

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

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O.A.No.2918/97

Hon'ble Shri Justice V.Rajagopala Reddy, VC(J)  
Hon'ble Smt. Shanta Shastry, Member(A)

New Delhi, this the 27th day of July, 2000

Shri S.C.Gupta  
B-2/2171, Vasant Kunj  
New Delhi - 110 070. ... Applicant

(By Shri C.Hari Shanker, Advocate)

Vs.

1. Union of India through  
The Secretary  
Ministry of Urban Affairs & Employment  
Nirman Bhawan  
New Delhi - 110 001.
2. The Director General (Works)  
C.P.W.D., Ministry of Urban Affairs  
& Employment  
Nirman Bhawan  
New Delhi - 110 001. ... Respondents

(By Shri R.V.Sinha, Advocate)

O R D E R (Oral)

By Justice Rajagopala Reddy:

The applicant seeks a direction to convene the DPC and consider him for promotion as Additional Director General (Works) in CPWD w.e.f. 1.1.1996 and grant him all the consequential reliefs. The brief facts of the case are as under:

2. The applicant was appointed as Assistant Executive Engineer in CPWD in 1963 and eventually he has been promoted to the post of Superintending Engineer and thereafter to the post of Chief Engineer on 27.3.1990. The next promotional post in the hierarchy is the Additional Director General (in short ADG). The promotion to the said post according to the recruitment rules is by way of selection among the eligible officers. As per rules, the minimum period



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of regular service for eligibility is three years as Chief Engineer (Civil) or Chief Engineer (Electrical). The applicant became eligible for consideration for the post of ADG by 27.3.1993.

3. The seniority list for the post of CE(Civil) was published on 4.3.1993 and the seniority list of CE(Electrical) on 26.2.1993. It is the case of the applicant that the first vacancy for promotion to the post of ADG (Works) arose on 1.1.1996 on the retirement of Shri D.K.Malhotra on 31.12.1995. As on that date the applicant was entitled for consideration for promotion, the respondents, however, did not take any steps to convene the DPC and fill up that post. Meanwhile, he was superannuated on 30.6.1997.

4. The grievance of the applicant in this OA is that though the applicant was eligible for consideration for promotion in the vacancy that arose on 1.1.1996, the respondents failed to consider him for promotion, thus the legitimate right of the applicant for consideration for promotion was lost.

5. The case is contested by the respondents and in the counter affidavit it is averred that as the feeder grade of CE (Civil and Electrical) are under review in pursuance of the directions of the Supreme Court in the case of R.L.Bansal and Others, decided on 8.5.1992, relating to the grade of Assistant Engineer and in view of the Tribunal's direction dated 30.12.1992, the respondents have revised the seniority list in the grade of AEs and the promotions made in the higher grades were also reviewed and subsequently

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review DPC was constituted in 1995. In view of the above facts, the seniority list of 1993 had become defunct and the provisional seniority list of CEs was published only in 1996 which was finalised in 1997. Hence the vacancy that arose could not be filled up on the basis of the original seniority list of 1993. It is also stated that none of ~~his~~<sup>the</sup> juniors of the applicant were promoted to the post of ADG (Civil).

6. We have given careful consideration to the contentions of the learned counsel for the applicant and the respondents. The learned counsel for the applicant relies upon the OM dated 20.3.1988 where it was stated that regular DPCs may be held based on the existing seniority list. The learned counsel for the applicant submits that there was a seniority list to hold the DPCs. It was also stated that unless there is an injunction/stay order against the regular promotion the appointment authority may convene the DPC and make directions on the basis of the existing seniority list. The learned counsel therefore contends that as there was no stay to make promotions on the basis of the disputed seniority list, the respondents could not lawfully withhold the promotions of the vacancies that arose in the year 1996. In this regard, it is necessary to extract the reasons given by the respondents in their reply for not convening the DPC:

" ..... It is further submitted that the applicant has concealed the fact that when the first vacancy arose in the grade of ADG(W) on 1.5.1995, the seniority in the feeder grades of Chief Engineer (Civil) and (Elect.) was already under review in pursuance to the direction of the Hon'ble Supreme Court dt. 8.5.1992 in the case of R.L.Bansal and others relating to the seniority in the grade of Asstt. Engineers. The Supreme Court had

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directed that seniority in the grade of Asstt. Engineers may be revised retrospectively. This Hon'ble Tribunal had directed in their judgement dated 30.12.1992 in the case of B.P.Bindal & Others that in view of the retrospective revision of seniority in the grade of Asstt. Engineers, promotions made in the higher grades may also be reviewed. In compliance of this direction, review of past promotions of Asstt. Engineers to the grade of Executive Engineer and from Executive Engineer to that of Supdt. Engineer had already been made in October, 1994. Proposals for further review of past promotions from the grade of S.E. to Chief Engineer had already been referred to the UPSC. The review DPC were held in July, 1995. The respondent had forwarded a proposal for filling up of the post of ADG(W) on ad hoc basis on the basis of the provisional seniority list of Chief Engineers (Civil) and (Elect.) of 93 for approval or the ACC. But the proposal was not approved by the competent authority as it was not considered desirable to make ad hoc promotions on the basis of defunct seniority list in view of the impending review of the same. Subsequently, the review DPC was held in the month of July, 1995. After approval of the recommendation of the Review DPC and approved by the ACC, revised provisional seniority list were issued on 31st August, 1996 and objections were invited from all concerned. A large number of objections were received against the revised seniority list. Pending finalisation of the provisional seniority list, dated 31.8.1996 in the grades of Chief Engineer (Civil) and Chief Engineer (Elect), a proposal for ad-hoc promotion to the grade of ADG(W) was again forwarded to the DPC for approval of the competent authority (ACC) in the matter. These proposals were again turned down and it was advised by the competent authority that expeditious action may be taken for the finalisation of the seniority list. The seniority list was finalised and issued on 4.7.1997. Pending regular promotion through the UPSC, ad-hoc promotions were made in Oct., 1997 with the approval of the ACC. It is, therefore, emphatically denied that the respondents had not filled up the post of ADG(W) intentionally or with a view to deprive the applicant of promotion. ...."

7. A perusal of the above makes it abundantly clear that the respondents made their efforts to fill up the post, they have made a proposal to fill up the posts on ad hoc basis, pending finalisation of the seniority list, which was not agreed to by the competent authority. In view of the directions of the Courts, the seniority list of AEs had to be reviewed which resulted in the review of the seniority list of CEs and convening of the DPC in July, 1995. The seniority list of 1993 had become defunct and no direction could be made on the basis of that seniority

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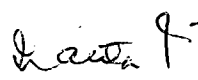
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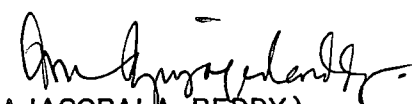
list. The provisional seniority list was prepared only in August, 1996 and published on 4.7.1997 and subsequently, the promotions were made to the post of ADG. We are therefore, satisfied that the respondents could not hold the DPC in 1996 to consider the applicant or any other officers for the promotion on the basis of the old seniority list.

8. The OM relied upon by the applicant is not a rule or a direction, it is a guideline to the DPCs. Keeping in view of these guidelines and in view of the facts and circumstances, stated supra, the DPC could not be convened and the vacancies are not filled up by the respondents.

9. Though the DPC which met during 1997, did consider for filling up the post of ADG which arose in 1996 but by that time the applicant has superannuated, his case could not be considered for promotion.

10. In the circumstances, we do not find any merit in this OA. The OA is therefore dismissed. No costs.

  
(SMT. SHANTA SHASTRY)  
MEMBER(A)

  
(V. RAJAGOPALA REDDY)  
VICE CHAIRMAN(J)

/RAO/