

Central Administrative Tribunal
Principal Bench: New Delhi

OA 1211/95

New Delhi this the 5th day of December 1996.

Hon'ble Mr R.K.Ahooja, Member (A)

S.S.Rudra
Retired Executive Engineer (Civil), CPWD
R/o B-7/54/2 Safdarjung Enclave
New Delhi - 110 029.

...Applicant.

(Through Advocate: Shri G.K.Aggarwal)

Versus

1. Union of India through
Secretary
Ministry of Urban Affairs and Employment
Nirman Bhawan
New Delhi.

2. The Director General (Works)
Central Public Works Deptt.
Nirman Bhawan
New Delhi.

...Respondents.

(Through Advocate: Shri Jog Singh)

O R D E R

Hon'ble Mr R.K.Ahooja, Member (A)

Applicant who retired on superannuation on 31.8.90 as Executive Engineer (C), C.P.W.D. submits that he was promoted as Assistant Engineer on 15.9.62 and Executive Engineer on ad-hoc basis on 20.10.90. Following the Tribunal's judgement in his OAs 2035, 2018 of 1989 (Annexure A-4), his ad-hoc promotion was ante-dated to 24.7.85. Subsequently, following Supreme Court judgement in P.S.Mahal (1984) 4 SCC 545, he has been granted regular promotion as Executive Engineer w.e.f.31.12.85. The applicant further submits that on the basis of Supreme Court judgement in R.L.Bansal 1992 Suppl.(2) SCC 318, seniority lists of Assistant Engineers and Executive Engineers were revised with the result that he became senior^{as} Assistant Engineer to Shri J.N.Goel and Shri R.K.Jain who were granted promotion earlier as Executive

20

Engineer ad-hoc. On the basis of that, they were earlier treated as senior to him. On that count, now that the seniority list has been revised, the applicant seeks pay parity with J.N. Goel. Further drawing attention to Supreme Court judgement in P.S.Mahal's case where there was an express direction that arrears would be paid to those who draw higher pay as a result of the review, the applicant claims arrears of pay, after re-fixation of his pay qua J.N.Goel and his substantive promotion w.e.f. 31.12.85 and re-calculation of his retiral benefits on the basis of the revised pay.

2. Respondents in their reply state that the applicant has no right to promotion but only right to be considered alongwith other eligible officers; he was duly considered for promotion alongwith Goel and Jain but he was not recommended for inclusion in the select list. As regards arrears of pay after his promotion as Executive Engineer following P.S.Mahal (Supra), the respondents submit that the matter has been referred to DoPT since his promotion orders are provisional and a decision on arrears of pay would be taken only after the orders are confirmed by the DoPT. Finally, the respondents say that the applicant has already been paid additional retiral benefits including encashment of leave, DCR gratuity, pension and commutation of pension on the basis of his revised pay on account of his promotion to the post of Executive Engineer w.e.f. 24.7.85. The applicant has filed a rejoinder contesting the respondents' claim that the orders of promotion in 1994 following P.S.Mahal are provisional and not final and that the payment of arrears has to await the instructions of DoPT.


3. I have considered rival contentions and arguments of the learned counsel for the parties. The first relief sought, namely, fixation of the applicant's pay as Executive Engineer (C) on ad-hoc

2

basis w.e.f. 31.12.76 on the ground that his juniors J.N.Goel and R.K.Jain were given such a promotion on the date, was not pressed very strongly before me and in any case cannot be granted. There is no right for ad-hoc promotion and in any case such promotion would not have been automatic. Hence the applicant is not entitled to have his ad-hoc promotion as Executive Engineer ante-dated to 31.12.76. The applicant is, however, entitled to stepping up of his pay to that of J.N.Goel since as per order (Annexure A-2) he has been promoted as Executive Engineer on a regular basis w.e.f. 31.12.85 while J.N.Goel's promotion is w.e.f. 31.12.86. Respondents say that the order (A-2) itself clearly states that no financial benefits shall accrue till provisional dates of promotions are approved by the competent authority. These orders were passed in 1994 and till now, despite lapse of another 2 years, the approval of the competent authority has not been granted.

4. In these circumstances, it will suffice if a direction is given to respondent 1 to take a final decision within a period of 3 months and to pay consequential financial benefits within a month thereafter unless there is any subsisting orders of any competent court to the contrary. In case any re-calculation of the retiral benefit is to be done because of the re-fixation of the pay of the applicant, on the basis of the orders (A-2) dated 20th October 1994, the same should be done also within 2 months thereafter. The application is disposed of with the above directions.

No orders as to costs.


[R.K.Ahooja]
Member (A)

aa.