

Dwarka Nath Sharma

Vs

Union of India and Others

Civil Appeal No. 3224 of 1989

(G. L. Oza, Ranganath Misra JJ)

08.08.1989

JUDGMENT

RANGANATH MISRA, J. –

1. Special leave granted.

2. Appellant was recruited as an Assistant Executive Engineer in the Military Engineering Service upon his selection by the Union Public Service Commission through the combined Central Engineering Service Examination of 1960 and he joined as an Assistant Executive Engineer on April 24, 1962. A provisional seniority list was prepared in August 1963 as claimed by him and the appellant represented that his previous service under the Central Government in consideration of which he had been given three increments at the time of joining should have been taken into account. In January 1967, the seniority list was published where, as the appellant pleaded, he was shown at the 483rd position. He represented against the lower placement and asked for placing him at the appropriate place. The Departmental Promotion Committee did not consider him for promotion on the basis of his lower placement in the seniority list and he was not promoted. Appellant, therefore, filed a suit for redress of his grievance of lower placement and for consequential reliefs. The suit was dismissed. Appellant's appeal before the District Judge was also dismissed and thereupon the appellant went before the High Court in second appeal but that too was dismissed. It is against the judgment of the High Court affirming those of the courts below that this appeal has been brought before this Court.

3. Before we go into the merits of the matter we must indicate that the case has not been appropriately placed in the courts below and relevant material has not even been made a part of the present record.

4. This claim in this litigation has to be considered in the backdrop of two earlier case. *Bachan Singh v. Union of India* ((1972) 3 SCC 489 : (1972) 3 SCR 898 : 1973 Lab IC 315) is the judgment of this Court where a dispute relating to the same Military Engineering Service involving inter alia of a claim of seniority came to be disposed of by a Constitution Bench. It is not necessary to refer at any length to the judgment in view of the fact that the result of the subsequent litigation in the case of *A. Janardhana v. Union of India* ((1983) 3 SCC 601 : 1983 SCC (L&S) 467) would be sufficient for the present purpose.

5. Notice was given in this appeal to hundreds of respondent whom the appellant had impleaded, but no one has appeared to contest his claim in this Court.

6. There has been no dispute in the courts below and here too that the appellant has been legally recruited to the service. In Janardhana case ((1983) 3 SCC 601 : 1983 SCC (L&S) at p. 618 of the report this Court held : (Para 23)

"Keeping in view the exigencies of service and the requirements of the State, temporary posts would be a temporary addition to the strength of the cards, unless it is made clear to the contrary that the temporary posts are for a certain duration or the appointment to temporary posts are of an ad hoc nature till such time as recruitment according to rules is made. In the absence of any such provision, person holding permanent posts and temporary posts would become the member of the service provided the recruitment to the temporary posts is legal and valid. Once the recruitment is legal and valid, there is no difference between the holders of permanent posts and temporary posts insofar as it relates to all the members of the service."

7. In the instant case, the Union of India accepted the position that recruitment through the Union Public Service Commission had been regularly made and the posts was not a temporary one but as the performance of the appellant had not been of a high order, he had been placed below treating him to be temporary - a position for which there is not much of legal support.

8. Some controversy was raised as to whether Janardhana ((1983) 3 SCC 601 : 1983 SCC (L&S) decision would operate as res judicata in view of the fact that the appellant had been impleaded in the litigation. Janardhana civil appeal before this Court arose out of a writ petition in the High Court and as paragraph 36 of the judgment at p. 625 of the report indicates :

"By an order made by the High Court the names of respondents 3 to 418 (in which the appellant was included) were deleted since notices could not be served on them on account of the difficulty in ascertaining their present addresses on their transfer sub-sequent to the filing of these petitions."

It is not the case of the respondent that the appellant had volunteered to appear in the writ petition or before this Court in the Janardhana dispute.

9. Strictly speaking, Janardhana decision ((1983) 3 SCC 601 : 1983 SCC (L&S) may not have the effect of res judicata for the present litigation, but we do not think in a dispute of the present dimension where hundreds of employees are concerned, it would be proper for the employees to litigate over the same issues from time to time. If it would be open to members of the service from time to time to raise disputes of the same nature and introduce uncertainty into the service, that would affect the efficiency of the service and would be against public interest. That also would call into jeopardy the guarantees of public service and expose the officers to an atmosphere of insecurity. A seniority list of a cadre should not be made the subject matter of debate too often. We have, therefore, to consider the claim of the appellant keeping these aspects in view and referring to the conclusions reached in Janardhana cases ((1983) 3 SCC 601 : 1983 SCC (L&S) 467).

10. At p. 625 of the report this Court came to the conclusion : (Para 35)

"In our opinion, there was no justification for redrawing the seniority list affecting persons recruited or promoted prior to 1969 when the rules acquired statutory character. Therefore, the 1974 seniority list is liable to be quashed and the two 1963

and 1967 seniority lists must hold the field."

The District Judge in appeal in paragraph 10 of his judgment came to find that the appellant's placement was raised from serial 483 to 89. The High Court in its judgment has indicated :

"Shri Sharma went up in appeal but the same was dismissed by the learned District Judge. He affirmed the findings of the trial Judge on issues 1 and 3. He also held that the suit of the appellant was barred by limitation. During the pendency of appellant's appeal before the District Judge, Bachan Singh case ((1972) 3 SCC 489 : (1972) 3 SCR 898 : 1973 Lab IC 315) had been decided by the Supreme Court and as a consequence thereof, his seniority was changed from Sr. No. 483 in 1967 seniority list to Sr. No. 89. So he got the main relief. His claim remained only for his reconsideration for promotion on the basis of his new ranking on the seniority list."

The High Court has again indicated :

"Pursuant to the judgment in Bachan Singh case ((1972) 3 SCC 489 : (1972) 3 SCR 898 : 1973 Lab IC 315), fresh seniority list was prepared in 1974 in which the appellant's name figured at Sr. No. 89 instead of 483. This list was challenged by A. Janardhana. His appeal was allowed and the said list was quashed. It was further held that 'there is nothing to suggest that 1963 and 1967 seniority lists were provisional or were likely to be re-drawn. Therefore, till the 1949 Rules acquired statutory character in 1969, the seniority lists of 1963 and 1967 in respect of Assistant Executive Engineers were quite legal and valid and were drawn upon the basis on the principle which satisfies the test of Article 16.' So the seniority lists of 1963 and 1967 were upheld. The grievance of the appellant stands disposed of by this judgment to which he was a party."

11. As we have already pointed out, appellant was not a party in Janardhana case ((1983) 3 SCC 601 : 1983 SCC (L&S) 467) inasmuch as no notice was taken to him and the case was disposed of without affording an opportunity to him of being heard.

12. The plea of limitation raised by the respondents should not have been upheld in the fact of the case. As already indicated, the seniority list was being changed from time to time. The appellant had represented against the 1967 seniority list. The dispute was already pending before this Court in Bachan Singh case ((1972) 3 SCC 489 : (1972) 3 SCR 898 Lab IC 315). In fact, without waiting for the judgment of this Court in Bachan Singh case ((1972) 3 SCC 489 : (1972) 3 SCR 898 Lab IC 315) the plaintiff came to Court on March 22, 1971. The appellant was entitled to make a representation against the seniority list and rejection of the representation actually would have given him the cause of action. In these circumstances, non-suiting him on the plea of limitation would not at all be justified. We therefore, do not accept the conclusion of the High Court that plaintiff's action was barred by limitation.

13. We take it that when this Court in Janardhana case ((1983) 3 SCC 601 : 1983 SCC (L&S) 467) held on the facts placed before it that 'there was no justification made out for redrawing the seniority list affecting persons recruited or promoted prior to 1969' It meant a total topsy-turvy of the list. Individual claims, if any, could not have been barred from consideration if by the time Janardhana case ((1983) 3 SCC 601 : 1983 SCC (L&S) 467) came to be disposed of, claims were pending adjudication before the court. Appellant's case was already before the High Court by the time

Janardhana appeal ((1983) 3 SCC 601 : 1983 SCC (L&S) 467) was disposed of by this Court. The appellant was certainly entitled to be treated as a recruit of 1960 and to be placed above the recruits of 1961. The stand taken before this Court in the counter-affidavit filed by respondent 1 that it was open to him to appear in the competitive examination in the succeeding year, that is, in the year 1961 to better his position is no justification for depriving him of his legitimate claim to a higher placement in the seniority in the cadre.

14. While we affirm the view in Janardhana case ((1983) 3 SCC 601 : 1983 SCC (L&S) 467) that the seniority list should not be disturbed, the appellant's claim has also to be accommodated. In these circumstances, we direct that the appellant's position shall be shown below the recruits of 1960 and above those of 1961 and he may be bracketed with one who has been assigned that position and an appropriate rectification shall be made in the seniority lists of 1967 on the basis of the placement in terms of this judgment. His entitlement to promotion on the basis of such position shall be considered by the respondent within four months hence. The appellant shall be entitled to his costs throughout. Hearing fee is assessed at Rs. 2000.

</html