

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1057/1999

New Delhi, this 22nd day of November, 2000

Hon'ble Shri Kuldip Singh, Member(J)
Hon'ble Shri M.P. Singh, Member(A)

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3. Ms. Nirmala Darolia
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4. Jaipal Singh
C-1/1, Gali No.3, Sadatpur Extn
Karawal Nagar, Delhi-94 .. Applicants

(By Shri E.X.Joseph with Shri S.S.Sabharwal,
Advocates)

versus

Union of India, through

1. Secretary
Ministry of Urban Development
Nirman Bhavan, New Delhi
2. Director General (Works)
CPWD, Nirman Bhavan, New Delhi
3. Dy. Director of Administration-1
o/o DG(works)
Nirman Bhavan, New Delhi .. Respondents

(By Shri D.S.Mehandru, Advocate)

ORDER

By Shri M.P. Singh

The applicants are aggrieved by the action of the respondents in denying them promotion to the post of Draughtsman (DM, for short) Grade II though they fulfil all the conditions of eligibility and have also passed the departmental examination for the post of DM Gr.II held on 12.1.88.

2. Heard the learned counsel for the parties and perused the records.

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3. Briefly stated, it is the case of the applicants who are working as DM Grade III (Electrical) in CPWD, that as per CPWD Manual they are eligible for promotion as DM Gr.II. The said Manual provides for 100% promotion of DM Gr.III, with Diploma in Draughtsmanship (Civil/Mech) from a recognised institute and three years' regular to the post of DM Gr.II subject to passing a departmental examination. The applicants possessing the requisite criteria passed the departmental examination for the post of DM Gr.II held on 12.1.88 and their names were published in OM dated 12.5.88 (Annexure A-3 to the OA) and some of them were promoted accordingly as DM Gr.II, while the applicants were left out. In the meantime respondents issued OM dated 31.1.91 to the effect that "on representation from the Engineering Drawing Staff Association, DG/Works is pleased to dispense with the holding of the departmental examination for promotion DM Gr.II from DM Gr.III". It was followed by another OM dated 21.10.91 wherein it was decided that all future promotions from DM Gr.III to DM Gr.II (Civil and Electrical) w.e.f. 1.11.91 would be strictly based on seniority-cum-fitness irrespective of the factor whether any DM Gr.III has passed the departmental examination or not. Upon submission of various representations from the Association, the respondents issued OM dated 21.10.1992 laying down the following procedure:

"In partial modification of this Directorate OM of even number dated 25.10.91 on the above subject the undersigned is directed to say that the DM Gr.III(C&E) who have qualified in the departmental examination may be considered for promotion against vacancies becoming available upto 31.10.91. All vacancies which have arisen w.e.f. 1.11.91 should be filled



strictly in accordance with R/Rules for the post of DM Gr.II(C&E) i.e. seniority-cum-fitness basis without having any consideration of passing the departmental examination"

(A)

4. Since the respondents did not promote the eligible DM Gr.III to that of Gr.II, some of them similarly placed like the applicants approached the Tribunal in OA 2834/92 challenging their non-promotion and that OA was disposed of by order 15.12.97 in favour of the applicants inter alia direct the respondents to consider the case of the applicants for promotion w.e.f. one year prior to the date of filing of the OA and to give appropriate relief also by way of consequential benefits. In pursuance of that, persons juniors to the applicants were promoted as DM Gr.II by order dated 31.12.98. Applicants made representation thereafter but without any result. That is how they are before us for a direction to the respondents to extend the benefit of the judgement dated 15.12.97 in OA No.2834/92 and to grant them promotion to the post of DM Gr.II with all consequential benefits.

5. The respondents have not controverted the aforesaid facts. The learned counsel for the respondents submitted that the promotions w.e.f. 1.11.91 have been made strictly in accordance with the seniority-cum-fitness basis without having any consideration of passing the Departmental Examination. The Departmental Examination was qualifying in nature and not competitive. The holding of such examination was dispensed with from 1991 and cut-off date was fixed as 1.11.91 for making promotion directly as per new Recruitment Rules on seniority-cum-fitness basis. Accordingly all vacancies which have arisen from 1.11.91

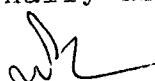


have been filled up strictly in accordance with the new Recruitment Rules. The Recruitment Rules are framed under Article 309 of the Constitution and have statutory force. In view of this, it would not be lawful and proper to extend the benefits of judgement in OA No. 2834/92 (supra) to the present applicants and they cannot be promoted due to the departmental problems like vacancies, fixing of seniority from back date etc. He, however, stated that respondents are not averse to consider the case of the applicants provided vacancies are available. We are not convinced with this argument.

6. The learned counsel for the applicants on the other hand has placed reliance on various judgements of the Hon'ble Supreme Court, viz. Amrit Lal V. Collector of Central Excise, Delhi 1975(1) SLR 169 wherein it has been held as under:

"When a citizen aggrieved by the action of a Government department has approached the court and obtained a declaration of law in his favours, others, in like circumstances, should be able to rely on the sense of responsibility of the department concerned and to expect that they will be given the benefit of this declaration without the need to take their grievance to Court"

A similar view was taken by the apex in Inder Pal Yadav & Ors. Vs. UOI 1985(2) SLR 248 to the effect that "...those who could not come to the court need not be at a comparative disadvantage to those who rushed in here. If they are otherwise similarly situated, they are entitled to similar treatment, if not by anyone else at the hands of this court". Even the Calcutta Bench of this Tribunal in the case of Y.G. Sharma Vs. UOI (1991) 17 ATC 82 has held a similar view that "respondents will behave rationally as a model employer instead of driving



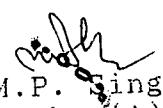
the desperate employees to take legal course. All decisions of this type should be treated as judgements in rem and be applied to persons similarly circumstanced".

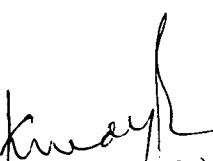
16

8. Admittedly, when the respondents have promoted persons juniors to the applicants in pursuance of the judgement in OA No.2834/92 (supra) we do not find any valid reason for not promoting the applicants when they fulfil the requisite criteria for promotion and have also passed the departmental examination way back in 1988.

9. For the reasons discussed above, the present OA is allowed. We direct the respondents to extend the benefit of the judgement in OA No.2834/92 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.

10. The OA is disposed of as aforesaid. No costs.


(M.P. Singh)
Member(A)


(Kuldip Singh)
Member(J)

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