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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO.17/2002

This the 13th day of February, 2003

HON'BLE SHRI V.K.MAJOTRA, MEMBER (A)

HON'BLE SHRI KULDIP SINGH, MEMBER (J)

Harvinder Singh Sandhu,
B-576/14, Kendriya Vihar-II,
Sector-51, Noida.

... Applicant

(By Shri G.K.Agarwal, Advocate)

-versus-

1. Union of India through
Secretary, Ministry of
Urban Development & Poverty
Alleviation, Nirman Bhawan,
New Delhi-110011.

2. Director General Works,
Central Public Works Department,
Nirman Bhawan, New Delhi-110011.

3. Secretary,
Union Public Service Commission,
Shahjahan Road,
New Delhi-110011.

4. Vijender K. Mittal,
Superintending Engineer (Electrical),
Electrical Circle-IV,
Y-Shaped Building, IP Bhawan,
New Delhi-110002.

... Respondents

(By Shri K.R.Sachdeva, Advocate)

O R D E R

Hon'ble Shri V.K.Majotra, Member (A) :

Applicant was appointed as an Assistant Executive Engineer (Electrical) [AEE(E)] in Central Electrical & Mechanical Engineering Service, Group 'A' through Combined Engineering Services (CES) Examination of 1976 in Central Public Works Department (CPWD) on 8.2.1978. He completed the probationary period satisfactorily on 9.8.1980. He has not been confirmed as yet by

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respondents stating that a specific order of confirmation has not been issued in this regard. He was promoted as ad hoc Executive Engineer (Electrical) [EE(E)] w.e.f. 30.9.1982. He was declared a regular EE(E) in AEEs' own quota from 13.1.1983/8.2.1983. A memorandum of charge was issued against him for major penalty proceedings under rule 14 of CCS (CCA) Rules, 1965 on 27.7.1989. While applicant's juniors were promoted as EEs(E) on 29.7.1992 on regular basis, applicant was by-passed. A penalty of reduction in pay by two stages without cumulative effect was imposed upon applicant on 4.5.1998. After expiry of the penalty period, impugned order Annexure A-1 was issued on 6.7.2001 confirming applicant as AEE(E) effective from 1.9.2000. Applicant's representation thereagainst was rejected vide Annexure A-2 dated 20.11.2001. Applicant has sought quashing and setting aside of Annexures A-1 and A-2 and declaration that he was confirmed as AEE(E) effective from 9.8.1980 and EE(E) from 13.1.1983/8.2.1983 and entitled to be considered for regular promotion before or along with his juniors to the post of Superintending Engineer (Elec.) [SE(E)] with or without taking into account the minor penalty order dated 4.5.1998, with consequential arrears and other benefits.

2. We have gone through the material on record and heard the learned counsel on either side.

3. The learned counsel of applicant contended that applicant had been appointed on 8.2.1978 as AEE(E) against a permanent post on the basis of CES Examination,

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1976. As per Annexure A-3 dated 23.2.1982, among others, applicant was declared to have satisfactorily completed the period of probation of two years from 9.8.1980. While as per Annexure A-4 dated 4.9.1982 he was appointed to officiate as EE(E) on ad hoc basis. In the revised seniority list of EEs(Civil/Elec.) dated 23.7.1984 (Annexure A-5) prepared on the directions of the Hon'ble Supreme Court vide judgment of 23.5.1984 in CWP Nos.157-162 of 1976 in the case of P.S.Mahal & Ors., applicant's date of actual promotion as EE(E) ^{is} shown as 8.2.1983. His date of regular promotion within the quota was shown as 8.2.1983/13.1.1983. In the seniority list of EEs(E) dated 18.9.1989 (Annexure A-6) dates of actual and regular promotion to the grade of EEs(E) within the quota relating to applicant were reiterated. Applicant's date of regular promotion within the quota was shown as 8.2.1983. Annexures A-4, A-5 and A-6 have never been cancelled till date. The learned counsel stated that respondents have taken into consideration a charge of misconduct and the penalty of reduction in pay by two stages without cumulative effect imposed on applicant on 4.5.1998 (Annexure A-9) for confirming him in the grade of AEEs(E) w.e.f. 1.9.2000, while as per Annexure A-1 dated 6.7.2001 several juniors belonging to subsequent batches have been confirmed in the grade of AEEs(E) during the period 1995-1998. The learned counsel contended that a misconduct or charge after applicant's promotion as EE(E) on regular basis should have no effect on his date of confirmation as AEE(E), seniority and further promotions. The learned counsel relied on Union of India v K.V.Jankiraman, 1991 (2) SCALE 423 SC

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contending that when he had completed the probationary period as AEE(E) and eligibility period of five years as EE(E) for further promotion in terms of CES Group 'A' Recruitment Rules much prior to the incidence of misconduct for which he was punished at a much later stage, it cannot adversely affect his confirmation, seniority and further promotions.

4. The learned counsel of respondents, first of all, raised his objection as to limitation. According to him, cause of action for applicant had arisen on 3.12.1990 when a number of officers of his batch as well as batches of subsequent years were confirmed w.e.f. 1.4.1988. In this regard, the learned counsel of applicant stated that cause of action for applicant had arisen only on 20.11.2001 when his representation regarding his confirmation from 1.9.2000 vide Annexure A-1 dated 6.7.2001 was rejected. The learned counsel stated that in Annexure A-1 whereas applicant has been confirmed from 1.9.2000 taking into consideration the penalty imposed upon him for a misconduct which had taken place much after the completion of his probation and regularisation as EE, several other personnel belonging to subsequent batches have been confirmed from dates several years prior to the date of confirmation of applicant. We are in agreement with the learned counsel of applicant and in the backdrop of facts and circumstances, reject the objection regarding limitation.

5. The learned counsel of respondents has next raised the contention that confirmation pre-supposes

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issuance of specific orders. He relied on High Court of M.P. through Registrar & Ors. v Satya Narayan Jhavar 2001 SCC (L&S) 1087 stating that completion of the period of probation does not culminate in deemed confirmation of the probationer. A specific order regarding confirmation is a condition pre-requisite. The learned counsel further stated that in terms of DOP&T OM dated 28.3.1988 (Annexure R-I) confirmation is made only once in the service of an official and that too in the entry grade. He further stated that confirmation is de-linked from the availability of permanent vacancies in the grade. An officer who has successfully completed the probation may be considered for confirmation by a DPC and a specific order of confirmation has to be issued when the incumbent is clear from vigilance angle etc. He stated that conditions for confirmation are : (1) passing of prescribed departmental test; (2) satisfactory completion of probationary period; (3) clearance from vigilance angle; and (4) satisfactory record of service. The learned counsel stated that confirmation of AEEs(E) of 1976 batch onwards could not be considered for several years on account of non-availability of permanent posts in the grade. Vide OM dated 28.3.1988 confirmation was de-linked from the availability of permanent posts and applicant who belongs to 1976 batch was also considered for confirmation by the DPC held on 12.4.1990. However, he could not be cleared as he had been chargesheeted in July, 1989 for major penalty and as such he was not cleared from vigilance angle and the DPC's recommendations were kept in a sealed cover. Several others belonging to his batch and subsequent batches were

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confirmed w.e.f. 1.4.1988 vide notification dated 3.12.1990.

6. The learned counsel of applicant maintained that OM dated 28.3.1988 is not applicable to applicant's case. This OM can have only prospective application. Instructions prior to 1988 only are applicable to applicant's case. We are convinced that instructions contained in OM dated 28.3.1988 relating to confirmation of officers in a particular grade are not applicable to the present case, applicant having completed his probation w.e.f. 9.8.1980 as per Annexure A-3.

7. Specific Government instructions on the subject of confirmation of probationers have not been brought to our notice despite our asking. In any case, instructions dated 28.3.1988 are certainly not applicable to the facts of the present case. Applicant had been appointed on a probation of two years on 8.2.1978. He completed the prescribed two years of probation satisfactorily on 9.8.1980 vide Annexure A-3 dated 23.2.1982. Thereafter he was promoted as EE(E) on ad hoc basis vide Annexure A-4 w.e.f. 30.9.1982. He was also declared regular EE(E) in AEEs' own quota vide Annexure A-5 dated 23.7.1984 from 13.1.1983/8.2.1983. This position was re-confirmed vide revised seniority list dated 18.9.1989 (Annexure A-6). On the basis of CES Examination, 1976 applicant had been appointed as AEE(E) against a permanent post. He had successfully completed his probation. In the absence of any other conditions for confirmation even if specific orders were to be issued

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regarding his confirmation, it would have been a mere formality. MHA OM dated 15.4.1959 on the subject of confirmation of probationers states :

"Confirmation of probationers. - A person appointed against a permanent post as a direct recruit with definite conditions of probation is to be confirmed in the grade with effect from the date on which he successfully completes the period of probation. The decision whether he should be confirmed or his probation extended should be taken soon after the expiry of the initial probationary period, i.e., ordinarily within 6 to 8 weeks and communicated to the employee together with the reasons in case of extension. There are no general orders providing for convening of DPC at specified intervals to consider cases of confirmation of direct recruits placed on probation. However, even though the meetings of the DPC may be held after the termination of the period of probation of direct recruits, a person appointed against a permanent post with definite conditions of probation is to be confirmed in the grade with effect from the date on which he successfully completes the period of probation. A probationer who is not making satisfactory progress or who shows himself to be inadequate for the service should be informed of his shortcomings well before the expiry of the original probationary period so that he can make severe efforts at self-improvement."

The above instructions have not clearly laid down that specific orders of confirmation have to be issued after successful completion of the period of probation. Applicant was appointed against a permanent post as a direct recruit with definite conditions of probation and respondents had declared that he had successfully completed the period of probation. He was promoted as EE initially on ad hoc basis and later on, on regular basis. Respondents have wrongfully applied the instructions dated 28.3.1988 to the present case. At the appropriate time, when on completion of probationary period

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applicant's confirmation was to be considered, no charge of any misconduct was pending against him. In the case of **Satya Narayan Jhavar** (supra), the relevant rule provided for a maximum period of probation for judicial officers appointed after training, with the further stipulation that at the end of the probationary period the appointee could be confirmed subject to his fitness and passing of departmental examination. After being found unfit for confirmation during the probation period, the judicial officer concerned was given a further opportunity for improving himself but he failed to improve himself. In such circumstances, it was held that the mere grant of such opportunity to continue in service after the expiry of maximum period of probation did not culminate in deemed confirmation of the probationer, more so, when the relevant rules permitted exercise at any time of the power to dispense with the service of such a probationer. The facts of the present case are clearly distinguishable from those of **Satya Narayan Jhavar** (supra). In that case orders for successful completion of probation were not there. In the present case applicant had been declared to have completed his probation successfully. Nothing has been brought to our notice which existed against applicant at the appropriate time. Applicant had been appointed against a permanent post. He had completed his probationary period successfully. No instructions have been shown requiring issuance of specific orders of confirmation. In these circumstances, confirmation can be deemed to have occurred immediately on 9.8.1980 when applicant satisfactorily completed his period of probation.

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Further, respondents have themselves declared applicant's date of regular promotion as EE(E) within quota w.e.f. 8.2.1983. He has a right to be considered for further promotion, when it was due before occurrence of misconduct, in the light of the above observations.

8. Having regard to the above discussion, Annexure A-1 dated 6.7.2001 and Annexure A-2 dated 20.11.2001 are quashed and set aside. Applicant is declared to have been confirmed as Assistant Executive Engineer (Electrical) effective from 9.8.1980 and as a regular Executive Engineer (Electrical) in his own quota effective from 13.1.1983/8.2.1983. We further hold that he is entitled to be considered for regular promotion before or along with his juniors from the post of Executive Engineer (Electrical) to Superintending Engineer (Electrical) without taking into account the minor penalty order dated 4.5.1998 and promoted, if recommended, with arrears and all benefits. Respondents are directed to take all steps in implementation of these directions within a period of three months from the date of communication of these orders.

9. The OA is allowed in the above terms. No costs.

Aveas
(Kuldip Singh) 13.2.2003
Member (J)

V. Majotra
(V. K. Majotra)
Member (A)

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