

Central Administrative Tribunal
Principal Bench, N.Delhi
....

O.A. No. 1143/94

O.A. No. 1194/94

O.A. No. 776/94

O.A. No. 1201/94

O.A. No. 1262/94

O.A. No. 1688/94

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New Delhi, this 2nd Day of March, 1995.

HON'BLE SHRI J.P. SHARMA, MEMBER (J)
HON'BLE SHRI B.K. SINGH, MEMBER (A)

DA No. 1143/94.

Shri V.K.Puri s/o
Shri H.L.Puri,
Executive Engineer,
C.P.W.D., Vigilance Unit,
Director General of Works,
Nirman Bhawan, New Delhi.
Resident of C-5/A 270,
JanakPuri, New Delhi.

Applicant

(By Shri Sohan Lal, Advocate)

Versus

1. Union of India through its

- (a) Secretary,
Ministry of Urban Development,
Government of India,
Nirman Bhawan,
New Delhi- 110 011.
- (b) Secretary,
Ministry of Personnel,
Public Grievances & Pensions,
North Block, New Delhi- 110 001.

2. Director General of Works,
Central Public Works Department,
Nirman Bhawan,
New Delhi-110 001-

Respondents.

(By Shri K.C.Sharma, Advocate)

O.A.No. 1194/94

Shri Satish Chandra,
s/o Shri (Late) Shri G.D.Garg,
EE, CPWD, Delhi Administration,
MSB Building, I.P.Estate,
IIND a 147, Nehru Nagar,
Ghaziabad.

Applicant

(By Shri Sohan Lal, Advocate)

Versus

1. Union of India through its,

(a) Secretary,
Ministry of Urban Development,
Government of India,
Nirman Bhawan,
New Delhi- 110 001.

(b) Secretary,
Ministry of Personnel,
Public Grievances & Pensions,
North Block,
New Delhi- 110 001.

2. Director General of Works,
Central Public Works Department,
Nirman Bhawan, New Delhi- 110 001.

Respondents.

(By Shri K.C.Sharma, Advocate)

D.A. No. 776/94.

Shri V.C.Sigheal s/o
Late Shri Babu Ram,
Retired Executive Engineer (Civil),
from C.P.W.D.
Resident of C/271, Vivek Vihar,
Phase-I, Shahdara,
Delhi - 110 095.
(By Shri Sohan Lal, Advocate)

Applicant

Versus

1. Union of India through its

(a) Secretary,
Ministry of Urban Development,
Govt. of India,
Nirman Bhawan,
New Delhi- 110 001.

(b) Secretary,
Ministry of Personnel,
Public Grievances & Pensions,
North Block,
New Delhi - 110 001.

2. Director General of Works,
Central Public Works Department,
Nirman Bhawan,
New Delhi- 110 001.

Respondents

(By Shri K.C.Sharma, Advocate)

D.A.No. 1201/94.

Shri M.K.Aggarwal, EE (Vig.) IV,
S/o Late Shri L.Prithvi Singh,
B-127, South Moti Bagh,
Nanak Pura, New Delhi- 110 027.
(By Shri Sohan Lal, Advocate)

Applicant

Versus

1. Union of India through, its

(a) Secretary,
Ministry of Urban Development,
Govt. of India,
Nirman Bhawan,
New Delhi- 110 001.

(b) Secretary,
Ministry of Personnel,
Public Grievances & Pensions,
North Block,
New Delhi- 110 001.

2. Director General of Works,
Central Public Works Department,
Nirman Bhawan,
New Delhi- 110 011.

Respondents.

(by Shri M.M.Sudan, Advocate)

D.A. 1262/94.

Shri A.K. Aggarwal,
S/o Late Shri Y.P. Aggarwal,
R/O 92, Navyug Market,
Ghaziabad (U.P.).
Working as Executive Engineer,
C.P.W.D. (Vigilance) Unit,
O/O Director General of Works,
Nirman Bhawan,
New Delhi.

Applicant

(By Shri Sohan Lal, Advocate)

Versus

1. Union of India through its

(a) Secretary,
Ministry of Urban Development,
Government of India,
Nirman Bhawan,
New Delhi- 110 011.

(b) Secretary,
Ministry of Personnel,
Public Grievances & Pensions,
North Block,
New Delhi- 110 001.

2. Director General of Works,
Central Public Works Department,
Nirman Bhawan,
New Delhi- 110 011.

Respondents

(By Shri M.M.Sudan, Advocate)

Contd....4/-

OA No. 1688/94.

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R.K. Vashist
Ago 57 Years S/o Late Shri Balbir Singh,
Executive Engineer
PWD Divn. No. XXI (MCTD)
Eashwar Nagar,
Delhi-Mathura Road,
New Delhi.

R/o C-69, Naraina Vihar,
New Delhi - 110 028.

(By None)

(15)
Applicant

Versus

Union of India through
the Director General (Works),
Central Public Works Department,
Nirman Bhawan,
New Delhi - 110 011.

(By Shri M.K. Gupta, Advocate)

Respondents.

J U D G E M E N T (ORAL)

Hon'ble Shri J.P. Sharma, Member (J)

All the applicants are serving as Executive Engineer except Shri V.C. Singhal who has retired on superannuation w.e.f. 31.1.1992 and Shri R.K. Vashist who retired during pendency of this Application. The applicants i.e. Executive Engineers were promoted from the post of Asstt. Engineer on different dates but their promotion was termed as ad-hoc and they have not yet been regularised in their appointment on regular basis. While giving them promotion to the post of Executive Engineer on different dates mentioned hereunder, all the applicants were given the benefits of fixation of pay under FR 22(c) now FR 22 (a) (1) particularly in view of the fact that the responsibilities and duties on promotion have to be shared by them carrying higher responsibility and discharge of duties. The grievance of the applicants in all the cases is common i.e. while fixing their

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pay under the said FR-22-C, their options for date of increment has not been considered by the respondents. The applicants have given different dates of fixation of their pay on the date of increment under FR 22(c), a chart of the same is given below:-

<u>Applicant</u>	<u>Date of Promotion</u>	<u>Date of next increment.</u>
V.C.Singhal	20.11.1987	1.1.1988
V.K.Puri	27.11.1992	1.1.1993
Satish Chandra	1.12.1992	1.1.1993
A.K.Aggarwal	6.7.1992	1.1.1993
M.K.Aggarwal	19.11.1990	1.12.1990
R.K.Vashishtha	20.8.1991	1.8.1992

2. The applicants have filed separate original applications but the relief claimed by them in all the applications is almost the same except in O.A. No. 776/94 by Shri V.C.Singhal (Rtd.) who has also claimed retirement benefits. The relief claimed in none of the O.A. No. 776/94 is taken as an example and the said relief was subsequently amended by the applicants. The amended relief is quoted below:-

8. Relief Sought:

- the O.M. dated 8.2.1994 may please be declared illegal and void to the extent of denying the benefit of the judgement in O.A. No. 2947 of 91 in Shri D.V.Singh V/S Union of India and others.
- To direct the respondents to give the benefit of the judgement of this Hon'ble Tribunal in O.A. No. 2947/91 Shri D.V.Singh v/s Union of India & Others delivered on 26.4.1993.
- To direct the respondents to fix the pay of the applicant under FR 22(a)(i) w.e.f. 21.11.1987 to 31.12.1987 as per O.M. Dated 9.11.1987.
- To direct the respondents to fix the pay of the applicant under FR 22(c) w.e.f. 1.1.1988 as per OM dated 9.11.1987 and as per option of the applicant dated 26.11.1987 as fixed by the respondents vide order dated 22.3.1988 and to pay these arrears.

- (e) To direct the respondents to give the consequential benefits on his retirement on 31.1.1992 of his pay fixed in terms of the judgement of the Hon'ble Tribunal in O.A. No. 2947/91 for retirement benefits such as pension, gratuity, leave salary and commutation of pension etc.
- (f) To direct the respondents to pay the interest at market rate @ 18% per annum on the arrears of pay and allowances.
- (g) To direct the respondents to pay the interest at market rate @ 18% per annum on the arrear of the retirement benefit such as pension, gratuity, leave salary and commutation of pay etc. w.e.f. 31.1.1992.
- (h) Cost of the application be awarded to the applicant.
- (i) To pass such orders or further orders as the Hon'ble Tribunal deems fit & proper in the facts and circumstances of the case.

In O.A. No. 1688/94 the said amendment has not been prayed for.

3. On notice the respondents contested these applications and in their reply have taken the stand that the applicants have not yet been regularised in their appointment and they are holding the post of Executive Engineer on ad-hoc basis and by virtue of O.M. dated 8.2.1983 read with O.M. dated 20.1.85 issued by Deptt. of Personnel & Training and annexed with the counter lays down that no option for fixation of pay on the date of next increment is determined by the Deptt. in the lower grade of the feeder post can be allowed. Indirectly, it is argued that only on the regular promotion the benefit of giving option can be claimed by the promotee and not otherwise. The learned counsel for the respondents have also referred to the O.M. dated 9.11.1987. Almost the reply filed by the respondents to the Original Applications separately is the same. It is stated that so far promotion to the grade of Executive Engineer (Civil) is concerned from 1980-1994 (31st March, 1994) have been regularised and a seniority list

of Executive Engineer (Civil) issued on 20th October, 1994, but the Assistant Engineer (Civil) appointed during 1967-68 have so far been included in the seniority list of regularly appointed Executive Engineers. None of the applicants who have separately filed the application in the reply to the respective Original Applications, it is stated that they were appointed as Assistant Engineer (Civil) in C.P.W.D. and have been subsequently given ad-hoc promotion to the post of Executive Engineer have not yet been regularised. In view of the above, the pay of the applicants have separately been fixed in accordance with the Govt. orders applicable to the Govt. servants. There is no discrimination or any malafide intention towards the applicants. In case his ad-hoc appointment is regularised by the duly constituted D.P.C. and his ad-hoc appointment is followed by regular promotion without any break, the applicant would get the right for exercising option from the date of initial appointment/promotion to the grade of Executive Engineer. The applicants, therefore, as stated by the respondents, can await the outcome of the regularisation process till they are appointed on regular basis in the grade of Executive Engineer by the duly constituted DPC. The request for exercising option to get his pay fixed is totally unjustified and not tenable, in view of the various DMOs referred to in the counter and annexed alongwith it. Detailing further averments in reply to the original application, the respondents have stated that the ad-hoc promotions were because of the exigency in the service as certain litigation was pending in the Apex Court for the determination of the inter-se seniority in the grade of Assistant Engineer and till that matter is finally decided the seniority list could not be finally

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revised and re-fixed but now the decision has arrived at have and the respondents/undertaken the process of re-fixing and revising the seniority list.'

4. The applicants have also filed the rejoinder in all the cases separately and they have re-iterated their contentions as already raised in the Original Applications.'

5. We have heard the learned counsel for the applicant Shri Sohan Lal. Shri K.N.R. Pillai is not present. As his case is covered by the arguments of Shri Sohan Lal so we have taken into consideration the help of Shri Sohan Lal also in his case. We have heard ^{Sarv} Shri K.C. Sharma, M.K. Gupta and A.M. counsel Sudan/for the respondents at greater length. The main question in this case is that the promotion to the post of Executive Engineer has been termed as ad-noc. The contention of the respondents' counsel is by virtue of the OM of dated 8.2.83 referred to above, option cannot be exercised for fixation of pay on the date of increment by ad-hoc promotees. This contention of the respondents' counsel is duly illustrated in the annexed annexure of DeP&T. However, the point in issue is whether the applicants are actually holding the regular vacancies of longer duration or are working in certain arrangement where the vacancies are short-lived. It is also to be seen whether they have cleared the pre-appointment test prescribed for promotion to the higher post of Executive Engineer or not. When considering the individual case of these

applicants, it is not disputed that the applicants have been cleared by a Screening Committee though it cannot be equated with a regularly constituted D.P.C. according to the Recruitment Rules. In view of these, it is fervently argued by the respondents' counsel that if the applicants are considered by the D.P.C. any of them may not be given regularisation, may be passed over or may get regularised in his appointment from the initial date of ad-hoc promotion to the post of Executive Engineer. It is also a fact that DPC was not constituted since all these years. The respondents have a justifiable excuse because unless the seniority of the Assistant Engineer is finally settled by the Apex Court the DPC has to consider persons on the basis of expected seniority list for taking into account ^{the} persons who will fall within the zone of consideration viz-a-viz the number of vacancies for the relevant year. This fact apart, if the respondents have chosen to give ad-hoc promotions and have also given the benefit of fixation of pay under FR 22(c) now FR 22(a)(1) can they deny the promotees the benefit of option or not. While going to the OM of January, 1985 para 4 deals with the fact that no option can be allowed in the case of ad-hoc promotion but immediately below this there is para 5 which lays down that if the benefit of FR 22(c) i.e. FR 22(a)(1) is given then option can also be allowed. Learned counsel Shri K.C. Sharma for the respondents emphatically asserted that it is to be read with para 4 and do not itself has to be read in isolation. However, while going through the

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Scheme of the aforesaid O.M. each and every paragraph deals with the matter separately and one cannot read alongwith other obviously because if it is taken to be a part of the other para then the scheme would have cleared the same or must have clarified in a subsequent O.M. We, therefore, are fortified in our view by two decisions of our own Tribunal, one is in the case of Piplani reported in AIR 1987 (1) CAT 253 and the other in the case of D.V.Singh Vs. Union of India in O.A. No. 2947/91 decided on 26th April, 1993. The later case is of a Single Bench but the former case is of a Division Bench. Learned counsel Shri M.K.Gupta for the respondents has rightly pointed out that the applicant in the case of Piplani was a promotee earlier to the issue of O.M. of 1983 and O.M. of 1983 was not, therefore, considered at that point of time. Regarding the decision of the case of D.V.Singh(Supra), the learned counsel for the respondents pointed out that there is no discussion of this O.M. including that of 9.11.1987 and as such this judgement should be taken as judgement per incuriam. We have considered these aspects in the light of the arguments advanced by the learned counsel for the applicant. The ratio in the case of D.V.Singh is that if ad-hoc promotion continues for years together and thus conceded by the learned counsel for the respondents Shri M.K.Gupta that while revising the seniority list and giving various berth in that seniority list of Assistant Engineer, if the position of any of that officers is changed then that officer will not suffer reversion though he may be working on the post of Assistant Engineer on ad-hoc basis.

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6. It is further clarified in the manner that the process of revision of seniority list is undergeing and so long there exists a vacancy either of the year for which DPC is held or for a subsequent year and a person is ultimately promoted though subsequently his berth in the seniority list may change but he may not face reversion.

7. Now all these lead to the result that this initial promotion to the post of Assistant Engineer have been continuing for about 3 or 4 years without any break though they have not yet been regularised as the process of the regularisation has taken place upto the year 1967-68 and applicant Shri V.C.Singhal is of 1976 batch and the other applicants are of different years but they are of ^{January,} till/1979 batch.

8. In the case of Patwardhan reported in 1977(SC) page 2157 AIR, the matter of seniority of Engineers were considered and in this case the Hon'ble Supreme Court of India has considered about the duration of vacancies whether they are of long term or of short duration. The Hon'ble Supreme Court of India in that case held that if the vacancies are of one year or more then the vacancies are termed as vacancy of longer duration. Here, in this case, these applicats are working as Assistant Engineer on ad-hoc basis for more than three years and these vacancies, therefore, cannot be termed as vacanci s of stop gap arrangement or of transitory in nature. The respondents too have conceded fairly that the ad-hoc appointments have been given on regular vacancies but because of pendency of litigation of seniority in the Apex Court, the regularly constituted D.P.C. has not considered their

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cases and only by a Departmental Screening Committee, the promotion have been effected. If the respondents have considered these pre-appointment test of the applicants/ ^{as sufficient,} it is their outlook though it may amount to promotion not in accordance with the rules but at the same time these promotions are when all eligible persons have been considered and that the vacancies are regular and are of longer duration. In such an eventuality, the term ad-hoc attached to the promotion of these applicants loses the significance. They, for all purposes, are holder of regular post of longer duration. It may be that subsequently a regular D.P.C., if constituted, will consider them on the basis of their performance and may regularise them or in the event they are not found fit may revert them to their substantive post. If they are reverted to the substantive post the benefit of the pay which they have claimed will no longer exist. If they are regularised on their post the benefit of pay will continue and their regularisation will date back to their initial date of appointment. However, it is made clear that this benefit will not in any way confer them any right of seniority which will be governed solely on the date of regularisation and as per the norms laid down in the judgement of the Hon'ble Supreme Court of India. Here, we are only considering for giving the benefit of option while promoting the applicants to the higher responsible post of Executive Engineer.

9. A situation may also arise that the persons may have to be reverted and if any of the applicants are reverted subsequently or if not regularised then the benefit which will accrue to them

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by this Judgement have to be rescinded because the applicants themselves are not awaiting the result of their regularisation and have come before this Tribunal for awarding of benefit earlier to an order of regularisation in their cases. This is a specific condition which is being observed in this order for giving the benefit to the applicants.

10. Now, considering the case of the applicants, since the ad-hoc promotion continues without break and their cases are covered by two decided cases (supra) and also by OM of Feb., 1983 read with Jan., 1985, the applicants shall be entitled to their options which they will be given within three months from the date of this order and respondents, in turn, will give fixation of pay to the applicants if they had not already given to the applicants, within three months thereafter. Those applicants who have already retired from service, it has been pointed out during the course of arguments that Sh. V.C. Singhal applicant in DA No. 776/94 and Sh. R.K. Vashisht applicant in DA No. 1688/94 have since been retired, they will be entitled to re-fixation of their retirement benefit also. The applications are allowed with the following directions:-

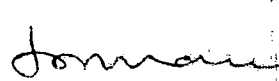
- (a) The applicants shall give their date of option for grant of next increment for fixation of pay under FR 22(c)/FR 22(a)(1) to the respondents within three months from today and the respondents shall consider the same and revise their pay from the date of their initial appointment to the post of Executive Engineer, if not already fixed, taking into account the option they have preferred

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for fixation of pay on the date of increment and on the date of promotion and on the basis of next increment in the feeder grade. The applicants, by virtue of this re-fixation of pay, shall be entitled to the arrears of pay due to them during all the years.

- (b) In case any of the applicants except those who have retired are not regularised and that they face a reversion or in any manner do not keep their seniority intact then the benefit given to them shall be reconsidered by the respondents after due notice to them and hearing them on that account, if occasion arises may be withdrawn.
- (c) Those who have retired from service i.e. Shri V.C. Singhal and Shri R.K. Vashishth, will also be given the benefit referred to above in para (a) and they will also be given the benefit of fixation of pay in the revised pensionary benefits etc. on the basis of their retirement benefits. In that circumstances of the case, the parties shall bear their own costs. A copy of this Judgement shall be placed in each of the files of the above mentioned six cases.


(B.K. SINGH)
MEMBER (A)


(J.P. SHARMA)
MEMBER (J)

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