post of Chief Engineer and the court

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had then further directed the respondents to redraw the seniority list for the post of Chief Engineer in accordance with the combined seniority list before promotions to the post of Chief Engineers are made so the counsel for the respondents submitted that since in that case the applicant had also asked for quashing of the appointment of the persons who are shown senior to him in the seniority list dated 13.2.2002 so until and unless that is asked for applicant cannot claim seniority over those persons and this judgment cannot be said to be judgment in rem to refix the seniority of all the SEs who were in existence before the promotions to the post of Chief Engineers was made.

19. The counsel for the respondents further submitted that vide order dated 25.7.1996 the applicant had been promoted on 6.8.98 Chief Engineer so he cannot ask for review of the order dated 25.7.96. Whereas in the case of OA 2159/2002 the applicant therein had challenged the appointment of persons Shri V. Velayutham and Nirmaljit Singh who were promoted vide same DPC under which the present applicant was also promoted so for the purpose of redrawing the seniority list the case of persons senior to the applicant could not be reviewed nor there was any specific direction in the said OA as such the judgment was rather a judgment in personum and not judgment in rem.

20. We have considered these contentions.

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21. First of all we may mention that the reading of the judgment itself would go to show that by allowing the OA the court had allowed and quashed the seniority list dated 13.2.2002 and official respondents were directed to redraw the seniority list of Chief Engineers in accordance with the combined seniority list of SEs in existence before that promotions to the post of Chief Engineers were made. So the respondents cannot deny that in case they have to redraw the seniority list for the post of Chief Engineer then they have to prepare the same in accordance with the combined seniority list of SEs in existence before the promotions to the post of Chief Engineer were made.

22. The court had also observed that in these circumstances the preparation of seniority lists on the basis of the work done in this or that Directorate, and that too for the purpose of making promotions, is clearly bad and would deserve to be set aside.

23. The court further observed that we are inclined to conclude that promotion to the post of Chief Engineer is to be made logically speaking on the basis of the combined seniority list of Superintending Engineers and after promotions have been made, the Chief Engineers could be earmarked to work on this or that side.

24. The applicant has also relied upon a judgment of the Hon'ble Supreme Court in Om Prakash Sharma and Others Vs. U.O.I. & Others reported in 1985 (Supp) SCC 218 wherein it has been held as under:-

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" Labour and Services - Seniority and promotion - In common seniority list maintained for members of staff of three departments appellants shown senior to respondents - Later the three departments separated each devising its separate seniority list and one of the departments merged with a fourth department - Respondents belonging to the merged department getting some accelerated promotions on account of availability of vacancies there - But seniority list restored - Consequently respondents becoming senior to the appellants in the common list - Held, Article 16 violated - Respondents must get their original place qua the appellants and as such would be below the appellants - Constitution of India, Article 16".

25. We may mention that even at the time when the case was taken up before the Hon ble High Court the High Court has specifically stated that "the process of preparation of fresh seniority list in terms of the impugned order of the Tribunal in 2159/2002 may continue.....".

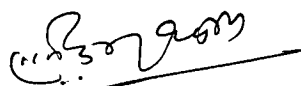
26. But in that situation also we find that if the process of fresh seniority has to be done that has to be done in accordance with the directions given in OA 2159/2002.

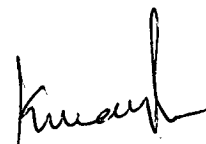
27. As regards the plea taken by the respondents that applicant has not asked for quashing of the appointment of two other persons who are shown senior to him in the seniority list we may mention that those two persons who had been shown senior to the applicant have been promoted in the year 1996 and the applicant had been promoted in the year 1998 so it is now too late to prepare seniority list in accordance with the directions given in OA 2159/2002. For that purpose the applicant need not ask for quashing of their appointment because in case the official respondents have to prepare a fresh seniority list in accordance with the direction given in:

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OA 2159/2002 they have to review all the promotions and apply the same principles to each and every case of promotion to the post of Chief Engineer. They cannot apply different standards or different rules for promotion of one individual vis-a-vis the other individuals. The point of law decided in OA 2159/2002 wherein the Tribunal had decided the basic principles to be followed for taking the combined seniority list of SES for promotion to the post of Chief Engineer so the official respondents cannot deviate from that principle unless that principle is set aside by a higher court. Hence we are of the considered opinion that the law as laid down by the Tribunal in OA 2159/2002 in case of each Superintending Engineer at the time of his promotion to the post of Chief Engineer is to be followed.

28. In view of the above, OA is allowed and the respondents are directed to redraw the seniority list in view of the directions given in OA 2159/2002. This may be done within a period of 3 months from the date of receipt of a copy of this order. No costs.

  
(R.K. UPADHYAYA)  
MEMBER (A)

  
( KULDIP SINGH )  
MEMBER (JUDL)