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Central Administrative Tribunal, Principal Bench

Original Application No. 599 of 1999

New Delhi, this the 17th day of July, 2001

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

Shri V.K. Agarwal, Asstt. Engineer, Flood  
Control & Drainage Civil Division No.2,  
Irrigation Control Department, Govt. of  
N.C.T. of Delhi, Jakhira, Delhi. - Applicant

(By Advocate- None)

Versus

1. U.O.I. through its Chief Secretary,  
Govt. of N.C.T. of Delhi, 5, Shamnath  
Marg, Delhi.
2. Union Public Service Commission, through  
its Secretary, Dhaulpur House, Shahjahan  
Road, New Delhi.
3. Shri Balbir Singh, Executive Engineer,  
C/o the office of the Chief Engineer,  
I&F, Govt. of N.C.T. of Delhi, 4th Floor,  
I.S.B.T., New Delhi-110006.
4. Shri N.S. Shammi, Executive Engineer, C/o  
the office of the Chief Engineer, I&F,  
Govt. of N.C.T. of Delhi, 4th Floor,  
I.S.B.T., New Delhi-110006.
5. Shri Prem Chand Rathi, Executive  
Engineer, c/o the office of the Chief  
Engineer, I&F, Govt. of N.C.T. of Delhi,  
4th Floor, I.S.B.T., New Delhi-110006. - Respondents

(Official respondents by departmental representative  
Shri Rajeev Kumar &  
Private-respondents 3 to 5 by Advocate Shri P.M. Ahlawat)

O R D E R (Oral)

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

In the absence of the applicant and his  
counsel, and the counsel of official-respondents, we  
proceed to dispose of this O.A. in terms of Rules 15  
and 16 of Central Administrative Tribunal (Procedure)  
Rules, 1987. We have considered the pleadings of all  
parties and also heard Shri P.M. Ahlawat, learned counsel  
of private-respondents.

2. The applicant has assailed order dated  
2.1.1997 of official respondents whereby on the

recommendations of the review DPC, official respondents have regularised Shri Balbir Singh, Assistant Engineer (Civil) (for short 'AE(C)'), respondent no.3 with effect from 10.3.1981 instead of 29.6.1982.

3. The applicant had filed OA No.1408/1992 seeking seniority in the list of AE(C) above Shri Balbir Singh, who is respondent 3 in the present OA. OA 1408/1992 was disposed of on 14.8.1997 with a direction that in the event the applicant files a detailed and self-contained representation to the official-respondents within two weeks from 14.8.1997, the respondents will dispose of that representation within <sup>by a detailed, speaking and reasoned order</sup> two months of its receipt. Applicant's representation though time barred was considered by the respondents in consultation with the Services Department of Govt. of NCT of Delhi, and applicant's representation was rejected. The applicant has averred that when on the basis of the roster system of reservation a SC candidate is promoted earlier than the general candidate, a general candidate on his promotion has to get seniority over the SC. It is stated that DPC was held on 9.10.1980 for adhoc promotion to the post of AE. Whereas the applicant was at serial no.14, respondent no.3 was at serial no.16. He was also senior to respondents 4 and 5 who were at serial nos.28 and 29. However, respondents 4 & 5 were promoted and later on, on the basis of the review DPC as stated earlier respondent no.3 was also promoted. According to applicant himself since he was junior to the last candidate in the general category, he could not be promoted and respondents 4 & 5 and later on respondent no.3 were promoted on the basis of the

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reservation for SC. The applicant has now sought promotion to the post of AE(C) with effect from 10.3.1981, with effect from which date his junior respondent no.3 Shri Balbir Singh has been given promotion as Assistant Engineer. He has also sought direction to official respondents to give seniority to the applicant to AE grade above respondent no.3 along with consequential benefits and interest on arrears etc.

4. Shri Ahlawat, learned counsel of private respondents contended that the applicant cannot be assigned seniority above respondents 3 to 5 in the grade of AE(C) with effect from 10.3.1981 as per <sup>ex tant</sup> ~~instant~~ <sup>h</sup> instructions of the DOPT and the law declared by the Hon'ble Supreme Court. He further stated that the applicant has sought seniority in the grade of Assistant Engineer with effect from 10.3.1981 which is badly time barred and further that the applicant has not impleaded other 17 persons who are senior to the applicant and who are likely to be adversely affected in the event of the success of this OA for promotion and seniority from the date of promotion to respondents 3 to 5 as per law. The learned counsel drew our attention to the ratios of the following cases :- (i) R.K.Sabharwal & others Vs. State of Punjab (1995) 2 SCC 745; (ii) Union of India Vs. Virpal Singh Chauhan, AIR 1996 SC 448; (iii) Baburam etc. Vs. C.C.Jacob and others, 1999 SCC(L&S) 682= 1999 (1) SCSLJ 347; and (iv) D.Sukumar and others Vs. Union of India and others, 2000 (2) SLJ (CAT) 230. Relying on these cases, the learned counsel contended that the private-respondents though junior were promoted earlier being SC/ST and as per Virpal Singh Chauhan's case (supra) general candidates regain seniority when

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promoted but the decisions in the cases of R.K.Sabharwal(supra) and Virpal Singh Chouhan (supra) and the Department of Personnel & Training's OM dated 30.1.1997 on the basis of which the applicant has sought seniority over respondents 3 to 5, have prospective effect only. As in the case of D.Sukumar (supra), present private-respondents who are SCs had been promoted earlier even to 10.2.1995. Hence afore-stated OM dated 30.1.1997 does not cover the present OA which deserves to be rejected.

5. The applicant has been claiming seniority with effect from 10.3.1981 when respondent no.3 has been promoted on the post of AE(C) by order dated 2.1.1997 (Annexure-P-1). The respondents have contended that the present matter is hopelessly barred by limitation as the applicant has claimed seniority with effect from 10.3.1981 and has slept over his rights if any for such a long time. The decision regarding allocation of seniority to respondent 3 with effect from 10.3.181 was conveyed vide order dated 2.1.1997 (Annexure-P-1) even though the present OA is barred by limitation. The respondents vide their order dated 7.5.1999 have considered the representation of the applicant dated 24.9.1997 as directed by this Tribunal, however, the same has been rejected on merit.

6. The learned counsel of private respondents Shri Ahlawat has also taken exception to the fact that the applicant has not impleaded 17 other persons who are senior to the applicant and who would be adversely affected in case the present OA is successful. We are inclined to agree with the learned counsel of private respondents in this behalf.

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7. The Ministry of Home Affairs, Govt. of India OM No.9/11/55-RPS dated 22.12.1959 and subsequent amendment by Department of Personnel & Training vide OM no. 20011/1/96-Estt(D) dated 30.1.197 state general principles in the matter of seniority. As per OM dated 20.12.1959 seniority of a person regularly appointed to a post according to rule would be determined by the order of merit indicated at the time of initial appointment and seniority of persons promoted to various grades shall be determined in the order of selection for such promotion. Thus, persons appointed through an earlier selection will enbloc be senior to those promoted in subsequent selection. OM dated 30.1.197 modified the OM dated 22.12.1959 and the following proviso was added -

"Provided that if a candidate belonging to the Scheduled Caste or the Scheduled Tribe is promoted to an immediate higher post/grade against a reserved vacancy earlier than his senior general/OBC candidate who is promoted later to the said immediate higher post/grade, the general/ OBC candidate will regain his seniority over such earlier promoted candidate of the Scheduled Caste and the Scheduled Tribe in the immediate higher post/grade."

Since this order was to take effect from the date of issue of this OM i.e. 30.1.1997, the case of the applicant is not covered under this OM.

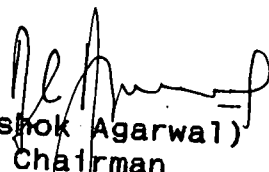
8. Placing reliance on the ratios of the cases cited by the learned counsel of private respondents, as also the fact that the OM dated 30.1.1997 has prospective effect, we are of the considered view that there is no infirmity in the memorandum dated 2.1.1997 (Annexure-P-1) whereby services of respondent no.3 had been regularised as AE(C) with effect from 10.3.19981 and also the decision of the respondents in rejecting

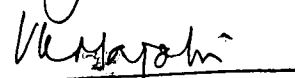
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the applicant's representation seeking promotion to the level of AE(C) with effect from 10.3.1981 as well as seniority in the grade of AE(C) over respondents 3 to 5.

9. Having regard to the reasons recorded and discussions made above, we do not find any merit in the present OA, which is dismissed accordingly. No costs.

  
(Ashok Agarwal)  
Chairman

  
(V.K. Majotra)  
Member (Admnv)

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