

**Central Administrative Tribunal
Principal Bench**

OA No.706/2020

New Delhi, this the 13th day of March, 2020



**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. A.K. Bishnoi, Member (A)**

Neeraj Agrawal,
S/o Shri Sheo Prasad Agrawal,
Aged about 48 years,
Director (Contracts), Group-A,
HQ DGMAP, Kashmir House,
Rajaji Marg,
New Delhi-110011.

Also at –

172, Ground Floor,
Harsh Vihar, Pitampura
New Delhi-110011.

...Applicant

(By Advocate : Shri Swetank Shantanu with Ms. Monalisa Harsh)

Versus

1. Union of India, through Secretary,
Ministry of Defence, South Block,
New Delhi-110011.
2. Engineer-in-Chief,
Army Headquarters,
Kashmir House,
Rajaji Marg,
New Delhi-110011.
3. R.K. Jain,
Flat No.204,
The Retreat Society,
Ivory Tower,
South City-1,
Gurugram-122001.

4. A.K. Srivastava,
CGM, JT& Highway Operations,
NHAI,
G-586, Dwarka Sector 10,
Delhi-110075.
5. Mahesh Kumar,
Director (Contracts),
HQ, DG, MAP,
Kashmir House,
Rajaji Marg,
New Delhi-110011.
6. Union Public Service Commission,
Dholpur House,
Shahjahan Road,
New Delhi-110001.



...Respondents

(By Advocate : Shri Y.P. Singh and Shri R.V. Sinha)

ORDER (ORAL)

Justice L. Narasimha Reddy, Chairman :-

The applicant joined the Military Engineering Services (MES) as Assistant Surveyor of Works, on 06.07.1993. Disciplinary proceedings were initiated against him in the year 2007 and through an order dated 13.11.2007, the punishment of reduction of pay scale by one stage, for a period of one year, without cumulative effect, was imposed upon him. The next promotion is to the post of Superintending Engineer. The DPC for that purpose met on 29.10.2010, but the applicant was

assessed as unfit for promotion. Thereafter, he was promoted in the subsequent selection, in the year 2013.



2. The applicant made a representation, stating that he was entitled to be promoted against the vacancy of the year 2009-10, and there was no basis for denial of the same, particularly, when the punishment has elapsed by the time, the DPC met. Earlier he filed an OA No.1221/19. That was disposed of on 16.04.2019, directing the respondents to pass a speaking order, on the representation dated 23.02.2018, submitted by the applicant.

3. In his representation, the applicant relied upon the OM dated 28.04.2014, and has raised certain other contentions also. Through an order dated 21.10.2019, the Appointing Authority rejected the representation of the applicant. The same is challenged in this OA and a prayer is made for promoting the applicant as Superintending Engineer, against the vacancy of the year 2009-10.

4. We heard Shri Swetank Shantanu, learned counsel for applicant and Shri Y.P. Singh and Shri R.V. Sinha, learned counsel for respondents.



5. This is the second round of litigation by the applicant, in his effort to get promoted as Superintending Engineer against the vacancy year 2009-10. It is not in dispute that he was imposed the punishment of reduction of pay through an order dated 13.11.2007. It may be true that by the time the DPC met on 29.10.2010, the punishment had worked itself out. However, the discretion of the DPC to assess the applicant for promotion to the post of Superintending Engineer cannot be restricted. Even if the ACRs of the relevant period are otherwise above the benchmark, the factum of the applicant suffering a punishment during that period, is certainly a factor to be taken into account, by the DPC at least in a comparative manner. In other words, if an Assistant Surveyor of Works, who is junior to the applicant, but without any blemish or whatever is available, naturally the DPC would be prone to choose him. The law concedes that much discretion to the DPC.

6. Though the applicant relied upon OM dated 28.04.2014, it cannot govern the situation that existed earlier thereto. Assuming that principles enunciated therein are relevant, the applicant is not able to point out as to, which part of it is violated. This is not a case in

which the ACRs of the applicant were downgraded by the DPC, on account of the punishment suffered by him.

7. We do not find any merit in the OA and the same is accordingly, dismissed.

There shall be no orders as to costs.



(A.K. Bishnoi)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

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