

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No.
~~XXXXX~~

873/ 1989

DATE OF DECISION 18.9.1989

K. Sahabjan

Applicant (s)

Shri G.N. Oberoi,

Advocate for the Applicant (s)

Versus

Union of India through Secretary, Ministry of Defence,

South Block, New Delhi-11 and another

Smt. Raj Kumari Chopra

Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. S.P Mukerji, Vice-Chairman

&

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

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. To be circulated to all Benches of the Tribunal ?

JUDGEMENT

Shri S.P Mukerji, Vice-Chairman

In this application dated 21.4.89 filed under Section 19 of the Administrative Tribunals Act, the applicant who has been working as a Superintending Engineer under the Engineer-in-Chief, Army HQ, has prayed that the impugned panel dated 28th July, 1988 at Annexure A-1 for promotion of Superintending Engineers/ Additional Chief Engineers to the non-functional Selection Grade of Junior Administrative Level, in which he was not included should be set aside as illegal and against the principle of natural justice and that he should be placed in the Selection Grade with effect from 30th July, 1986 when his juniors were promoted to that Grade. The material facts of the case are as follows:

2. The applicant has been working as a Superintending Engineer since July, 1986. On 28th July, 1988 the respondents issued a panel of 113 officers for promotion to the Selection Grade of Rs.4500-5700/- without including his name, when his juniors were given retrospective promotion from 30th July, 1986. His representation was rejected on the ground that since he was involved in disciplinary proceedings, the assessment of the DPC had been kept in sealed cover and his name not included. According to the applicant, the disciplinary proceedings were commenced in February, 1988 in connection with a fire in the storeyard in April, 1984 and deficiencies in the stores held by the Storekeeper during the period between 1982 and 1985 when the applicant was Garrison Engineer in Bikaner Division. The disciplinary proceedings ended in the order of punishment dated 19th August, 1988 imposing a minor penalty of "withholding of increment for one year without cumulative effect". The applicant contends that the disciplinary proceedings should not have been a bar to his promotion to the Selection Grade in July, 1986 when his juniors were promoted.

3. The respondents have stated that when the DPC met in 1988 the disciplinary proceedings had already been initiated and accordingly his name was not included subject to the assessment being kept in a sealed cover. They have clarified that the charge-sheet was issued against the applicant on 22nd February, 1988 while the meeting of the DPC was held on 3rd June, 1988. Accordingly the sealed cover procedure was followed. They have averred that the question of opening the sealed cover arises after the finalisation of the disciplinary case provided the individual is exonerated of all the charges. If however

the disciplinary proceedings ended in minor penalty the recommendations of the DPC will not be given effect to.

4. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. We admit the application. It has been held by a Full Bench of this Tribunal in K.Ch.Venkatareddy v. Union of India, ATR 1987(1) 547 that unless the charge-sheet is served on the official, he cannot be denied consideration for promotion, ^{or for} crossing of efficiency bar, merely on the ground that he is under some cloud or suspicion. It is true that when the DPC met in 1988, the charge-sheet had already been served on him. But since on the basis of the DPC's recommendations both his seniors and juniors were given promotion with retrospective effect between 1.1.86 and 29.12.86 (vide Annexure A-1) ^{while} _{when} the charge-sheet had been served on him in February, 1988, the DPC should not have excluded his name for consideration for inclusion in the panel for promotion to the Selection Grade.

5. Secondly, even if the promotions are given effect to from 1988, the respondents were duty-bound to open the sealed cover after the closure of the disciplinary proceedings and take a view about his promotion to the Selection Grade considering the assessment made in the sealed cover and the outcome of the disciplinary proceedings.

6. Thirdly, the question of denying him promotion while he ^{was} _{is} undergoing a minor penalty of stoppage of increment cannot be allowed as it will ^{be} tantamount to imposing double penalty. This view has been held by the Chandigarh Bench of the Tribunal in Parveen Kumar v. Indian Council of Agricultural Research & ors., 1988(3)SLJ 694.

7. In the facts and circumstances we allow this application,

with the direction that a Review DPC should consider the applicant's case for promotion as in July, 1986, taking into account his performance and Confidential Rolls upto 1986 and not later and ^{consider promoting to} ~~promote him to~~ the Selection Grade with effect from 30.7.86 when his juniors were promoted to that Grade on the basis of the recommendations made by the Review DPC. There will be no order as to costs.

18.9.86
(T.S OBEROI)
MEMBER(J)

S.P.M.
(S.P MUKERJI)
VICE CHAIRMAN