

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA No. 2584/97

New Delhi, this the 6th day of July, 1998

HON'BLE SHRI T.N. BHAT, MEMBER (J)
HON'BLE SHRI S.P. BISWAS, MEMBER (A)

In the matter of:

Shri Kanhiya Lal,
B-1/1, Brij Vihar,
Pitam Pura,
Delhi-110034.

..... Applicant

(By Advocate: Mrs. Subhadra Chaturvedi)

Vs.

1. Union of India
through the Secretary
Ministry of Defence,
South Block,
New Delhi.

2. Engineer-in-Chief,
Army Head Quarters,
Kashmir House,
Defence Head Quarters,
P.O., New Delhi-110011.

..... Respondents

(By Advocate: Sh. V.S.R. Krishna)

O R D E R

Hon'ble Shri T.N. Bhat, Member (J)

The applicant in this OA is working as Assistant Engineer (B/R) in the MFS and has come to the Tribunal against the action of the respondents in not including his names in the All India seniority list of Assistant Engineers at his proper place/Serial Number. In the impugned seniority list, as at Annexure A-I, the applicant's name does not at all figure. The names of 150 Assistant Engineers have been included and according to the applicant his name should have been in between Sl. No. 135 and 136, i.e., immediately after the name of Sh. G.C. Verma and before the name of Sh. R.P. Singh. According to the applicant the aforesaid document and the

6.7.98

list annexed thereto is in reality a panel for promotion to the post of Executive Engineers from the post of Assistant Engineers and the applicant apprehends that the aforesaid list shall be operated and his chances of promotion shall suffer irreparably.

2. A brief resume of the facts leading to the controversy in the present OA may be given as follows:

3. The applicant had started officiating substantively as Superintendent Grade I in the B/R Wing of MES w.e.f. 15.12.74. However, when the first seniority list (Annexure A-6) was issued on 22.8.94 the applicant was wrongly shown as holding the post of Assistant Engineer in the E/M Wing and his date of substantive appointment to the post of Superintendent was also wrongly mentioned as 1.4.81. The applicant promptly represented and as a result a corrected seniority position relating to the applicant was issued on 6.8.96, as at Annexure A-7. In the corrected seniority list the correct designation of the applicant as Assistant Engineer (B/R-1) was shown though the date of substantive appointment to the post of superintendent continued to be wrongly shown as 1.4.81. It is, however, no longer disputed by the respondents that the applicant was substantively appointed to the post of Superintendent Grade I on 15.12.74. This is also evident from the seniority list issued by the respondents on 23.6.97 (Annexure A-8) in which the date of substantive appointment of the applicant has been corrected to read as "15th December, 1974".

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4. The applicant states that Sh. G.C.Verma shown at Sl. No. 135 in the All India seniority list had been appointed on a substantive basis w.e.f. 28.9.74 while the applicant was so appointed on 15.12.74 and there is none in between them. According to the applicant his name should have been entered in the seniority list immediately after the said Sh. G.C.Verma, while the respondents have wrongly shown the applicant at Sr. No.220 after Shri Maria Das who had started officiating only from 1.4.81.

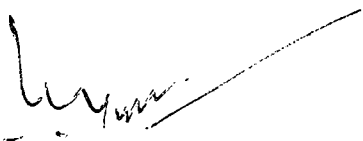
5. The applicant has prayed for the following reliefs:-

a) Direct the Respondents particularly Respondent No.2, to amend the impugned order No. A/41025/AF/97-98/EIR(O) dated 6.8.97 (Panel-Annexure A-1) so as to include the name of the Applicant at Sr. No.114A immediately after Shri G.C.Verma.

b) direct the Respondent to:-

i) refrain from implementing the impugned Panel (Annexure A-1) before its amendment as sought at (A) above.

ii) to pay costs of these proceedings to the Applicant adequately.



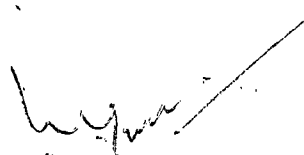
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c) issue any other order or direction as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case to give complete relief to the Applicant."

6. The respondents have resisted the applicant's claim mainly on the ground that the seniority list was based upon the recommendations made by the Departmental Promotion Committee. It is averred that Sh. G.C.Verma and several other persons after him were appointed on substantive basis as A.E.S against the vacancies of 1984 according to their merit while the applicant could be accommodated only against the vacancies of 1985. As regards Sh. Mariya Das who belongs to the E/M cadre, the respondents have taken the plea that he was also selected against the vacancies for the year 1985 and empanelled at Sl No. 1 of the panel issued on 13.6.85 against the reserved vacancies for the year 1985 in the E/M cadre while the applicant was empanelled against the reserved vacancies in the B & R cadre.

7. As regards the inclusion of the applicant's name in the panel for promotion to the post of Executive Engineer the respondents have take the plea that since the applicant does not come within the zone of consideration, considering his position in the seniority list, he could not be considered for empanelment.

8. The applicant has filed rejoinder to the counter filed by the respondents. Apart from reiterating the contentions raised in the OA the applicant has further averred in the rejoinder that there is no reason why the



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applicant should not have been considered against the vacancies of 1984, considering his date of substantive appointment to be 15.12.74. It is vehemently denied by the applicant that the seniority list was correctly prepared. According to the applicant the correct figures were not forwarded to the concerned DPC as the respondents have committed a mistake in describing the applicant as Assistant Engineer E/M and had also given his date of substantive appointment as 1.4.81 instead of 15.12.74.

9. We have heard the learned counsel for the parties at length. The relevant departmental records furnished by the learned counsel for the respondents have also been perused apart from the other material which the parties have placed on the record of this OA.

10. On a bare perusal of the documents on record we find it established beyond doubt that while mentioning the name of the applicant in the seniority list of 1984 a mistake had occurred and the applicant's name had wrongly been shown as Assistant Engineer (E/M). Not only that, but also was the date of his substantive appointment wrongly shown to be 1.4.81 while the correct date should have been 15.12.74. When the applicant represented, the necessary correction was made by the respondents as they realised their mistake. However, while issuing the corrected figures in the seniority list, as at Annexure A-8, issued on 23.6.87 the respondents seem to have persisted with their action in showing the applicant lower down in the order of seniority at Sl. No. 224. The respondents have in this regard sought to justify the action by stating that it was only against the

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vacancies of 1985 that the applicant could make the grade when the DPC considered him for substantive appointment as Assistant Engineer. However, on going through the records furnished by the learned counsel for the respondents we find that while forwarding the names to the DPC for consideration of their appointment against the 1984 vacancies the applicant's name was not at all shown in the list. This was so only because the respondents had wrongly shown the applicant as having been appointed on 1.4.81. Had the correct date of appointment of the applicant been reflected in the list of candidates which were forwarded to the DPC the applicant would have easily been accommodated against the vacancies of 1984. That was not done and the applicant's name was forwarded only against the vacancies of 1985 while the names of several persons who were otherwise junior to him were forwarded for consideration against the vacancies of 1984. We are, therefore, convinced that this is not a case where the applicant was properly considered by the DPC or ^{where} ~~that~~ on such consideration he was found fit to be appointed only against the vacancies of 1985 and not those of 1984. In these circumstances the contentions raised by the respondents have to be rejected.

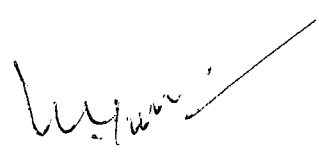
11. The learned counsel for the applicant has taken the alternative plea of reservation. According to the learned counsel the respondents ought to have considered the applicant for empanelment against the reserved points as he belongs to the Scheduled Caste Category. He has relied upon the judgments of the apex court reported as (1997) 6 Supreme Court cases 129 and (1998) 9 Supreme Court cases 287. We have gone through

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the aforesaid judgement but we find that these judgments are really not relevant. If the existing seniority position of the applicant is considered he cannot claim promotion even on the basis of reservation as he would not fall within the zone of consideration. We cannot subscribe to the view conveyed by the learned counsel for the applicant that whatever be the seniority position of a Scheduled Caste candidate he has the right to be considered even though he does not come within the normal zone of consideration or even the extended zone of consideration applicable in case of persons belonging to the reserved categories. The judgment reported in (1997) 5 Supreme Court cases 129 does not support this contention of the applicant's counsel. As regards the other judgment, that case related to delay in convening departmental promotion committee, the zone of consideration in such cases and the period upto which the ACRs should be considered in cases of delay.

12. However, the question remains as to what relief can the applicant claim in the circumstances of the case. This question needs examination in depth. As already stated, whether rightly or wrongly, the applicant's name does not appear to have been forwarded for consideration against vacancies of 1984. The DPC was held in the month of June 1986. There were 145 vacancies relating to 1984 and 130 vacancies for 1985. Applicant's name was not at all considered in the 1984 vacancies though taking into consideration the date of his appointment on substantive basis as Superintendent B/R grade I, he was fairly senior and could have been easily considered against the vacancies of 1984. But the



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applicant chose to come to the Tribunal only in the year 1997 and that too when he found his name missing from the panel for promotion to the post of Executive Engineer. It is true that the applicant could not have known that his appointment was made only against vacancies of 1985 as no communication appears to have been addressed to the applicant regarding the result of the DPC held in the year 1985. But it is equally true that several persons who were earlier junior to the applicant have some-how stolen a march over him and right from 1994 their names have figured higher up in the seniority list.

13. That apart, we notice that the applicant has not impleaded the persons who although junior to the applicant find a place in the panel for promotion to the post of Executive Engineer. Applicant's name also continues to figure lower down in the seniority list, at Sl. No. 229. The seniority list has not been specifically assailed in this OA. Applicant has only challenged the order date 6.8.97 which, as already indicated, is a panel prepared for promotion to the post of Executive Engineers.

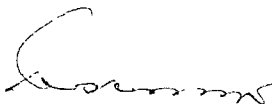
15. In the circumstances given above, we would not like to unsettle matters which have continued to exist right from the year 1986. However, we would direct the respondents to consider the entire matter and to find out some reasonable method to redress the grievances of the applicant after giving show cause notices to all the persons who are likely to be effected. The least the respondents should do is to include the name of the applicant at no. 1 of the next panel prepared for promotion to the post of Executive Engineer even though

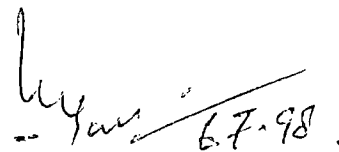
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the applicant's name appears at Sl. No. 220. This
should, of course, be done after the persons likely to be
effected are also given an opportunity to show cause why
that should not be done.

16. In view of the above, we dispose of this
OA with a direction to the respondents to consider the
applicant's case for giving him the proper Sl. No. in
the All India seniority list after the effected parties
are given opportunity to show cause and, further, without
amending or altering the impugned panel for promotion to
the post of Executive Engineers, consider placing the
applicant's name at No.1 in the next panel which may be
prepared after the present panel as Annexure A-1 is
exhausted but, again, after giving show cause notices to
those who are likely to be effected.

17. No costs.


(S.P. BISWAS)
Member (A)


(T.N. BHAT)
Member (J)