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CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH

OA-1600/95

New Delhi, the 4th ^{October} ~~September~~, 1996.

Hon'ble Shri A.V. Haridasan, VC(J)
Hon'ble Shri R.K. Ahooja, M(A)

R.P. Bhardwaj
Supdt. Engineer(Civil)
CPWD DCC-I
New Delhi. 110002.

Applicant

(By Adv. Sh.GK Aggarwal)

vs

1. Union of India:through
The Secretary,
Min. of Urban Affairs &
Employment,
Nirman Bhawan,
New Delhi.
 2. The Director General(Works)
Central Public Works Department
Nirman Bhawan,
New Delhi.
 3. The Secretary,
Union Public Service Commission
Shahjahan Road,
New Delhi.
 4. S.R. Pandey,
SE(C)
Agra Central Circle,
CPWD, Agra.
 5. Jose Kurian,
SE (C)
COO, CPWD, Nirman Bhawan,
New Delhi.
 6. A.K. Singhal-II,
SE(C), IBB,
Siliguri Central Circle-II
CPWD, SILIGURI.
 7. Pratap Singh,
SE(C), BFR
Border Fencing Circle
CPWD, JAMMU (J&K).
 8. D.P. Bhatia,
SE (C)
SE (Valuation) IT Deptt.
Kidwai Road, Calcutta.
- Or

9. NMD Jain,
SE(C)
SE (Vigilance)
CPWD, Nirman Bhawan,
New Delhi. 110011.

10. Anil K. Mitta,
SE(C)
SE (Coord), Coordination Circle,
CPWD,
Calcutta.

.... Respondents

(By Adv. Shri B. Lal)

ORDER

R.K. Ahooja, Member (A)

The applicant who joined the Central Public Works Department (CPWD) as an Assistant Executive Engineer in 1973 was appointed as S.E. on adhoc basis on 30.6.86. The promotions in the CPWD were for a long time being made on adhoc basis since the basic seniority list was under litigation in a number of cases before this Tribunal as well as in the Supreme Court. After the judgement of Hon'ble Supreme Court in R.L. Bansal's case dated 8.5.92, the seniority lists of Executive Engineers/ Supdt. Engineers were finalised on 20.10.94 in accordance with the direction given in OA No.1265/92. Thereafter, the adhoc promotions from 1982 onwards in the grade of SE were regularised by holding/DPCs ^{yearwise} from 1982 to 1993-94 in UPSC in the month of October, 1994.

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The applicant is aggrieved that though he got his promotion on adhoc basis as S.E. not only in accordance with the seniority but even by superseding some of his seniors, by the impugned order A/1 he was left out not only from the selection list for the year 1985 but was also placed below his juniors of the next batch in 1986 selections. He alleges that the DPCs were conducted contrary to the provisions of Recruitment Rules and the guidelines prescribed by the respondents for holding DPCs.

2. In the main the applicant has taken four grounds to challenge the impugned orders. Firstly, he claims that his promotion vide order A/3 dated 30.6.86 as SE was a regular one and it only received confirmation in 1994. The so called adhoc promotion was based on recommendations of a properly constituted DPC as per the then extant rules. This promotion continued uninterrupted and was not challenged for a period of eight years before 1994 DPC. Hence, there was no cause for changing the inter-se seniority. Secondly, the DPC in 1994 erred in not properly considering the relevant ACRs of the officers. Since, the selection was for the year 1985 and the Procedure for writing ACRs was financial yearwise, the

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DPC should have considered ACRs upto 31st March, 1985 while it actually considered ACRs only upto the end of calendar year 31.12.1984. Thirdly, the DPC wrongly increased the zone of consideration upto 1985 by considering those who did not have the requisite qualifying service the cut off date being 1.10.85. Fourthly and finally, the applicant alleges that while at the time of promotion made in 1986 only 23 vacancies were taken into consideration, the 1994 DPC wrongly took into consideration 33 vacancies.

3. The respondents controvert the above allegations and submit that the adhoc promotions were not in accordance with the rules since the UPSC had not been associated with the selections. They also claim that the 1994 DPC was the original DPC and not a review DPC of 1986 selections. The DPC could not be held for this long period because of the non-finalisation of the seniority list due to long pending litigation. The respondents claim that the 1994 DPCs were held in accordance with the rules and all the ACRs required to be considered were taken into account. They also submit that the number of vacancies were calculated strictly in accordance with the rules prescribed and not only for the actual vacancies but also the anticipated vacancies for the next 12 months had to be provided for. Finally, they also assert that

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the cut off date for eligible candidates was fixed in accordance with the instructions of the UPSC.

4. We have heard the arguments of both sides at length and have not only perused the records but have also gone through the records of the UPSC in relation to the UPC held in 1994. The first contention of the applicant that the so called selection for adhoc promotion in 1986 was tantamount to a regular selection can be rejected out-right. The argument of the learned counsel for the applicant is that the composition providing^{for} the association of the UPSC with the UPCs came only through order A/7 dated 17.10.86, while the Selection Committee composed of departmental officers^{was} obviously held prior to that date. The learned counsel further argued that the association of UPSC with the UPC was not mandatory as has been settled by the Supreme Court in its judgement in State of UP vs. Manbodhanlal Srivastava : AIR 1957 SC 912. He contended that since all the eligible persons had been considered and the UPC included all the required persons except the Chairman/Member of the UPSC, the selection was a regular one and it was termed adhoc only because of the pending litigations. We find that these

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contentions of the learned counsel to be untenable since the rules governing the adhoc promotion was entirely different from those of regular promotion. In adhoc promotion, seniority-cum-fitness holds sway while in the case of regular promotion consideration of merit is paramount ~~and recruitment~~ where rules provide for selection. The Selection Committee which screened the names of the eligible persons in 1986 could not have ignored seniority unless there was something adverse against a particular officer. Whatever, therefore the constitution of the Selection Committee, the selection made in 1986 were neither in accordance with the recruitment rules nor selection ~~offer~~ was regular. It was only in 1994 when the seniority list had been finalised ^{that} the proper selections were made. We therefore agree with the learned counsel for respondents Shri Lal that the DPC held in 1994 was not a review DPC but the first DPC for regular promotion to the rank of S.E.

5. The second ground taken by the applicant is regarding the non-consideration of the relevant ACHs. The learned counsel for the applicant argued that since the promotions were made for the year 1985 and since the ACHs in the CPD were being recorded on financial year basis, the DPC had to consider and take into account the latest ACHs upto 31.3.1985.

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In this context, he drew our attention to a copy of OM No.22011/5/86.Estt.(D) dt.10.4.1989 read with OM No.22011/7/86-Estt.(D) dt. 19.7.1989. To ascertain the exact position we called for an affidavit from respondent N .2. They stated in para-4 thereof that for the vacancies of the year 1985, the 1994 DFC considered the Mks upto 31.3.1995 of all the officers who fell within the zone of consideration. To satisfy ourselves, we called for the relevant records of the DFC from respondent no.3, that is, Secretary UPSC. We are satisfied, on perusal of the records that the Mks upto 31.3.85 were taken into account. These allegations of the applicant on this score are therefore not substantiated.

6. The applicant has also alleged that only 23 vacancies were taken into account at the time of adhoc promotion made in 1986 while the 1994 DFC took into consideration 33 vacancies. The contention of the applicant is that the DFC thereby wrongly extended the zone of consideration. The respondents deny that number of vacancies taken into account were higher than those calculated by the DUPT guidelines since vacancies anticipated during the following 12 months had also to be considered. The applicant has not been able to controvert this reply of the respondents.

In any case, the only effect of the reduction of

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vacancies in so far as the applicant is concerned would have been on restriction of the zone of consideration, and it has^{not} been shown as to how respondents no.4 to 10 who have superseded the applicant would not have come within the zone of consideration if the vacancies were only 23. Even if the other respondents had not found a place in the Selection list nor would have the applicant as he did not make the grade.

For this reason not much emphasis was laid by the learned counsel for the applicant on this particular aspect of his case.

7. The final contention of the applicant is in regard to the eligibility of some of respondents to be considered for 1985 selections. The learned counsel for the respondents pointed out that as per instructions of the DOPT dt. 19.7.89 (supra), the crucial date with reference to eligibility of government servants in the feeder cadre should be determined for the purpose of promotion as follows:

- i) 1st July of the year in cases where AHS are written calendar yearwise; and
- ii) 1st October of the year where AHS are written financial year-wise.

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8. The learned counsel pointed out that since ACRs in the CPWD were being written financial yearwise, the crucial date for determining eligibility would be 1.10.1985. However, respondents from 7 to 10 were not eligible since they completed seven years of qualifying service only on 7.12.1989. The respondents on the other hand averred in the counter in para-5 (G3 to G5) that the respondents 7 to 10 fulfilled the eligibility criteria as on 31.12.1985 which was the crucial date for determining the eligibility. The respondents in this connection cited the letter of DOPT (A-10) on the subject. Para 2 and 3 thereof may be read as below:

2. As regards, the issue of determining the crucial date of eligibility in respect of vacancies of previous years, the matter has been examined and it is proposed to issue instructions clarifying that while considering promotions against vacancies of previous years, eligibility may be calculated with references to 31st December, if the previous year is 1988 or earlier and with reference to 1st July/1st October if previous year happens to be 1989 or later (in future).

3. It is requested that approval/comments of the Commission on the proposed general clarifications indicated in paras 1 & 2 above may please be conveyed to this department at an early date.

9. Shri G.K. Gupta, learned counsel for the applicant laid emphasis on para-3 which called for approval, on the proposed general clarifications. He argued that since no approval had been sent by the Commission till the holding of UPC no further

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clarification as proposed had been issued from the DUPT and therefore the letter of the DUPT dt. 19.7.1989 (supra) held ground. He also submitted that this was applicable to pending DPC for vacancies occurring prior to the date of the issue of that letter also.

10. We have carefully considered this point and find that the arguments of the learned counsel for the applicant cannot be accepted for the reasons that the letter dt. 23.11.89 addressed to the Secretary, UPSC is only regarding the issue of a 'clarifications' namely, that for the vacancies prior to issue of 1989 letter, the crucial date would be 31.12.89 while for those vacancies which arose after the issue of the letter the eligibility dates would be as provided in the letter. We find no error if the UPSC proceeded on the basis of above clarification proposed by the DUPT. The DUPT had already proposed the clarification and sought the approval of the UPSC thereto. If the UPSC had acted on these terms then obviously it concurred with the proposal and also tacitly agreed that the proposed clarification was the correct interpretation. In other words, the DUPT interpreted by its letter dt. 23.12.1989, the position prior to 19.7.89 in regard to determination of the crucial date in a certain manner and the UPSC agreed with that. Since both

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the concerned authorities adopted this interpretation, we find no illegality even if this clarification was not circulated to all and sundry.

11. In the light of the above discussion, we find no ground for interference. Accordingly, we dismiss the application. In the circumstances of the case, There will be no order as to costs.

R. K. Khooja
(R.K. Khooja)
Member(A)

M. V. Haridasan
(M.V. Haridasan)
Vice Chairman(J)