

9

CENTRAL ADMINISTRATIVE TRIBUNAL

Principal Bench

DA.1447/95

New Delhi, the 29 September, 1996.

Hon'ble Shri R.K. Ahooja, M(A)

Suraj Pal
S/o Sh. Tika Ram
R/o 1983, Sector-I
Pushp Vihar,
New Delhi.

Applicant

(Advocate: Sh. R.V. Sinha)

vs

1. Union of India,
M/o Urban Development,
Nirman Bhawan,
New Delhi.01.
Through: Secretary.

2. The D.G. Works
C.P.W.D.
Nirman Bhawan,
New Delhi.01.

Respondents

(Advocate: Sh. M.K. Gupta)

ORDER

Hon'ble Shri R.K. Ahooja, M(A)

The applicant who was given promotion
as Assistant Executive Engineer w.e.f. 10.1.79,
and as Executive Engineer w.e.f. 10.1.83 is aggrieved
that he has not been granted consequential benefits
of arrears of pay and allowances. The applicant

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joined the Central Public Works Department (CPWD) as Junior Engineer(Civil) in 1962 and was promoted as an Assistant Engineer on the basis of a Limited Departmental Competitive Examination on 30.1.79. In 1977, the applicant had taken the Combined Engineering Services Examination held by the UPSC under age relaxation subject to the condition that he will be eligible for the posts only in CPWD. It was stated that there were ten SC vacancies of AEE to be filled in through that examination. The applicant secured 11th position in order of merit for SC posts. It was later found that one Shri Lucose who secured 10th position had falsely claimed to be a member of SC and therefore no offer was sent to him. The applicant therefore, claimed that he stood elevated to 10th position and should have been offered the post of AEE but the respondents did not do so. The applicant again took the 1978 Examination and his merit position among SC candidates was 3rd. The number of SC vacancies notified for AEE in CPWD was only 2. On his representation, the SC vacancies increased to 8 and UPSC were intimated accordingly. However, the applicant was not given the post of Asstt. Executive Engineer.

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The applicant has all along been pursuing his case for appointment against the first 1977 Examination and finally the respondent No.2 corrected the mistake and issued order dated 27-7-93 appointing him as Asstt. Executive Engineer on the basis of 1977 Examination retrospectively w.e.f. 10.1.79. Subsequently, vide order dated 9.2.94 (Annexure P-2) the applicant was given promotion as Executive Engineer retrospectively w.e.f. 14.6.1985. In both these orders it was stated that the applicant will not be entitled to get the consequential benefits including arrears of pay and allowances.

2. The applicant submits that this impugned portion of the orders placed at P-2 and P-3 are liable to be set aside since his promotion was delayed for no fault of his and the delay was entirely ^{due to} the mistake and negligence on the part of the respondents.

3. The respondents in reply submit that when it was found that the 10th selected candidate in 1977 had falsely claimed the reserved vacancy, the UPSC were requested to make one additional nomination but the same was refused by the UPSC since the result of the examination had long since been declared and the result of the following examination was also due to be announced. Subsequent representations made to the UPSC also resulted in a similar response.

The UPSC decided that no exception could be made in the case of the applicant and the same advice was endorsed by the Personnel and Law Ministries. However, in 1993 it was decided to give notional appointment to the applicant as AEE with retrospective effect with a view to settle the grievances of a SC candidate. The applicant had during the intervening period worked in different grades like Junior Engineer, Assistant Engineer, Executive Engineer etc. and he could not be given the pay of the posts against which he did not actually work~~ed~~ during the relevant period.

4. I have carefully considered the pleadings and documents on record. The respondents have take contrary stands when they state, on one hand, that they could not persuade the UPSC to sponsor the name of the applicant for which reason the applicant could not be appointed at the proper time. On the other hand, they say that they decided to give promotion to the applicant with retrospective effect in order to settle the grievances of a SC candidate. The applicant is not at fault, if he had not been given appointment in the first place. Once the respondents have granted the retrospective promotion to the applicant they have in fact conceded the claim of the applicant that he was entitled to be appointed on the basis of his performance

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in 1977 Combined Engineering Services Examination held by the UPSC. Consequential benefits cannot thereafter be denied by the respondents on the ground that they have already made one concession to him because he is a SC candidate. The respondents have in fact no right to make appointments by way of a concession since such appointments can only be made in terms of the Recruitment Rules. Hence, it is not correct on the part of the respondents to say that sufficient concession and consideration have been shown to the applicant and he should remain content therewith instead of claiming consequential benefits as well.

5. The second point taken by the respondents is that the applicant did not work against the posts to which he has now been notionally appointed for the relevant period and therefore he cannot be allowed to have back wages on the principle of 'no work no pay'. The learned counsel for the respondents submitted in his arguments that the applicant cannot be allowed to have the benefit of the posts, the duties of which he had never discharged.

6. The learned counsel for the applicant on the other hand has relied on the judgement of Punjab and Haryana High Court in Charan Dass Chadha vs State of Punjab and another (1980(3) SLR 703).

(b)

(JBA)

In that case considering the claim for back wages which had been denied on grant of promotion with retrospective effect, the Learned Judges observed that any condition imposed to that effect would be illegal, the reason being that the Government by not promoting such an employee on the date on which he was entitled to be so promoted, cannot take advantage of its own wrong or illegal order in not promoting him and then while conceding the claim of the employee for promotion with retrospective effect, it cannot withhold what is due to the said employee on account of such promotion in the matter of pay and allowances.

The learned counsel also drew attention to the famous case of Union of India vs. K.V. Jankiraman (AIR 1991 SC 2010).

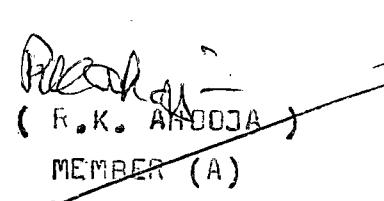
In that case, one issue was the grant of arrears of pay to those employees who were granted retrospective increments on opening of the sealed cover following a disciplinary enquiry. Dealing with the contention on behalf of the parties, their Lordships observed that no work no pay principle was not applicable where the employee who was willing to work was kept away from work by the authorities for no fault of his.

7. In the instant case under consideration, the applicant had a right to be appointed as Assistant Executive Engineer on the basis of 1977 Examination,

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the claim which was eventually conceded by the authorities.

He was therefore entitled to the arrears of pay and allowances. More so in the present case since the applicant was promoted in 1979 as an Assistant Engineer on the basis of a Limited Departmental Examination. It is averred by the applicant and not denied by the respondents that the nature of duties performed by an Assistant Engineer and an Assistant Executive Engineer were and are the same, the distinction amongst two categories being only on the basis of mode of recruitment. The former was appointed by promotion and the latter by direct recruitment. In the present case, the applicant had thus even performed the duties as are assigned to an Assistant Executive Engineer even though he had not been given the designation thereof.

8. In the light of the above discussion, the application is allowed. The respondents will calculate the arrears of pay due to the applicant on the basis of his notional appointment as Assistant Executive Engineer and Executive Engineer and pay the same within a period of four months. There will be no order as to costs.


(R.K. AHUJA)
MEMBER (A)