

Central Administrative Tribunal
Principal Bench

O.A. No. 2832 of 2001

New Delhi, dated this the 30th April, 2002

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE SMT. LAKSHMI SWAMINATHAN VICE CHAIRMAN (J)

1. Jag Mohan Swarup
Block II/3/1
New Minto Road Hostel,
Minto Road, New Delhi-110002APPLICANT
(By advocate: Shri G.K. Aggarwal)

Vs.

1. Union of India thro'
Secretary, Ministry of Urban
Development of Poverty Alleviation
Nirman Bhawan, New Delhi-110011.
2. The Appointments Committee of the
Cabinet (ACC) thro'
Cabinet Secretary,
Rashtrapati Bhawan,
New Delhi-110004.
3. The Secretary,
Union Public Service Commission

Shahjahan Road,
New Delhi-110011. ... Respondents.
(By Advocate: Shri Madhav Panikar)

ORDER

S.R. ADIGE, VC (A)

In this OA filed on 16.10.2001, applicant seeks a declaration and direction that the penalty order dated 2.12.98 (Annexure A-1) shall be ignored, as having been set aside and a declaration and direction that he shall be treated as regular Superintending Engineer (Civil) w.e.f. 31.12.85 above his juniors (s) if otherwise found fit to be so, and correspondingly as Chief Engineer (c) with retrospective effect above his junior (s) with arrears and all consequential benefits, in supersession of respondents' order dated 6.11.2000 (Annexure A/2), if necessary.

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2. Heard.

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3. Pleadings reveal that applicant who was an Ex.Engineer (Civil) was promoted as SE(C) on adhoc basis on 10.7.86. He was considered for regular promotion to the grade of SE(C) by the DPC held in UPSC in October, 1994 alongwith other eligible officers against regular vacancies for the year 1985 and onwards upto 1993-94, (this bunching had occurred owing to seniority disputes in feeder grades), but as he was not free from vigilance angle, having been chargesheeted for a major penalty under rule 14 CCS (CCA) Rules, 1965 vide Memo dated 30.6.93, the DPC's findings in regard to him were kept in sealed cover in accordance with DP & T's OMs dated 10.4.89 and 14.9.92. On the DPCs recommendations a number of officers junior to applicant in the grade of Executive Engineer were empanelled in the year 1985 and onwards and were assigned dates of appointment as Superintending Engineer(C) on regular basis w.e.f. 31.12.85 onwards vide respondents' orders dated 20.10.94 and 4.9.95.

4. Pleadings further reveal that in the background of the Tribunal's order dated 1.8.96 in OA No. 1865/95 Surinder Kumar and Ors. Vs. UOI and Ors., a DPC was held in UPSC in February, 1997 for preparing yearwise panels for regular promotion to the grade of SE(C) for the year 1994-95, 1995-96

and 1996-97. Applicant was again considered for promotion alongwith other eligible officers in each of these three years, but as he was still not free from the vigilance angle, the DPC's findings in respect of him were again kept in sealed cover. As a result of acceptance of DPC's recommendations, by the appointing authorities, promotion orders in respect of 46 officers as SE(C) issued on 27.3.97.

5. The disciplinary proceedings pending against applicant concluded vide order dated 2.12.98 with the imposition of a minor penalty of reduction by two stages in the time scale of pay for a period of 2 years without cumulative effect. Respondents aver that in terms of DOPT's OM dated 14.9.92 on sealed cover procedure, the sealed cover (s) were not opened and acted upon.

6. DPCs could not be convened for making further regular promotions to the grade of SE(C) for some time thereafter owing to pending court cases, but eventually a DPC was held in October, 2000 for recommending promotion against vacancies of SE (C) for the year 2000-2001 and on the basis of DPC's recommendations, applicant was promoted as SE (Civil) on regular basis along with other officers vide impugned order dated 6.11.2000.

7. At the outset we note that applicants' challenge if any to the penalty order dated 2.12.98 in this OA which has been filed on 16.10.2001, is squarely hit by limitation under section 21 AT Act. Applicant has filed MA No.2319/2001 for condonation

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(11)

of delay in filing the OA contending that earlier he had been advised that the penalty would not affect his regularisation as SE (C) w.e.f. 31.12.85 as the charge related to the period 19.11.90 to 25.4.91, but clearly this contention cannot be construed to be sufficient cause to condone the delay in filing the OA under section 21 (3) AT Act. Indeed a 7 Judge Bench of the Hon'ble Supreme Court in paragraph 16 of its judgment in L.Chandra Kumar Vs. State of AP & Ors. JT 1997 (3) SC 589 while referring to Chapter IV of the AT Act entitled "PROCEDURE" which covers sections 19 to 27 of the Act, has specifically observed that the Tribunal has no power to condone delay.

8. That apart we note that because of seniority disputes in feeder cadre, the DPC for making recommendations for promotion to the grade of SE could be held for the year 1985 upto 1993-94 only in October, 1994 by which time applicant had been proceeded against for a major penalty, vide order dated 30.6.93, and officers junior to him were regularised as SE (C) by orders dated 20.10.94 and 4.9.95. It was open to applicant to have challenged the aforesaid two orders within the period of limitation prescribed at that point of time on the same grounds as he is advancing at present, namely that the charge relating to the period 1990-91, and should not therefore affect his regularisation as SE (C) w.e.f. 31.12.85, but he did not do so then, and his challenge at this stage is again hit by limitation.

9. Again for the aforesaid reasons, reckoned

from 27.3.97 when another batch of officers junior to applicant were regularised as SE (C) applicant's claim in the present OA filed on 26.10.2001 is hit by limitation.

10. Even on merits we find that the OA warrants no interference. The DPC met in October, 1994 to make recommendations for promotion to the grade of SE (C) from 1985 upto 1993-94. On the date of that DPC, applicant already stood proceeded against departmentally for a major penalty vide Memo dated 30.6.93 and in accordance with Govt. instructions his case had to be kept in sealed cover. In succeeding DPCs also his case had to be kept in sealed cover, as the disciplinary proceedings concluded with the imposition of a minor penalty vide order dated 2.12.98, and respondents' subsequent action is fully in consonance with DP & T's OMs dated 10.4.89 and 14.9.92. Indeed para 17.6.2 of OM dated 14.4.92 explicitly states that if any (emphasis supplied) penalty is imposed upon the Govt. servant as a result of the disciplinary proceedings or if he is found guilty in the criminal prosecution against him the findings of the sealed cover/covers shall not be acted upon. His case for promotion may be considered by the next DPC in the normal course and having regard to the penalty imposed upon him.

11. In the result the OA warrants no interference and the Hon'ble Supreme Court's ruling in Ajit Kumar Rath Vs. State of Orissa & Ors.

6 - (1999) 9 SCC 596 relied upon by applicant's counsel

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does not advance applicant's claims in the particular facts and circumstances of this case.

12. The OA is therefore dismissed. No costs.

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

S.R. Adige

(S.R. Adige)
Vice Chairman(A)