

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

O.A.No.1495 /1997

Date of Decision: - -1998

Shri K.B. Rajoria

APPLICANT

(By Advocate Shri G.D. Gupta

versus

Union of India & Ors.

RESPONDENTS

(By Advocate Shri S.M. Arif for official respondents.

Shri G.K. Aggarwal for private respondents.)

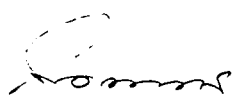
CORAM:

THE HON'BLE SHRI T.N. Bhat, Member (J)

THE HON'BLE SHRI S.P. BISWAS, MEMBER(A)

1. TO BE REFERRED TO THE REPORTER OR NOT? YES ✓

2. WHETHER IT NEEDS TO BE CIRCULATED TO OTHER
BENCHES OF THE TRIBUNAL?


(S.P. Biswas)
Member(A)

Cases referred:

1. Lord Searman in Notting hom County Council Vs. Secy. of State, 1986(1) All England Law Reports.
2. Hamsaveni Vs. State of Tamil Nadu (1994 SCC (L&S)1277).
3. Chandigarh Administration Vs. Jagjit Singh(1995(1)SCC 745).

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA-1495/97

New Delhi this the

29TH June '98

Hon'ble Sh. T.N. Bhat, Member(J)
Hon'ble Sh. S.P. Biswas, Member(A)

Sh. K.B. Rajoria,
S/o late Sh. B.B. Mathur,
R/o C-II/132, Moti Bagh-I,
New Delhi-21.

..... Applicant

(through Sh. G.D. Gupta, advocate)

versus

1. Union of India through
the Secretary to the Govt.
of India, Ministry of Urban
Affairs & Employment,
Nirman Bhawan, New Delhi.
2. The Director General(Works),
C.P.W.D., Ministry of Urban
Affairs & Employment,
Nirman Bhawan, New Delhi.
3. Sh. N. Krishnamoorthi,
Chief Engineer(Electrical),
CPWD, C-II/8, Moti Bagh,
New Delhi.

..... Respondents

(through Sh. S.M. Arif for official respondents and
Sh. G.K. Aggarwal for private respondent)

ORDER


Hon'ble Sh. S.P. Biswas, Member(A)

The applicant, a C.P.W.D. Chief Engineer (Civil) in the Ministry of Urban Affairs and Employment, is seeking relief in terms of issuance of directions to the respondents to correct infirmities not only in the impugned seniority list dated 13.6.97 (Annexure-A) but also those in the lists dated 31.8.96 (Annexure-G), 4.7.97 and 25.11.97 respectively. Behind this relief, the main issue relates to applicant's claim for promotion to the post of Additional Director General/Works (ADG/W for short). The Recruitment Rules

dated 23.12.91 for the post of ADG provide that Chief Engineers/Civil (CE/C for short) and Chief Engineers/Electrical (CE/E for short) with 3 years regular service in the grade are eligible for promotion and the eligibility shall be determined with reference to the date of completion by the officers of the prescribed qualifying service in the respective grade. However, the eligibility with regard to the date of completion of prescribed qualifying service has been varying with changes in deemed date of promotion because of implementation of judgements from Courts and orders of Tribunals. Hence, through correction of alleged illegalities in the seniority lists, the basic relief being sought for is in terms of upward revision of deemed date of promotion of the applicant from 28.2.90 to 1.1.87.

2. The applicant seeks to justify his aforesaid claim by two alternative channels. The first one relates to correcting alleged infirmities in respect of deemed date of promotion of CE within the cadre of Civil Engineers itself. Alternatively, the applicant would stake his claim by establishing his superior seniority in the combined cadre of Civil and Electrical Engineers, particularly with reference to Sh. N. Krishnamoorthi (Respondent No. 3) belonging to Electrical stream.

3. We shall now proceed to elaborate No.1 alternative. Sh. G.D. Gupta, learned counsel for the applicant left no stone unturned to bring out the infirmities in the series of seniority lists.

3A. The impugned seniority list (Annexure-A) dated 13.6.97 as well as the one revised on 4.7.97 and 25.11.97 respectively contain the same irregularities, the applicant has been alleging time and again. They leave several vacancy positions in the original panels unallocated. Specific details as to how such vacancy positions in the original panels have been left unallocated are available in para-20 of this O.A. As a result of such a large number of vacancies having been left unallocated, the applicant's deemed date of promotion has been unjustifiably pushed down. In other words, if these vacancies were correctly considered, allocated and proper procedures followed in formulating the lists, the applicant would have got 1.1.87 or even an earlier date as his deemed date of promotion. The impugned Annexure-A seniority list dated 13.6.97 virtually is  a product of uncorrected version of 31.8.96 seniority list, and is, therefore, equally faulty and questionable, the learned counsel contended.

3B. The counsel also argued that in the absence of rules for fixing inter-se seniority between CE/C & CE/E for promotion to the level of A.D.G./W, the deemed date of promotion as Chief Engineer plays a crucial role as this determines the date of eligibility for promotion. Thus, any unjustified pushing down of his deemed date of promotion or pushing up of somebodyelse's would have had adverse affects on his career prospectus for future promotions either as A.D.G./W or D.G./W. In support of his claim, the

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counsel places heavy reliance on the seniority list of CE(C) prepared by the office of DGW, as at Annexure-N, wherein the deemed date of applicant's promotion in the review panel has been indicated as 1.1.87.

3C. Two specific nature of irregularities have been cited. There are officers (R.B. Gupta & D.N. Joshi) who left the department (Civil) with no intention to return back and yet those vacancies continued unallocated. Again, on opening the recommendation of the D.P.C. in "sealed cover" cases, the officers are to be given notional promotion and the deemed date of promotion is the date of notional promotion given with reference to date of promotion of junior. However, some officers have been allocated clear vacancy and given actual dates wrongly. The case of Sh. S.M. Agarwal (Civil) has been cited as an example of violation of D.O.P. & T's instruction on the subject. Surprisingly, the respondents have chosen to follow corrected procedures in "sealed cover" cases while preparing the seniority list of CE(E). The applicant, therefore, alleges inter-departmental discrimination within the same organisation.

3D. Mistakes have also been committed in respect of not giving proforma promotion under the rule of Next Below Rule (NBR for short) for atleast 3 officers sent out of the department on deputation. Details in para-21 of the O.A. refer. The applicant would also submit that the respondents' claim of having rectified mistake by means of issuing final revised seniority list dated 4.7.97 is "wholly an eye wash and

has been illusory". This is particularly so when U.P.S.C. has taken note of such glaring irregularities, though remitted the matter for action at the level of the Ministry.

4. We shall now elaborate applicant's reliance on the second alternative. As per Recruitment Rules of 1986, inter-se seniority at the level of CE/C and CE/E of the two streams in C.P.W.D. determine promotion to the higher post of A.D.G. and as per the same Rules, amended in March 1992, the eligibility for promotion of C.E.(C) or C.E.(E) is determined with reference to the date of completion by officers of the prescribed qualifying service in the respective grades. As against a few posts of A.D.G.s lying vacant, the immediate countendor besides the applicant hereinafter for permanent promotion to A.D.G.'s post is Sh. N. Krishnamoorthi, respondent No.3 who is a C.E. in the Electrical Wing of the Department. The applicant argues that Respondent No.3 has been assigned deemed date of promotion as 6.1.1987 and officer senior to Respondent No.3, namely, Shri N. Jaypal has been placed below him wrongly assigning the deemed date of promotion as 21.12.1990. This is highly irregular and gives undue advantage to Respondent No.3, the applicant contended. The review D.P.C. held in September 1992 had categorised Sh. N. Jaypal as "good". But the second review D.P.C. held in July 1995, however, graded Sh. Jaypal as "Very Good" for 1985 panel and accordingly he was placed above respondent No.3 in 1985 panel. The charges against Sh. Jaypal were dropped in September 1992. In view of this, putting the findings of Shri N.

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Jaypal in a sealed cover by the Review D.P.C. held in 1995 for the panel of 1985 is illegal. In other words, if Jaypal's case at the level of the ACC was processed correctly in terms of Dhamania's case (UOI & Ors. Vs. N.P. Dhamania & Ors.) (1995(5) SLR 509), the seniority problem of the applicant vis-a-vis respondent No.3 would have been solved justifiably, the counsel for the applicant argued.

5. The respondents have submitted that after the review D.P.C. was held in the grade of CE/C and CE/E and the recommendations of the regular D.P.C. were approved by the competent authority, a provisional seniority list of both CE/C and CE/E was circulated on 31.8.96 (Annexure-G) inviting comments and objections. The respondents do admit that a large number of representations were received against the said seniority list of 31.8.96. The revised seniority of 4.7.97 is only the final outcome of the review D.P.C. held in the grade of Chief Engineers. The respondents would also submit that the seniority list published on 13.6.97 (Annexure-A) has been duly revised based on the instructions contained in DOP&T O.M. No. 22011/5/86-Estt.(D) dated 10.4.89. In other words, necessary adjustments and legal requirements following the repatriation of the deputationists and by allocating all the deemed dates of promotion to the persons in the review panel have been complied with in chronological order.

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6. So far as the unallocated dates were concerned, since DG(W), CPWD could not furnish full information in respect of the actual dates of occurrence of different vacancies in the grade of Chief Engineers from time to time, inspite of repeated efforts, and the UPSC did not consider it a fit case for further review, the Ministry decided to leave the unallocated dates of promotion as such, since it was considered that it did not have the powers to move persons from a later panel to an earlier panel.

7. With the issue of O.M. dated 4.7.97, the respondents claim to have corrected all the alleged infirmities in the several seniority lists. The applicant, on the other hand, alleges that the aforesaid O.M. provides no real solution.

8. We find as per records made available to us that the applicant admits - "that though the department tried to allocate some unallocated vacancies which were left out as per the provisional seniority list dated 31.8.96, but in the process it happened to leave out some other unallocated vacancies and, therefore, the position of the applicant has remained the same." The issue of determination of deemed date of promotion is thus shrouded by claims and counter-claims. Faced to the problem of determination of an issue in a maze of controversy, Lord Searman in Notting hom County Council Vs. Secy. of State, 1986 (1) All England Law Reports.

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197 observed:-

"Where the existence or non-existence of a fact is left to the discretion of a public body, and that fact involves a broad spectrum of ranging from the obvious to the debatable or the just conceivable, it is the duty of the Court to leave it to that body, save in cases where it acts perversely."

9. We find applicant's seniority position as CE/C has improved from Serial No. 75 to 73 and from 28.2.90 to 21.8.89 as regards deemed date of promotion. Whereas the position of Respondent No. 3 in respect of deemed date of promotion has been modified marginally to his disadvantage from 6.1.87 to 1.4.87 as indicated in the order dated 4.7.97. Respondents, therefore, cannot be said to have acted perversely.

10. If R-1 seniority list dated 4.7.97 had been worked out without taking into account the catalogue of irregularities as in paras 3A to 3D of this order, the applicant's position of deemed date of promotion as CE(Civil) would even become better than 21.8.89. As per respondents, the applicant's position cannot worsen than what is indicated in R-1 order since all the objections raised have been taken care of. It is for the applicant to establish with a mathematical precision that his deemed date of promotion is 1.1.87. On the basis of pleadings and materials on record, the applicant has to establish and reach upto at least 1.1.87 in respect of deemed date of promotion to cover his case. The applicant has failed to do that. Mere mention of a plea repeatedly is not enough in a legal forum. In legal matters, finality is utmost important

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and that is lacking here. It is not the function of the Court/Tribunal to make roving enquiries and enter into a finding. If any authority is needed for this proposition, it is available in Hamsaveni Vs. State of Tamil Nadu (1994 SCC (L&S) 1277).

11. We find a clear lapse on the part of the applicant. This relates to seniority list of Chief Engineers (Civil) issued on 4.3.93 (Annexure-D). It is a final seniority list issued pursuant to decisions of the Hon'ble Supreme Court in the case of P.S. Mahal Vs. U.O.I. (1984(4) SCC 545) decided on 23.5.84 and R.L. Bansal Vs. U.O.I. (1992 Suppl. (2) SCC 318) decided on 8.5.92. In this list, the applicant's deemed date of promotion on the basis of regular D.P.C. has been shown as 28.2.90. If the applicant had a cause of action in terms of deemed date of promotion, that arose not following the publication of Annexure-G seniority list on 31.8.96. He is now agitating against his deemed date of promotion (28.2.90) shown in Annexure-G whereas the same date was shown against his name in Annexure-D seniority list on 4.3.93. We find there are a large number of representations by the applicant himself against the seniority list of 31.8.96 but none with reference to the seniority list of March 1993 until on 5.7.96 when the first objection was raised through an official note. It is surprising to see that the

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seniority list published in March 1993 was final one but the one published in August 1996 was only a provisional one.

The Hon'ble Supreme Court in the case of M.L. Cecil De Souza Vs. Union of India, AIR 1986 SC 2086 has observed as follows:-

"It is essential that any one who feels aggrieved with an administrative decision affecting one's seniority should act with due diligence and promptitude and not sleep over the matter. Raking up old matters like seniority after a long time is likely to result in administrative complications and difficulties. It would, therefore, appear to be in the interest of smoothness and efficiency of service that such matters should be given a quietus after a lapse of some time."

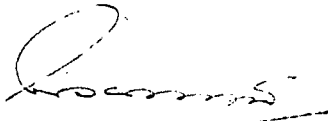
In view of the aforesaid law laid down by the Apex Court, the applicant's plea for restoration of his deemed date of seniority to 1.1.87 cannot be accepted.

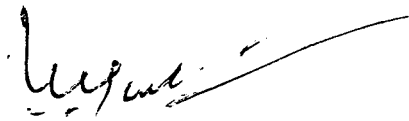
12. The applicant considers that Respondent No.3 has achieved a better deemed date of promotion undeservedly and seeks to establish that plea by details in Annexures H, I & J. He also seeks to remedy the situation now by means of improving the seniority of Sh. N. Jaypal, (since retired in October 1992) with retrospective effect and that too by challenging ACC's refusal to accept higher grading in favour of Sh. Jaypal, for a review D.P.C. held in 1995 against the panel of 1985. The applicant would say that the action of Government of India is against the judicial pronouncements in Dhamania's case (supra) and could not

be justified by wrong application of DOP&T circular dated 10.11.95. If rules were properly followed, Mr. Jaypal, being senior to Respondent No.3, would have got 6.1.87 as his deemed date of promotion and that would have deflated Respondent No.3's seniority to 21.12.90 thereby putting applicant's deemed date of promotion (28.2.90) on a different and better footing. It appears to us that in this alternative approach, the applicant is reconceiled to have 28.2.90 as his deemed date of promotion but would not accept Respondent No.3's deemed date of promotion as of 1.4.87. We are not in a position to persuade ourselves to accept such a peculiar contention as legally sustainable. Sh. Jaypal is not before us. If some alleged seniors (Sh. Jaypal or the applicant) are denied what they are entitled to get, they are to challenge that denial successfully. If the applicant was aggrieved of Respondent No.3's seniority, he should have challenged Annexure-E dated 23.2.93 in time. He did not do so timely. Sh. Jaypal's seniority vis-a-vis Respondent No.3 is not yet determined otherwise than what is in Annexure-G seniority list. If some wrong has been done to Sh. Jaypal, as alleged, it was necessary to pursue that problem to its logical conclusion. Without there being any final redetermination of Jaypal's deemed date of promotion, the applicant is trying to get the benefit in terms of his seniority. Without challenging the real wrong effectively, one cannot get benefit from that very

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wrong. Such collateral reliefs are alien to law. The decision of the Hon'ble Supreme Court in the case of Chandigarh Administration Vs. Jagjit Singh (1995(1) SCC 745) supports this view.

13. In the light of the reasons aforesaid, the O.A. fails on merit and is accordingly dismissed. No costs.


(S.P. Biswas)
Member (A)


(T.N. Bhat)
Member (J)

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