

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No.793/98

Hon'ble Shri V.K.Majotra, Member (A)
Hon'ble Shri Shanker Raju, Member (J)

New Delhi, this the 19th day of March, 2001

Shri D.Hore
s/o Shri A.K.Hore
r/o D-17/F DDA
MIG Flats, Mayapuri
New Delhi - 110 064. .. Applicant

(By Advocate: Shri Digvijay Rai, proxy of Ms. Mamta Saha)

Vs.

1. Union of India through
The Secretary to the Government of India
Ministry of Urban Affairs &
Employment, Nirman Bhawan
New Delhi.
2. The Director General (Works)
Central Public Works Department
Nirman Bhawan
New Delhi.
3. Union Public Service Commission
through its Secretary
Dholpur House
Shahjehan Road
New Delhi. .. Respondents

(By Advocates: Shri D.S.Jagotra for R-1 and R-2 with
Mrs. B.Rana for R-3)

O R D E R(Oral)

By Mr. V.K.Majotra, Member(A):

The present application is directed against OM dated 5.2.1997 (Annexure-A1) circulating the seniority list of Superintending Engineers (Civil) alleging that the applicant has been assigned depressed seniority vis-a-vis his juniors. The applicant joined as Assistant Executive Engineer on 18.12.1972. In the seniority list dated 27.5.1994, Annexure-A2 he was shown at S1. No.122 (1971 examination). He was promoted as Executive Engineer (Civil) on ad hoc basis. Annexure-A3, dated 19.1.1994, is the seniority list in the grade of Executive Engineer (Civil),

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wherein the applicant's name was shown at Sl. No.433.

According to the applicant he became due for promotion as Superintending Engineer prior to 28.10.1996 in terms of Central Engineering Services Class-I Recruitment Rules, 1961 (hereinafter referred to as 'Rules of 1961'). The new rules were promulgated from 28.10.1996 (hereinafter referred to as 'Rules of 1996'). The applicant was promoted as Superintending Engineer on ad hoc basis vide Annexure-A5 dated 26.3.1987 and posted in the Geological Survey of India on deputation vide order dated 14/15.4.1987 where he continued to function as such till 30.4.1990. Vide order dated 20.10.1994 (Annexure-A6) the respondents have appointed 129 Executive Engineers (Civil) to officiate as Superintending Engineers (Civil) on regular basis in the Central Engineering Service Group-A in the pay scale of Rs.3700-5000. The applicant's name is at Sl. No.84. It is alleged that he was superseded by 43 junior officers, i.e., from Sl. No.44 to 83. He made a representation on 17.11.1994, Annexure-A7. He has stated to have made several representations thereafter. The applicant has stated that in pursuance of Tribunal's directions contained in order dated 9.6.1994 passed in OA 1765/92 in the matter of B.P.Bindal's case, the respondents held a DPC meeting in October, 1994 to prepare year-wise panel of Executive Engineers for regular promotion to the grade of Superintending Engineer for the vacancies pertaining to the years 1982 to 1994. The applicant made representations on 17.11.1994, 16.12.1994 and 17.12.1994. Those dated 16.12.1997 and 17.12.1994 were rejected vide OM dated 1.1.1996, Annexure-A10 stating that the post of Superintending

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Engineer is 'selection' based and that the applicant was superseded by various juniors on the basis their better service records. The applicant has contended that whereas he had 'Verygood' record, officers of the same batch who did not have 'Good' record, had been promoted, resulting in hostile discrimination against him. He has sought a direction to respondents to review DPC held in October, 1994 and declare the seniority list of Superintending Engineers (Civil) circulated vide Office Order dated 5.2.1997 as invalid and also a direction to the respondents for preparation of a fresh seniority list assigning new seniority to the applicant in the grade of Superintending Engineer (Civil), above all officers who were juniors to him in the grade of Executive Engineer (Civil). 16

2. The respondents No.1 and 2 have raised objection relating to the limitation and non-impleadment of 43 officers alleged to have been made senior to the applicant in the seniority list of 20.10.1994. They have stated that ad hoc promotions in the grade of Superintending Engineer were made on the recommendations of the Screening Committee consisting of departmental members of DPC only without involving the Union Public Service Commission (UPSC). These ad hoc promotions made from 1982 onwards in the grade of Superintending Engineers were regularised by holding year-wise DPC for the period 1982 to 1993-94 in the UPSC in the month of October, 1994. The DPC proceedings were not held in a single day but from 3.10.1994 to 7.10.1994 and further from 10.10.1994 to 12.10.1994. Selection being the basis for promotions

to the post of Superintending Engineer and 'Verygood' being the bench mark for the purpose, it is stated by the respondents that certain juniors with better service record had overtaken the applicant. As the applicant failed to achieve 'Verygood' bench mark for the years 1985, 1986, 1987 and 1988, he was ultimately empanelled in 1989 when he achieved the prescribed bench mark of 'Verygood'. (A)

3. Respondent No.3, UPSC has also taken exception to non-impleadment of 43 officers who have allegedly superseded the applicant. According to UPSC, the procedure adopted in the DPC held during October, 1994 has been strictly in accordance with the rules and guide-lines on the subject.

4. Whereas the applicant remained absent during the final hearing the proxy counsel for the learned counsel of the applicant, namely, Ms. Mamta Saha has stated that there are no instructions from the applicant. We have proceeded to consider the case in the light of the pleadings of all the parties and after hearing Ms. B.Rana the learned counsel for Respondent No.3 and Shri D.S.Jagotra, learned counsel for the respondents No.1 and 2. Ms. B.Rana contended that order dated 6.9.2000 in OA 2065/97 in the matter of Shri A.Chaudhary Vs. Union of India and Others, an identical matter is applicable in the present case. The only difference is that Shri A.Chaudhary belonged to the Electrical Wing of CPWD and the applicant is from the Civil Wing of CPWD. Shri A.Chaudhary had also objected to his supersession by various juniors in the grade of Superintending Engineer. It was held

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in the above case that the selection process was correctly undertaken in accordance with the instructions in force, after properly working out the vacancies year wise and identifying the field of choice and with the participation of the appropriate authority, i.e., UPSC. As such it was held that placement of the applicant in the seniority list of Superintending Engineer on the basis of selection in DPC deserved to be endorsed as legal and proper and the application having been filed on incorrect appreciation of facts as well as law failed and the same was accordingly dismissed with costs.

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5. From the available record, we find that seniority list dated 20.10.1994 regarding Superintending Engineer (Civil) which has been assailed by the applicant was finalised without any objection having been filed by the applicant. The present OA was filed on 4.2.1998 after expiry of over three years after the seniority list had been finalised. Representations made by him on 16.12.1994 and 17.12.1994 were rejected vide Annexure-A10 dated 1.1.1996. As Annexure-A1, whereby the respondents have finalised the provisional deemed dates of promotion of Superintending Engineers (Civil) is dated 5.2.1997 and the OA was made on 4.2.1998 it is deemed to have been filed within the time limit.

6. Another point which has to be considered relates to the non-impleadment of the necessary parties. It has been stated that the applicant had filed MA 2387/2000 on 24.8.2000 seeking impleadment of 17 persons as necessary parties. The said MA was

rejected on 31.1.2001 in the light of the ratio of AIR 1997 SC 772, T.L.Muddukrishna and Anr. Vs. Smt Lalitha Ramchandra Rao as being barred by time. (9)

7. Next question before us is whether DPC held in October, 1994 was in accordance with Rules, instructions and guidelines available on the subject.

8. We are satisfied that at the time of ad hoc promotion of the applicant as Superintending Engineer, the UPSC had not been associated. The Review DPC, conducted between 3.10.1994 to 7.10.1994 and further from 10.10.1994 to 12.10.1994 in association with UPSC, was held as per rules, instructions and guide-lines on the subject. No good ground has been made before us for faulting the outcome of the DPC held in October, 1994. This matter is squarely covered by order dated 6.9.2000 made in OA 2065/97 in the matter of Shri A.Chaudhary supra.

9. Having regard to the reasons and discussions made above, this OA is dismissed being devoid of merit. No costs.

S.Raju

(SHANKER RAJU)
MEMBER(J)

/RAO/

V.K.Majotra

(V.K.MAJOTRA)
MEMBER(A)