

(12)

Central Administrative Tribunal
Principal Bench

O.A. No. 1584 of 1998

New Delhi, dated this the 22nd March, 2000

Hon'ble Mr. S.R. Adige, Vice Chairman (A)
Hon'ble Mrs. Lakshmi Swaminathan, Member (J)

O.A. No. 1584 of 1998

Shri S.M.Verma,
S/o Shri Jaimini Verma,
R/o E-32, Guru Nanak Road,
Adarsh Nagar,
Delhi-110033.

... Applicant

(Applicant in Person)

Versus

1. Union of India through
the Secretary,
Ministry of Urban Affairs & Employment,
Nirman Bhawan,
New Delhi-110011.

2. Director General (Works),
C.P.W.D., Nirman Bhawan,
New Delhi-110011.

.. Respondents

(By Advocate: Shri M.K. Bhardwaj proxy
counsel for Shri A.K. Bhardwaj)

O.A. No. 1886 of 1995

Shri S.M.Verma,
S/o Shri Jaimini Verma,
R/o E-32, Guru Nanak Road,
Adarsh Nagar,
Delhi-110033.

... Applicant

(Applicant in Person)

Versus

1. Union of India through
the Secretary,
Ministry of Urban Affairs & Employment,
Nirman Bhawan,
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2. Director General (Works),
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.. Respondents

(By Advocate: Shri M.K. Bhardwaj proxy
counsel for Shri A.K. Bhardwaj)

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ORDERBY HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)

As these two O.As deal with the same matters, they are being disposed of by this common order.

O.A. No. 1886/95

2. In this O.A. applicant impugns respondents' order dated 5.7.95 (Annexure A-1) and seeks regular promotion as Superintending Engineer (S.E.) w.e.f. 4.9.95, the date his junior Shri B.B. Bhatia was promoted. Applicant also prays that the conduct of certain officers, against whom he has alleged impropriety, violation of rules and regulations and misuse of official position be investigated into.

3. Admittedly the posts of S.E. are filled 100% by promotion from the grade of Executive Engineers (E.E) by selection method from amongst E.Es with 7 years regular service in the grade through a D.P.C. headed by a Member, UPSC. Since the seniority in the feeder grade i.e. E.E. could not be finalised for a long time owing to prolonged litigation, promotion to the grade of S.E. was being made on ad hoc basis since 1982. Pursuant to the Hon'ble Supreme Court's judgment dated 8.5.92 in R.L.Bansal's case (No. 1438/81) the seniority list of E.Es/SEs was finalised on 20.10.94 (Annexure A-2) in compliance with C.A.T., P.B's order dated 9.6.94 in O.A. No. 1765/92.

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4. It is not denied that in the aforesaid order dated 9.6.94 respondents had been directed to complete the process of review/regularisation of ad hoc promotions upto the level of S.E. (Civil) as on 1.1.94 by 20.10.94 pursuant to the which DPCs were held in UPSC in October, 1994 to prepare yearwise panels of E.E. (Civil) for promotion to the grade of S.E. (Civil) for the vacancies from 1982 to 1993-94 and these proceedings concluded on 10.10.94.

5. Respondents in their reply have stated that applicant was also considered by the yearwise DPCs for promotion as S.E. (Civil) but on account of his service record he was superceded in the years 1991-92; 1992-93 and 1993-94 as he failed to obtain the minimum bench mark of 'Very Good' for promotion as S.E.

6. We have heard both sides.

7. We note that applicant in Paragraph 4 (x) of his O.A. has urged, and respondents in the corresponding paragraph of their reply have not denied that the CRs for the preceding 7 years were relevant for the purpose of assessing applicant's performance.

8. We have perused applicant's ACRs. For the year 1987-88 his overall grading is 'Very Good'. For the year 1988-89 it is the same. For the year 1989-90 also it is the same. For the year 1990-91,

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we note that remarks have been recorded for the period 1.4.90 to 18.11.90 during which applicant has been graded overall as 'Very Good'. For the period 1.11.90 to 31.3.91 no remarks have been recorded as he worked under different reporting officers for less than 3 months each. For the year 1.4.91 to 31.3.92 he has been graded as a 'Very Good' officer. For the year 1992-93 he has been graded overall as 'Good' while for the year 1993-94 he has again been graded as 'Very Good'.

9. It is clear from the foregoing that except for the year 1992-93 when applicant was overall graded merely as 'Good', he has been overall graded as 'Very Good' right from 1987-88 till 1993-94, and but for that one year's grading as 'good', he would have achieved the bench mark of 'Very Good' for promotion as S.E. In the case of U.P. Jal Nigam & Others Vs. P.C. Jain and Others 1996 (1) SCALE page 624, the Hon'ble Supreme Court has held as follows:

"We need to explain these observations of the High Court. The Nigam has rules, whereunder an adverse entry is required to be communicated to the employee concerned, but not down grading of an entry. It has been urged on behalf of the Nigam that when the nature of the entry does not reflect any adverseness that is not required to be communicated. As we view it the extreme illustration given by the High Court may reflect an adverse element compulsorily communicable, but if the graded entry is of going a step down, like falling from 'Very Good' to 'Good' that may not ordinarily be an adverse entry since both are a positive grading. All what is required by the Authority recording confidentials in the situation is to record reasons for such down grading on

the personal file of the officer concerned, and inform him of the change in the form of an advice. If the variation warranted be not permissible, then the very purpose of writing annual confidential reports would be frustrated. Having achieved an optimum level the employee on his part may slacken in his work, relaxing secure by his one time achievement. This would be an undesirable situation. All the same the sting of adverseness must, in all events, be not reflected in such variations, as otherwise they shall be communicated as such. It may be emphasised that even a positive confidential entry in a given case can seriously be adverse and to say that an adverse entry should always be qualitatively damaging may not be true. In the instant case we have seen the service record of the first respondent. No reason for the change is mentioned. The down grading is reflected by comparison. This cannot sustain."

10. It is true that the aforesaid ruling was made in the context of the U.P. Jal Nigam Rules, but it cannot be denied that the rules applicable to applicant require that adverse entry be communicated, but not downgrading of an entry. In the light of the aforesaid ruling the downgrading of applicant's ACR for the year 1992-93 to 'Good' from the previous years ACR of 'Very Good' should have been communicated to applicant before those downgraded remarks were actually recorded, and applicant should have been given an opportunity to represent, but that was not done in the present case.

11. We are aware that the DPC is not bound by the overall grading given in the ACRs and is to make its own assessment of the work of the candidates. We are also aware that the Tribunal cannot substitute its own assessment for that of a

regularly constituted DPC. However, in the facts and circumstances of this particular case, when applicant has undeniably been graded overall as 'Very Good' during six of the seven years which are relevant, and in the single year when he was rated as 'good' this down grading in the entry was not communicated to him, we feel it is a fit case to call upon respondents to communicate the downgraded entry to applicant within six weeks of receipt of a copy of this order, and grant applicant six weeks thereafter to file a representation, if any against the same. Thereafter respondents will dispose of that representation in accordance with rules and instructions and if the downgraded entry is upgraded, respondents shall consider applicant's case for promotion as S.E.(Civil) with effect from the date his junior Shri B.B. Bhatia was so promoted by order dated 4.9.95. We direct accordingly and call upon respondents to implement these directions in full as expeditiously as possible and preferably within 6 months from the date of receipt of a copy of this order. In case applicant is so promoted he shall be entitled to all consequential benefits flowing therefrom including arrears of pay and allowances and seniority.

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12. In this O.A. also applicant seeks identical relief as in O.A.No.1886/95 namely promotion as S.E. w.e.f. 4.9.95 with consequential benefits including pay and allowances(with arrears) from 4.9.95 as also interest @ 18% p.a. w.e.f. 1.1.98 and costs.

13. As the main relief sought in O.A.No.1584 of 1998 is already covered by our directions in paragraph

Avk by 11 above in relation to O A No.1886/95 no separate orders are required on O.A. No. →

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1584/98, and indeed applicant should not have filed the second O.A. seeking the same relief which he has sought in the first.

14. Under the circumstances both O.As are disposed of in terms of the directions contained in paragraph 11 above. The prayer for interest and costs is rejected as we find no good grounds to award the same. No costs.

Lakshmi Swaminathan

(Mrs. Lakshmi Swaminathan)
Member (J)

S.R. Adige

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

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