

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW DELHI

O.A. No. 22.62  
T.A. No.

1989.

DATE OF DECISION 12<sup>th</sup> Dec 1989

Shri P.N.Kapoor \_\_\_\_\_ Applicant (s)

Shri B.S.Maine \_\_\_\_\_ Advocate for the Applicant (s)  
Union of India \_\_\_\_\_ Versus \_\_\_\_\_ Respondent (s)

Shri C.N.Abolri, \_\_\_\_\_ Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. T.S. Oberoi, Member (Judl.)

The Hon'ble Mr. P.C. Jain, Member (Admn.)

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes
2. To be referred to the Reporter or not ? No
3. Whether their Lordships wish to see the fair copy of the Judgement ? No -
4. To be circulated to all Benches of the Tribunal ? No .

JUDGEMENT

(Delivered by Hon'ble Shri T.S.Oberoi, Member).

This is an application filed by the applicant, under Section 19 of the Administrative Tribunals Act, 1935, wherein he has challenged his reversion from the post of Sr. Civil Engineer/Survey, Saharanpur to Class II post and his posting as Assistant Engineer/Survey-I, Sharanpur, by downgrading the post of SEN/Survey, Saharanpur, ordered vide notice dated 9.11.1989 (Annexure A-1 to the application).

2. The applicant's case briefly is that he was included in the provisional panel of Assistant Engineers vide order dated 10.8.1987 (Annexure A-1 to the application) and, on the recommendations of the Departmental Promotion Committee, he was placed in the provisional panel for ad-hoc promotion to Sr. Scale in the Civil Engineering Department, vide letter dated 13.12.1988.

Thereafter, he was put to officiate in the Senior Scale as Sr.Civil Engineer and posted as Sr. Engineer(Construction) Bikaner, with effect from 14.2.1989, and later transferred to ~~Delhi~~ Saharanpur, in the same capacity, vide order dated 12.10.1989 (Annexure-5). He was the senior-most in the panel of eight officers shown in the panel approved vide order dated 13.12.88 (Annexure A-3) and, thereafter, seven more Assistant Engineers have been promoted as Sr.Civil Engineers, and thus, there are 15 Sr. Civil Engineers, who are junior to him. According to the applicant, there is no dearth of posts of Sr.Civil Engineers and that his reversion, ordered vide the impugned order dated 9.11.1989, is governed by some extraneous considerations, as no warning or any adverse report had, during all this period, been conveyed to him, by the department, showing that his work had all along been satisfactory, as also evident from the fact that the DPC had approved his name for promotion, and placed him at the top of the panel, vide Annexure A-3. He has <sup>also</sup> stated that though his present headquarter is at Saharanpur, he has to look after various items of work going on at various outstations spread over Kanpur to Jodhpur, and had been away from his headquarter during the relevant period from 8th November onwards, and thus, the impugned order dated 9.11.1989 has not yet been served upon him, and that after arranging a copy thereof, has come before this Tribunal, by way of the present application.

3. After considering the grounds, contained in the application, by way of interim relief, vide our order dated 16.11.1989, the respondents were restrained from implementing their order dated 9.11.1989 for a period of 14 days, till 29th November, 1989.

4. In the written statement filed on behalf of the

respondents, a preliminary objection was raised that the applicant has come before the Tribunal without exhausting departmental remedy of appeal, as provided in Rule 18(c)(b) of the Railway Servants (Discipline & Appeal) Rules, 1963. It has also been pointed out that the order dated 9.11.1989 has since been served upon the applicant or in any case he has a copy thereof in his possession, and, therefore, the application has become infructuous. An exception has been taken on the ground that this Tribunal, being not a court of appeal, should not have entertained this application, in the interest of administration, as the applicant has chosen to come to this Tribunal, without availing of the departmental channel.

5. We have considered the rival contentions and also the facts and circumstances of the case, as discernible from the application, as well as the written statement filed by way of objections to the grant/confirmation of the interim relief. Without dwelling, at length, upon the merits of the case of each party, and without prejudice to their case eventually, we are of the view that the case can be disposed of, at this stage itself, by giving the following directions: -

- (a) the applicant shall file an appeal within seven days of the date of this order,
- (b) the respondents shall consider and dispose of the appeal, in accordance with the provisions of law, within six weeks thereafter, and
- (c) till then, the respondents are restrained from implementing the impugned order dated 9.11.1989, and reverting the applicant to Class II post as Assistant Engineer/Surveyor-I,

6. Needless to say that the applicant shall be at liberty to seek relief according to law, in the event of his not being satisfied, after decision of his appeal.

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7. The application is disposed of on the above terms and in the circumstances, the parties are left to bear their own costs.

(*G. C. Jain*)  
(P.C. Jain)  
Member (Admn.)

(*T. S. Oberoi*)  
Member (Judl.)