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Central Administrative Tribunal
Principal Bench
New Delhi

O.A. No. 1808/98

Decided on 17.5.99

Shri B.N. Laha Applicant

(By Advocate: Shri G.K. Aggarwal)

Versus

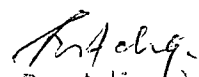
Union of India & Ors. Respondent

(By Advocate: Shri R.N. Singh proxy
counsel for Shri R.V. Sinha)

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HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE MRS. LAKSHMI SWAMINATHAN, 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

O.A. No. 1808 of 1998

New Delhi, dated this the 17 MAY 1999

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

Shri B.N. Laha,
235/B/2, Netaji Subhas Road,
Calcutta-47.
C/o Shri G.K. Aggarwal, Advocate
G-82, Ashok Vihar-I,
Delhi-110052.

... Applicant

(By Advocate: Shri G.K. Aggarwal)

Versus

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

2. The Director General (Works),
Central Public Works Dept.
Nirman Bhawan, New Delhi-110011.

3. The Secretary,
UPSC, Shajehan Road,
New Delhi-110011.

... Respondents

(By Advocate: Shri R.N. Singh proxy counsel
for Shri R.V. Sinha)

O R D E R

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

Applicant impugns respondents' O.M. dated 19.3.98 (Ann. A/1) dated 5/6.10.95 (Ann. A/5) and dated 8.11.95 (Ann. A/6). He seeks a declaration that he is a regular S.E. (Civil) w.e.f. 19.9.95, pursuant to respondents' orders dated 4.9.95 (Ann. A/2) with back wages and all consequential/ attendant benefits.

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2. Applicant and 32 others were promoted to officiate as Superintending Engineer (Civil) on regular basis vide order dated 4.9.95 (Ann. A/2). This order was stayed by CAT, Lucknow Bench vide interim orders dated 6.9.95 in o.A. No./ 476/95 Adesh Kumar Vs. UOI & Ors., in pursuance of which respondents issued order dated 11.9.95 directing all concerned to comply with those directions. Meanwhile unaware of the stay order, applicant submitted joining report as S.E. (C) on 19.9.95 (Ann.A/7) but subsequently by order dated 5/6.10.95 (Ann. A/5) his joining report as S.E. (C) on promotion was cancelled on 8.11.95 (Ann. A/6).

3. Meanwhile Shri. Surendra Kumar & 3 Others had filed O.A. No. 1865/95 in CAT, P.B. impugning the order dated 4.9.95 and the DPC held in October 1994 leading upto the issue of that order. The CAT, PB in its order dated 1.9.96 held that while the appointment of R-3 & 35 (i.e. the officers named in the order dated 4.9.95) who were placed in the panel by the duly constituted DPC for appointment to the 33 identified ^{on posts of S.E. existing in 1994 was valid, the} posting of some of them against vacancies which were created subsequent to 1994 was irregular and unjustified. Accordingly the CAT, PB iter alia directed respondents to make necessary adjustments such that those officers (including applicant who was at Sl. No.19) were appointed against the vacancies for which they had been placed in the panel.

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4. Subsequently the CAT, Lucknow Bench by its order dated 19.9.96 (Ann. A/8) vacated its interim order dated 6.9.95. Meanwhile Shri R.C. Gupta (Sl. No.18 in order dated 4.9.95) filed O.A. No. 882/97. The CAT, PB in its order dated 30.6.97 in that O.A. (Ann. A/4) held that Shri Gupta having been empanelled for promotion as SE (C) by the DPC in 1994, and having been promoted as such by order dated 4.9.95 and that order dated 4.9.95 having been held valid, ^{respondents} could not now take the stand that as he had not been found upto the benchmark in the review DPC held in 1995 pursuant to the Tribunal's order dated, he could not be promoted as SE (C) and had to be reverted. Accordingly respondents were directed to respect their own orders and make suitable adjustments short of reversion till the appropriate vacancies arose for the purposes of posting. We note that in the order dated 4.9.95 applicant at Sl. No.19 is immediately below Shri R.C. Gupta.

5. Meanwhile applicant had filed O.A. No. 596/97 in CAT, Calcutta Bench seeking promotion as per order dated 4.9.95. That O.A. was disposed of by order dated 28.11.97 (Ann. A/10) with a direction to applicant to make a representation to respondents in the first instance and enclosing with it a copy of the Tribunal's order dated 30.6.97 in O.A. No. 882/97 and a direction to respondents to dispose it of.

6. Respondents have rejected applicant's representation by detailed order dated 19.3.98 against which this O.A. has now been filed.

7. In this order dated 19.3.98 respondents have taken the stand that having examined the matter in accordance with the CAT, Principal Bench's order dated 1.8.96 in Surender Kumar's case (Supra) and as there were only 12 vacancies in the grade of SE (C) available in the year 1992-93 the first 12 officers in the panel for the year 1992-93 (i.e. upto Shri R.K. Ghosh) have been retained as SE (c) while the remaining officers in the 1992-93 panel and all the officers in the 1993-94 panel were required to be considered again against vacancies for subsequent years. All the candidates including applicant Shri Laha were considered by DPC held on 27.2.97 for vacancies of the years 1994-95, 1995-96 and 1996-97 and on the basis of applicant's record for the relevant years, the DPC did not find him upto the prescribed grade and accordingly his name was not included in the panels for the years 1994-95, 1995-96 and 1996-97.

8. Meanwhile applicant's counsel Shri G.K. Aggarwal has filed copies of Delhi High Court's order dated 24.3.99 in CW-718/99 dismissing the challenge to the CAT, PB's order dated 30.6.97 in OA-882/97.

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9. In view of the facts and circumstances noticed above, and particularly the Delhi High Court's order dated 24.3.99 dismissing the challenge to the CAT P.B. order dated 30.6.97 in O.A. No.882/97, the stand taken by respondents in the impugned order dated 18.3.98 cannot legally be sustained.

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10. The O.A. succeeds and is allowed to the extent that Respondents will have to respect their own order dated 4.9.95 and treat applicant as a regularly promoted Superintending Engineer (Civil) w.e.f. 19.9.95 with all consequential benefits including back wages. No costs.

Lakshmi Swaminathan

(Mrs. Lakshmi Swaminathan)
Member (J)

S.R. Adige

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

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