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Central Administrative Tribunal
Principal Bench

OA- 1849/95

New Delhi, the 15 April, 1996.

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

Sudhir Kumar
B-87, Sheikh Sarai-I
New Delhi-110017.

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Applicant

(Advocate: Sh. G.K. Aggarwal)

versus

1. The Secretary,
Min. for Urban Affairs and
Employment, Nirman Bhawan,
New Delhi.110011.
2. The Director General (Works)
CPWD, Nirman Bhawan
New Delhi.
3. The Secretary
UPSC Shahjahn Road,
New Delhi.110011.
4. Supdt. Engineer (E)-Designate
Deputy Director (Admn) EC-I
Dte. General(W) CPWD
Nirman Bhawan,
New Delhi.110011.

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Respondents

(By Shri B.Lal, Advocate)

ORDER

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

The applicant is presently posted as
Executive Engineer (Electrical) in CPWD. He joined
the Department on the basis of the Combined Engineering
Service Examination conducted by the UPSC on 1.5.78
as an Asstt. Executive Engineer and was promoted
to his present post of Executive Engineer w.e.f.

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1.5.83 on regular basis. The relevant Recruitment Rules provide that Executive Engineers who have completed nearly seven years in that rank are eligible to be considered for promotion to the post of Executive Engineer. The applicant is shown at serial No.155 in the seniority list of Executive Engineer issued vide officer order 337 of 1994 dt. 25.11.94. Having been appointed on a regular basis w.e.f. 1.5.83, the applicant has thus completed the required minimum qualifying service of seven years as Executive Engineer for being considered for further promotion.

2. The respondent No.4 Mr. R.K. Singhal who joined the service on 2.12.1977 and was promoted to the rank of Executive Engineer on 8.2.1983 has been shown two ^{places} above/in the seniority list ^{the applicant}.

3. The applicant submits that respondent No.1, Min. for Urban Affairs and Employment, created new Supdt. Engineer posts of vide their letter dated 12.7.95 (Annexure A/5) w.e.f. the same date i.e. 12.7.95. The grievance of the applicant is that the respondents 1,2,3 promoted respondent No.4 to the rank of Supdt. Engineer w.e.f. 25.5.95 against one of these ^a posts on the basis of panel prepared by ~~SSCM~~ a DPC

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for the period prior to 1.4.95 even though the newly created post arose only on 12.7.95. According to the applicant, the respondents 1,2,3 ought to have prepared a fresh panel of eligible Executive Engineers fit for promotion to Supdt. Engineers for the year 1.4.95 to 31.3.96 and only persons included in that panel should have been considered for promotion for posts available during the period 1.4.95 to 31.3.96. The case of the applicant is that if this would have been done, as per rules, he would have had a better chance than respondent No.4, On the basis of comparative ACR for the period upto 31.3.95. He has therefore sought directions of the Tribunal to partially set aside the Order No.219/95 dt. 25.5.95 in respect of the promotion of respondent No.4 and secondly consider him for promotion to vacancies arising during 1.4.95 to 31.3.96 after taking into account ACRs upto 31.3.95.

4. The respondents deny the claim of the applicant. They point out that due to consistent litigation the seniority list of various grades could not be finalised for a long time and promotions to the grade of Supdt. Engineers were made on ad-hoc basis during the period 1982 to 1994. On the compliance of the Tribunal Order dt.9.6.94 in OA No.1765/92, the respondents held a DBC meeting

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on 11.10.94 to prepare a year-wise panel of Executive Engineers for regular promotion to the grade of Supdt. Engineer for the vacancies of 1982 to 1993-94. It is the case of the respondents that the panel having been drawn up in October, 1994, the same was valid upto October, 1995. The same having not been exhausted it could be utilised for filling up the anticipated vacancies which arose, in this case, in July, 1995.

4. We have heard the ld. counsel on both sides and perused the records. The ld. counsel for the applicant vehemently argued that the extant Rules issued by the DOPT specifically provide that panels will be prepared for the vacancies arising or likely to arise during the relevant period and the ACRs which would be considered would be upto the reporting period immediately preceding the year for which panel was being prepared. In this connection, he relied on the case of Ashok Kumar and Others vs. Chairman, Banking Recruitment Board and others - JT 1995 (8) SC 276 in which it has been held that every citizen has a fundamental right to be considered for appointment to the post and

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therefore vacant posts or expected vacancies should be notified and vacancies arising subsequently cannot be filled up by appointing candidates in the waiting list.

5. The ld. counsel for the respondents emphasised that the validity period of a panel for a one year and submitted that since the post arose even though unexpectedly during that period, the appointments could be made from that panel till the panel was exhausted.

6. We have carefully considered the above contentions and arguments. The whole question hinges on whether the panel of one year can be used during its validity period of one year or the extended period for six months thereafter irrespective of whether it pertains to the period in which the vacancies have arisen. In our view the instructions of the Govt. of India, DOPT provide a clear guideline in this matter. The DPT OM dated 10.4.89, extracts of which have been annexed with the OA at Annexure 3, provides that DPC should be convened at annual intervals to draw panels which could be utilised for making promotions against the vacancies "occurring during the course of the year". Further a vacancy shall be filled in accordance

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recruitment
with the rules in force on the date of vacancy,
unless rules made subsequently have been expressly
given retrospective effect. Para 3.2 of the said
instructions provide that annual meetings of the
DPC shall be convened unless a certificate has been
issued by the Appointing Authority that there are
no vacancies to be filled by promotion.

Para 6.42 provides that where DPC has already been
held in a year/ in case of further vacancies that arise during the same
year due to death, resignation, voluntary retirement
etc. the following procedure should be followed:

- i) Vacancies due to death, voluntary retirement,
new creations etc. clearly belonging to
the category which could not be foreseen
at the time of placing facts and material
before the DPC. In such cases, another
meeting of the DPC should be held for drawing
up a panel for these vacancies as these
vacancies could not be anticipated at the
time of holding the earlier DPC. If, for any
reason, the DPC cannot meet for the second
time, the procedure of drawing up of
year-wise panels may be followed when
it meets next for preparing panels in
respect of vacancies that arise in
subsequent year(s).
- ii) In the second type of cases of non-reporting
of vacancies due to error or omission (ie.
though the vacancies were there at the time
of holding of DPC meeting they were not
reported to it) results in injustice to the
officers concerned by artificially restricting
the zone of consideration. The wrong done
cannot be rectified by holding a second DPC
or preparation of an year-wise panel. In

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all such cases, a review DPC should be held keeping in mind the total vacancies of the year.

Para 6.4.3 provides that for the purpose of evaluating the merit of the officers while preparing year-wise panels, the scrutiny of the record of service of the officers should be limited to the records that would have been available had the DPC met at the appropriate time. For instance for preparing a panel relating to the vacancies of 1978 the latest available records of service of the officers either upto December 1977 or the period ending March, 1978 as the case may be, should be taken into account and not the subsequent ones.

7. The above quoted rules thus clearly stipulate the following; Firstly, the DPC should be held annually. Secondly, where the non-anticipated vacancies arise then another DPC should be held. Thirdly, in respect of vacancies which have not been reported, the year-wise panel should be prepared relating to vacancies which arise in each year and latest ACRs should be considered only with reference to the year for which the vacancies arise. In the present case, the respondents themselves state that the panel from which the appointment of respondent No.4 has been made was prepared for the vacancies arisen between 1982 to 1993-94. They also state that the

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ACRs which were considered ~~was~~ upto the year ending

31.3.93. Obviously, therefore, the vacancies

which admittedly arose in July, 1995 were not

or known to relevant in the DPC at the time the panel in question was prepared. There is a provision in para 6.4.2(ii)

that the late reporting of vacancies results in

injustice to the officers concerned by artificially

restricting the zone of consideration. The vacancies

in 1995 which arose due to Cadre Review would thus

be falling in this category. In this context, the

plea of the applicant that the non-consideration

of upto-date ACRs also results in a denial of

opportunity for promotion as per rules has a valid

basis. In these circumstances, promotion to the

posts arising in 1995 had to be done from a panel

prepared by the DPC which had taken into account

these posts and not otherwise. Hence, the action

of the respondents of making use of the panel

prepared for vacancies, pertaining to the years

1982 to 1993-94 taking into account the ACRs upto

March, 1993, for appointments to posts arising in

1995 was contrary to rules and hence illegal.

8. For the aforesaid reasons, we quash the

impugned order No.219/95 dt. 25.9.95 in respect of

respondent No.4 and direct the respondents 1,2,3

to make promotions to the vacancies arisen as a result


of Cadre Review in July, 1995 on the basis of a fresh

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panel, to be prepared as per rules, within three months, taking into account the records of service as required by order issued by DP&T dated 10.4.89. The application is thus allowed. However, there will be no order as to costs.

~~Rickha~~
(R.K. Anooja)
Member(A)


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

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