



CENTRAL ADMINISTRATIVE TRIBUNAL

CHANDIGARH BENCH

O.A. No.060/00435/2018

Chandigarh, this the 30th January, 2020

(RESERVED ON: 27.01.2020)

HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)

HON'BLE MS. NAINI JAYASEELAN, MEMBER (A)

Kanwarpal Singh, Aged 60 years s/o Sh. Labh Singh, Surveyor (Retired) O/o Executive Engineer, C.P. Division No. 1, Sector 9-C, Chandigarh, resident of Village Tarauli, Post Office Behlol Pur, Tehsil and District Mohali.

....Applicant

(BY: MR. R.K. SHARMA, ADVOCATE)

Versus

1. Union Territory, Chandigarh through Administrator, U.T. Civil Secretariat, Sector 9, Chandigarh.
2. Secretary, Engineering Department, Union Territory, U.T. Secretariat, Sector 9, Chandigarh.
3. Chief Engineer, Union Territory, U.T. Secretariat, Sector 9, Chandigarh.
4. Superintending Engineer, Construction Circle No. 1, Union Territory, U.T. Secretariat, Sector 9, Chandigarh

... .Respondents

(BY: MR. G.S. SANDHU, ADVOCATE)

ORDER

MS. NAINI JAYASEELAN, MEMBER (A):

1. Applicant has filed the present O.A. under Section 19 of the Administrative Tribunals Act, 1985, with a prayer to quash the order dated 18.10.2017 (Annexure A-1) vide



which his claim to consider him for promotion to the post Junior Engineer (Civil) has been rejected, on the ground that there is no vacancy available in his quota. This is the 2nd round of litigation by the same applicant.

2. The contention of the applicant is that he was eligible for promotion w.e.f. 2007, and that Respondent No. 4 vide letter dated 18.02.2010 (Annexure A-15) have stated that two vacancies are vacant in the quota of the applicant. Therefore, applicant prays that his case for promotion from the post of Surveyor to Junior Engineer be considered in terms of criteria prescribed in Recruitment Rules, 2004 wherein 4% (out of 25% of promotion quota) has been prescribed for promotion from the post of Surveyor to Junior Engineer, after rendering 10 years of service. It is averred that since the applicant is the senior most Surveyor since 2004 and the vacancy in his category became available in 2008. However, he was not considered at that point of time because of the pendency of a criminal case registered against him. It is his contention that he has, subsequently, been acquitted vide order dated 11.03.2016 by the Court of Judicial Magistrate 1st Class, Chandigarh.

3. In their reply statement, Respondents i.e. U.T. Chandigarh Administration has contended that the claim of the applicant for promotion to the post of Junior Engineer



(Civil) against 4% quota earmarked for Surveyor as per notified Recruitment Rules dated 25.06.2004, is not sustainable on the following grounds:-

- (i) Applicant possessed educational qualification of matriculation with two years certificate in ITI and was initially appointed as Surveyor in the office of Executive Engineer, C.P. Division No. 4, Chandigarh on 11.03.1985 and during service, an FIR No. 7 dated 10.09.2004 under Sections 420, 467, 468, 471, 201, 120-B IPC was registered against him and thereafter he retired w.e.f. 31.03.2015, on attaining the age of superannuation, from the office of Executive Engineer, CP Division, during the pendency of the said FIR No. 7 dated 10.09.2004.
- (ii) It is undisputed fact that applicant was subsequently acquitted and he had filed O.A. No. 060/00222/2017, which was adjudicated upon and vide order dated 03.03.2017, wherein a direction was given to the Competent Authority to decide his pending representation by passing a reasoned and speaking order, in accordance with law, within a period of two months from the date of receipt of a certified copy of the order. Since there was no post of Junior Engineer (Civil) meant for promotee quota against Source No. (v) at that time, and moreover no junior has been promoted prior of his retirement, therefore, sealed cover procedure, as laid down in the guidelines dated 06.07.1994 (Annexure R-1) was not followed in his case.
- (iii) Moreover, all the guidelines of promotion are effective from prospective date and not from retrospective. In the instant case, the applicant retired w.e.f. 31.03.2015 before his acquittal in the criminal case, and therefore, he is not entitled against any vacancy which arose after his retirement. Therefore, there is no infirmity in the impugned order dated 18.10.2014.



Respondents have also averred that the contention of the applicant that two vacancies existed, based on letter dated 18.02.2010 (Annexure A-15) is baseless as the letter clearly indicates that the vacancies are as on date and not at the relevant point of time.

4. We have perused the impugned order. It is apparent from a perusal thereof that the representation of the applicant has also been considered wherein it is reiterated that the applicant had retired w..f. 31.03.2015 well before his acquittal in criminal case and moreover none of his juniors were promoted prior to his retirement, and correctly the sealed cover procedure was not adopted as there was no vacancy.

5. In view of the above, there is no reason to interfere with the impugned order. O.A. is dismissed.

(Ms. Naini, Jayaseelan)
Member (A)

(Sanjeev Kaushik)
Member (J)

Place: Chandigarh
Dated: 30.01.2020

'mw'