

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. ...

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 Shahjehan Road,  
New Delhi.110011.

4. Supdt. Engineer (E)-Designate  
Deputy Director (Admn) EC-I  
Dte. General(W) CPWD  
Nirman Bhawan,  
New Delhi.110011. ...

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.

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 posts on the basis of panel prepared by ~~SDM~~ 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 Annexure3, 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

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/ further vacancies 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 be 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.

R.K. Anocja  
( R.K. Anocja )  
Member (A)

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

SCS