

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.NO.1856/2000

Monday, this the 23rd day of April, 2001

Hon'ble Shri Justice Ashok Agarwal, Chairman
Hon'ble Shri S.A.T. Rizvi, Member (A)

Adarsh Kumar, Superintending Engineer
(P&A), NDZ. III, CPWD, Sewa Bhawan,
R.K.Puram, New Delhi-110 066.

...Applicant

(By Advocate: Shri Varinder Sharma)

VERSUS

1. Union of India through
the Secreetary to Govt. of India,
M/O Urban Affairs & Employment,
Nirman Bhawan, New Delhi.
2. Director General, CPWD, Nirman Bhawan,
New Delhi.
3. Sukhdev Singh, Superintending Engineer,
(AA), I.T. Deptt., A Wing, 3rd Floor
Mittal Court, Nariman Point, Mumbai-400021.
4. Jai Prakash, Superintending Engineer
I.T.Deptt.7/35, Tilak, Kanpur (UP)-208003
5. B.B.Gupta, Superintending Eningeer
Allahabad Central Circle, CPWD,
841 University Road, Allahabad-211002
6. Dharam Pal, S.E. (TLC&QA), CPWD
Old CGO Building Annexe, 101, M.K.Road,
Mumbai - 400 020 (Now under posting in Delhi)
7. J.M.Sawroop, S.E., CDO, CPWD
Nirman Bhawan, New Delhi.
8. J.J.Lal, SE, PWD
Circle 7, Govt. of Delhi
2nd Nezamuddin Bridge,
East Appraoch,
Delhi-110082.
9. RC Gupta, SE (TLQA) DR, CPWD
Nirman Bhawan,
New Delhi.
10. B.N.Malhotra, SE (TLQA) NR,
CPWD, Sewa Bhawan, RK Puram,
New Delhi-110022.

All private respondents through DG (W)

..Respondents

(By Advocate: Shri Madhav Panikar for R-1 & R-2.
Shri G.K.Aggarwal for respondent-9.
None for other respondents.

2

O R D E R (ORAL)

By Hon'ble Shri S.A.T. Rizvi, M (A):

Aggrieved by allocation of wrong seniority, the applicant has filed the present OA impugning respondents' letter dated 27.9.1999 by which the representation made by him regarding his seniority has been rejected. Apart from the two official respondents, 8 others have been impleaded as private respondents. Of the private respondents, replies have been filed by the private respondent Nos. 5 & 9. They seek to contest the OA. Official respondent Nos. 1 & 2 have also jointly filed a reply contesting the OA. Other private respondents have not filed any reply. All the private respondents are Superintending Engineers like the applicant himself.

2. We have heard the learned counsel on either side and have perused the material placed on record.

3. The contention raised by the applicant is that whereas in the seniority list of 20.10.1994, he was shown at Sl.No.665, the private respondents, namely, Shri Sukhdev Singh, respondent No.3 herein and Shri Jai Prakash, respondent No.4 herein were shown at Sl. Nos. 671 and 674 respectively. The impugned seniority list of 25.9.1998 places the applicant below the aforesaid two private respondents who respectively occupy in the said list Sl.Nos. 158 and 159 whereas the applicant has been placed at Sl.No.161. The applicant is aggrieved by his aforesaid down grading and that is why this OA.

2

(3)

4. The learned counsel appearing in support of the OA has, in the context of the applicant losing seniority as above, placed reliance on DOPT's OM dated 30.1.1997. We have also perused the said OM and find that the same would apply in a situation in which promotions are made in accordance with the policy of reservation. Accordingly, it is provided therein that if a SC/ST candidate is promoted earlier (by virtue of the rule of reservation/roster) than his senior general candidate and the senior general candidate is promoted to the higher grade, he will regain his seniority over such SC/ST candidate promoted earlier than him. In other words, according to the said memorandum, the promotion of a SC/ST candidate made earlier in point of time does not in such cases confer upon him seniority over the general candidate even though the general candidate is promoted later to that same category. We also find that the aforesaid OM has been issued in the light of the judgement dated 10.11.1995 rendered by the Hon'ble Supreme Court in the case of Union of India Vs. Virpal Singh Chauhan etc. reported in JT.1995 (7) SC 231. In the present case, we find, the applicant as well as others have been promoted from the rank of Executive Engineer to that of Superintending Engineer and the impugned seniority list dated 25.9.1998 is in respect of Superintending Engineers.

5. Such promotions, we find, are not covered by the policy of reservation in promotions and accordingly, the private respondents, namely, S/Sh. Sukhdev Singh and Jai Prakash, both SC community officers are entitled to



11
(4)

promotion in accordance with the instructions of the Department of Personnel & Training placed at Annexure R-1 to the reply filed by the official respondents. The aforesaid instructions clearly provide that in matters of promotions by selection to posts within group 'A' which carry an ultimate salary of Rs.5700/- or less per month (pre-revised), where there is no reservation, SC/ST officers who are senior enough in the zone of consideration for promotion so as to be within the number of vacancies for which select list is required to be drawn up, would be included in that list provided they are not considered unfit for promotion. The aforesaid instructions also provide that in the event of promotion, the concerned SC/ST candidates will be positioned in the select list in accordance with the place allocated to them by the DPC on the basis of their record of service. In their cases, the criterion of bench-mark will not apply and they are entitled to be considered for promotion unless they are found unfit for promotion. (emphasis supplied)

6. The learned counsel appearing on behalf of the respondents has raised the issue of limitation on the ground that the impugned seniority list was issued on 25.9.1998 whereas the present OA has been filed on 28.8.2000. The aforesaid plea, we find, cannot be sustained inasmuch as the representation filed by the applicant has been rejected, after proper consideration and on its own merits by the respondents' letter of 27.9.1999. The limitation thus stands revived. The other contention raised is that the applicant has claimed

2

(5)

seniority after the panels for the years 1993-94 onwards have been recast but has not proceeded to implead the officers who are presently senior to him. This ground, we find, is sustained and the OA suffers from the defect of non-impleadment of necessary parties.

7. The learned counsel appearing on behalf of the official respondent Nos. 1 and 2 has next proceeded to furnish details of the rule position and the action taken by the official respondents to promote Executive Engineers to the post of Supdt. Engineer. According to him, the post of SE carrying the pay scale of Rs.3700-5000/- (pre-revised) is required to be filled on the basis of selection from amongst EEs with five years' regular service in the grade and possessing degree in Engineering from a recognized university. The bench-mark prescribed in the relevant recruitment rules for promotion to the rank of SE is, 'Very Good'. In compliance of this Tribunal's order in B.P.Bindal's case, DPC meetings were held in the UPSC in October, 1994 to prepare year-wise panels of EEs for regular promotion to the rank of SE in respect of the vacancies pertaining to the years 1982 to 1993-94. The proceedings of the DPC concluded on 10.10.1994 and as a result a panel of 20 officers was prepared in respect of the vacancies for the year 1992-93 and a panel of 19 officers to cover vacancies for the year 1993-94. The applicant, a general category candidate, was considered by the DPC against the aforesaid vacancies for 1992-93 and 1993-94 but was not empanelled as he failed to qualify in terms of the prescribed bench-mark of 'Very Good'. Admittedly,

d

(6)

several officers junior to the applicant got empanelled in respect of the aforesaid two years as they had a better record of service, comparatively speaking. The orders promoting the EEs to the rank of SE regularly were thereafter issued on 20.10.1994. However, all the officers empanelled for vacancies upto the year 1993-94 could not be promoted for want of vacancies.

8. Subsequently, as a result of cadre review, 37 new posts of SE were created by respondent's order dated 12.7.1995. In the wake of the aforesaid order, orders were issued on 4.9.1995 promoting 33 officers to the grade of SE to fill the newly created posts. The said 33 officers belonged to the aforesaid panel dated 10.10.1994 which was not only valid but had, as stated, also not been exhausted. This order of 4.9.1995 includes the names of several officers junior to the applicant who had superseded him. Accordingly, the said promotion order of 4.9.1995 was challenged before this Tribunal in OA-1865/95 (Shri Surinder Kumar & Ors. Vs. U.O.I. & Ors.). The ground taken in that OA was that the promotions in question were made to fill the vacancies created in 1995-96 from a panel which had been prepared for the vacancies covering the years only upto 1993-94. The Tribunal by its order dated 1.8.1996 set aside the aforesaid promotion and directed the respondents to organize a fresh DPC meeting for preparing a panel of EEs for appointment against 37 vacancies that had been created in the grade of SE in the year 1995. All those included in the zone of consideration for the said purpose were to be considered. The EEs earlier promoted

d

from amongst the panel drawn up for the years upto 1993-94 to fill the aforesaid 37 vacancies were not to be reverted until the recommendations of the fresh DPC became available and were implemented. The Tribunal further directed that in order to accommodate the aforesaid EEs who had been promoted against the posts of SE created in July, 1995, the official respondents shall make requisite adjustments so as to ensure that they were appointed against vacancies to fill which they were then empanelled. Accordingly, the respondents made necessary adjustments and appointed officers included in the panels for the years of upto 1991-92 fully and upto Sr.No.12 (Sh. R.K.Ghosh) from the panel for the year 1992-93. These appointments were made against the vacancies existing prior to the year ending 1993-94 in the grade of SE. The remaining officers, i.e., 8 from the panel of 1992-93 and 19 others from the panel of 1993-94 incidentally including all the officers who had superseded the applicant earlier were in the event reconsidered for promotion by the DPC held in the UPSC in February, 1997 for preparing year-wise panels in respect of vacancies for 1994-95, 1995-96 and 1996-97. The applicant together with the private respondent Nos. 3 & 4 was considered together with the other eligible officers for promotion against 1995-96 vacancies. The applicant was not recommended by the DPC as he failed again to achieve the bench-mark of 'Very Good'. The private respondent Nos. 3 & 4 who were admittedly junior to the applicant and who belonged to the SC category, were assessed by the DPC as 'Good'. Both of them were recommended by the DPC for promotion against the 1995-96


d


(8)

vacancies in accordance with the DOPT's instructions at Annexure R-1 on the basis that they were not found unfit for promotion. The applicant who could not make the mark on the aforesaid occasion was, however, considered again along with other eligible officers for promotion against the vacancies for the year 1996-97 and was included in the panel for the same year on the basis of his service record. Based thereon, the applicant stands promoted/appointed as SE. Insofar as the question of seniority vis-a-vis private respondent Nos. 3 & 4 is concerned, the applicable rules clearly provide that the persons appointed through an earlier selection are enblock senior to those promoted through subsequent selections. It is for this reason that the applicant was placed in the seniority list of 25.9.1998 below the aforesaid private respondents who, as already mentioned, were included in the panel for 1995-96, whereas the applicant could be included in the panel for 1996-97 only.

9. We have considered the matter carefully and find nothing wrong with the method followed by the official respondents and the rules and instructions applied by them in making promotions on year to year basis upto the year 1996-97. For the reasons already discussed, the various pleas advanced by the applicant do not have any force and are rejected.

10. In the background of the above discussions, the OA fails and is dismissed with no order as to costs.


(S.A.T. Rizvi)
Member (A)


(Ashok Agarwal)
Chairman

!Sunil!