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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI.

Regn. No. OA-723/86

Date of decision: 24.7.1992

Shri R.L. Rakheja .... Applicant

Versus

Union of India through .... Respondents  
Secy., Miny. of Urban  
Development & Another

For the Applicant .... Shri G.D. Gupta, Counsel

For the Respondents .... Shri M.L. Verma, Counsel

CORAM:

The Hon'ble Mr.P.K. Kartha, Vice Chairman(J)

The Hon'ble Mr.B.N. Dhoundiyal, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgment? Yes

2. To be referred to the Reporters or not? Yes

JUDGMENT

(of the Bench delivered by Hon'ble  
Shri P.K. Kartha, Vice Chairman(J))

The applicant, who is presently working as Executive Engineer (Civil) in the C.P.W.D., was sent on foreign assignment to the Government of Libya in public interest in 1978. While he was posted at Libya, the respondents issued Office Order No.449/79 on 18.9.79 whereby 25 Assistant Engineers (Civil) were appointed to officiate as Executive Engineers (Civil) temporarily on an ad hoc basis from the date they assumed charge of the

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post and till further orders. Their promotions were made on ad hoc basis and without prejudice to the regular appointments to be made on the basis of the seniority list when finalised subject to the judgement of the Supreme Court in Writ Petition No. 725/79 filed by S. Ramaswamy & Others Vs. Union of India.

2. The name of the applicant also figured at Sl. No. 7 in the aforesaid office order. The applicant has stated that even though the appointment was styled as 'ad hoc', the same was preceded by selection on merits through a Departmental Promotion Committee wherein all eligible candidates had been considered and that the appointments were made on ad hoc basis because of the pendency of the writ petition in the Supreme Court, mentioned above. Thereafter, more than 300 Assistant Engineers junior to the applicant, have already been promoted on ad hoc basis. The respondents have not denied these averments made by the applicant.

3. The applicant returned to India from abroad in June, 1985. Thereafter, he remained on leave upto 27.9.1985. He made representations for posting him as Executive Engineer, but this was not done. He was told that he could not be promoted as he was on foreign assignment in 1979. As the promotions were made on

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ad hoc basis, the question of giving him N.B.R. protection also did not arise. The respondents also informed him that as he was charge-sheeted, his case would be taken up only after the case was decided. In the meanwhile, a charge-sheet was given to him in December, 1985. In that charge-sheet, he was ultimately given the penalty of censure.

4. The applicant has, therefore, prayed that the act of the respondents in not promoting him as Executive Engineer is arbitrary and illegal. He has sought for a direction for the respondents to declare that he is entitled to be posted as Executive Engineer after he returned to India, and that he should be given the consequential benefits.

5. The present application was filed in the Tribunal on 12.9.1986. On 8.10.1986, the Tribunal passed an interim order whereby the respondents were directed to allow the applicant to join duty as Executive Engineer. In view of this, the respondents passed office order No. 294/86 on 29.10.1986, whereby the applicant was promoted as Executive Engineer (Civil) on purely ad hoc and provisional basis in compliance of the interim order passed by the Tribunal.

6. The case of the respondents is that the applicant was promoted along with others in 1979 under a mistaken

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impression that he was still working in the C.P.W.D. He was not, however, given ad hoc promotion as it transpired thereafter that he had gone on foreign assignment. His case for ad hoc promotion had been considered in 1984, but he could not be promoted as he was still on foreign assignment. In 1986, he could not be promoted because of the pendency of the disciplinary case against him.

7. We have gone through the records of the case carefully and have considered the rival contentions. The applicant was informed by the respondents at the time of passing of the promotion order in 1979 or at any time before he returned to India from Libya in 1985, to come back and take over charge as Executive Engineer on ad hoc basis. Had they done so and the applicant continued to remain in Libya, the respondents could have justified their action. The learned counsel for the applicant emphasised that the applicant went to Libya on foreign assignment in public interest and that he had been sponsored by the Government for the assignment. In our opinion, this also is a relevant factor in favour of the applicant. The charge-sheet issued to him in December, 1985, is not relevant for the purpose of considering his promotion in 1979.

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8. In the conspectus of the facts and circumstances of the case, we are of the opinion that the applicant is entitled to succeed in the present application. Accordingly, we hold that the applicant is entitled to immediate notional promotion with effect from the date his junior assumed charge of the post of Executive Engineer (Civil) on ad hoc basis pursuant to the office order No. 449/79 dated 18.9.1979. He would also be entitled to promotion on ad hoc basis from June, 1985. He would further be entitled to the increments in accordance with the rules from 1979 onwards in the scale of the post of Executive Engineer. The respondents shall refix his pay and allowances on the said basis and release the arrears to him from the due date as expeditiously as possible and preferably within a period of three months from the date of communication of this order. We, however, make it clear that the ad hoc promotion of the applicant as Executive Engineer (Civil) will be subject to the final outcome of the writ petition No. 725/79 pending in the Supreme Court.

There will be no order as to costs.

*B.N. Dhoundiyal*  
(B.N. Dhoundiyal)  
Administrative Member

*26/11/92*  
Dec 26/11/92  
(P.K. Kartha)  
Vice-Chairman (Judl.)