



CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.2952/2002

New Delhi, this the 11th day of November, 2003

Hon'ble Shri Justice V.S. Aggarwal, Chairman
Hon'ble Shri S.K. Naik, Member(A)

Shri Sudhir Prasad Jain
Surveyor of Works (Retd.)
C-146, Kendriya Vihar
Sector 51, Noida-201307
Dist. Gautam Budh Nagar
(U.P.)

... Applicant

(Shri V.S.R.Krishna, Advocate)

versus

Union of India, through

1. The Secretary
Ministry of Defence
Government of India
South Block
New Delhi.
2. The Engineer-in-Chief
E-IN-C's Branch
Army Headquarters
Kashmir House
DHQ Post Office
New Delhi-110 011.
3. The Joint Secretary (E)
Ministry of Defence
Government of India
South Block
New Delhi.

... Respondents

(By Shri R.P.Agarwal, Advocate)

ORDER

Justice V.S. Aggarwal

The applicant had joined the service in 1960. He was promoted on regular basis as Surveyor of Works in the Military Engineering Service on 23.6.1994. The next promotional avenue is the post of Superintending Surveyor of Works in the Military Engineering Service. From the years 1998 to 2000, a number of vacancies had arisen in

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the grade of Superintending Surveyor of Works and the applicant was one of the eligible candidates. The Departmental Promotion Committee meeting did not take place and thus the applicant was deprived of his promotion. He superannuated on 31.5.2000. On 28.8.2000, the respondents published a panel of 22 officers for promotion as Superintending Surveyor of Works in the Military Engineering Service. The name of the applicant did not find a place therein. An order was issued on 26.9.2000 for promotion and posting of 18 out of 22 officers which included some of the persons who were otherwise junior to the applicant. A single panel in respect of the vacancies which arose in three separate years had been prepared. The grievance of the applicant is that for delayed constitution/consideration by the Departmental Promotion Committee, he cannot be made to suffer. By virtue of the present application, he seeks quashing of the order rejecting his representation and a direction to hold a Departmental Promotion Committee meeting on year to year basis on the basis of eligibility list for each year and to pass orders for promoting the applicant on notional basis or to declare the applicant as notionally promoted to the post of Superintending Surveyor of Works with consequential benefits.

2. The application has been contested. The respondents contend that the Departmental Promotion Committee meeting was held on 4.7.2000 for promotion to the post of Superintending Surveyor of Works. The

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applicant was considered by the Departmental Promotion Committee for the vacancies of 2000-2001, but he had retired on 31.5.2000. It has been explained that for the said post, 3 vacancies were for the year 1998-99, 9 vacancies were for the year 1999-2000 and 11 for the year 2000-2001. Eligible persons were considered and a panel was drawn. During the period the applicant was in service, no person junior to him was promoted. Thus it is contended that the claim of the applicant is without any merit.

3. We have heard the parties' learned counsel.

4. Perusal of the record reveals that the applicant had represented. He was informed on 10.7.2001 that his representation had no merit because he had superannuated on 31.5.2000. The said order informing him to that extent reads:-

"1. Reference your representation dated 09 Jan 2001.

2. The undersigned is directed to inform you that your representation has been examined by the Competent Authority. It has been found that your name was considered by the DPC held at UPSC for promotion from SW to the grade of SSW against the vacancies of 1998-99, 1999-2000 and 2000-01. The panel for promotion to the grade of SSW based on recommendation of the above mentioned DPC was issued by Engineer-in-Chief's Branch on 28 Aug. 2000.

3. As per instructions issued vide DOP&T OM No. 22011/4/98-Estt. (D) dated 12 Oct 98, while name of retired persons who are in the zone of consideration are to be included in the eligibility list but such persons have no right for actual promotion. Since you had retired from service on superannuation on 31 May 2000, your name was not included in the above mentioned panel for promotion

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as per DOP&T instructions in vogue."

5. The learned counsel for the applicant contended that vacancies were available while the applicant was still serving with the respondents. Because of delay on their part, he cannot be made to suffer. It is the respondents who did not convene the Departmental Promotion Committee meeting in time.

6. The learned counsel for the applicant relied upon the instructions of the Department of Personnel and Training contained in Office Memorandum No. 28034/6/86-Estt. (D) dated 17.11.1986 which read as under :-

"2. Inspite of these clear instructions, a number of instances of delay in holding DPC meetings have come to notice. One of the reasons given by Ministries/Departments to justify the delay as that recruitment rules for the post are being reviewed/amended. This is not an appropriate ground to postpone the meetings of DPCs.... The DPCs should, therefore, be convened in time and the panel of officers for promotion finalised in accordance with the existing recruitment rules."

On the strength of the same, it was contended that the applicant was entitled to the benefit though he had superannuated.

7. Indeed, the instructions clearly state that the Departmental Promotion Committee should be convened in time. However, the question before us is that when there

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is delay in convening the meeting of the Departmental Promotion Committee and there are no mala fides or any other factor that may prompt interference, whether the persons who superannuated should be given the benefit or not.

8. The learned counsel for the applicant relied upon a decision of this Tribunal in the case of **B.K.Aalok v. Union of India and others** in OA No.1502/2001 rendered on 23.10.2001. In the said case, the applicant B.K.Aalok had become eligible for promotion in 1999. He was placed at Sl.No.6 in the gradation list. A meeting of the Departmental Promotion Committee was convened on 1.10.2000, but there was a stay granted by the Lucknow Bench of this Tribunal. Therefore, the findings of the Departmental Promotion Committee could not be given effect to. The stay was vacated on 8.1.2001, but despite that no order was passed for implementing the recommendations of the Departmental Promotion Committee while Shri B.K.Aalok superannuated on 31.1.2001. It is these facts that prompted this Tribunal to grant the relief and the respondents were directed to promote the applicant to the post of Deputy Director General (Geology) on notional basis and to fix his pay with consequential pensionary benefits.

9. The facts clearly indicate that the decision was confined to the peculiar facts that were placed before this Tribunal. It cannot be taken as a principle of law decided that whenever there is any delay in convening the

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Departmental Promotion Committee meeting, the person who superannuated has to be given the benefit.

10. On the contrary, two decisions of the Supreme Court referred to by the respondents cannot be ignored. The same are **Union of India and Others v. K.K. Vadera and Others**, AIR 1990 SC 442 and **Baij Nath Sharma v. Hon'ble Rajasthan High Court of Jodhpur & Anr.**, JT 1998 (6) SC 133.

11. In the case of K.K. Vadera (supra), the Supreme Court clearly held that promotions would be effective from the date of the order and not from the date when promotional posts were created or fell vacant. The findings of the Supreme Court read:-

"There is no statutory provision that the promotion to the post of Scientist 'B' should take effect from 1st July of the year in which the promotion is granted. It may be that rightly or wrongly, for some reason or other, the promotions were granted from 1st July, but we do not find any justifying reason for the direction given by the Tribunal that the promotions of the respondents to the posts of Scientist 'B' should be with effect from the date of the creation of these promotional posts. 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 a post falls vacant for any reason whatsoever, a promotion to that post should be from the date the promotion is granted and not from the date on which such post falls vacant. In the same way when additional posts are created, promotions to those posts can be granted only after the Assessment Board has met and made its recommendations for promotions being granted. If on the contrary, promotions are directed to become effective from the date of the creation of additional posts, then it would have the effect of giving promotions even before the Assessment Board has met and assessed the suitability of the candidates for promotion. In



the circumstances, it is difficult to sustain the judgement of the Tribunal."

Similarly, in the case of Baij Nath Sharma (supra), he was a member of the Rajasthan Judicial Service. He had prayed that his case for promotion to the Rajasthan Higher Judicial Service should be considered from the date when the post fell vacant. By the time, he had filed the writ petition, he had superannuated. The posts were vacant. The Supreme Court held that he could only have a grievance if any of the juniors had been given promotion from a date prior to his superannuation and that was not the case therein and, therefore, the petition was dismissed.

12. Identical is the position in the present case. No person junior to the applicant had been given promotion from a date prior to the date of his superannuation. In such a situation when there are no mala fides or any other factors, merely because delay had occurred in calling of the meeting of the Departmental Promotion Committee the same will not give the applicant a cause to seek notional promotion in this regard.

13. Resultantly, the present application being without merit must fail and is dismissed. No costs.

Announced.

S. K. Naik

(S. K. Naik)
Member (A)

/sns/

V. S. Aggarwal

(V. S. Aggarwal)
Chairman