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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW DELHI

O.A. No. 1037 of 1986  
~~R.AxNox~~

DATE OF DECISION 28.8.87

Shri Krishan Chander Petitioner

Applicant in person Advocate for the Petitioner(s)

Versus

Union of India Respondent

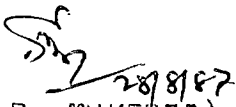
Smt. Raj Kumari Chopra Advocate for the Respondent(s)

**CORAM :**

The Hon'ble Mr. JUSTICE K. MADHAVA REDDY, CHAIRMAN

The Hon'ble Mr. S. P. MUKERJI, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? No

  
(S. P. MUKERJI)  
ADMINISTRATIVE MEMBER

  
(K. MADHAVA REDDY)  
CHAIRMAN

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OA-1037/86

DATE OF DECISION : 28 8 87

Shri Krishan Chander . . Applicant

Versus

Union of India . . Respondents

For Applicant . . Applicant in person

For Respondents . . Smt. Raj Kumari Chopra, Advocate.

CORAM

The Hon'ble Mr. Justice K. Madhava Reddy, Chairman

The Hon'ble Mr. S. P. Mukerji, Administrative Member

(Judgment of the Bench delivered by Hon'ble  
Shri S.P. Mukerji, Administrative Member)

The applicant, who is working as an ad-hoc Assistant Surveyor of Works in the Engineer-in-Chief's Branch, Army Headquarters, New Delhi, has moved this application, dated 19th November, 1986 under Section 19 of the Administrative Tribunals Act, 1985, praying that the Select List, dated the 14th April, 1986 for promotion to the post of Assistant Surveyor (Works) (hereinafter referred to as ASW), should be quashed and the respondents directed that he should be given proper seniority in the cadre of Supdt. (B/R) Grade I/Surveyor Assistant (SA) Grade I, and thereafter to get fresh year-wise panel prepared for regular promotion to ASW's grade between the years 1976 and 1986. He has also prayed that his seniority in the grade of ASW be fixed on the basis of his regular promotion so effected and his ad-hoc promotion as ASW should be continued till regular appointments are made. He has also claimed damages from the respondents. As an interim measure, this Tribunal directed that status-quo as regards his continuance as ASW should be maintained and if as a result of the recommendations of the D.P.C., if any, the applicant is sought to be reverted, the respondents may approach the Tribunal.

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2. The matrix of relevant facts can be summarised as follows. The applicant was appointed as Supdt. (Bldgs. & Roads) (B/R) Gr. II in the scale of Rs.100-300 on 13.12.56 in the Military Engineer Services. After passing the departmental promotion examination, he was promoted ~~to as~~ <sup>(Grade I)</sup> grade I of Supdt. (B/R) in the scale of Rs.335-485 on 19.1.1963 and took over as such on 18.2.1963. However, in the cadre of Supdt. Gr. I, he was given seniority on the basis of ~~the~~ <sup>the</sup> 8th April, 1963 which, according to the applicant, was an arbitrary date not related to the date of his promotion to that grade. In the M.E.S., <sup>as</sup> distinct from the Engineers' Cadre to which the applicant belongs, there is a cadre of Surveyors and the posts of Surveyor Gr. I carry the same pay-scale of Rs.335-485 as that of Supdt. (B/R) Grade I. In 1964, the respondents decided to merge the Surveyors' and Engineers' cadres and the Surveyors were given the option to join the combined cadre with the assurance that their seniority will be based on the date of appointment to the grade. Again, the cadres were separated by demerger in 1978 and options were ~~not~~ asked for by the respondents. It was also clarified that seniority would be fixed on the basis of the date of appointment as Supdt. (B/R) Grade I. The applicant opted to serve in the Surveyors' cadre and based on this option he was promoted on an ad hoc basis as ASW on 19.4.1982. The applicant's grievance is that no meeting of the D.P.C. could be held after his ad hoc promotion in 1982, ~~and~~ <sup>and</sup> till 1986 for regular promotion as ASW. His further grievance is that all the 91 regular vacancies in the grade of ASW which occurred <sup>in</sup> till 1985, were clubbed together and a consolidated panel was prepared in which he was not included. According to the applicant, preparation of such a consolidated panel by the clubbing together of vacancies

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over a number of years, has deprived him of his promotion which he would have got if year-wise panels had been prepared and the zone of consideration reduced thereby. He has also challenged the consolidated panel as being in violation of the policy of preparing year-wise panel as laid down in the Department of Personnel & A.R.'s O.M. of 24th December, 1980.

3. The applicant has also prayed that his seniority in ~~Surveyor Assistant (Grade I)~~ <sup>Surveyor Assistant (Grade I) i.e.</sup> the grade of SA-I should not be fixed from the date of the option letter of 1980. He has also questioned the action taken by the respondents in not allowing him to cross the Efficiency Bar in the scale of ASW at the stage of Rs. 900 in the scale of Rs. 700-1300 merely on the ground that he was an ad hoc appointee. He has referred to a number of letters which his superiors have been writing to the Engineer-in-Chief recommending him for crossing the E.B.

4. The respondents have stated that the applicant was considered by the D.P.C. headed by a Member of the U.P.S.C. for regular promotion to the grade of ASW in 1985 but his name could not find a place in the panel due to the grading awarded to him by the D.P.C. They have explained their action of clubbing together of the vacancies till 1985 by stating that the recruitment rules were finalised on 9th February, 1985 and <sup>therefore</sup> ~~thereafter~~, year-wise vacancies could not be filled earlier. They have further stated that as soon as these rules were finalised, the meeting of the D.P.C. was <sup>held</sup> in March, 1986 in accordance with the procedure laid down by the instruction of 24th December, 1980. Since the vacancies were pertaining to the year 1985 after the publication of the recruitment rules, the ACRs of the applicants were considered for the years <sup>from</sup> 1980 to 1985. They ~~have~~ also clarified that ~~ad hoc~~ <sup>Assistant</sup> promotions of ~~Assistant~~ <sup>Assistant</sup> Surveyor Gr. I as ASW were made on an ad hoc basis during 1982-1985 because the recruitment rules had not

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been finalised. His Efficiency Bar, according to the respondents, could not be cleared as the applicant was an ad-hoc ASW. The respondents have further stated that since the applicant was taken in the seniority list of Surveyor Assistants Gr.I w.e.f. 5th January, 1981 only, he cannot claim promotion as ASW given to Surveyor Assistants Gr.I against the vacancies of ASW of 1979 filled on the recommendations of D.P.C. which met in 1982.

5. We have heard the arguments of the applicant and the learned counsel for the respondents and gone through the documents carefully. There is no doubt in our mind that on the demerger of Engineers and Surveyors' cadres in 1978, the applicant, who as Supdt.(B/R), opted for the Surveyor's cadre must count his total service as Supdt.(B/R) Gr.I w.e.f. 19.1.1963 in the seniority list of Surveyor Assistants(I). The learned counsel for the respondents relied on the Ministry of Defence's letter of 18th September, 1979 to indicate that on demerger, the Supdts. from the Engineering side who opted to join the Surveyors' cadre, were to be en-bloc junior to Surveyor Assistants Gr.I. In that connection, we have examined the Engineer-in-Chief's letter No.A/40001/SW/E.I.R of 5th June, 1978 para.5 of which reads as follows:

"5. In respect of those individuals who now opt for SW Cadre, services rendered in the grade of AEE, Supdt. B/R Gde I and Supdt. B/R Gde II will be treated as equivalent service in the corresponding post of SW Cadre. As far as AEs (Group 'B' Officers B/R) are concerned, the services rendered by them as Supdt. B/R Gde I and AE will be treated as equivalent services in the grade of SA I."

The above clearly states that service as Supdt. Gr.I will be treated as equivalent to S.A.-I for the purposes of inter se seniority. The aforesaid para 5 was modified by the Ministry of Defence's letter of 18th September, 1979 relied upon by the learned counsel for the respondents

but even this letter of 18th September, 1979 was further modified by a further letter of 5th September, 1980 restoring the position in para. 5 of Government of India's letter of 1978. The relevant extracts from the Ministry of Defence's letter of 5th September, 1980 <sup>(Exhibit D to the petition)</sup> read as follows:-

- "5. Seniority of personnel, whose options for transfer to the posts in the Surveyor of Works Cadre are approved will be regulated on the following basis:-
- (a) Assistant Executive Engineers(encadred) - Will be merged with the ASWs, Seniority list on the basis of the dates of assuming appointment as AEE (before demerger)/ASW and in the same orders of seniority.
  - (b) Assistant Engineer (Group 'B') Supdts B/R Gde I (Charge Holders), Supdt. B/R Gde I - Will be merged with the seniority list of Surveyor Assistant Gde I on the basis of the dates of assuming appointment as Supdt B/R Gde I (before demerger)/Surveyor Assistant Gde I in the same order of Seniority Assistant Engineer (Group 'B') and Supdts B/R Gde I (Charge Holders) will be placed above Supdts B/R Gde I/ Surveyor Assistant Gde I.
  - (c) Supdts B/R Gde II - Will be merged with the seniority list of Surveyor Assistant Gde II on the basis of the dates of assuming appointment as Supdt B/R Gde II (before demerger)/Surveyor Assistant Gde II and in the same order of seniority."

Thus, the seniority of the applicant in the cadre of Surveyor Assistant Grade I has to be fixed on the basis of his date of commencement of officiation in this grade, i.e., 19.1.63 and no S.A. Grade I and Supdt.(B/R) who had commenced officiation as <sup>such</sup> SA-I after 19.1.1963, should be ranked above him in the seniority list of SA-I after demerger.

6. So far as the clubbing of the 91 vacancies between 1982 and 1985 is concerned, we are not impressed by the

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argument of the learned counsel for the respondents since the recruitment rules were finalised in February, 1985, earlier vacancies could not be filled up on a regular basis and they had to be clubbed in 1985. A little probe during the course of the arguments revealed that it is not as if there were no recruitment rules prior to February, 1985. The recruitment rules had been promulgated as far back as 1949 under the rubric of the Military Engineers Service Class I (Recruitment, Promotion and Seniority) Rules, 1949. These rules were notified in Gazette No.1581 on 17th September, 1949 and subject to periodical modifications, have been continuously in force. Rule 21, Part III of these rules reads as follows :-

"21. Appointment by promotion shall be made by selection from among the following categories of Superintendents Gde I (Charge Holders) and Surveyors Assistant Grade I, on the recommendations of the Departmental Promotion Committee, and the Commission. No individual shall have ANY claim to such promotion as a matter of right."

The Engineer-in-Chief's letter of 5th June, (referred to in para 5 supra) shown to us, itself in para. 6(b) states that "(a) the existing recruitment and promotion rules for SW, ASW, SA Gr.I and SA Gr.II are contained in the following:- (b) M.E.S. (RPS) Rules, 1949 (as amended) vide Gazette SRO 41 of 1st February, 1969 and SRO of 346 of 21st September, 1977 (for ASW)".

6. Thus, it will be futile to argue that the vacancies prior to 1985 could not be filled up as the recruitment rules were being finalised and the applicant had to be appointed on an ad-hoc basis because of non-finalisation of recruitment rules. The respondents' own action in getting four posts of ASWs filled on

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a regular basis through the D.P.C. held in 1982, gives the lie to their indefensible stand of keeping the applicant as an ASW on an ad hoc basis since 1982 because of non-finalisation of Recruitment Rules.

Reiterating their instructions O.M.'s No.22011/6/75-Estt. D of 30.12.1976, No.22012/2/79-Estt.D of 19.7.1979 and No.22012/2/79 Estt.D. of 25.2.1981, emphasising the need for holding annual meetings of the D.P.C. for making promotions against vacancies occurring during the course of the year, the Government of India in the Deptt. of Personnel and Training's O.M. No.28034/6/86 Estt.D dated 17.11.86 directed as follows.

"2. In spite of these clear instructions, a number of instances of delay in holding DPC meetings have come to notice. One of the reasons given by Ministries/Departments to justify the delay is that Recruitment Rules for the post are being reviewed/amended. This is not an appropriate ground to postpone the meetings of DPCs. Amendments to the Recruitment Rules can normally have only prospective application and as such the existing Recruitment Rules would continue to be in force till the new rules come into force. The Supreme Court has also ruled that vacancies should be filled according to the rules in force when the vacancies arose. It is, therefore, neither desirable nor permissible to postpone holding of DPC meetings solely on the ground that the Recruitment Rules are under revision/amendment. The DPCs should, therefore, be convened in time and the panel of officers for promotion finalised in accordance with the existing Recruitment Rules." (ATLT 1987(i) Statute Section 80)

Thus, the applicant has a legitimate grievance as he was not considered for regular promotion as ASW between 1982 and 1985 through annual DPC's which were not called contrary to clear instructions of the Government of India repeatedly emphasised since 1976.

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7. The applicant can have further grievance because his date of induction in the feeder cadre of SA Gr.I which had been notified as from 20th July, 1978 vide the order, dated 5th March, 1979 (exhibit 'E') was inexplicably renotified to take effect from 7.10.80 vide their further order, dated 19th January, 1981 (exhibit 'F'). This postponement of the date of his induction as SA resulted in the vacancies of 1979 to be filled up by promotion of the Surveyors <sup>in ASW's cadre</sup> <sup>Assistants</sup> by the D.P.C. held in 1982 without the case of the applicant being considered on the dubious ground that in 1979 when the vacancies occurred he was not in the feeder cadre, <sup>of SAs,</sup> even though when the DPC met in 1982, he was very much in that cadre.

8. We, therefore, feel that the applicant who was admittedly eligible to be considered for the post of ASW right from 1982, should be considered for such promotion by a review D.P.C. of 1982 on the basis of his revised seniority in the grade of SA-I as indicated in para 5 above and if he is found fit to be included in the panel, he should be promoted as ASW on a regular basis w.e.f. the date his next junior in the revised seniority list got the promotion in 1982.

9. In case the applicant does not get promoted on the basis of the review D.P.C. of 1982, he should be considered for promotion as ASW in the promotion quota vacancies falling from year to year between 1982 and 1985. We are not able to accept the contention of the respondents that all the 91 vacancies occurred on or after 1.1.1985.

According to them, 34 vacancies occurred on 25.2.1985 as a result of promotion of ASUs, 4 vacancies occurred on 1.1.1985 due to retirement and 53 vacancies materialised on 1.1.1985 due to increased cadre strength. This means that there was no vacancy in the promotion quota between 1982 and 1985. This, to our mind is not convincing as there must have been promotions, retirements, etc., during this period, giving rise to substantive vacancies. We are confirmed in our presumption about the existence of such vacancies in Engineer-in-Chief's letter (referred to in para 5 supra) of 5th June, 1978 itself. Para 7 of that letter shown to us indicates that the authorised strength of ASUs at that time was 105 and 49 officers were in position. This meant that on the basis of 66 2/3 per cent promotion quota as prescribed in the rules, there were 66 posts in the promotion quota. Thus, there were at least 17 vacancies, if not more, even if we take all the 49 officers as promotees. It is not clear how these vacancies in the promotion quota which could not be in any case less than 17, had been filled up between 1978 and 1985. There was only one D.P.C. during this period held in 1982 when only 4 vacancies were filled up. Thus the plea of the respondents of non-occurrence of any vacancy in the promotion quota between 1982 and 1985 cannot be accepted.

10. In the above context, considering that there were vacancies in the promotion quota and there were valid recruitment rules for filling up those

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1982 and 1985, <sup>there is no reason why</sup> vacancies between the Department of Personnel & A.R.'s instructions of 24th December, 1980 (exhibit 'J'), were not followed by preparing year to year panels. We are convinced that by overlooking year-wise vacancies and not preparing year-wise panels, the chances of promotion of the applicant have been abridged. No valid and convincing reason has been given for non-observance of the instructions of 24th December, 1980. By consolidating the vacancies in one year, not only has the applicant been compelled to face an unduly large field of competition but also the span of performance which could have been taken into consideration has been shortened. If his case had been considered annually between 1982 and 1985, his performance from 1977 to 1985 would have been considered by taking into account the preceding five years of service every year. <sup>from 1982.</sup> Against this, his performance only between 1980 and 1984 was taken into account by the D.P.C. which met once only in 1986.

11. In the facts and circumstances, we allow the application with the following directions :-

(a) The panel prepared by the D.P.C. in March, 1986 and promotions, if any, made on that basis are set aside as illegal <sup>being</sup> ~~and~~ in complete violation of Government of India's own instructions of preparing annual panels for promotion.

(b) The applicant's seniority in the grade of SA-I should be based on his total length of service as Supdt. Gr.I commencing from 19.1.1963.

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(c) His induction as SA-I should be deemed to have taken place from 1978 and a review D.P.C. should consider him for promotion as ASW as in 1982. If he is found suitable for promotion, he should be given promotion with all consequential benefits against a super-numerary post w.e.f. the date his next junior in the revised seniority list of SA-I was promoted through the D.P.C. of 1982 against the vacancies of 1979.

(d) The respondents should identify year-wise regular vacancies in the promotion quota in the grade of ASW between 1982 and 1986 and hold review D.P.C. for each of the years till 1986 to prepare year-wise panels in accordance with the instructions of 24th December, 1980. Promotions of ASWs should be made on the basis of the year-wise panels so prepared.

(e) If the applicant is included in any of the panels so prepared through the review D.P.C., his promotion should be regularised from the year for which he is empanelled and his entire ad-hoc service from that year should count for seniority in the grade of ASW. His ad-hoc officiation, if any, prior to that year cannot count for seniority because once considered and not empanelled he has to concede seniority to those who are on the panel.

The application is disposed of <sup>on</sup> the above lines.

There will be no order to costs.

  
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(S. P. MUKERJI)  
ADMINISTRATIVE MEMBER

  
28/8/87  
(K. MADHAVA REDDY)  
CHAIRMAN