

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

OA NO. 2065/97

THIS THE 6th DAY OF SEPTEMBER, 2000

Hon'ble Mr. Justice V.Rajagopala Reddy, VC (J)
Hon'ble Mr. Govindan S.Tampi, Member (A)

In the matter of:

Sh. A.Chaudhary,
r/o Q.6-3, Sector-13,
R.K.Puram,
New Delhi-110066. Applicant
(By Advocate: Sh. R.P.Kapur)

Vs.

1. Union of India through
The Secretary,
Ministry of Urban Affairs & Employment,
Nirman Bhawan,
New Delhi-110011.
2. The Director General (Works),
Central Public Works Department,
Nirman Bhawan,
New Delhi-110011.
3. The Secretary,
Union Public Service Commission,
Shahjahan Road,
New Delhi-110011.
4. Sh. S.C.Khurana
Superintending Engineer,
P.W.D. Electrical Circle-I
Govt. of India
I.P.Bhawan,
New Delhi-110002.
5. Sh. S.R.Subramanian
Superintending Engineer (Electrical)
S&S, C.P.W.D., Vidyut Bhawan,
Shanker Market,
New Delhi-110001.
6. Sh. Nagrajan,
Superintending Engineer (Electrical)
Delhi Central Electrical Circle No.6,
C.P.W.D., Vidyut Bhawan,
Shanker Market,
New Delhi-110001.
7. Sh. Mohan Swaroop
Superintending Engineer (Electrical)
Parliament Library Project,
C.P.W.D., Parliament House Avenue,
Pandit Pant Marg,
New Delhi-110001.

8. Sh. J.B.Phadia,
Superintending Engineer (Electrical)
Administration, Office of the Chief
Engineer (E) I, C.P.W.D., Vidyut Bhawan,
Shanker Market,
New Delhi-110001.
9. Sh. K.K.Sharma
Superintending Engineer (Planning)
Office of the Chief Engineer (Elec) (BFL)
Vidyut Bhawan, Shankar Road
New Delhi - 110 001.
10. Sh. S.P.Barnwal,
Superintending Engineer (Electrical)
Delhi Central Electrical Circle No.8,
C.P.W.D., I.P. Bhawan,
New Delhi-110002.
11. Sh. Ashok Kumar,
Superintending Engineer (Electrical)
New Delhi Municipal Committee,
Palika Kendra, New Delhi-110001.
12. Sh. K.J.Singh,
Superintending Engineer (Electrical)
Vigilance, C.P.W.D., "A" Wing,
Nirman Bhawan,
New Delhi-110001.
(By Advocate: Sh. R.P.Aggarwal)

ORDER

By Hon'ble Govindan S. Tampi, Member (A)

This application is directed against the assignment of lower seniority to Sh. A.Chaudhary, the applicant as Superintending Engineer in CPWD. Having joined CPWD as Asstt.Ex. Engineer (Elec) on 28-2-70, through UPSC Exam, the applicant became Ex.Engineer (Elec) on 30-3-74 and Superintending Engineer on ad hoc basis on 10-5-85. In the seniority list of Superintending Engineers dated 25-11-94, he was placed at Sl.No. 21, as against his junior S.C.Khurana, who was placed at Sl. No.4. This is the order impugned in the application. Earlier to that

following orders of this Tribunal, CPWD had been directed to recast the seniority list of Ex. Engineers from the correct seniority list of Asstt. Ex. Engineers. In the lists prepared accordingly, Khurana had been placed below him. On account of continuous litigation; between 1982 and 1994, promotions to the grade of Superintending Engineer were made on ad hoc basis and the DPC meeting for regular promotion for all the vacancies from 1983 onwards took place on 11-10-94. As it involved the scrutiny of as many as 457 ACRs on a single day, it was an exercise of non-application of mind and thus vitiated, and the promotions made thus were void. This had happened inspite of the clear instructions of the DOPT as to the need of holding DPC meetings annually, computation of vacancies yearwise, drawal of consideration zone examination of ACRs of all those in the consideration zone equally, assessment and gradation, preparation of select list etc. On account of this heavy and varied schedule, it is doubtful whether the DPC held on 11-10-94, would have followed the instructions correctly, states the applicant. As the qualifying service for promotion from the grade of Ex. Engineer to Suprintending Engineer in CPWD were only five years - on the analogy of DOPT's instructions for similar posts duly accepted by the Ministry of Urban Affairs, controlling CPWD also - only ACRs of the Ex. Engineers for five years should have been seen for promotion, but the instant DPC had taken seven years' ACRs which was incorrect. Applicant represented against it on 25-1-97 & 27-2-97, but before

considering and disposing of the same, the respondents issued the impugned seniority list. Hence, this application.

2. Grounds for the relief are as follows :

- i) the applicant was senior to Sh.Khurana as Ex. Engineer in the seniority lists of 18-9-89 and of 12-1-94;
- ii) as against the requirement of five years' qualifying service for promotion as Supretending Engineers, the respondents adopted seven years' criterion;
- iii) DPCs had not been conducted annually, vacancies had not been reckoned correctly yearwise and the field of choice in the feeder cadre had not been worked out properly;
- iv) ACRs for equal number of years should have been considered for all, to arrive at the suitability and preparation of the 'Select List'. The above requirements could not have been completed in a single day and, therefore, the procedure adopted by the DPC, which met on 11-10-94, was vitiated and liable to be set aside.

3. Reliefs sought, therefore, are :-

- a) quashing the proceedings of the DPC held on 11-10-94;
- b) direction to hold a fresh review DPC;
- c) cancellation of the Seniority List circulated vide OM No. 359/1994, finalised under OM No. 30/11/94-EC dated 5-2-97 and
- d) preparation of a fresh seniority list of Supretending Engineers restoring to the applicant, his legitimate position with consequential reliefs.

4. In the reply filed on behalf of the respondents 1 & 2, the applicant's plea that his seniority as Suprintending Engineer, was wrongly fixed on regularisation (while he had been correctly placed on the occasion of the ad hoc promotion) is strongly rebutted. It is stated that the DPC had not graded him as "Very Good" in respect of the vacancies for the years 1983, 1984, 1985 and 1986 and, therefore, was not accordingly promoted. His promotion on regularisation came with respect to the vacancies of



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1987, as he had obtained the grade "Very Good" that year. Following are among the points raised in reply

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i) Seniority list of Superintending Engineers notified on 25-11-94 showed the applicant at Sl.No.21, but he had contested only in 1997. The challenge is, therefore, time barred.

ii) DPC meetings were conducted on 30-9-94 and 11-10-94. As the applicant did not make the grade "Very Good" in the years 1983 to 1986, but only in 1987, his promotion was regularised with reference to the vacancy of 1987. The same has also been reiterated by the Review DPC of 28/29-1-1997. This was done by the UPSC and correctly so.

iii) The eligibility criterion of 7 years was adopted for promotion to the grade of Superintending Engineer, in terms of CPWD Manual Vol.II in the absence of the Recruitment Rules. The Rules which were notified only on 28-10-96,

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fixed the qualifying period as 5 years, but the same could not have been given any retroactive effect.

iv) His seniority as Superintending Engineer was with reference to his regular promotion in 1987, and there who made it earlier would gain seniority over him. In view of the above, the applicant has no case at all to agitate.

5. UPSC, the 3rd respondent aver that the DPC had been correctly conducted in terms of all the instructions in force and the averments made by the applicant to the contrary are incorrect. Requirement of 7 years' service was fixed in the absence of Recruitment Rules, and in tune with the practice adopted from 1966 to 1981. The applicant has not made out any case in law and the application, therefore, has to fail, according to the UPSC.

6. The rejoinders filed on 27-2-1998 are only detailed reiterations by the applicant and averment that the application was not hit by limitation, that the proceedings of the DPC having been incorrectly conducted should be quashed and he be given consequential reliefs. By another letter the applicant has also furnished a list of few other officers, who have since then been placed above him in the seniority list.

7. Heard the learned counsel for both the applicant and the respondents. Sh. P.P.Khurana, the learned counsel for the applicant, strongly reiterates the pleas made by him. The main pleadings by him are summarised as below :-

- i) The process of the DPC held on 11-10-94 was vitiated by non-application of mind as they could not have completed the perusal and analysis of the ACRs of all persons concerned in the very short time made available to them and, therefore, the exercise was faulty.
- ii) The adoption of the criterion of seven years' service against the requisite criterion of five years of service has hit the applicant wrongly and unjustifiably. The adoption of this arbitrary standard, had come in the way of the applicant who had a consistently very good performance, except for one adverse entry in 1986-87 and if only five years's ACRs were considered, he would have been selected when his turn came due.
- iii) After having been found fit for ad hoc promotion, there was no reasons why the applicant should have lost

out of reckoning during the first years i.e. 1983, 84, 85 and 86 for regular promotion.

iv) There has been violations of the guidelines of the DOPT, the nodal Ministry on Service matters, in the manner in which the DPC was conducted, vacancies were reckoned, field of choice was identified and gradations were made.

In view of the above the applicants' plea should succeed and he should be granted all the reliefs sought by him, urges Sh. Khurana.

8. The learned counsel for the respondents Sh. R.P. Agarwal, refutes the pleas made by the applicant, as in his view the Deptt. as well as the UPSC had correctly acted in reckoning the vacancies, holding the DPC and in selecting and empanelling the persons found suitable. He further argues that the Superintending Engineer's was a senior post calling for very high responsibility, promotion to which was by selection and the DPC headed by a UPSC Member had correctly graded the candidates before them and recorded their findings properly. Therefore, there was no need to interfere with the same and grant any ^{additional} relief to the applicant, who has got his due. Sh. Aggarwal also placed before us the proceedings of the DPC for perusal.

9. The rival contentions have been carefully considered. We have also perused the proceedings of the DPC. The points urged on behalf of the applicant are that the DPC meeting which had considered the promotion of the applicant, among others, had not applied its mind; that the number of qualifying years have been taken as 7 years as against 5 years to the detriment of the applicant etc. On careful consideration, we are not convinced that the applicant has made out any case. The plea urged by the applicant is that as the requisite period of eligibility for promotion to the post of Superintending Engineer (Elec) in CPWD was only five years, in terms of the DOPT's instructions and Recruitment Rules, the Respondents should have taken *for scrutiny* ACRs of the individuals only for five years and not seven years. The same would have had some relevance/merit only if the vacancies had related to the period subsequent to the notification of the Recruitment Rules. Admittedly, the Recruitment Rules provide in Schedule II, that the post of S.Engineer (Elec/Mech) in CPWD shall be filled by promotion from amongst the Ex.Engineers with five years regular service. However, the Rules themselves have been notified only w.e.f. 28-10-96, while the vacancies which are the subject matter in this application related to 1983, 1984, 1985, 1986 & 1987 and they could not have been dealt with under the new Rules. The vacancies have been filled up in consultation with and approval of the UPSC - infact the Member of UPSC had chaired the DPC - which relied upon the instruction in CPWD Manual Vol.II, in the absence of

the Recruitment Rules. The DPC decided, in the circumstances to adopt the criterion of seven years of qualifying service as Ex. Engineer for promotion to Superintending Engineer and accordingly considered the ACRs of all eligible persons for seven years relatable to the years of vacancies. As all the eligible person's ACRs for the same number of seven years have been considered there was no hostile discrimination. The DPC's and the respondents action cannot be called in question. The fact that if on the other hand, only five ACRs were considered the same would have shown the applicant's performance in a better light, is beside the point, as the DPC is expected to deal with the cases of all eligible officers, in a given case, in the same manner, and its having done so the applicant has no legitimate ground for complaint.

10. The complaint of the applicant that the fact that the Deptt. had not conducted the DPC on annual basis also does not merit endorsement. DPC meetings could not be held on annual basis primarily on account of continued litigation in the Deptt. and also as Recruitment Rules were not framed. That is why ad hoc promotion were ordered from time to time, followed thereafter by the regular promotion in accordance with the selection proceedings according to the instructions and participated by UPSC, during 30-9-94 & 11-10-94. In the said DPC, all the instructions in force at that time, regarding vacancies, consideration zones select, list were followed. Though in the meeting filling up of all vacancies was taken up together, the vacancies were

reckoned separately on year to basis from 1982 to 1994, keeping in view the performance of the eligible officer for the period of previous seven years relatable to the years in which the vacancies occurred. The procedure was correctly done and the same has to be accepted.

11. Applicant has alleged non-application of mind on the part of the DPC as in a single day 457 ACR of 122 officers could not have been considered. This also is baseless as the DPC had taken place not as one day but on two days - 30-9-94 and 11-10-94 and the ACRs for almost all the candidates for quite a few years were common, and did not have to be repeated. What was required was looking into one additional ACR for the candidate, with reference to each year and this would not have taken a substantial time for an experienced body like DPC, chaired by a Member of UPSC. The allegation of non-application of mind, therefore, has no legs to stand on.

12. The plea by the applicant that only on 1986-87 there was an adverse remark in his ACR and, therefore, he would have been rightly promoted earlier if only five years' reports also falls to the ground as he has been graded "Very Good" and found fit for promotion for the vacancies of 1987. Obviously the adverse report for 1986-87, referred to by him had not gone against him and he had been promoted in spite of that. Criterion of seven years had not hurt him on that count also. The applicant has also not realised



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that during 1980 to 1984. ACRs were written on calendar year basis and, therefore, there could not have been the reporting period of 1986-87.

13. We have also seen the DPC minutes in this regard. Paras 3 & 4 of minutes dated 13-10-94 are reproduced below :-

"3. The Committee were also informed that there are no RRs for the post of Superintending Engineer (Elec). However, CPWD in their Manual have prescribed that the post of Superintending Engineer (Elec.) in the Central Engineering Service Group 'A' is to be filled up on the basis of selection from amongst Executive Engineers (Elec.) with 7 years regular service in the grade. This criteria has been followed from 1966 to 1981 by all DPCs conducted by the Commission. Accordingly, Commission have decided to follow the same eligibility criteria for promotion to the post of Superintending Engineer (Elec.).

4. The vacancy position is as under :-

<u>Year</u>	<u>Vacancies</u>
1983	03
1984	03
1985	10
1986	04
1987	04
1988	02
1989	04
1991-92	04
1992-93	02
1993-94	04

It is clear from the above that the procedure adopted was proper and that vacancies have been correctly worked out. And we are satisfied.

14. Perusal of the records placed before us clearly convinces us that the vacancies from 1983 to 1993-94 have been separately shown and the field of

choice been correctly worked out eg. 10 persons each for 1983 and 1984 for 3 vacancies each; 23 persons for 10 vacancies of 1985; 12 persons for 4 vacancies of 1986, 12 persons for 4 vacancies of 1987 etc. were considered. Assessments have also been separately ^{mDC} and yearwise. DPC after going through the ACRs of the officers have categorised the officers as "Very Good" "Good" and "Average". Only those persons who have been graded as 'Very Good' have been placed on the select panel. For the first year i.e. 1983 itself the applicant was considered in accordance with his position in the seniority list in the feeder cadre and he was graded as 'Good'. Three persons all of whom were ^{seniors} ~~services~~ and who were graded as "Very Good" were placed in the select panel and were promoted that year. For the next year i.e. 1984 also ten persons were considered. The applicant was graded 'Good' while six persons below him were graded 'Very Good'. First three of them, including Sh. S.C.Khurana were placed in the select list and were promoted for that year. For the year 1985, ten persons including one senior and nine juniors who were graded 'Very Good' made the selection, and the applicant was only graded 'Good'. The same was the position for 1986 when the applicant continued to be graded as 'Good' while four of the juniors assessed as "Very Good", made the selection for the four vacancies. In 1987 for the first time he was rated as "Very Good" and accordingly he was placed first on the select list ahead of three others who were also graded "Very Good", but were juniors to him. This pattern was followed upto 1993-94, where in only those who made the grade "Very

Good" were placed on the select list, keeping in view the vacancies of every year, and in the order of their seniority in the feeder cadre. Naturally, therefore, three persons in 1984, ten persons in 1985 and four persons in 1986 who were originally his juniors in the feeder cadre went above him on the basis of their higher gradation as "Very Good" while he remained behind on account of his lower grading as "Good". And in 1987, when he attained the gradation "Very Good" he was also promoted on regular basis as Superintending Engineer. In view of the above, as the selection process was correctly undertaken in accordance with the instructions in force, after properly working out the vacancies year wise and identifying the field of choice and with the participation of the appropriate authority i.e. UPSC, it cannot be assailed and the placement of the applicant in the seniority list of Superintending Engineer on the basis of above selection in DPC - both original and review - , communicated by OM No. 30/11/9/EC I dated 5-2-97 deserves to be endorsed as legal and proper.

15. In the above view of the matter, this application filed on incorrect appreciation of facts as well as ~~in~~ law fails and is accordingly dismissed. We also directed ~~the~~ the applicant to pay Rs. 3,000/- (Rupees Three thousand only as costs), which should be paid to the Central Administrative Tribunal's Bar Association for the purposes of its library.

(Gopinathan S. Tampi)
Member (A)

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(V. Rajagopala Reddy)
Vice-Chairman (J)