

Central Administrative Tribunal, Principal Bench

Original Application No.2385 of 1999

New Delhi, this the 1st day of August, 2000

Hon'ble Mr.Justice Ashok Agarwal Chairman
Hon'ble Mr.V.K.Majotra, Member (Admnv)

Veerendra Kumar, S/o Shri Balbir Singh, Aged
about 32 years, At present working as Asst.
Executive Engineer In the Ministry of
Surface Transport, 1, Parliament Street, New
Delhi-110001. Permanent resident of Vill.
Dhanju, P.O.-Modipuram, Dist.-Meerut, U.P.
PIN-250110.

- Applicant

(By Advocate Shri A.K.Behra)

Versus

1. Union of India through the Secretary, Ministry of Surface Transport, 1, Parliament Street, New Delhi-110001.
2. The Secretary, Ministry of Railways (Railway Board), Rail Bhawan, New Delhi.
3. Director General (Road Development), Ministry of Surface Transport, 1, Parliament Street, New Delhi-110001. - Respondents

(By Advocate Shri Rajinder Nischal through proxy counsel Shri Vinod Kumar)

O R D E R (Oral)

By V.K.Majotra, Member(Admnv) -

The O.A. has been made by the applicant against the action of the respondents in not according him promotion to the post of Executive Engineer with effect from 9.2.1999 (the date from which his immediate junior was so promoted).

2. The applicant was selected on the basis of Engineering Services Examination, 1993 (for short 'ESE 1993') conducted by the Union Public Service Commission. He secured rank no.128 in the All India Merit List prepared by the UPSC. Another candidate, namely, Shri Alok Kumar Pandey secured 129 rank in the said merit list. On the basis of results of the said examination, whereas Shri Alok Kumar Pandey was allowed to join as Assistant Executive Engineer on 9.2.1995, the applicant

was not allowed to join his service as he was declared medically unfit. Vide order dated 14.9.1995 in OA 2292/1994 this Tribunal directed the respondents to conduct medical examination afresh in accordance with rules and to take a fresh decision about the suitability of the applicant after such medical examination. Accordingly, medical examination was conducted on 15.3.1996. The Medical Board found the applicant fit for promotion. Ultimately, vide letter dated 6.5.1996 the applicant was allocated to CES (Roads) under respondent no.1. After various formalities, the applicant could join on 7th July, 1997.

3. The next promotional avenue open to the applicant is to the grade of Executive Engineer. According to the recruitment rules Assistant Engineer having four years of regular service in the grade are eligible for consideration for promotion to the grade of Executive Engineer. The applicant claims that since his joining was prevented by the respondents on the basis of an illegally held medical examination and subsequently when he joined on interference by a court of law, he has to be given the benefit of seniority as well as qualifying service with reference to the person immediately below him in the merit list. The applicant has sought declaration that he is entitled to count his qualifying service with effect from 9.2.1995 and also a direction to the respondents to promote him as Executive Engineer with effect from 9.2.1999 with all consequential benefits.

4. The learned counsel of the applicant has drawn our attention to a decision of the Hon'ble Supreme Court.

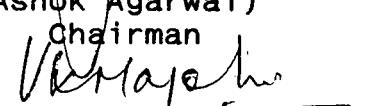
in the case of Pilla Sitaram Patrudu Vs. UNION OF India, (1996) 8 SCC 637 wherein it has been held "[S]ince he was selected by direct recruitment, he is entitled to be appointed according to rule. His appointment was delayed for no fault of his and he came to be appointed in 1981, he is, therefore, entitled to the ranking given in the select list and appointment made accordingly".

5. In their counter the respondents have stated that though the applicant had been selected on the basis of ESE, 1993, he was declared medically unfit on 22.2.1994 and 23.7.1994 by the Medical Boards of the Department. However, consequent upon the judgment in OA 2292/94, the applicant was examined by another Medical Board in which he was declared fit for all services other than Railway Engineering Services. They have admitted that the applicant could not join as Medical examination is a pre-condition before appointment. Since the applicant was medically unfit, he could not join along with his juniors and when he was found fit for appointment later on he was offered appointment.

6. The ratio in the case of Pilla Sitaram Patrudu (supra) is squarely applicable in the present case. The applicant could join Government service only after he was declared medically fit. He could not join earlier having been declared medically unfit by two Medical Boards. When the third Medical Board directed by the Tribunal, found the applicant fit, the applicant was offered appointment. Obviously, the applicant has to be given seniority for all purposes with effect from the date his junior joined in service. The plea to treat the applicant not having requisite length of service for

promotion cannot be entertained in view of the ratio of the above case. The ends of justice would be met only if the applicant is considered for promotion to the post of Executive Engineer with effect from the date his junior was promoted even though his qualifying service falls short of the required period on account of his joining late in service for which he can hardly be blamed.

7. Having regard to the above facts and circumstances, we hold that the applicant is entitled to count his qualifying service with effect from 9.2.1995 when his junior Shri Alok Kumar Pandey joined as Assistant Executive Engineer. The respondents are also directed to consider the applicant for promotion as Executive Engineer with effect from 9.2.1999 when his junior was so promoted as per rules. He shall also be accorded all consequential benefits. The O.A. is accordingly allowed in the above terms, however, without any order as to costs.


(Ashok Agarwal)
Chairman

(V.K. Majotra) 01.08.2002
Member (Admnv)

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