

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.93 of 1999

New Delhi, this 6th day of March, 2000

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

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S.S. Agarwal  
S/o Late Ram Chandra Agarwal  
R/o 263 Rajouri Apartments  
Rojouri Garden, New Delhi. Applicant

(By Applicant in person)

versus

1. Union of India, through the  
Secretary to the Govt. of India  
Ministry of Defence  
South Block  
New Delhi-110011.
2. The Engineer-in-Chief  
Kashmir House, Rajaji Marg  
New Delhi-110011.
3. Chief Engineer Western Command  
Chandimandir-134107
4. Standing Panel of Arbitrators  
5 Campbell Lines  
Nehru Road  
Lucknow Cantt.
5. CDA Pension  
Draupadighat Alahabad-14
6. Central Records Office  
C/o Chief Engineer Delhi Zone  
Delhi Cantt.-110010
7. Punjab National Bank  
Delhi Cantt.-110010 ... Respondents

(By Advocate Shri Rajinder Nischal through  
proxy Shri D.S. Jagotra)

ORDER(oral),  
By Reddy, J. -

~~Since~~ The applicant was ready to argue  
the matter. None appears for the respondent  
either in person or through counsel. Proxy  
counsel is present on behalf of respondents only  
to point out that the advocates are abstaining

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the Courts, which reason for absence, we deem it as untenable.

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2. The applicant was working as Superintending Surveyor of Works in Military Engineering Service. The next post in the hierarchy for promotion was Chief Surveyor of Works. One Shri S.V. Gadre, Chief Surveyor of Works, issued notice for voluntary retirement on 21.4.1997, to retire with effect from 21.7.1997. It is the case of the applicant that as Shri Gadre had issued the notice of voluntary retirement and under the rules the government servant shall be precluded from withdrawing his 'resignation', the respondents should have treated the post of Chief Surveyor of Works as vacant with effect from 21.7.1997 and the panel for promotion for likely vacancies should have been prepared even before the actual vacancy arose, so that a person who is due for promotion does not have to wait. The applicant relies upon the judgement of the Supreme Court in Union of India Vs N.R.Banerjee & Ors. [JT 1966(11)SC.605] dated 19.12.1996. The applicant was promoted on 8.9.1997 and he retired from service on 31.10.1997.

3. The applicant appears in person and argues that his promotion was delayed by two months from 22.7.1997 to 8.9.1997. He,

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therefore, seeks the relief of promoting him with effect from 22.7.1997.

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4. In the counter affidavit it has been stated that there were two vacancies for Chief Surveyor of Works for the year 1997-98 due to retirement of Shri S.V. Gadre on 31.1.1998 and Shri J.S.Khanna on 28.2.1998. A proposal for holding DPC was submitted to the Ministry of Defence on 12.5.1997 for onward transmission to UPSC. The DPC was held by UPSC on 13.8.1997 and the promotion order of the ~~of the~~ applicant was issued on 4.9.1997. It is, therefore, stated that even before the vacancy occurred on 21.7.1997, the respondents forwarded the proposal for filling up the post as Shri Gadre was to retire on 31.1.1998. The respondents denied that the judgement of the Supreme Court relied upon by the applicant has any application to the present case.

5. We have given careful consideration to the arguments of the applicant and perused the pleadings. We do not find any substance in the plea of the applicant. It is seen from the counter filed by the respondents that they have taken prompt action for filling up the post even in May 1997 itself on the ground that the two officers viz. Shri S.V. Gadre and Shri J.S. Khanna would retire on 31.1.1998 and 28.2.1998

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respectively. The UPSC held the DPC on 13.8.1997 and the applicant thereafter was promoted on 4.9.1997 itself. We do not, therefore, find any delay on the part of the respondents in filling up the post. The judgement cited by the applicant (supra) deals with Indian Ordinance Factories Service Rules. the Hon'ble Supreme Court in the said case held under those rules preparation of panel has to be undertaken well in advance to fill the clear vacancies or anticipated vacancies and that was a mandatory requirement. But the instant case is not covered by the Indian Ordinance Factories Service Rules. The recruitment rules of the applicant are quite different. Even assuming that the same principle has to be applied to all the anticipated vacancies, we are satisfied that the respondents have taken prompt and expeditious action in filling up the post.

6. Regarding the claim of the applicant for interest on the delayed payment on pensionary benefits, it is stated in the counter affidavit that there was no delay at all and that the pensionary benefits have been sent to the bankers of the applicant on 29.7.1997. As regards revision of pension, since the <sup>report</sup> results of the 5th Pay Commission and the government's order regarding the 5th Pay Commission's recommendations were issued on 19.12.1997, the

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case of the applicant could be initiated only after the publication of PTO (Part Two Order) which was approved by the audit authority on 3.3.1998. The revision claim for pension of the applicant could be forwarded only on 20.5.1998. The CCDA (Pension) Allahabad issued PPO on 20.10.1998 which was received on 20.11.1998 and the same was forwarded to the bankers of the applicant on 5.12.1998. It is, therefore, stated that the above time frame was taken because of the various processes that the authorities had to take.

7. In view of the above submissions made in the counter affidavit, we do not see that there is any culpable negligence on the part of the respondents in paying the pensionary benefits to claim interest.

8. After the judgement is dictated the applicant proffers the written arguments and wants us to accept the same. It must be noted that the applicant had not filed the written arguments nor supplied the same before the judgement was dictated. Hence we have not considered the contentions raised in the written arguments.

9. The OA fails and is accordingly dismissed. No order as to costs.

*Smt. Shanta Shastri*  
(SMT SHANTA SHASTRY)  
MEMBER (ADMN)

*V. Rajagopala Reddy*  
(V. RAJAGOPALA REDDY)  
VICE-CHAIRMAN