

(S)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No. 470/89

New Delhi this 7th March 1994

The Hon'ble Mr. J.P. Sharma, Member (J)
The Hon'ble Mr. B.K. Singh, Member (A)

Shri S.C. Bhatia,
son of Shri K.L. Bhatia,
Resident of B-1/261 Janakpuri,
New Delhi 110 058.

... Applicant

(By Advocate : None)

Versus

1. Union of India through
The Secretary,
Ministry of Urban Development,
Nirman Bhawan,
New Delhi-110 001.
2. Director General of Works,
Central Public Works Department,
Nirman Bhawan,
New Delhi-110 011.
3. Union Public Service Commission,
through Secretary,
UPSC, Dholpur House,
New Delhi-110 011.
4. Shri K.P. Satdeve,
Senior Architect II,
Public Works Department,
Delhi Administration,
N.S.O. Building 11th Floor,
I.P. Estate,
New Delhi-110 002
5. Shri S.F.B. Jessudian,
C/o Chief Engineer,
CPWD Southern Zone I,
140 Marshalls Road,
Egmore-Madras-620 008. ... Respondents

(By Advocate Shri P.H. Ramchandani with
Advocate Shri Mohan)

O R D E R

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

The grievance of the applicant is against
rejection of his representation dated 26.7.1988 on
the seniority list of the Agricultural Wing of the
Central Public Works Department as on 1.5.1988. He
was informed that his position in the seniority list

↓

has been changed due to review of promotion made by the Union Public Service Commission and his position in the seniority list, therefore, is correct.

2. The applicant was appointed alongwith others as Deputy Architect on the recommendation of the Union Public Service Commission on the basis of a selection. The relative order on merit and date of appointment as Deputy Architect is as follows:

1. Shri S.C. Bhatia,
Applicant,
18.5.1991
2. Shri S.S. Rao,
9.6.1971
3. Shri K.P. Satdeva (Respondent No. 4)
1.7.1991
4. Shri S.F.B. Jessudian (Respondent No. 5),
28.2.1972

The date of promotion of the applicant on the recommendation of the DPC is 1.11.1975 and the date of confirmation is 1.4.1977 and of Respondent Nos. 4 & 5 Shri Satdeva and Shri Jessudian is 15.11.1975 and 10.5.1976 respectively and the date of confirmation in the grade is 15.11.1977 and 10.5.1978 respectively. Subsequently, the applicant had gone on deputation and in the meantime Respondent Nos. 4 & 5 were promoted as Senior Architect with effect from 21.1.1985 and 11.3.1985 respectively. When the applicant returned from the foreign service and joined the parent department on 14.4.1986 he was given promotion as Senior Architect under Next Below Rule with effect from 21.1.1985. In the seniority list of Architects as on 1.2.1976 the position of the applicant in the seniority list was at Serial Nos. 40 and that of Respondent Nos. 4 & 5

(7)

was at Serial Nos. 43 and 44 respectively. In the subsequent seniority list of Architects as on 1.3.1983 the position of the applicant in the seniority list was at Serial No. 17 and that of Respondent Nos. 4 & 5 at Serial Nos. 18 & 19 respectively. Again in the seniority list of Group 'A' Officers of Architectural Wing as on 1.1.1987, the applicant was at Serial No. 15 while respondent Nos. 4 & 5 at 16 & 17 respectively, and in the list of Senior Architects the applicant was at Serial No. 26 and Respondent Nos. 4 & 5 at Serial Nos. 27 & 28 respectively. Thus, till now the applicant was shown Senior to Respondent Nos. 4 & 5.

3. However, the grievance of the applicant is that another seniority list was issued as on 15.5.1987, and the applicant has been shown junior to Respondent Nos. 4 & 5 in as much as the position of Respondent No. 4 & 5 was at Serial Nos. 15 & 16 and that of the applicant at Serial No. 17. Another seniority list of Group 'A' Officer in the Architectural Wing of Central Public Works Department was issued as on 1.5.1988, and in this the applicant was shown junior to Respondents Nos. 4 & 5 in the Architect as well as Senior Architect in as much as the position in the seniority list of the Architect was at Serial No. 17 and that of Respondent Nos. 4 & 5 at Serial Nos. 15 & 16 while in the Grade of Senior Architect his position was at Serial No. 25 and that of Respondent Nos. 4 & 5 was at Serial Nos. 23 & 24 respectively. The applicant made a representation and he has been given the impugned reply. He has filed this application for the grant of the relief that the applicant be restored to his original seniority in the grade of Architect and senior Architect as in the list as on 1.1.1987 and be given seniority over the Respondent Nos. 4 & 5.

4. A notice was issued to the respondents who contested the application and it is stated that the reasons for change of seniority of the applicant is due to the fact that prior to 1973 the recruitment rules provided the method of filling up the post of Architect by promotion of Deputy Architects and Assistant Architects in the ratio of 2 : 1. The promotion of Deputy Architect was on the basis of seniority-cum-fitness after completion of five years service in the grade whereas the promotion of Assistant Architect was on selection basis through Union Public Service Commission after completion of eight years regular service in the grade. During the year 1970, Deputy Architects having five years service in the grade were not available for filling up the post of Architect failing to their quota and as such the eligibility period was reduced from 5 to 4 years. The Commission, however, advised to make a provision in the recruitment rules for filling up the post of Architect by promotion of Deputy Architect and Assistant Architect failing which by direct recruitment and so a proposal was sent to the Union Public Service Commission for amendment of the recruitment rules in August 1973. The Commission changed the whole schedule of recruitment rules by the letter dated 17.10.1973. However, the approved amended rules did not contain the eligibility criteria for promotion to the Grade of Architect which eluded detection. The rules were notified on 28.12.1973. The eligibility criteria was subsequently reduced to four years by Union Public Service Commission's letter dated 28.4.1977. However, the mistake was detected in 1983 that in the recruitment rules notified in December 1973 where the eligibility criteria for promotion was inadvertently

-: 5 :-

omitted. The Union Public Service Commission then was consulted in the matter whereby the Union Public Service Commission in consultation with the Department of Personnel and Administrative Reforms advised for review of all promotions of Deputy Architects to the Grade of Architect made after 1973 on selection basis from respondents Nos. 4 & 5. In nutshell it is stated by the respondents that the promotions after 1973 are to be made on selection basis and not on seniority-cum-fitness from the grade of Deputy Architect to the grade of Architect. In view of this the respondents have stated that the applicant has no case.

5. None appeared for the applicant and Shri P.H. and Ramachand^{an} appeared for official respondents assisted us in going through the pleadings and also argued the case on behalf of the official respondents. None appeared on behalf of the Respondent Nos. 4 & 5. Firstly, we find that the action of the respondents in revising the seniority by holding a review D.P.C. is wholly unjustified. In fact the applicant was already promoted in his turn on the basis of seniority cum fitness & shown to Respondent Nos. 4 & 5 on 1.11.1975. Though the recruitment rules were notified in 1973 but these rules did not have any provisions of eligibility criteria for promotion to the grade of Architect. The applicant as well as Respondent Nos. 4 & 5 were given promotion taking into account that such a provision existed. However, this eligibility criteria was subsequently introduced in the notification issued in April 1987 and by the time the applicant as well as the respondent Nos. 4 & 5 were already holding the post of Architect. The applicant was also

Je

-: 6 :-

confirmed in the grade before the subsequent notification on 28.4.1977 as he was confirmed with effect from 1.4.1977. The respondent Nos. 4 & 5 were confirmed subsequently in November 1977 and May 1978 respectively. In view of this fact without giving any proper notice to the applicant, he cannot be made to lose his seniority in the grade of Architect. Merely because the new recruitment rules provided the promotion from the post of Deputy Architect to Architect by a selection process would not make the applicant to be reconsidered on this basis. Respondent Nos. 4 & 5 had also been promoted on the basis of seniority-cum-fitness and as such, there was no discrimination. In the selection process the bench mark plays an important role. It may be that respondent Nos. 4 & 5 may have better performance and in the process of selection a junior may also supersede a senior who is ~~not just~~ ^{not} better than the juniors. But when the matter has gone upto 1987 and the applicant has already been shown senior to respondent Nos. 4 & 5 not only in the grade of Architects but also in the still higher grade of senior Architect then reviewing the whole position would be unsettling the settled matters. The only reason given for holding review DPC was because of the new recruitment rules which provided the filling up of the post by promotion on the basis of selection.

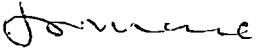
6. The learned counsel for the respondents could not justify the action of the respondents in down grading the seniority of the applicant by showing any authority or any circular or OM issued by the Dept. of Personnel and Training. The seniority plays an important role in the service career and when the applicant has been found fit to hold the promotional post and further he has been given his qualification which speak high of him as compared

-: 7 :-

to Respondent Nos. 4 & 5, we do not find any reason that now the promotion should be again judged on the basis of the selection.

7. In view of the above facts and circumstances, is the applicant allowed with the direction to the respondents to restore the seniority list of January 1987. The applicant shall be treated senior to respondent Nos. 4 & 5 and he will get all consequential benefits arising therefrom. The seniority list issued in May 1987 and May 1988 shall accordingly be corrected and the applicant shall be restored in the seniority list to the same position to which he was shown in the seniority list as on 1.1.1987 circulated on 12.2.1987. In the circumstances the parties to bear their own costs.


(B.K. Singh)
Member (A)


(J.P. Sharma)
Member (J)

Mittal

RA Allwrd
OA Reddy