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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI

O.A. NO.538/2002

This the 11th day of November, 2002.

HON'BLE SMT. LAKSHMI SWAMINATHAN, VICE-CHAIRMAN (J)

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

V.Thirunavakkarasu,  
C/O Shri D.K.Baxi,  
D-506, Pragati Vihar Hostels,  
New Delhi-110003.

... Applicant

( By Shri G.K.Aggarwal, 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. Shri A.K.Sharma,  
Suerintending Engineer (Civil)  
thr. Director General (Works),  
CPWD, Nirman Bhawan,  
New Delhi-110011.

... Respondents

( By Shri Madhav Panikar & Mrs. B.Rana, Advocates )

O R D E R (ORAL)

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

Applicant joined as Assistant Executive Engineer (Civil) Group 'A' on 24.8.1983 through UPSC examination, 1981. He was promoted on 24.8.1988 as regular Executive Engineer (Civil) [EE(C)]. DOP&T O.M. dated 21.9.1988 lays down that within Group 'A' up to posts with maximum of pay of Rs.5700/- (pre-revised) SC/ST candidates would be promoted by seniority regardless of benchmark, if they are not otherwise unfit for promotion. These concessions

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to SC/ST candidates were withdrawn by government on 22.7.1997. The following proviso to Article 335 of the Constitution of India has been incorporated by the Constitution (Eighty-Second Amendment) Act, 2000 :

"Provided that nothing in this Article shall prevent in making of any provision in favour of the members of the Scheduled Castes and Scheduled Tribes for relaxation in qualifying marks in any examination or lowering the standards of evaluation, for reservation in matters of promotion to any class or classes of services or posts in connection with the affairs of the Union or of a State."

In pursuance of this enabling proviso to Article 335, vide Annexure A-3 dated 3.10.2000 DOP&T restored the concessions for SC/ST w.e.f. 3.10.2000 which had earlier been withdrawn on 22.7.1997. It is stated on behalf of applicant that DPC held on 10.10.2000 for promotion to the grade of Superintending Engineer (Civil) [SE(C)] (Group 'A', scale Rs.14300-18300) in CPWD did not consider the concessional provision for SC/ST in the case of applicant who belongs to SC, which resulted in denial of promotion to him as SE(C). However, later on, he was promoted as regular SE(C) on 25.10.2001 through DPC for 2001-2002, but his representation for promotion to the post of SE(C) on the basis of DPC held on 10.10.2000 against the posts of SE(C) pertaining to the year 2000-2001 was not considered. Applicant has sought review of his case at the DPC for 2000-2001 for regular promotion as SE(C) with all consequential benefits.

2. Respondents, on the other hand, have stated that in terms of recruitment rules, 1996 notified on

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28.10.1996, posts of SE(C) Group 'A' in the pay scale of Rs.3700-5000 (pre-revised) are filled up 100% on the basis of selection from amongst EE(C) having five years' regular service in the grade. The benchmark for promotion to the post of SE(C) is "very good". It is stated that due to certain reasons, the department could not convene DPC for promotion to the grade of SE(C) after February, 1997. UPSC decided in July, 2000 that promotions would be made to the grade of SE(C) on selection by merit basis to fill up 24 vacancies of SEs pertaining to the year 2000-2001. UPSC approved that field of selection would be EEs(C) in the revised pay scale of Rs.10000-15200 with ten years' regular service in the grade. According to respondents, there is no reservation for promotion to the post of SE. However, SC/ST officers who are senior enough in the zone of consideration for promotion so as to be within the number of vacancies for which the select list has to be drawn up, are recommended for promotion notwithstanding the benchmark, provided they are not considered unfit for promotion. Applicant was at Sl. No.35 in the list of 47 seniormost eligible officers who were considered for promotion to the grade of SE(C) in the vacancies for the year 2000-2001 by DPC on 10.10.2000. Applicant was not considered as an SC candidate but as belonging to general category. He was assessed as "good" and as such not recommended for promotion to the grade of SE(C). Several junior officers who attained the prescribed benchmark of "very good" were recommended for promotion. The learned counsel of respondents stated that even if applicant had been considered as an SC candidate, the recommendations

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of the DPC would have remained the same as he was not covered within the number of vacancies as per his serial number in the eligibility list. For 24 vacancies of SEs, 24 officers were recommended in the panel and three more were included in the extended panel who were to be promoted only if three specific officers recommended at sl. nos. 4, 8 and 14 in the panel were not available for appointment. Admittedly, applicant's juniors S/Shri Deepak Panwar (SC) and A.K.Sharma were promoted vide impugned order dated 26.2.2001.

3. We have perused the records of the DPC meeting held on 10.10.2000 which have been produced by respondents. We find that 47 officers found place in the eligibility list for consideration for vacancies of SEs for the year 2000-2001. Applicant's name appears at Sl. No.35. He has been assessed as "good" on the basis of his confidential reports. Shri Deepak Panwar (SC) and Shri A.K.Sharma, Sl. Nos.36 and 37 respectively, were included in the recommended panel. Further juniors to applicant at Sl. Nos.38, 29 and 40 S/Shri U.C.Mishra, R.Sampath and Rejendra Kalla, respectively, were included in the extended panel.

4. As instructions for concessional treatment for SC/ST candidates had been restored w.e.f. <sup>3<sup>th</sup></sup> 10.2000 (Annexure A-3), applicant's case should have been considered by the DPC held on 10.10.2000 as an SC candidate notwithstanding the benchmark provided that he was not considered unfit for promotion. The interpretation given by respondents to the instructions

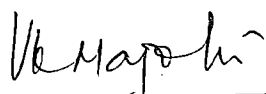
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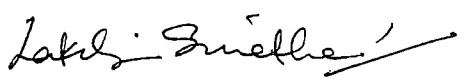
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is that whereas applicant could have been considered as a general candidate as he was included among 47 eligible candidates, he could not have been considered as an SC candidate as his name was at Sl. No.35 which was beyond the total number of vacancies, i.e., 24. As per instructions dated 3.10.2000, applicant was to be considered as if he had attained the benchmark as he had not been declared unfit by the DPC. Candidates at Sl. Nos.37, 38 and 39 could not have been accorded precedence over applicant even if they had attained the benchmark "very good".

5. Having regard to the discussion and reasons recorded above, respondents are directed to conduct a review DPC relating to the recommendations of the DPC meeting held on 10.10.2000 to consider applicant's case for promotion to the post of SE(C) against the 24 vacancies for the year 2000-2001, considering applicant as SC candidate in terms of instructions contained in Annexure A-3 dated 3.10.2000 and granting him consequential benefits with effect from the date his juniors were promoted as SE(C). Respondents are directed to carry out above exercise within a period of three months from the date of communication of these orders.

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

  
( V. K. Majotra )  
Member (A)

  
( Smt. Lakshmi Swaminathan )  
Vice-Chairman (J)

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