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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO.2536/2001

This the 23rd day of May, 2002.

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

HON'BLE SHRI SHANKER RAJU, MEMBER (J)

1. Bharat Bhushan,
419A, Ram Nagar,
Gurgaon.
2. H.C.Upadhyaya,
C-92, Hanuman Road,
New Delhi-110001.
3. J.P.Sharma,
H.No.163, V&PO Burari,
Delhi-84.
4. Lokesh Kumar Gandhi,
74, Housing Board Colony,
Sector-7, Gurgaon (Haryana).
5. O.P.Azad,
198, Mohalla Garhai,
Shahdara, Delhi-32.
6. Pradeep Kumar Khatri,
43A, Teliwara, Shahdara,
Delhi-32.
7. R.N.Tewari,
1415 Laxmibai Nagar,
New Delhi-110023.
8. Shri Bhagwan Singh,
H.No. 134, V&PO Qutab Garh,
Delhi-110039.
9. V.K.Chopra,
A-120, Hari Nagar Clock Tower,
Delhi-110064. ... Applicants

(By Shri G.K.Agarwal, Advocate)

-versus-

1. Union of India through
Secretary, Ministry of Urban
Development & Poverty Alleviation,
Nirman Bhawan, New Delhi-11.
2. Director General (Works),
CPWD, Nirman Bhawan,
New Delhi-110011. ... Respondents

(By Shri S.Mohd Arif, Advocate)

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

Applicants have sought the following reliefs :

"(a) Call for relevant record, and

(b) Declare and direct the respondents that the Applicants shall be treated to have been promoted as regular Draftsmen Grade-II (Electrical), CPWD effective 01.11.1991 above Mr. Kuldeep Singh Solanki with all consequential effects including pay-fixation, arrears, seniority/service for regular promotion to next higher grade D'men-I (Electrical), CPWD and higher posts, and final seniority lists of D'men-II(E), CPWD shall be published forthwith taking into account the Applicants' claim herein, and

(c) Grant any other relief, with costs."

2. Learned counsel of applicants, Shri G.K. Aggarwal, stated that applicants are Draftsmen Grade-II (Electrical) in CPWD. Appointment to the post of Draftsman Grade-II is by promotion from Draftsmen Grade-III on seniority-cum-fitness basis. Since there were a large number of candidates for being promoted, the department prescribed a qualifying examination which was held in January, 1988 and the result thereof was declared vide Annexure A-4 dated 12.5.1988. Applicants were among the candidates who passed. However, they were not promoted. Later on, respondents issued Annexure A-5 dated 25.10.1991 dispensing with the requirement of examination for vacancies arising on or before 1.11.1991 without specifying that those who had passed the examination in 1988 would be promoted first. Certain candidates similarly placed, instituted OA No.2834/1992 (Vijender Kumar & Ors. v. Union of India & Ors.), seeking to impugn respondents' action to dispense with

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the examination vide order dated 25.10.1991 (Annexure A-5). According to the applicants therein, the department was not justified in dispensing with the examination till such time that the candidates who had cleared the examination had been promoted. Aforesaid OA was allowed by an order passed on 15.12.1997 with the following directions :

"7. It was further stated that even though there are 11 applicants in the present case, 7 out of these 11, have already been promoted and no further relief for them is being sought in this OA. The petitioners have candidly agreed to confine the relief to petitioners No.1, 2, 7 & 11 since these petitioners, and even though they have passed the required departmental test since 1988, they have not been promoted; it will be fit and proper for us to direct that the respondents shall consider the case of the petitioner for promotion w.e.f. one year prior to the date of filing of this OA and to give appropriate relief also by way of consequential benefits."

In pursuance of the above ruling, four persons, namely, S/Shri Kuldeep Singh Solenki, Ravi Kumar, Vijender Kumar, and Ajay Kumar Kapoor were promoted effective from 1991. Four more persons S/Shri Anand Singh Negi, Hari Om, Ms. Nirmala Darolia and Jaipal Singh filed OA No.1057/1999 (Anand Singh Negi & Ors. v. Union of India & Ors.) for similar relief. That OA was disposed of by an order passed on 22.11.2000 by granting the following relief :

"For the reasons discussed above, the present OA is allowed. We direct the respondents to extend the benefit of the judgement in OA No.2384/92 and grant them promotion to the post of DM Gr.II from the date their juniors were so promoted. Applicants shall have their pay fixed notionally but they are not entitled for any backwages as they have not actually shouldered the responsibility of the post."

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Aforesaid order of the Tribunal was upheld by the High Court of Delhi by an order passed on 19.7.2001 in CW No.3521/2001.

3. The learned counsel of applicant stated that though applicants have been promoted as Draftsmen Grade-II and also granted their due seniority, they have not been granted consequential pay fixation and arrears of difference of pay and allowances w.e.f. 1.11.1991. Learned counsel placed reliance in this behalf on Union of India v. K.V.Jankiraman, 1991 (2) SCALE SC 423, and P.S.Mahal & Ors. v. Union of India & Ors., (1984) 4 SCC 545. The learned counsel stated that as these applicants were available for promotion to the post of Draftsmen Grade-II as on 1.11.1991, under normal circumstances, they would have been promoted at that time, assumed charge of the higher post and reaped the benefit of higher pay and allowances; however, they were prevented from taking over the charge of the superior positions, as respondents did not resort to promote applicants who had cleared the examination first and dispensed with the requirement of the examination and started promoting personnel without holding the examination, on the basis of seniority-cum-fitness.

4. On the other hand, learned counsel of respondents, Shri S. Mohd. Arif, stated that in 1991 it was observed that all Draftsmen Grade-III had diploma in draftsmanship as prescribed in the recruitment rules, and a decision was taken to dispense with the holding of departmental examination w.e.f. 31.10.1991 after which

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promotion from Draftsman Grade-III to Draftsman Grade-II was made strictly in accordance with seniority-cum-fitness basis. Learned counsel further stated that applicants who had qualified the examination prior to the aforesated decision of Government could not be considered for promotion due to non-availability of vacancies in the respective grades. Accordingly, respondents have decided that all such Draftsmen including applicants should be deemed to be promoted from 1.11.1991 and assigned seniority according to their inter se seniority in the grade of Draftsman Gr.-III with only notional benefits, and that actual benefits would be admissible from the date they shoulder duties and responsibilities of the higher post. He further stated that revised seniority list has also been prepared (Annexure R-1). Applicants have been assigned seniority over S/Shri Kuldeep Singh Solenki, Ravi Kumar, Vijender Kumar, and Ajay Kumar Kapoor w.e.f. 1.11.1991.

5. Having regard to the judgments in OA No.2834/1992, OA No.1057/1999 and the ratio in the matters of Jankiraman (supra) and P.S.Mahal (supra), and in the interest of justice, we direct respondents to consider granting applicants consequential benefits of their promotion to the post of Draftsman Grade-II from dates post-1.11.1991 as and when the vacancies in Draftsman Grade-II were available, keeping in view Annexure A-4 dated 12.5.1988, and seniority-cum-fitness basis. In case such vacancies were not available till the dates when applicants' juniors S/Shri Kuldeep Singh Solenki, Ravi Kumar, Vijender Kumar, and Ajay Kumar



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Kapoor have been considered for consequential benefits of their promotion, then these applicants shall also be considered for grant of consequential benefits with effect from the same dates as their aforesaid juniors.

6. This OA is accordingly disposed of, with no order as to costs.

S. Raju

(Shanker Raju)
Member (J)

V. K. Majotra

(V. K. Majotra)
Member (A)

/as/