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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No.2445/99

Hon'ble Shri Justice V.Rajagopala Reddy, VC(J)
Hon'ble Smt. Shanta Shastry, Member(A)

New Delhi, this the 17th day of May, 2000

Ishwar Singh Sharma
s/o Shri Om Dutt Sharma
r/o House No.1047, Sector 7-B
Chandigarh, presently working as
Junior Engineer (Civil)
Central Public Works Department
Chandigarh Central Divn. No.1,
Kendriya Sadan
Sector-9, Chandigarh.

... Applicant

(In person)

Vs.

1. Union of India through
Secretary

Ministry of Urban Development
Nirman Bhawan
New Delhi.

2. Superintending Engineer
Chandigarh Central Circle
Kendriya Sadan
Sector-9
Chandigarh.

3. Sh. L.C.Wadhwa
Assistant Engineer
(Since retired)
to be served through
EE, 'J' Divn. CPWD
East Block No.2, Level - 3
R.K.Puram
New Delhi.

4. Sh. Ram Lubhaya
Executive Engineer
(Since retired)
to be served through
S.E./DCC-VI, East Block No.1
Level-6, R.K.Puram
New Delhi.

... Respondents

(By Shri Gajender Giri, Advocate)

O R D E R (Oral)

By Smt. Shanta Shastry, Member(A):

The applicant has filed this OA with a prayer that he may be allowed the promotional scale of Rs.2000-3500 w.e.f. 18.11.1992 instead of ^{from 1} 18.11.1995 with all consequential benefits together with interest at the rate of 18% per annum.

2. The applicant is working as a Junior Engineer (Civil) in the CPWD. He has been working since 18.11.1977. On completion of 15 years of service he became eligible to the higher scale of Rs.2000-3500 as per the order dated 22.3.1991 issued by the Ministry of Urban Development (Works Division). Thus the applicant was due for the higher scale on 18.11.1992, however, actually he was given the scale w.e.f. 18.11.1995 vide order dated 11.3.1997. The applicant who appears in person submits that till he completed 15 years of service, nothing adverse had been communicated to him and there was no disciplinary action initiated against him before the period of 15 years since he started working. On 10.8.1993, i.e., after about 10 months from the date on which he became eligible to the promotional scale adverse remarks appearing in the ACR of the applicant for the period 29.10.1991 to 31.3.1992 were communicated to the applicant. He represented against the same and the adverse remarks were expunged vide Memo. dated 23.11.1993. The applicant further states that initially the applicant was given the promotional scale w.e.f. 18.11.1992 with the condition that financial benefits would be allowed only w.e.f. 21.6.1995. The applicant submitted a representation on 22.8.1995 for allowing him the arrears from 18.11.1992 to 20.6.1995. However this was turned down. The applicant, therefore, filed OA No.638/CH/96 before the Chandigarh Bench of this Tribunal for the payment of arrears. However, the respondents withdrew the impugned order dated 7.8.1995 and thus the OA became infructuous. The respondents decided to issue

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fresh orders vide their Office Order No.1358, dated 31.12.1996. Thereafter, the respondents held a review DPC on 13.1.1997. The applicant was informed about the same. The applicant filed representation against this, however, the review DPC was held and it was decided to grant the promotional scale w.e.f. 18.11.1995 instead of 18.11.1992 as granted earlier. This was communicated to the applicant on 11.3.1997. The applicant is aggrieved by this order.

3. It is the case of the applicant that the adverse entries in his ACR for the period 29.10.1991 to 31.3.1992 were expunged. Since there were no more adverse entries he should have been given the promotional scale w.e.f. the date he completed 15 years of service, i.e., on 18.11.1992. The applicant has also raised objection that the adverse entries were communicated to him much later than the normal prescribed period within which the remarks should have been communicated to him. The applicant has also alleged malafides against the reporting and reviewing officer on the ground that because he had complained against the reviewing officer, his ACR was deliberately spoiled.

4. The learned counsel for the respondents submits that a review DPC was held in 1997 and the applicant was found fit, therefore, he was given promotional scale w.e.f. 18.11.1995. Though he had completed 15 years on 18.11.1992, he could not be given promotion because in the earlier DPCs which were held the applicant was not found fit, in spite of expunging of the adverse remarks in the ACR of

1991-92. The respondents have admitted that initially the applicant had been given the promotional scale notionally w.e.f. 18.11.1995 and actually from 21.6.1995. However, there was a mistake in the decision taken by the DPC and therefore they had to reconsider the case of the applicant. The applicant was found unfit because he had not earned the Bench Mark of three 'Good' remarks. He had earned Good report only for 31 months out of 60 months. After completion of one more year his CRs for the period 1.4.1988 to 31.3.1993 were considered and he was again found unfit for promotion in the higher scale. Again, after completion of one more year, his ACRs for the 1.4.1988 to 31.3.1994 were considered and having been found fit he was granted the promotional scale from 18.11.1995. The learned counsel for the respondents argues that since the applicant could not come to the Bench Mark of 3 'Goods' in his ACRs, he could not be considered fit for the higher promotional scale of Rs.2000-3500 and, therefore, he has been rightly denied the promotion from 18.11.1992.

5. We have heard the applicant in person and the learned counsel for the respondents and have perused the pleadings. We had called for records relating to the DPC meetings in connection with the promotional scale of the applicant. We have also seen the record produced by the respondents. We find that the applicant's ACRs for the relevant period, i.e., five years preceding the date of completion of 15 years service did not contain any adverse entries except the adverse entries which were communicated to the applicant and which were later on expunged. It is

correct that the applicant has two Good ACRs and one Average ACR and also in the totality, the applicant earned Good report for 31 months out of 60 months. This is almost more than 50%. More than 50% cannot be said to be just average. It has to be above Average. On our enquiry as to the definition of 'Average', the learned counsel for the respondents has brought to our attention the guide-lines issued by the DoPT in regard to the promotions wherein in Para 6.1.4. it has been clarified that

"While 'Average' may not be taken as adverse remarks in respect of officer, at the same time, it cannot be regarded as complimentary to the officer, as "Average" performance should be regarded as routine and undistinguished. It is only performance that is above average and performance that is really noteworthy which should entitle an officer to recognition and suitable rewards in the matter of promotion"

6. The learned counsel has further brought to our notice the criteria for selection cum seniority and selection by merit. In Para 6.3.1(iii), it has been mentioned as under:

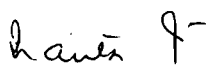
"Each Departmental Promotion Committee while considering the suitability of officers for promotion to posts for which the bench-mark has been determined as 'Good' would grade the officers as 'Good', 'Average' and 'Unfit' only. Only those officers who obtain the grading of 'Good' will be included in the panel in the order"

7. We have read these guide-lines. It is nowhere stated that 'Average' entry is considered to be 'Unfit'. This is not a selection post. It is merely granting of a higher pay scale after completion of a certain period of service, i.e., 15 years in this case irrespective of vacancies. The order under which the promotional scale is to be granted i.e., 22.3.1991, Annexure-A2 clearly laid down in Para (i) that "the higher grade will not be treated as a promotional one

but will be non functional and the benefit of FR 22(I)(a)(i) will not be admissible, while fixing the pay in the higher grade, as there will be no change in duties and responsibilities." Further Para 2 reads as follows:

"Also Junior Engineers/Sectional Officers (Horticulture) who could not be promoted to the post of Assistant Engineers/Assistant Directors (Horticulture) in the scale of Rs.2000-3500 due to non availability of vacancies in the grade of Assistant Engineers/Assistant Directors (Horticulture) will be allowed the scale of Assistant Engineers/Assistant Director (Horticulture), i.e., Rs.2000-3500, on a personal basis, after completion of 15 years of total service as Junior Engineer/Sectional Officer. This personal promotion will be given on fitness basis. As and when regular vacancies in the cadre of AE/ADs arise, the Junior Engineers/ Sectional Officers enjoying the personal promotion will be adjusted against these vacancies, subject to observance of normal procedure."

8. In view of the above clear cut instructions it is obvious that this is not at all a promotional post but a non functional post and, therefore, the only criteria is fitness. Here the normal bench-mark of promotions is not required. The applicant has not earned three 'Good' reports but on the whole his record is satisfactory and no where it is stated that he is 'Unfit' and also the adverse remarks have been expunged. This being the position, we are of the view that the applicant deserves to be given the higher promotional scale w.e.f. the date he completed 15 years, i.e., 18.11.1992. We, therefore, set-aside the impugned orders dated 11.3.1997 and direct the respondents to grant the promotional scale of Rs.2000-3500 to the applicant from 18.11.1992 with all consequential benefits. The OA is, accordingly, allowed. We do not order any interest and costs.


(SMT. SHANTA SHASTRY)
MEMBER(A)


(V. RAJAGOPALA REDDY)
VICE CHAIRMAN(J)

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