

Central Administrative Tribunal, Principal Bench

Original Application No.1947 of 1994

New Delhi, this the 2nd day of August, 1999

Hon'ble Mr. Justice D.N. Baruah, Vice Chairman  
Hon'ble Mr. N. Sahu, Member (Admnv)

P.N.D. Modi,  
Son of Shri D.K. Modi,  
Aged: 57 years  
Resident of:  
E-27, Ashok Vihar, Phase-I,  
Delhi-110052

....Applicant

(By Advocate - Shri D.C. Vohra)

Versus

Union of India: through  
the Secretary,  
Department of Telecommunications  
Ministry of Communications,  
Sanchar Bhawan, Ashoka Road,  
New Delhi-110001

....Respondent

(By Advocate - None)

O R D E R (Oral)

By Baruah, J.-

The applicant in this O.A. has prayed for various reliefs including an order/direction to grant Selection Grade for S.E. since 1.1.86. At the time of admission, by an order dated 27.9.94, this Tribunal after considering the three prayers, disallowed the first two prayers following the decision of the Supreme Court in Upendra Singh's case reported in J.T. (1994)(1) SC 658. In view of the order passed, it is now to be seen whether the applicant is entitled for the third relief. Facts for the purpose of disposal of this O.A. are as under.

2. The applicant was originally appointed Junior Engineer in the year 1955 in the C.P.W.D. Later on he was permanently absorbed in the P&T Civil

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Wing in the grade of Assistant Engineer and was assigned seniority with effect from 10.12.71. The applicant being aggrieved over his seniority, filed an O.A. 665/88 before this Tribunal. The said O.A. was disposed of by the Tribunal vide order dated 7.6.91 by the following orders:-

"In the result, we hold that the applicant is entitled to his seniority in the cadre of Assistant Engineers with effect from the date of his initial appointment to that post, namely, 21.5.64 and he is further entitled to all the consequential benefits arising out of his absorption and fixation of seniority. We, accordingly, all the applicant and quash the order dated 21.12.87 (Annexure A-13) and direct the Respondent Nos. 1 and 2 to treat the applicant to have been permanently absorbed in the P&T Department with effect from 1.7.1963 and to fix his seniority to the post of Assistant Engineer(C) with reference to his promotion on 21.5.64. His seniority will accordingly be reflected in the cadre of Assistant Engineers and in higher cadres as above. For further promotions, his revised seniority will be taken into account."

3. In compliance of the above directions, applicant's seniority was fixed by Annexure 'D' order dated 13.10.93. We quote below the relevant portion of the order dated 13.10.93:-

"Consequent on his promotion as Superintending Engineer(Civil) w.e.f. 23.04.86 the seniority of Shri P.N.D.Modi in the Grade of Superintending Engineer (Civil) has been fixed in the seniority list as on 01.01.1989 at serial No.14A between Shri H.Bagchi (Sl.No.14) and Shri D.N.Bhatia (Sl.No.15)."

4. By annexure 'F' notification dated 3.5.91, promotion was made to the Non-functional Selection Grade and the applicant's name was not there in that

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list. According to the applicant, it happened because of the dispute in the grade of Executive Engineer. The contention of the applicant is that his junior, namely, Shri D.N.Bhatia and other officers upto serial no.22 were given the Selection Grade. The applicant states that for promotion to Non-functional Selection Grade, seniority is the only criteria and if that is so, the applicant ought to have been granted Selection Grade from the date his juniors were given. As this was not done, the applicant filed the present O.A.


5. On the earlier dates, the Tribunal directed the applicant to produce the documents to show that the grant of the Selection Grade does not involve any selection and on the basis of merits. The applicant has produced the relevant ruling by M.A.3744/94. We have perused the same. As per the said rules, for promotion to Non-functional Selection Grade, seniority is the criteria. The applicant is definitely entitled to this grade and in all probability, his name was not recommended because his case was pending before the Tribunal. The judgement in his case was delivered only after the issuance of Annexure 'F' notification dated 3.5.91. We have already stated that the applicant's seniority was revised pursuant to the directions of this Tribunal. Had this Tribunal delivered its judgement some time before 7.6.91, the applicant would have been granted the selection grade. Further at the time of granting Non-functional Selection Grade, two conditions must be fulfilled that there is no vigilance/disciplinary case is pending and integrity certificate is issued in his favour. The

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D.P.C. was held on 12.7.95 for grant of NFSG and as the disciplinary proceedings were pending against the applicant, his name case was not considered. But if the DPC would have been held on a date immediately after the pronouncement of the Tribunal's judgement on the basis of the revised seniority, the applicant would have been granted the Selection Grade.

6. We, therefore, direct the respondents to hold a review DPC as on 3.5.91 and consider the case of the applicant as per Rules. At that relevant time, no disciplinary proceeding was pending against the applicant. This must be done as early as possible but not later than two months from the date of receipt of this order. No costs.

  
(N. Sahu)  
Member (Admnv)

  
(D.N. Baruah)  
Vice Chairman

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