

CENTRAL ADMINISTRATIVE TRIBUNAL  
JAMMU BENCH, JAMMU

Hearing through video conferencing

T.A. No. 62/7018/2020

Order reserved on 08.03.2021  
Order pronounced on 12.03.2021



HON'BLE MR. RAKESH SAGAR JAIN, MEMBER (J)  
HON'BLE MR. ANAND MATHUR, MEMBER (A)

Mohammad Shafi Dar aged about 56 years, S/o Abdul Ahad Dar R/o Sogam Kupwara, Kashmir

.....Applicant

(Advocate: Mr. Shuja Ul Haq)

**Versus**

1. State of J&K through Commissioner Secretary to Govt. Power Development Department Kashmir Civil Secretariat Srinagar/Jammu.
2. Development Commissioner (Power) Srinagar/Jammu.
3. Chief Engineer System and Operations Division Bemina Srinagar Kashmir.

.....Respondents

(Advocate: Mr. Amit Gupta, Additional Advocate General)

(ORDER)

Delivered by Hon'ble Mr. Rakesh Sagar Jain, Member-J

1. The present T.A. has been filed by applicant Mohammad Shafi Dar seeking the following reliefs:-

“a) By issuance of writ, order or direction one in the nature of mandamus, respondents be commanded to promote the petitioner on the post of Assistant Executive Engineer w.e.f., 15-10-1999, i.e., the date when the Junior of the petitioner namely Abdul Majeed Bhat has



been promoted as Assistant Executive Engineer in the Department and pay all the service benefits unto the petitioner.

- b) By issuance of writ, order or direction one in the nature of mandamus, respondents be commanded to give effect to the promotion of the petitioner as Assistant Engineer (Civil) in PDD monetarily w.e.f., 15-10-1994 and also pay him the arrears of pay having fallen due to him owing to the placement of the petitioner in seniority list over and above Mr. Abdul Majeed Bhat.
- c) By issuance of writ, order or direction one in the nature of mandamus, respondents be commanded to place the petitioner as Executive Engineer w.e.f., 4-5-2008 i.e., the date when the Junior of the petition namely Abdul Majeed Bhat has been placed as Executive Engineer in the Department.
- d) Any other relief as this Hon'ble Court may deem fit and proper under the circumstances of the case may also be passed in favour of the petitioner and against the respondents."

2. Limited case of applicant is that he seeks the relief to be promoted on the same date when his junior Abdul Majid Bhat has been promoted in the engineering wing. It is the case of the applicant that in terms of directions given by the Hon'ble High Court vide order dated 27.05.2018 in SWP No. 1695/2016 filed by the applicants, the respondents placed the applicant in the seniority list of Junior Engineers (Civil) issued vide Government order dated 09.12.1992, wherein the applicant was placed at serial No. 28-A ahead of his junior Ab. Majid Bhat and consequently has been promoted further as Assistant Engineer (Civil) from the date Mr. Ab. Majid Bhat was promoted i.e., 15.10.1994.



3. It is the case of the applicant that Abdul Majid Bhat despite being his junior has been promoted as Assistant Executive Engineer w.e.f., 1999 and Executive Engineer w.e.f., 04.05.2008, thereby superseding the applicant. Hence, the prayer of the applicant seeking promotion to the post of Assistant Executive Engineer and Executive Engineer from the dates his junior Abdul Majid Bhat was promoted.
4. We have heard and considered the arguments of learned counsel for the applicant and learned A.A.G. for the respondents and gone through the material on record.
5. Perusal of material on record shows that Abdul Majid Bhat was promoted as Assistant Executive Engineer (Civil) from 15.10.1999 to 28.09.2004 notionally and from 29.09.2004 on regular basis and that said Abdul Majid Bhat was posted against the vacant post of Executive Engineers (Civil) on Incharge basis vide order dated 04.08.2008.
6. Undoubtedly, applicant was placed at serial no. 28A, ahead of his junior Abdul Majid Bhat vide Government order dated 09.12.1992 in the seniority list of Junior Engineers (Civil) and thereafter, promoted as Assistant Engineer (Civil) from the date, Abdul Majid Bhat was promoted. This fact is clear from the order dated 18.02.2019 passed by the Hon'ble High Court in CP SW No. 672/2016 filed by the applicant against Mr. Hirdesh Kumar. So, Abdul Majid Bhat is junior



to the applicant but vide Government order 57 PDD of 2007 dated 07.03.2007 has superseded him in the promotion to the post of Assistant Executive Engineer (Civil). Therefore, applicant is entitled to be promoted to the post of Assistant Executive Engineer (Civil) from the date his junior Abdul Majid Bhat was promoted vide order dated 07.03.2007.

7. It is the case of applicant that Abdul Majid Bhat has been promoted as Executive Engineer (Civil) and therefore, applicant is also entitled to be promoted on the same date as Abdul Majid Bhat was promoted in the year 2008.
8. Perusal of the order dated 07.03.2007 (Annexure VIII), shows that Abdul Majid Bhat has been notionally promoted Assistant Executive Engineer (Civil) from 15.10.1999 to 28.09.2004 and from 29.09.2004 on regular basis. Accordingly, the wrong done to the applicant of being superseded by his junior has to be remedied.
9. Hence, respondents are directed to consider the promotion of the applicant being senior to Abdul Majid Bhat as Assistant Executive Engineer (Civil) notionally from 15.10.1999 to 28.09.2004 and regularly from 29.09.2004 similar to the promotion given to Abdul Majid Bhat by way of Government order no. 57 PDD of 2007 dated 07.03.2007.



10. Applicant also seeks promotion to the post of Executive Engineer from the year 2008 when his junior Abdul Majid Bhat was promoted as Executive Engineer (Civil). Government order dated 265 PDD of 2008 dated 04.08.2008 shows that said Abdul Majid Bhat was posted against the vacant post of Executive Engineer (Civil) on Incharge basis.
11. Although, the Incharge placement does not confer any right of promotion on the incumbent, but the seniors ought to be preferred for such arrangement. It is fairly well settled that even while making ad hoc or Incharge appointments to a higher post, the concerned authority shall be under an obligation to take into account the seniority in the lower category. It is only when the regular promotions are made, that the DPC can select the candidates and in the process, the senior can also be overlooked. Once, there is no selection process involved, the seniority deserves to be respected. Of course it is also a settled law that an adjustment on ad hoc or Incharge basis against such post by an officer who did not possess requisite qualification for holding the post would be illegal and is to be taken into consideration while ordering such temporary adjustments.
12. Looking to the fact of the case, more particularly the seniority list, direction is issued to the official respondents to revisit the Government order dated 265 PDD of 2008 dated 04.08.2008 issued



by Commissioner/Secretary to Government, Power Development Department and make the necessary corrections, in case the impugned list has been prepared in violation of aforementioned principle of law regarding seniority to be respected, within a period of two months from the date of receipt of certified copy of this order provided also that the applicant considered for temporary arrangement does not suffer from any impediment or disqualification. However, before taking up the question whether the list is to be corrected or not, the official respondents would consider whether the applicant is eligible to be considered for the post in question.

13. In view of the facts and circumstances of the case, T.A. is disposed of accordingly. No cost.

(ANAND MATHUR)  
MEMBER (A)

(RAKESH SAGAR JAIN)  
MEMBER (J)

*Arun/-*