

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH : NEW DELHI

OA No.1307/2002

Date of decision: 23.10.2002

N.N.Biswas

.. Applicant

(By Advocate: Shri D.Barukha)

versus

Union of India, through .. Respondents

(By Advocates: Shri R.P.Aggarwal & Mrs. B. Rana)

CORAM:

The Hon'ble Shri Justice V.S.Aggarwal, Chairman

The Hon'ble Shri M.P. Singh, Member(A)

To be referred to the Reporter or not? Yes


(M.P. Singh)
Member(A)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1307/2002

New Delhi, this 23rd day of October, 2002Hon'ble Shri Justice V.S. Aggarwal, Chairman
Hon'ble Shri M.P. Singh, Member(A)N.N. Biswas
0-55/X-4 Post Office
Dilshad Garden, Delhi-95 .. Applicant

(Shri D. Barukha, Advocate - not present)

versus

Union of India, through

1. Secretary
Ministry of Defence, New Delhi
2. Engineer-in-chief, Army Hqrs., New Delhi
3. Secretary
UPSC, Dholpur House, New Delhi
4. K.K. Tiwari
125/2, Kabul Line, Delhi Cantt.
5. R.P. Singh
27/1, MES Officers Enclave
Kotwali Road, Delhi Cantt. .. Respondents

(Shri R.P. Aggarwal, Advocate for R-1 and R-2
and Mrs. B. Rana, Advocate for R-3)ORDER
Shri M.P. Singh, Member(A)

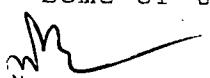
By the present OA, applicant seeks directions to the respondents to pass appropriate orders giving retrospective promotion to him and re-fix his pay scale accordingly and also re-fix his pensionary/retirement benefits.

2. Briefly stated, the applicant joined service as Assistant Engineer (AE) with the respondent-department on 13.2.84. According to him, as per the Recruitment Rules for the post of Executive Engineer (EE) notified on 9.7.1991, 66 2/3rd of the posts are to be filled from amongst Assistant Executive Engineers (AEEs) with 4 years

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regular service in the grade and 33 1/3rd of the posts are to be filled from amongst AEs with 8 years regular service in the grade. In the vigilance clearance sent by respondents on 6.8.1997 for promotion to the grade of EE for the vacancies of the year 1997-98, applicant's name was at Sl.No.62 while that of R-4 and R-5 were at Sl.No.68 and 136 respectively. However, the department carried out DPC only for the post of AEE. Therefore, applicant alongwith R-4 and R-5 filed OA 1563/2000 on 16.8.2000 seeking direction to the respondents to promote AEs and AEEs strictly in accordance with Rules. That OA was disposed of by this Tribunal vide its order dated 26.9.2000 directing the respondents to strictly adhere to the Rules with particular reference to the quota for promotion to the posts of EEs from the feeder grades of AE and AEE as prescribed in the R/Rules. Thereafter, applicant superannuated in 30th September, 2000

3. As the respondents have failed to adhere to the order of the Tribunal, applicant filed CP 81/2001. In the meantime, by communication dated 14.9.2001, a request was sent for vigilance clearance for promotion of AEs to the grade of EEs for the vacancies of the year 1998-99 to 2001-2002 and the applicant's name figured at Sl.No.16 while that R-4 and R-5 figured at Sl.No.64 and 71 respectively in the eligibility list. This Tribunal in its order dated 4.12.2001 in CP 81/2001 expressed its dissatisfaction over the conduct of the respondents when respondents (UPSC) assured that those applicants falling within the zone of consideration of promotion, even if some of them retire on superannuation during this period,



their claims for consideration for promotion will not be jeopardized. Thereafter, R-5 superannuated on 31.12.2001.

4. On 29.1.2002, R-2 released the order containing the panel for promotion of AEs to the grades of EEs for the vacancies of 1999-2000, 2000-01 and 2001-02, wherein name of R-5 who retired on 31.12.2001 had figured while that of applicant has been left out. On the basis of the order dated 29.1.2002, CP 81/2001 filed by the applicant was dismissed by the Tribunal by an order dated 7.2.2002. Aggrieved by non-inclusion of his name in the order dated 29.1.2002, applicant has filed the present OA seeking the aforesaid reliefs.

5. Respondents have contested the OA in their reply. It is stated that though the applicant was eligible for promotion to the post of EE, a selection post, he was not promoted as no DPC was held due to litigation in various forums. Judgement dated 26.9.2000 in OA 1563/2000 was fully implemented and promotions were made based on the recommendations of the DPC which was finally held on 3/4.1.2002. The panel for promotion to the grade of EE issued on 29.1.2002 is prospective in nature and names of R-4 and R-5 included in the panel were appointed/to be appointed from the date they assumed charge. They have not been appointed from any date prior to superannuation of the applicant. Applicant was considered by the DPC for the year 1999-2000 and 2000-2001 but his name could not find place in the approved panels since officers with higher gradings were available in the zone of consideration for promotion by method of selection as per

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R/Rules. His name could not find place in the zone of consideration in the DPC held for the year 2001-2002 since he retired from service on superannuation on 30.9.2000, well before the crucial date of eligibility i.e. 1.1.2001. R-4 and R-5 were selected by the DPCs for the year 1999-2000 and 2001-2002 respectively due to their higher grading. R-5 was superannuated on 30.12.2001 and he was eligible in the zone of consideration in the year 2001-2002 while the applicant was superannuated on 30.9.2000 and was not eligible for zone of consideration for the year 2001-2002. In view of this position, the OA be dismissed.

6. UPSC (R-3) have also filed reply stating that the DPC meeting for considering promotion of officers in the rank of AE to the grade of EE in the pay scale of Rs.10000-15200, in the MES under the Ministry of Defence was held on January 3, 4 & 7, 2002. The meeting was chaired by a Member the UPSC. JS(Estt.) and DG(Pers) of Ministry of Defence also attended the meeting as departmental Members of the DPC. The DPC considered 31 vacancies including 3 reserved for SCs and 7 for STs for the year 1999-2000, 8 vacancies including one each reserved for SC and ST for the year 2000-2001 and 60 vacancies including 9 reserved for SC and 4 for ST for the year 2001-2002. As sufficient number of eligible ST officers were not available, DPC could recommend for promotion to the grade of EE 26 officers for the year 1999-2000, 8 officers including one officer in extended panel for the year 2000-2001 and 77 officers including 21 officers in extended panel for the year 2001-2002. The officers in extended panel were recommended for promotion

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in place of officers retired/retiring in the same vacancy year. The DPC was held in compliance with order dated 8.2.2000 pronounced by Allahabad Bench of the Tribunal in OA 465/99 filed by S.K.Mishra & Ors. as upheld by the High Court of Judicature at Allahabad in CMWP No.10242/2000 and 18114/2000. The promotion in this case being from Group B to Group A, bench mark for promotion was 'good'. DoPT guidelines dated 27.3.97 provide that the DPC shall grade the officers as 'Outstanding', 'Very good', 'Good', 'Average' and 'Unfit', as the case may be and the officers will be arranged according to the grading obtained placing the "Outstanding" officers on top followed by those graded as 'Very good' and so on in the select panel upto the number of vacancies with the officers having the same grading maintaining their inter-se seniority in the feeder grade.

7. It is further stated by the UPSC in their reply that DoPT guidelines dated 6.10.2000 provide that the DPC should assess the suitability of the employees for promotion on the basis of their service records and with particular reference to the CRs for 5 preceding years irrespective of the qualifying service prescribed in the service/Recruitment Rules. While preceding five years were the years immediately preceding the vacancy year for vacancies pertaining to the year 1999-2000 or before, that for vacancies pertaining to the year 2000-2001 onwards are governed by the DoPT OM dated 8.9.98 read with OM dated 16.6.2000 which provides that only such ACRs should be considered which became available during the year immediately preceding the vacancy/panel year.

Accordingly, DPC held in January 2002 for promotion to

the grade of EE assessed ACRs from 1994-05 to 1998-99 for the vacancy years 1999-2000 and 2000-2001 and from 1995-96 to 1999-2000 for vacancy year 2001-2002.

8. UPSC have also stated that the DPC assessed eligible officers on the basis of the rules, instructions and guidelines as referred to hereinabove. The applicant was considered for promotion at Sl.No.16 of the eligible list for the year 1999-2000 and Sl. No.4 of the eligibility list for the year 2000-2001. Since he retired on superannuation w.e.f. 1.10.2000, he was not considered for promotion for vacancies for the year 2001-2002. The applicant was assessed as 'Good' for both the years i.e. 1999-2000 and 2000-2001. Since officers with higher grading were available to fill up required number of posts, he was not recommended for promotion by the DPC in terms of the DOP&T OM dated 27.3.1997 referred to above. This way, he was superseded by some officers junior to him, who were graded higher than that attained by him. In view of the above, it is clear that the DPC in January 2002 for promotion to the grade of EE in MES was held strictly as per rules, procedure and instructions. Therefore, the contentions of the applicant that his name had been omitted for consideration for promotion because he had since retired from service on superannuation on 30.9.2000, as noted by this Tribunal while passing interim orders for issuing notices to the respondents, is misleading and far from truth.

9. Heard the learned counsel for the parties and perused the records.



10. During the course of the arguments, the learned counsel for the applicant has argued that the applicant who joined as AE on 13.2.84 was entitled for promotion on 13.2.92 having completed 8 years service, that the applicant was senior to both R-4 and R-5 vide respondent-department communications dated 6.8.97 and 14.9.2001 but he was ignored for promotion, that despite Tribunal's express orders, respondents found it advisable not to give promotion to the applicant, and that R-5 has been promoted by order dated 29.1.2002 though he too had superannuated on 31.12.2001.

10. Placing reliance on the judgements of the Hon'ble Supreme Court in K.Madhavan Vs. UOI [(1987) 4 SCC 566] and Kishan Lal Kalai Vs. State of Bihar, 1990 Supp SCC 165, the learned counsel for the applicant has contended that retrospective promotion is permitted even after retirement since an appellant cannot be deprived of the same benefit while similarly circumstanced officers are given the promotion.

11. On the other hand, respondents' counsel has admitted that the applicant was senior to R-4 and R-5. His name was considered by the DPC but could not find a place in the DPC conducted at UPSC due to the fact that officers with higher grading were available in zone of consideration for promotion by method of selection as per the R/Rules for the year 1999-2000 and 2000-01. His name was not considered in the DPC for the year 2001-2002 due to the fact that he superannuated on 30.9.2000 whereas the cut off date was 1.1.2001. In so far as R-5's promotion by the order dated 29.1.2002 who also was

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superannuated on 30.12.2001 is concerned, the learned counsel reiterated respondents' stand that R-5 was eligible for zone of consideration in the year 2001-2002.

12. The learned counsel for the respondents also drew our attention to the judgements of the Hon'ble Supreme court in the following cases:

- (i) UOI Vs. M.Jangammayya AIR 1977 SC 757 wherein it has been held that no employee had any right to have vacancy in the higher post filled up as soon as the vacancy occurred; Govt. had the right to keep the vacancy unfilled as long as it chooses.
- (ii) UOI Vs. K.K.Vadera AIR 1990 SC 442, wherein it has been held that "we do not know of any law or any rule under which a promotion is to be effective from the date of creation of the promotional post. After post falls vacant for any reason whatsoever, a promotion to that post should not be from the date on which post falls vacant;
- (iii) Baij Nath Sharma Vs. Rajasthan High Court at Jodhpur (1998) 7 SEC 44 wherein it has been held that "appellant could certainly have a grievance, if any, of his juniors had been promoted from a date prior to his superannuation".

13. We have gone through the DPC proceedings furnished by the respondents. We could not find any lapse or illegality in the procedure followed by the respondents in holding DPCs for filling up vacancies for various years. The post of EE being a selection post, the DPCs after assessing the over all performance of the officers in the feeder grade as reflected in their annual CR dossier have recommended the names of the officers for promotion who have been graded "very good" whereas the applicant has been graded as "good". Therefore, respondents have promoted R-4 and R-5, though junior to the applicant, who were graded "very good" by the DPCs.

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It is also an admitted position that both R-4 and R-5 were not promoted prior to the superannuation of the applicant. Therefore, the applicant should have no grievance on this account. The judgements relied upon by the applicant would not give any assistance to him in view of the law laid down in the judgements referred to by the respondents, as above.

14. Therefore, for the reasons recorded above, we find no merit in the present OA and the same is accordingly dismissed. No costs.

M.P. Singh
(M.P. Singh)
Member (A)

V.S. Aggarwal

(V.S. Aggarwal)
Chairman

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