

(B)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 506
T.A. No.

1986

DATE OF DECISION 22.2.90R.D.Gupta

Petitioner

Mr. G.D.Gupta

Advocate for the Petitioner(s)

Versus

Union of India and another

Respondent

Mr. M.L.Gupta

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. G.Sreedharan Nair, V.C.

The Hon'ble Mr. P.C.Jain Member (A)

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. Whether it needs to be circulated to other Benches of the Tribunal?

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Registration No. O.A. 506 of 1986

Date of decision 22.2.1990.

R.D. Gupta

..

Applicant

- versus -

The Union of India and another ..

Respondents

CORAM:

Hon'ble Shri G.Sreedharan Nair, Vice-Chairman

Hon'ble Shri P.C. Jain, Member(Administrative)

Counsel for the applicant : Mr. G.D. Gupta.

Counsel for the respondents : Mr. M.L. Verma.

ORDER

(passed by Hon'ble Shri G.Sreedharan Nair, Vice-Chairman) :-

The applicant, who joined C.P.W.D. as Assistant Executive Engineer on 25.11.1969, was promoted to the grade of Executive Engineer with effect from 25.11.1973. However, the posting orders initially issued were cancelled and fresh posting orders were issued on 21.2.1974 pursuant to which he joined as Executive Engineer at Bombay on 5.3.1974. He was confirmed in the grade of Executive Engineer with effect from 5.3.1976. In December, 1980, there was a proposal for promotion of ~~Twenty~~ sixty Executive Engineers to the grade of Superintending Engineer. At that time there were no recruitment rules for appointment to the post of Superintending Engineer; it was governed by the instructions contained in the general guidelines in the C.P.W.D. Manual, according to which seven years' service as Executive Engineer is required for promotion to the post of Superintending Engineer. On 23.2.1981, a D.P.C. was held for consideration of the eligible Executive Engineers for promotion

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to the post of Superintending Engineer. It is alleged that as the qualifying service of the applicant in the cadre of Executive Engineer was nine days short of the requisite period of seven years, his name was not included in the list of eligible candidates, but the names of certain others junior to him were included. According to the applicant this was highly discriminatory and unjust as in the past persons who had not completed seven years' service as Executive Engineer were considered and selected for the post of Superintending Engineer. The applicant has narrated the specific instances. There is also the plea that the fixation of a date for the meeting of the D.P.C. was arbitrary and not based on any specific guidelines or principles. It is pointed out that in the year 1980, the D.P.C. was convened in the month of September, and only a period of five months had lapsed when the proposed D.P.C. was to be convened.

2. It is alleged that representation was submitted by the applicant to the Hon'ble Minister against the non-inclusion of his name in the list of eligible candidates, and based on the notings by the Joint Secretary of the Ministry, finding that injustice was done to the applicant, it was ordered that the applicant be promoted immediately as Superintending Engineer on ad hoc basis and the papers be sent to the Union Public Service Commission, the second respondent, for holding a Review D.P.C. to consider the regular promotion of the applicant. It is stated that no Review D.P.C. has been convened. Hence, the applicant prays for a direction to the respondents to take steps for convening the Review D.P.C. and grant the applicant promotion to the post of Superintending Engineer based on the decision of the Review D.P.C. and for consequential benefits.

3. Separate replies have been filed by the first respondent, the Union of India and the second respondent, the Union Public Service Commission.

4. The first respondent states that pending final decision on the question of holding Review D.P.C., the applicant was promoted as Superintending Engineer on ad hoc basis with effect from 29.8.1981, and before final decision could be taken, on the question of holding Review D.P.C., pursuant to the judgment of the Supreme Court in P.S. Mahal's case, the Seniority List of the Executive Engineers had to be revised, and at present there is no final Seniority List on the basis of which a Review D.P.C. could be held. It is contended that as the matter is under consideration of the Government, the application is infructuous.

5. In the reply filed by the second respondent, it is contended that the application is barred by limitation as the cause of action arose on 23.2.1981. It is stated that the second respondent was of the view that there is no valid reason for a review of the proceedings of the 1981 D.P.C. meeting. It is pointed out that as per the procedure, proposal for relaxation of the provisions of the Recruitment Rules, if required, are initiated by the Department concerned in consultation with the Department of Personnel and then sent to the second respondent for approval, and as no such proposal was sent as regards the case of the applicant, the question of relaxation did not arise.

6. In a supplementary affidavit filed on behalf of the respondents on 31.7.1987, it is stated that it has since been decided by Government that the applicant is not entitled to relaxation in the qualifying service and as such, it was decided that no Review D.P.C. is to be held.

7. The question that arises for determination is whether a direction is to be issued to the respondents for holding a Review D.P.C. for consideration of the applicant for promotion to the post of Superintending Engineer as on 23.2.1981.

8. It was argued by Mr. M.L. Verma appearing on behalf of the respondents that the eligibility and fitness of a civil servant for promotion to a higher post has to be assessed by the prescribed authority and not by the Tribunal. It was submitted by him that no civil servant has a right as such to claim relaxation of the prescribed eligibility conditions for consideration for promotion to a higher post. These submissions are ~~no~~ doubt unexceptionable. But we are of the view that they have no application to the facts of the instant case.

9. Admittedly, at the relevant time, there were no recruitment rules governing the promotion of Executive Engineers to the post of Superintending Engineer. Even according to the respondents the insistence of seven years qualifying service in the grade of Executive Engineer was only as a matter of practice. But the applicant has specifically referred to instances in the past where Executive Engineers, who had rendered only less than seven years' service in the grade, were considered and promoted to the post of Superintending Engineer. This has not been controverted in the reply filed by the respondents. There is also the circumstance that since after promotion of the applicant to the cadre of Executive Engineer, there was a time-lag before his actual assumption of the post, some of his juniors completed the prescribed qualifying service of seven years when the D.P.C. met on 23.2.1981 and they were considered and have been promoted to the post of Superintending Engineer. Pointing out these aspects the applicant submitted representation before the concerned Ministry. The relevant files were made available by counsel of respondents for our perusal. From the notings in the file it emerges that the matter was referred to the Department of Personnel and Administrative Reforms for their advice and that Department pointed out that in case persons not satisfying the eligibility criteria have been considered in the past by giving them relaxation, non-consideration of the case of officers

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like the applicant would be discriminatory. That when the D.P.C. met in January, 1979, the cases of five Executive Engineers, who had not completed prescribed period of seven years, were considered by the D.P.C. is also adverted ^{to} in the notings. It is further clear that it was on account of the omission of the Administrative Department to examine in detail the question of eligibility of the applicant when the list of officers to be included in the zone of ² ~~case of the applicant was not~~ consideration was prepared for the D.P.C. that met on 23.2.1981, ^{to put up} ~~the~~ It is seen that on the strength of the aforesaid notings, ^{the} Minister ordered the ad hoc promotion of the applicant and for sending his case to the second respondent for fresh advice/review. In view of the above, the contentions raised by the first respondent have to be repelled, and we do so.

10. It is revealed from the files that after promoting the applicant on ad hoc basis, request was made to the second respondent for review of the case of the applicant, but it was not accepted by the second respondent on the technical ground that the proposal for relaxation should have been sent-up for approval before the D.P.C. was convened. It cannot but be pointed out that the applicant cannot be made to suffer for the lapse of the first respondent in not putting up the proposal to the second respondent at the relevant time, before the convening of the meeting of the D.P.C., and as such the rejection of the proposal for convening a Review D.P.C. by the first respondent, based on the aforesaid technical objection of the second respondent is unjust and unfair. More so, when the records reveal that discrimination in the case of the applicant was manifest to the first respondent.

11. There is considerable force in the submission of counsel of the applicant with respect to the arbitrary fixation of the date for holding the meetings of the D.P.C. Normally, the meeting of the D.P.C. has to be held once in a year. Here what has happened is the ¹¹ ~~that~~ ^{which} previous meeting was held in September, 1980. ~~that~~ hardly five months

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the meeting was held in February, 1981. On that date, the applicant was just short of nine days to complete the qualifying service of seven years.

12. In the result, we direct the respondents to convene a Review D.P.C. to consider the case of the applicant for promotion to the post of Superintending Engineer as on 23.2.1981. This shall be done within three months from the date of receipt of copy of this order. It is needless to add that in case the applicant is found suitable, he shall be deemed as having been promoted to the post of Superintending Engineer with effect from the date on which his immediate junior who was considered by the D.P.C. that met on 23.2.1981, was promoted, and shall be allowed consequential benefits.

13. The application is disposed of as above.

C. Sreedharan Nair
22/2/1990
(P.C.Jain)
Member (A)

C. Sreedharan Nair
22.2.1990
(G. Sreedharan Nair)
Vice-Chairman