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ABRAHAM JACOB AND OTHERS

v

UNION OF INDIA

FEBRUARY 11, 1998

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[S. SAGHIR AHMED AND G.B. PATTANAİK, JJ.]

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Service Law : Inter se Seniority—Assistant Engineers in Telecommunication Department—Direct recruitment till 1969—Set of rules framed—When the rules were in draft form Asst. Engineers cadre vacancies filled—50% by direct recruit—And 50% by promotion from among Junior Engineers—All these promotions on as hoc basis—Draft rules approved by the Govt.—Ad hoc promotions regularized—Fresh seniority list on merit—Challenged before CAT—Order of CAT to prepare fresh list without quota/rota—On appeal Held : inter se seniority of promotees and direct recruits has to be on rotation of vacancies and on quota of vacancies reserved—Government order of Ministry of Home affairs dated 22/12/59 applicable, before the statutory rules were framed.

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Prior to 1969 Asst. Engineers in the Telecommunication department were recruited directly. In 1969, a set of rules was framed thereunder it was provided that 50 percent of the vacancies in the post of the Asst. engineer will be filled up by direct recruitment and 50 percent by promotion from amongst junior engineers. On 21st Feb. 1976 draft rules were approved by the Government and became statutory rules. During the period when the rules were in draft form, the vacancies in the post of Asst. engineers continued to be filled both by direct recruitment as well as promotion on 50:50 basis by virtue of an administrative decision. All the promotions during 1969-1976 were on ad hoc basis.

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Departmental promotion committee in 1978 regularised all ad hoc posts, screened all the promotes and drew fresh seniority list on the basis of merit. The promotees who were brought down in the merit list, challenged the Government decision before the Central Administrative Tribunal. The seniority in the cadre of Assistant Engineer was claimed on the basis of continuous service in the rank of Asst. Engineer. The Tribunal accepted the claim of the promotees and passed an order quashing the seniority list and directing the govt. to draw the fresh seniority list without importing any

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quota/rota rule for the period prior to 1976. The direct recruits were neither

party not the question of inter se seniority between the direct recruits and the promotees was under consideration. A

In fact the seniority list of the Asst. Engineers promoted and recruited for the period 1969 to 1976 was drawn by the Govt. on basis of administrative decision, as contained in the draft rules and in accordance with clause (6) of memorandum dated 22nd Dec. 1959 issued by the Ministry of Home Affairs. B

For the period 1969-1976, when the rules were in draft form the inter se seniority of direct recruits and promotees in the cadre of Assistant Engineers has to be determined in accordance with the above said Government Order, which stipulates that the relative seniority shall be determined according to the rotation of vacancies between the direct recruits and promotees which shall be based on quota of vacancies reserved for direct recruits and promotees respectively. C

Allowing the appeal, this Court D

HELD : 1. Inter se seniority of direct recruits and promotees in the cadre of Assistant Engineers has to be determined according to the rotation of vacancies between the direct recruits and promotees which shall be based on the quota of vacancies reserved for direct recruits and promotees respectively. [784-G] E

2. The inter se seniority of direct recruits and promotees, could be governed by administrative instructions and as per Clause (6) of the Memorandum of Ministry of Home affairs DT. 22/12/1959, in the absence of Statutory Rules, which were framed subsequently. [785-A] F

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 12386 of 1996 Etc. F

From the Judgment and Order dated 26.3.96 of the Central Administrative Tribunal, at Ernakulam in Kerala, in O.A. No. 15 of 1995. G

M.N. Krishnmani, Ramesh P. Bhatt, N.N. Goswami, Ms. Kumud L. Das, S.B.Upadhyay, Harish Chander, S.Wasim A. Qadri, Praveen Swarup, Arvind Kumar Sharma, C.V. Subba Rao, Ms. Anubha Jain and K.M.K Nair for the appearing parties. G

The Judgment of the Court was delivered by H

A **G.B. PATTANAİK, J.** These three appeals are directed against the same judgment of Central Administrative Tribunal, Erankulam Bench, one by the Union of India and the others by the affected employees who were the direct recruit Assistant Engineers in the Telecommunication Wing of the Government of India. The inter se seniority between the direct recruits and the promotees to the post of Assistant Engineer during the period 1969 till 1976 was the subject matter of consideration before the Tribunal, on an application being filed by a promotee challenging the seniority list of Assistant Engineers dated 20th June, 1994 as well as the provisional seniority list of Executive Engineers dated 25th November, 1994. The Tribunal by the impugned judgment has quashed the seniority list of Assistant Engineers and had directed to re-draw a fresh seniority list without importing any quota/rota rule for the period prior to 9.9.1976.

Admittedly, the post of Assistant Engineer in the erstwhile Civil Wing of Posts and Telegraphs Department now nomenclatured as Telecommunication Department was being filled up only by direct recruitment. There was no statutory rule governing the service conditions of these Assistant Engineers. In 1969, a set of rules was framed whereunder it was provided that the 50 per cent of the vacancies in the post of Assistant Engineer will be filled up by direct recruitment and 50 percent by promotion from amongst the Junior Engineers. The draft rules thus framed in the year 1969 was ultimately approved by the Government and became a statutory rule under Article 309 of the Constitution on 21st February, 1976. But even before the rules were finally approved and became a statutory rule on 21st February, 1976 on being approved by the competent authority the vacancies in the post of Assistant Engineer continued to be filled up both by direct recruitment as well as by promotion on 50:50 basis by virtue of an administrative decision. Thus the provisions in the draft rules by virtue of an administrative decision continued to be applied in the matter of recruitment to the post of Assistant Engineer. As the rules were in a draft stage, promotion of the Junior Engineers to the post of Assistant Engineer was being made on ad hoc basis. After the rules were approved on 21st February, 1976 the ad hoc promotion was regularised by order dated 20th of March, 1978 in the cadre of Assistant Engineer. At the time of regularisation of the aforesaid promotees a departmental promotion committee was constituted which committee screened the cases of all such ad hoc promotees and then drew up the merit list for being regularised and the seniority of such promotees inter se was drawn up on the basis of their respective position in the merit list prepared for regularisation. The aforesaid decision of the Government was challenged by some of promotees who were

brought down in the merit list before the Central Administrative Tribunal, A
Ernakulam Bench, claiming thereunder that their continuous service in the
rank of Assistant Engineer should be the basis for their seniority amongst the
promotee Assistant Engineers. The Tribunal accepted their claim. It may be
stated here that in the aforesaid proceedings before the Central Administrative
Tribunal the direct recruits between the period 1969 till 1976 were not parties B
nor the question of inter se seniority between such direct recruits and the
promotees was under consideration. The Government, however, drew up the
seniority list, in respect of those Assistant Engineers who were recruited
between 1969 till 1976 and those who were promoted from the post of Junior
Engineers between the said period on the basis of administrative decision, to
promote to the extent of 50 per cent as contained in the draft rule following C
the Government Memorandum dated 22nd December, 1959. The aforesaid
principle on the basis of which the inter se seniority of the direct recruits and
promotees between the period 1969 till 1976 was made, was challenged before
the Ernakulam Bench of the Central Administrative Tribunal and the Tribunal
by the impugned judgment came to the conclusion that the recruitment rules D
having been enforced only on 9.9.1976, the inter se seniority between the
direct recruits and promotees prior the said date cannot be determined by
following the quota/rota rule which is a part of the statutory recruitment rule.
The Tribunal further came to hold that since earlier it has been decided by
the Tribunal that these promotees will get their service counted from the date
of their ad hoc promotion and not from the date of their regularisation the E
seniority list has been drawn up on a wrong basis and as such cannot be
sustained. With the aforesaid conclusion the Tribunal having set aside the
seniority list and having directed to re-draw the same without importing any
quota/rota rule for the period prior to 9.9.1976, these appeals have been
preferred.

Mr. M.N. Krishnamani, learned senior counsel appearing for the direct
recruits and Mr. N.N. Goswami, learned senior counsel appearing for the
Union of India contended that the Tribunal committed gross error in issuing
the impugned direction inasmuch as the Junior Engineers could be promoted
to the extent to 50 per cent of the posts in the cadre of Assistant Engineer
in enforcement of the provisions in draft rules and therefore for determination G
of their inter se seniority as between the direct recruits and the promotees
for the period in question, namely from 1969 till 1976, the Government Order dated
22.12.1959 has to be followed. It was further contended that in fact the
Hyderabad, Bombay and Delhi Benches of the Tribunal have already taken
the view that the general principles for determination of seniority enunciated H

A in the order of Ministry of Home Affairs dated 22.12.1959 should be followed for drawing up the seniority list and it is only the Ernakulam Bench by the impugned judgment had taken a contrary decision. Mr. K.M.K. Nair, learned counsel appearing for the promotée - respondent on the other hand contended that the respondent having rendered long years of service as Junior Engineer and having been promoted as an Assistant Engineer the continuous length of service in the cadre of Assistant Engineer should be the basis for determining the inter se seniority between the direct recruits and promotees and as such there is no infirmity with the impugned judgment of the Tribunal.

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C Having heard the learned counsel for the parties it appears to us that the only question for consideration is on what principle the inter se seniority between the direct recruits and promotee Assistant Engineers will have to be determined for the period 1969 till 1976 i.e. the period from which 50 per cent of the posts were filled up by promotion till the enforcement of the statutory recruitment rules? It is undisputed that prior to 1969 no Junior Engineer was being promoted to the post of Assistant Engineer. From 1969 after formulation of a set of draft rules promotion was being given to the Junior Engineers to the post of Assistant Engineer in accordance with the provisions contained in the draft rules even before such draft rules were approved by the governmental authority and became a statutory rule, by virtue of an administrative decision of the Government. It is too well settled that the service conditions of employes, in the absence of a statutory rule could be governed by administrative instructions. There was, therefore, no illegality in giving promotion to the Junior Engineers to the post of Assistant Engineer because of the aforesaid administrative decision of the Government. It is also conceded that in the statutory rules the principle of determination of inter se seniority between the direct recruits and promotees has not been indicated.

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E It is in this context the Government of India followed the general principles for determining the seniority enunciated in the order of Ministry of Home Affairs dated 22.12.1959. Clause (6) of the aforesaid Memorandum which deals with relative seniority of direct recruits and promotees stipulates that the relative seniority shall be determined according to the rotation of vacancies between the direct recruits and promotees which shall be based on the quota of vacancies reserved for direct recruits and promotees respectively. Since the statutory rule had not come into force and yet promotion could be given on the basis of the provisions contained in the draft rule by virtue of an administrative order of the Government such promotees cannot claim a greater advantage than the direct recruits having come into the cadre on the basis of the aforesaid draft rules. Further, the inter se seniority of such direct

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recruits and promotees has to be determined by taking recourse to the aforesaid office memorandum dated 22.12.1959 issued by the Government of India in the Ministry of Home Affairs. Needless to mention that this principle has to be invoked for determination of inter se seniority of the appointees both direct recruits and promotees during the period 1969 till 9.9.1976 and in fact the Government has drawn up the seniority list on following the said principle. In the aforesaid premises, the direction of the Tribunal in the impugned judgment to re-draw the seniority list without importing any quota/rota rule for the period prior to 9.9.1976 is unsustainable in law and we accordingly quash the said direction. Necessarily, therefore, the inter se seniority of the direct recruits and promotees in the cadre of Assistant Engineers for the period 1969 till 9.9.1976 has to be determined in accordance with the Government Order dated 22.12.1959 issued by the Ministry of Home Affairs. We, accordingly allow these appeals and set aside the impugned Judgment of the Central Administrative Tribunal, Ernakulam Bench. There will be no order as to costs.

S.S.

Appeals allowed. D