

(B)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 1096/89

DECIDED ON : 03.09.1993

R. N. Dakshi,
D. K. Bhattacharya, and
R. N. Chanda

... Petitioners

Vs.

Union of India through the
Secretary, Ministry of Water
Resources & Anr.

... Respondents

CORAM :

THE HON'BLE MR. JUSTICE V. S. MALIMATH, CHAIRMAN
THE HON'BLE MR. S. R. ADIGE, MEMBER (A)

Petitioners present in person
Respondents through Shri M. L. Verma, Counsel

JUDGMENT (ORAL)

Hon'ble Mr. Justice V. S. Malimath :-

The three petitioners are diploma holders. They were holding the post of Junior Engineers. 50 per cent of the posts of Extra Assistant Directors/ Assistant Engineers (Civil and Mechanical) are required to be filled up by promotion from among the degree holder Junior Engineers and 50 per cent from among the Junior Engineers who are diploma holders. The petitioners 1 and 3 were promoted on regular basis w.e.f. 31.12.1984 as Extra Assistant Directors/Asstt. Engineers in pursuance of the selection made by the departmental promotion committee. So far as petitioner No.2 is concerned, he was on deputation at the relevant point of time and he was given regular promotion by order dated 22.1.1985, with effect from the date his juniors were promoted. The promotion took effect from 31.12.1984. Subsequently, the

(14)

petitioners were also declared to have completed their probation satisfactorily as is clear from the orders Annexures A-4 and A-5. Some others were appointed, reference to which is not necessary. On 28.3.1989, an order was passed as per Annexure A-10 in pursuance of the review DPC held on the 27th of December, 1988. The said order reads :-

"The review Departmental Promotion Committee (Group B) in the meeting held on 27.12.88 considered persons belonging to SC/ST, who got higher position in the seniority list of Jr. Engineers as on 30.11.1984 by virtue of confirmation in the grade of Extra Assistant Director/Assistant Engineer on regular basis against vacancies falling in the reserved quota for SC/ST and recommended suitable officers for inclusion of their names in the DPC (Group B) panel dated 31.12.84 and drew the revised panel. S/Shri R.N. Dakshi, D.K. Bhattacharya and R. N. Chanda who are working in the grade of EAD/AE on regular basis on the recommendations of the earlier DPC, have not been approved for regular promotion by the Review DPC. Accordingly S/Shri R.N. Dakshi, D.K. Bhattacharya and R.N. Chanda are deregularised with effect from 27.12.88. These officers will, however, continue to officiate in the grade of EAD/AE in an adhoc capacity till further orders."

Being aggrieved by this action of depriving the petitioners of the benefit of regular promotion which they had earned earlier, they have challenged the impugned order in these proceedings.

2. The contention of the petitioners is that their promotions having been effected on their candidature being evaluated by a duly constituted DPC, they having served satisfactorily and earned satisfactorily the completion of probation period, could not be deprived of these valuable rights by subjecting their cases for a review DPC. It is also urged that if

the review became necessary for the purpose of respecting the rights of the members of the SC/ST, it was enough to take appropriate action for their benefit without depriving the petitioners of the benefit of promotion which they had earned long back. As we felt concerned about the situation, we thought it proper to call upon the respondents to produce before us the proceedings of the DPC which was held on 27.12.1988, on the basis of which the impugned order has been made. We have gone through the same carefully.

3. The stand taken by the respondents in the reply is that on the basis of the then existing seniority list in the year 1982 the review DPC was held and on the basis of their recommendations, the petitioners were promoted. It is their case that subsequently certain confirmation orders were made in favour of the members of SC/ST which earned for them appropriate higher ranking in the seniority list of Jr. Engineers. It is in the absence of this privilege which they had earned later that the earlier DPC had considered the cases of the petitioners and others and accorded promotions. It is, therefore, pleaded that to set the matters right and to respect the rights of the members of the SC/ST, in particular whose names got included in the seniority list, that it became necessary to revise the seniority list of Junior Engineers. The revised seniority list of Jr. Engineers was accordingly circulated in the year 1985 as on

30.11.1984/1.12.1984 on 2.3.1985. On 3.10.1988 the revised seniority assigning to the SC/ST appointment in a substantive capacity and appropriate ranking in the cadre of Jr. Engineers as on 30.11.1984 was duly circulated. It is pleaded ^{that} ~~on~~ their being assigned correct positions in the seniority list, the members of SC/ST came within the normal zone of consideration for promotion as EAD/AE on regular basis as on 31.12.1984 when the earlier DPC was held. It is for this reason that it is pleaded that all the promotions had to be reviewed in the light of the new seniority list and promotion accorded to the cadre of Extra. Asstt. Directors/Asstt. Engineers. It is that exercise which was done by the review DPC on 27.12.1988. It is pleaded that there were 119 vacancies which had to be filled up in accordance with the recommendations of the said DPC. It is further stated that the petitioners could not be empanelled by the Review DPC as they did not come within the range. They had, therefore, to be deregularised.

4. When regular promotions are made, normally the question of disturbing their promotion would not arise. But in this case, regular promotions effected earlier had to be reviewed for the reason that therer was substantial alteration in the seniority list which was the basis of promotion in the year 1984 when the petitioners' cases were considered and promotion accorded. In view of the subsequent according of confirmation retrospectively to the members of SC/ST to which they were entitled to from anterior dates prior to 1984, the entire seniority list of Jr. Engineers had to undergo modification by

interpolating the names of the members of the SC/ST who had a right to be included into the seniority list. The number of persons to be considered for promotion by selection also stood enlarged having regard to the ranks assigned to the members of SC/ST and the total number of vacancies which were required to be filled up in the year 1984. The total number of vacancies then were 119. But earlier empanelment was made only of 100 persons and another 5 were added later on.

5. We find on a perusal of the proceedings of the DPC that as 50 per cent of the vacancies are required to be filled up by promotion by selection from the graduate Jr. Engineers and 50 per cent from the diploma holders, there being 119 vacancies, about 60 posts were required to be filled up from among the graduate and remaining about 60 from among the diploma holders. From the proceedings it is seen that such of the vacancies which could not be filled up from one category had to be filled up from another category. As there were only 43 candidates available from among the graduates though there were about 60 vacancies, the remaining vacancies stood added to the promotee quota thus bringing it to 76. As 76 vacancies were required to be filled up by promotion, three times the number of vacancies in that category were required to be considered by the DPC. The proceedings of the DPC show that they considered the cases of 228 seniormost diploma holders in the revised seniority list published in the year 1988. We also see from the proceedings of the DPC that whereas 43 persons were

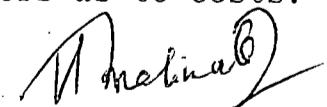
selected from among the graduates, 76 persons were selected from among the diploma holders. This includes the members selected from the category of SC/ST. We find from the proceedings that in all 26 members belonging to that category have been placed at the bottom of the list. Only 50 persons from the general pool have been included from among the diploma holders. The last person included in the select list from among the diploma holders, we find, is Shri A. R. Sarkar who is at sl. No. 50. Those who are at sl. No. 51 to 76 are all members of the SC/ST. Among the 228 persons whose cases were considered by the DPC, we find that the names of the petitioners are found at sl. Nos. 93, 95 and 96. All the three petitioners have been graded as 'very good'. The last person who has been included in the diploma holders category in the promotion quota from the general pool, Shri A. R. Sarkar, is at sl. No. 92. We scrutinised the names of all the 76 persons who have been included in the panel. We find that all of them have been given the same grade as 'very good', as has been assigned to the three petitioners before us. Those who are seniors to the petitioners but who have secured inferior grades than 'very good' have not at all been included in the panel. We are satisfied on a perusal of the proceedings of the DPC that none juniors to the petitioners have been included in the panel. We are also satisfied that none who had secured any grade inferior to the one secured by the petitioners has been included in the panel. There was just and

fair consideration at the hands of the DPC. It is, therefore, not possible to take the view that there has been invasion of the legitimate rights of the petitioners when they stood deregularised by the impugned order. It is unfortunate that the correct seniority list was not adopted when they were promoted in the year 1984. Had the correct seniority list been available at that time, the petitioners would not have got promoted. As what has really been done in this case to set the mistake right by following the proper procedure which is just, fair and reasonable, our interference would not be justified in these proceedings. Deregularisation brought about by the impugned order cannot, therefore, be faulted.

6. We would, however, like to add that though the petitioners have been deprived of the promotion granted to them in the year 1984 some time in 1988, the respondents would not be entitled to claim recovery of the higher emoluments paid to the petitioners for the reason that they actually performed in the higher positions and on the strength of the orders made by the administration. Though no such orders appear to have been made, we make it clear that the respondents would not be entitled to claim any recovery from the petitioners.

7. For the reasons stated above, this petition fails and is accordingly dismissed. No orders as to costs.


(S. R. Adige)
Member (A)


(V. S. Malimath)
Chairman

as
030993