

Central Administrative Tribunal  
Principal Bench  
New Delhi

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O.A. No. 1219/98

Decided on 1.12.98

J.L. Khushu

..... Applicant

(By Advocate: Shri G.K. Aggarwal )

Versus

Union of India & Ors.

..... Respondents

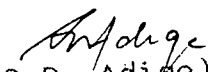
Shri

(By Advocate: Madhav Panikar )

CORAM

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)  
HON'BLE MR. RATAN PRAKASH, MEMBER (J)

1. To be referred to the Reporter or Not? YES
2. Whether to be circulated to other outlying benches of the Tribunal or not ? No.

  
(S.R. Adige)  
Vice Chairman (A)

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Central Administrative Tribunal  
Principal Bench: New Delhi

O.A. No. 1219/98

New Delhi date this the 1st day of December, 1998

Hon'ble Shri S.R. Adige, Vice-Chairman (A)  
Hon'ble Shri Ratan Prakash, Member (J)

Shri J.L. Khushu,  
D-II/2779, Netaji Nagar,  
New Delhi-110023.

.....Applicant

(By Advocate: SHri G.K. Aggarwal)

Versus

1. Union of India through  
Secretary,  
Ministry of Urban Affairs and  
Employment, Nirman Bhawan,  
New Delhi-110011.
2. The Appointments Committee of  
Cabinet (ACC) Govt. of India  
through Cabinet Secretary,  
Rashtrapati Bhawan,  
New Delhi-110004.
3. The Secretary Deptt. Personnel &  
Training, Ministry of Personnel,  
Public Grievances & Pensions,  
North Block, New Delhi-110001
4. The Secretary  
Union Public Service Commission  
Shahjehan Road,  
New Delhi-110011

.....Respondents

(By Advocate: Shri Madhav Panikar)

ORDER (Oral)

By Hon'ble Shri S.R. Adige, Vice-Chairman

Applicant seeks a direction to respondents restraining them from interfering with his promotion dated 24.7.96 (Annexure A-1) as a regular Chief Engineer (Civil) in respondents' department.

2. It is not denied that in August 1995 a duly constituted DPC chaired by a Member of UPSC (or its Chairman), considered 44 seniormost eligible SEs(C)

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and prepared a panel of 20 SEs (C) for regular promotion to the next higher grade of CEs(C). The applicant who was at Serial No.40 of the seniority list, was considered, graded 'outstanding' and was placed at the top of the panel. On 2.4.96, respondents issued letter of even date (Annexure A-2) abolishing three posts of Chief Engineers (Civil) we.f. 29.6.95 and took the view that the number of vacancies to be considered by DPC in August 1995 was 17 instead of 20, reducing the zone of consideration to 38 from 44. Proceeding on that basis respondents sought to remove applicant's name from the panel prepared and forwarded a truncated panel of 17 names to the Appointments Committee of the Cabinet (ACC) for approval. The applicant filed O.A. 854/96 praying for promotions to be, if made, in the order of the panel prepared by DPC in August 1995. After pleadings were completed it was reported to the Tribunal that respondents had made regular promotions from SEs(C) to CEs(C) vide order dated 24.7.96 (Annexure A-1) in the order of the panel prepared by DPC. Since the relief prayed for in the OA was granted, the Tribunal by its order dated 2.8.96 made in the presence of both the parties, in that O.A., took note of the submissions made by learned counsel for the applicant and dismissed the O.A. as having become infructuous.

3. Applicant contends that after having worked on the post of CEs(C) for 2 1/2 years, Respondents are now seeking to hold a review DPC, to review the aforesaid decision taken.

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4. We have heard Shri G.K. Aggarwal, learned counsel for the applicant and Shri Madhav Panikar, learned counsel for the respondents.

5. Shri Panikar has invited our attention to the respondents' reply, in which it is stated that consequent to the clarificatory instructions issued by DP&T in their O.M. dated 13.4.98, and the Finance Ministry's directions dated 9.6.95, imposing a 10% cut as an economy measure, it has become necessary to re-calculate the number of vacancies and if the vacancies have been correctly assessed, only 17 vacancies would have been reported to the UPSC and the applicant's name would not have been included in the zone of consideration based on 17 posts.

6. During hearing Shri Panikar has not denied that applicant has worked on the post of CE (C) vide respondents' order dated 24.7.96 for well over 2 years, and manifestly, therefore, if any post is to be abolished as an economy measure it can be done only prospectively and not retrospectively. It is clear, therefore, that respondents cannot <sup>retrospectively</sup> abolish the posts <sup>held</sup> by applicant at this stage, against which he has <sup>and been paid</sup> continuously worked from 24.7.96 onwards.

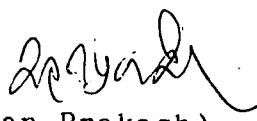
7. In the light of the above, the OA is allowed and succeeds to the extent that respondents are directed not to interfere with the applicant's promotion order dated 24.7.96 (Annexure A-1), ~~and~~ by seeking to abolish the post of CE (C) held by him w.e.f that date.

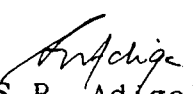
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8. Applicant's counsel has also emphasised that this O.A. was entirely avoidable and respondents should be issued formal directions to avoid creating situations which put Govt. employees to considerable harassment and expenditure <sup>by</sup> ~~which~~ compelling them to seek the shelter of Courts/Tribunals. While no formal directions need be issued, we trust this point raised by Shri Aggarwal will be noted by respondents.

9. The O.A. stands disposed of accordingly. No costs.

  
(Ratan Prakash)  
Member (J)

  
(S.R. Adige)  
Vice-Chairman (A)

cc.