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

Date of Decision: 23.10.2018

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W.P.(C)No.2897/2001

B.M. BATISH

..... Petitioner

Through : Ms. Palak Rohmetra, Adv.

versus

UOI THROUGH LT. GOVERNOR & ORS. ... Respondents

Through : Mr. Kanishk Rana, Adv. for
Mr. Anuj Aggarwal, Adv.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE PRATEEK JALAN

S. RAVINDRA BHAT, J.(ORAL)

1. The writ petitioner is aggrieved by an order dated 29.03.2001 of the Central Administrative Tribunal (hereafter referred to as "CAT"), which was made at the behest of the contesting respondent nos.3 and 4 (hereafter referred to as "the applicants").

2. Briefly the facts are that the writ petitioner joined the Irrigation and Flood Control Department of the Delhi Administration (hereafter as "the NCT") in 1966 as a Junior Engineer. He apparently acquired a degree/degree equivalent qualification sometime in 1970. He was promoted in 1973 on *ad hoc* basis on the post of Assistant Engineer but subsequently reverted in 1976. Eventually, based upon the

availability of promotional vacancies in the cadre of Assistant Engineers (AE), he was promoted to that post, w.e.f. 13.10.1980. Previously, he functioned on *ad hoc* basis as AE from 24.09.1979. The record would reveal that the final seniority list was prepared on 01.12.1991 in which the petitioner was shown at Sr.No.44. The contesting respondents – who were recruited as AEs in 1982, were shown at Sr. Nos.29 and 30. The petitioner approached the CAT (by filing O.A.No.2665/1991) complaining that his representations for grant of seniority from an anterior date were unjustifiably rejected. In O.A.No.2665/1991 (hereafter referred to as “the first proceedings”), the petitioner’s claim was largely based upon the judgment of a Id. Single Judge of this Court dated 28.11.1984, in W.P.(C)No.741/1977. That judgment was in the context of a petition by one Mr. B.S. Hooda, who was placed somewhat similarly, in the sense that he too had acquired a degree qualification in 1970; though he was senior to the present petitioner. He had claimed seniority from the date prior to his date of regular promotion arguing that the acquisition of the higher/degree qualification entitled him to be treated as eligible and also consequently, promoted to a regular vacancy in the cadre of AE. The Id. Single Judge appears to have accepted this plea. The other employees, who were apparently aggrieved by the judgment of the Id. Single Judge, as well as the official respondents had approached the Division Bench of this Court. Besides, the judgment of the Id. Single Judge was apparently contrary to the view expressed by two other Single Judges of the Court. Ultimately, the appeal was heard by the Division Bench (LPA No.123/1985). The appeal was allowed on

13.09.1996. The Court held as follows :

“..... The language of the DPC dated 28.9.70, is very clear that promotes are ad hoc and by no stretch of imagination can the promotion of Mr. Hooda be said to be a regular one or nor could it be treated as within promotee quota. It was clearly made against the deputation/direct recruitment quota on an ad hoc basis and was not on a regular basis, particularly because Mr. Hooda was ineligible as on 28.9.70 for regular promotion. Even assuming the quota rule had broken down, he could not claim regular promotion from 28.10.70, for he had not completed 3 years after passing AMIE nor did he have 8 years Section Officer. There was no basis in the Rules to treat him as eligible by counting 3/8 proportionate service of Mr. Hooda while submitting the proposals to the DPC.

It is true that even though a promotion is called ad hoc it may, in fact, be not ad hoc and could be deemed regular in certain situations, such as where the selection procedure was gone through as for regular promotions and if the person is qualified for regular promotion, etc. In the present case, we have shown that as on 28.9.70, Mr. Hooda was not eligible and hence the above principle cannot be attracted. We, therefore, disagree with Charanjit Talwar, J. on this main issue.

For all the above reasons, we hold on a thorough examination of the documents filed by appellants, Mr. Hooda and the department, that the promotion of Mr. Hooda on 28.10.70 pursuant to DPC dated 28.9.70 was ad hoc and could not be deemed to be a regular one Point 4 is decided against Mr. Hooda.”

3. In the meanwhile, the CAT, based upon the judgment and order of the Id. Single Judge, accepted the present petitioner's claim and directed that he be given benefits in a like manner as in the case of

Hooda. This meant that he was entitled to be accorded seniority benefits from the date anterior to his regular promotional entry into the cadre of AE – in all probabilities from 1973. This led to the respondents reworking the seniority list as on 08.01.1997. This seniority list became the subject matter of proceedings before the CAT – the second proceedings, at the behest of the applicants (respondents No.3&4 herein).

4. The Tribunal noticed all the relevant facts and recorded its conclusions as follows :

“24. We have heard the learned counsel for the parties and have gone through the records of the case.

25. From the perusal of the pleadings and after hearing the rival contention of the parties, we find that the short question which has to be answered by the court is whether the judgment in OA 2665/91 vide which the seniority of respondent No.3 was upgraded based on the judgment given by the learned Single Bench in CWP 741/77 had become final and whether on subsequent occasion the judgment given by the Single Bench in Writ Petition No.741/77 having undergone a further change in LPA 123/85 and then SLP which has entirely changed the principles as laid down by the learned Single Bench judgment of the High Court then whether the seniority of the respondent No.3 can be redetermined or not.

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30. In our view the contentions raised by the learned counsel for the respondents have no merits at all. Admittedly the respondent No.3 was given benefit of the judgment given by the Hon’ble Single Judge in CWP 741/77, thus the foundation for upgrading the seniority of respondent No.3 was the judgment given by the Hon’ble

Single Judge. Since the same very judgment has undergone a change by a decision given by the Division Bench of the Delhi High Court in LPA 123/85 against that very judgment, so the foundation itself shakes and as such the respondents cannot stand on the same foundation. It is not a case where the judgment has been cited in support of a case which may get subsequently overruled by a superior court but it a case where the same judgment had undergone a change and the department was well aware of the fact that separate proceedings were pending to challenge that judgment given by the Single Bench as the direct recruits had filed an LPA to challenge the judgment of the Single Bench and simultaneously they had filed an OA before this Tribunal wherein they had challenged the upgradation of Hooda so it was foremost duty of the respondent No.3 as well as the official respondents in OA 2665/91 to inform the court that judgment given in Writ No.741/77 is under challenge. Thus it is a clear case where the true facts has been concealed from the Tribunal when the Tribunal was deciding OA 2665/91.

31. It is also strange that the respondent No.3 who is pleading estoppels against the applicants has not given any reason as to why in OA 2665/91 he had not impleaded other persons who were likely to be affected by the judgment coming in favour of respondent no.3 in OA 2665/91. In such like circumstances we find that the principles of estoppel does not apply at all because the moment the applicants came to know about the refixation of seniority at the time when respondent No.3 was being considered for next higher promotion, the direct recruits, i.e., the applicants started making representations about the refixation of the seniority of respondent No.3. Similarly we find that the plea of limitation is not available to respondent No.3 because the applicants in the present OA are asking to refix the seniority of respondent No.3 in accordance with the directions given by the Division Bench in LPA and the Hon'ble Supreme Court. They have not challenged the seniority at the time

the seniority was refixed because at that time the applicants were not aware of the fact that the seniority of respondent No.3 has been refixed as the order of refixation the seniority had not been circulated. Besides that the applicants could have asked to refix seniority of respondent No.3 only after judgment given in the LPA and after the matter had become final when the SLP had also been disposed of by the Hon'ble Supreme Court. It is the LPA 135/85 and SLP judgment by Apex Court which have finally decided the original CWP 741/77. Respondent No.3 cannot be allowed to have benefit of judgment in CWP 741/77 which itself have been set aside in LPA 135/85 and confirmed in SLP.

32. *In view of our discussion above, the OA succeeds and same has to be allowed. Accordingly we allow the OA and direct the respondent Nos.1 and 2 to reconsider the case of respondent No.3 and refix his seniority in accordance with the judgment given in LPA No.135/85 which had modified the orders given by Hon'ble Single bench of the Delhi High Court in CWP No.741/77 on the basis of which the seniority of respondent No.3 was earlier fixed in the cadre of AEs.*

33. *Respondents are further directed to fix the seniority of applicants in the list of AEs after refixing the seniority of respondent No.3 in terms of the directions given in LPA 135/85 which has been further upheld by the Hon'ble Supreme Court in SLP. They are further directed that the seniority list of Executive Engineers be updated consequent to the refixation of seniority of respondent No.3 in the seniority list of AEs. This exercise may be done within a period of 4 months from the date of receipt of a copy of this order."*

5. It was argued on behalf of the petitioner that the CAT's findings cannot be sustained. Learned counsel pointed out that the petitioner was promoted in 1973 on *ad hoc* basis, on the premise of his holding the requisite qualifications, which had been acquired in 1970 as in

Hooda's case. The finalization of seniority in 1991, was on the basis of Hooda's decision. In these circumstances, the grievance against denial of benefit which led to the first proceedings was a justified claim which the CAT allowed in the first instance. It was argued that being the later entrants in the cadre of AEs, the contesting respondents could not be claimed to be necessary parties as they were not likely to be affected. On this ground, they were not impleaded in the earlier proceedings initiated by the petitioner. Ld. counsel submitted that since the final seniority list was made only in 1997, the contesting respondents' applications could not be entertained in 1998 having regard to the period of limitation prescribed under the Administrative Tribunal Act.

6. It is evident from the factual narrative that the petitioner's claim was based on parity with B.S. Hooda's case. Like the latter, the petitioner claims to have acquired the degree qualification which was the eligibility criteria for promotion or recruitment to the cadre of AE, in 1970. Of course, B.S. Hooda was senior to the petitioner having entered the service in the cadre of JE prior to him but in other respects, no doubt, there was an identity of facts. However, to the extent that the petitioner claimed entitlement on the basis of his having acquired degree qualification, this court is of the opinion that no right *per se* could have flowed in the manner as was sought to be put forward. No rule or binding norm, prescribes that upon the acquisition of higher qualification (such as a degree in engineering), a person placed in the lower cadre would automatically stand transferred to the higher cadre (i.e. AE). This obviously, meant that the individual had to wait for his

turn for promotion— either on the basis of selection i.e. merit or on the basis of seniority. The first judgment in Hooda's case accepted an identical argument; the first proceeding before the CAT initiated by the petitioner led to relief on the basis of Hooda's case. As a consequence, the seniority list was recast in 1977. In the meanwhile, the Division Bench and the Supreme Court reversed the holding or ratio in Hooda's case. This meant that there was no question of automatic grant of higher cadre or promotion on the basis of acquisition of a degree; the entitlement had to flow on the basis of consideration by the DPC which in turn depended upon the availability of vacancies and the performance (i.e. suitability and the fitness) of the individual candidates. The resultant exclusion of the contesting respondents, meant that the seniority list – which had been earlier finalized on 01.12.1991 was recast on 08.01.1997. This occasioned the second proceeding. This Court is not persuaded by the petitioner's argument that the contesting respondents acted belatedly or approached the CAT after a lapse of time. The cause of action as it were in their case arose after the publication of the revised seniority list. There was, at least from their perspective, no occasion for the authorities to revise the seniority list. Once the seniority list was finalized as on 01.12.1991, they could be sanguine about their position - which incidentally was far higher than the present petitioner (contesting respondents were reflected at Sr.Nos.29 and 30 in the earlier list whereas the petitioner was shown at Sr.No.44). The first proceeding culminated on a bare acceptance of the B.S.Hooda's principle. That principle, if one may so term, was upset by the

Division Bench by its judgment of 30.09.1996. Such being the case, there was really no basis for the seniority list, which was subsequently published on 08.01.1997.

7. In these circumstances, this Court is of the opinion that the impugned order does not call for interference; what it merely did was to instruct the authorities to take note of the relevant binding orders of the Division Bench and the Supreme Court– and recast the seniority list of all contesting parties.

8. For the above reasons, this Court is of the opinion that this writ petition has to fail and is accordingly dismissed.

S. RAVINDRA BHAT, J

PRATEEK JALAN, J

OCTOBER 23, 2018

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