

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Reserved on : December 07, 2010*
Judgment Pronounced on: December 16, 2010

+ **W.P.(C) 3103/2010**

JAGDISH PRASAD Petitioner
Through: Ms.Gyan Mitra, Advocate

versus

DDA & ORS. Respondents
Through: Ms.Kanika Agnihotri, Advocate and
Ms.Shikha Tandon, Advocate
Ms.Jyoti Singh, Advocate for R-2.

W.P.(C) 2948/2010

DDA & ORS. Petitioners
Through: Ms.Kanika Agnihotri, Advocate and
Ms.Shikha Tandon, Advocate

versus

HARENDRA PAL & ORS. Respondents
Through: Ms.Jyoti Singh, Advocate for R-1.
Ms.Gyan Mitra, Advocate for R-2.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J.

1. A seniority list of Assistant Engineers under DDA which was finalized on 21.8.1996 was unsettled by DDA after 13 years and 2 months, when on 20.10.2009 a revised seniority list was issued and as per which Harendra Pal Singh lost out on

seniority and was immediately affected on account of Jagdish Prasad, who was shown junior to him in the seniority list dated 21.8.1996 was shown as senior to Harendra Pal Singh. Needless to state, Harendra Pal Singh approached the Central Administrative Tribunal and obtained a verdict favourable to him. The Tribunal has held that by 20.10.2009 it was too late in the day to revise the seniority list of Assistant Engineers which was settled on 21.8.1996.

2. The decision dated 2.2.2010 passed by the Tribunal in favour of Harendra Pal Singh has been challenged by DDA as also by Jagdish Prasad who have filed the above captioned writ petitions.

3. It is the case of the petitioners that notwithstanding 13 years and 2 months passing by since the seniority list dated 21.8.1996 was finalized, because a fundamental wrong was committed by the Department and so patent was the error and illegality that the Department was justified in revising the seniority list and for which the petitioners rely upon the decision of the Supreme Court reported as AIR 1989 SC 357 R.M.Ramul vs. State of Himachal Pradesh & Ors.

4. At the outset it may be noted that in R.M.Ramul's case (supra), a seniority list dated 13.9.1971 was questioned and was corrected after 11 years on 28.4.1982 and the Supreme Court had upheld the action of the Government in correcting the seniority list noting that the initial seniority list had been illegally prepared in violation of the directions issued by the Central Government. It was noted by the Supreme Court that the aggrieved employee had made an immediate representation after the seniority list was prepared on 13.9.1971.

5. Thus, in a nutshell, the contention urged by the

petitioners is that on account of mere delay in revising the seniority list the action of DDA could not be questioned.

6. We may note that in the instant case, Sh.Jagdish Prasad had filed a representation against the tentative seniority list circulated and the date of his representation is 7.3.1996. It is apparent that this representation precedes the date 21.8.1996, when the final seniority list was notified. Thereafter i.e. after the final seniority list was notified, he kept quiet for nearly 8 years and the first representation which he made after 21.8.1996 is dated 29.3.2004. He followed it up with two more representations made in the year 2004; three representations made in the year 2005; one representation made in the year 2007; two representations made in the year 2008 and one representation made in the year 2009.

7. What was the ostensible error claimed/stated to have been made by the Department which needed correction?

8. As per the applicable Recruitment Rules to the post of Assistant Engineer, there are two channels of appointment. 50% posts are filled up by direct recruitment and 50% by promotion. The feeder cadre for filling up the 50% posts by promotion is the post of Junior Engineer and we find that the Recruitment Rule contemplates further bifurcation with 25% representation of Junior Engineers having a degree and 25% representation of Junior Engineers having a diploma. Eligibility for promotion is 3 years' regular service as a Junior Engineer with a degree and 8 years' regular service as a Junior Engineer with a diploma. As per the Department the error committed in the year 1996 was to en-block place the promotee Junior Engineers junior to the Direct Recruits for the year 1988 and 1989 and not rotate the seniority with reference to the rota applicable for the quota. To put it pithily, as per the

Department, since 50% recruitment to the post of Assistant Engineer was by direct recruitment and 50% by promotion, the direct recruits and the promotees were to be rotated, for purposes of seniority, 1:1. According to the Department corrective action was taken being that en-block placement of promotees shown junior to the direct recruits was undone and the two were intermingled with the rota 1:1.

9. The issue is not as simple as projected by DDA. A perusal of the revised seniority list shows that Jagdish Prasad has been shown as being promoted in the promotee quota as of 14.12.1988. It is not in dispute that Jagdish Prasad has been held entitled to be promoted as a Junior Engineer with a degree. It is not in dispute that Jagdish Prasad has joined as a Junior Engineer on 11.3.1980 and at that time he possessed no degree and had a Diploma in Engineering. It is also not in dispute that with reference to his seniority as a Junior Engineer with a diploma, notwithstanding he having 8 years' service to his credit as of 14.12.1988, he would not earn a promotion as an Assistant Engineer as persons senior to him as Junior Engineers with a diploma had yet to earn a promotion. His promotion is with reference to the fact that he obtained a Degree in Engineering on 4.4.1986 and thus became entitled to be considered for promotion as an Assistant Engineer in the category of Junior Engineer with a Degree.

10. As per the Department, Jagdish Prasad was entitled to be promoted in the category of Junior Engineer with a degree after 2 years of acquiring the degree for the reason, the Recruitment Rule for the post of Assistant Engineer, vide Note-2, thereof provides as under:-

"If an S.O. who has done graduation, completes 8 years service as S.O. on a date earlier than the date on which the period of 2 years after graduation

expires, he should be given promotion from such earlier date notwithstanding the fact that he has not completed 2 years service after graduation."

11. It may be noted that for unexplainable reasons the Department was referring to Junior Engineers as 'Section Officer (Junior Engineer)' and this explains the reference to the acronym 'S.O.'

12. Relevant would it be to record that the note aforesaid was the subject matter of an opinion rendered by the Supreme Court. The decision rendered by the Supreme Court is reported as 2007 (5) SCC 535 Shailendra Dania & Ors. vs. S.P.Dubey & Ors., where the Supreme Court considered Note-2 afore-noted in para 9 above, and held as under:-

"After having an overall consideration of the relevant rules, we are of the view that the service experience required for promotion from the post of Junior Engineer to the post of Assistant Engineer by a degree-holder in the limited quota of degree-holder Junior Engineers cannot be equated with the service rendered as a diploma-holder nor can be substituted for service rendered as a degree-holder. When the claim is made from a fixed quota, the condition necessary for becoming eligible for promotion has to be complied with. The 25% specific quota is fixed for degree-holder Junior Engineers with the experience of three years. Thus, on a plain reading, the experience so required would be as a degree-holder Junior Engineer. 25% quota for promotion under the rule is assigned to degree-holder Junior Engineers with three years' experience, whereas for diploma-holder Junior Engineers eight years' experience is the requirement in their 25% quota. Educational qualification along with number of years of service was recognized as conferring eligibility for promotion in the respective quota fixed for graduates and diploma-holders. There is watertight compartment for graduate Junior Engineers and diploma-holder Junior Engineers. They are entitled for promotion in their respective quotas. Neither a diploma-holder Junior Engineer could claim promotion in the quota of degree-holders because he has completed three years of service nor can a

degree-holder Junior Engineer make any claim for promotion quota fixed for diploma-holder Junior Engineers. Fixation of different quota for promotion from different channels of degree-holders and diploma-holders itself indicates that service required for promotion is an essential eligibility criteria along with degree or diploma, which is service rendered as a degree-holder in the present case. The particular years of service being the cumulative requirement with certain educational qualification providing for promotional avenue within the specified quota, cannot be anything but the service rendered as a degree-holder and not as a diploma-holder. The service experience as an eligibility criterion cannot be read to be any other thing because this quota is specifically made for the degree-holder Junior Engineers.

As a necessary corollary, we are of the view that the diploma-holder Junior Engineers who have obtained a Degree in Engineering during the tenure of service, would be required to complete three years' service on the post after having obtained a degree to become eligible for promotion to the higher post if they claim the promotion in the channel of degree-holder Junior Engineer, there being a quota fixed for graduate Junior Engineers and diploma-holder Junior Engineers for promotion to the post of Assistant Engineers."
(Underline Emphasized)

13. It is thus apparent that the Department committed an illegality when the seniority list was revised in the year 2009 and Jagdish Prasad who had not rendered 3 years' service as a Junior Engineer after he had obtained a Degree was held entitled to be promoted as an Assistant Engineer in the 25% quota allocable to Junior Engineers with a Degree. For unexplainable reasons his stale claim was picked up and the settled Seniority List was revised after 13 years.

14. It would be interesting to note that after the decision of the Supreme Court, the Department has revised the seniority list of Junior Engineers in which Jagdish Prasad has found himself lowered in the seniority list of Junior Engineers with a

Degree. The revised seniority list of Junior Engineers has for unexplainable reasons not been notified till date but on 4.7.2008 was circulated to the Department for necessary action.

15. In a nutshell, the position would be that to give effect to a stale claim of Jagdish Prasad who claims a right to be promoted as an Assistant Engineer with reference to a date he was not eligible to be promoted in the 25% quota of Junior Engineers with a degree, notwithstanding the fact that by the year 2007 the Supreme Court had negated the stand of DDA to interpret Note-2 of the Recruitment Rules in the manner DDA was wanting to so interpret, ignoring that on the one hand DDA was revising the seniority list of Junior Engineers and as per the list which was finally revised by DDA Jagdish Prasad found himself lower in the seniority position as a Junior Engineer, DDA enhanced his seniority position as an Assistant Engineer.

16. Before concluding, we need to pen that all kinds of wrongs are not treated as capable of belated rectification. Fundamental wrongs which are grave and unsustainable are treated as capable of being rectified. A safe test of what would be a fundamentally, grave and unsustainable wrong would be to see whether the illegality reaches the level of inherent perversity of the kind that no man with a sense of justice would accept the same or of a kind noted by the Supreme Court in the decision reported as 2004 (1) SCC 149 Dr.Renuka Datala vs. Solvay Pharmaceuticals BV & Ors. Though in a different context, the decision throws light that finality cannot attach to decisions which are made on fundamentally erroneous basis or a patent mistake; the fundamental errors or the patent mistakes being of a kind which on the face of it demolish the foundation of the action.

17. Thus, the Department committed an illegality in

disturbing a settled and finalized seniority list after 13 years thereby prejudicing the interest of Harendra Pal Singh.

18. In light of the above, both the writ petitions are dismissed upholding the decision dated 2.2.2010 passed by the Central Administrative Tribunal.

19. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(SIDDHARTH MRIDUL)
JUDGE

December 16, 2010
dk