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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Regn. No. OA 1129/1986

Date of decision: 28.08.1992.

Shri Ved Prakash Dewan

...Applicant

Vs.

Union of India & Others

...Respondents

For the Applicant

...Shri G.K. Aggarwal,
Counsel

For the Respondents

...Shri M.L. Verma,
counsel for
Respondent No. 1.

Shri B.K. Aggarwal,
Counsel for
Respondent Nos. 2
and 3.

CORAM:

THE HON'BLE MR. P.K. KARTHA, VICE CHAIRMAN(J)

THE HON'BLE MR. B.N. DHUNDIYAL, 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? *No*

JUDGMENT

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

The applicant, who has worked as Superintending
Engineer (Electrical) in the Postal Electrical Circle,
New Delhi, filed this application under Section 19 of
the Administrative Tribunals Act, 1985, seeking the
following reliefs:-

"(a) He be given the benefit of regular service as
AE(E) from 16.12.1957 and

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- (b) He be given the benefit of regular service as SE(E) from 22.10.1965, and
- (c) He be declared promoted as regular SE(E) in September, 1972 or latest January, 1977 before Respondent No.2 and others, and
- (d) He be declared promoted as regular CE(E) in October, 1982 or latest 08.9.1986, before Respondent no.2.
- (e) Annexure 'A' be set aside as illegal and void
- (f) He be granted arrears with interest on all the retrospective promotions and all consequential and subsequent benefits".

2. We have gone through the records of the case and have heard the learned counsel of both parties. We have also duly considered the case law ~~xxx~~ relied upon by both parties. The applicant retired in August, 1987 on attaining the age of superannuation of 58 years. He began his career as Junior Engineer in the C.P.W.D. in 1953. He was promoted as Assistant Engineer in CPWD Class II (Gazetted) on 16.12.1957. With effect from 21.7.1961, he was posted as Assistant Engineer in the P&T Zone of C.P.W.D. On 1.7.1963, P&T Zone of CPWD was taken over by Post and Telegraph Department. Non-gazetted employees were declared 'absorbed' in 1969. In 1969, he was asked to give option for permanent retention in P&T. The respondents absorbed him in the

* Case law relied upon by the applicant:-

1987(4) SCC 506; AIR 1986 SC 638

** Case law relied upon by the respondents:-

1987(1) ATLT 129; 1987(1) ATLT 400; 1992(19) ATC 548;
1991(2) SLJ (SC) 41.

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→ P&T Civil Wing in the grade of Assistant Engineer(Elect.) with effect from 1.7.1963 by their order dated 14.3.1985. This was pursuant to the decision of the Allahabad High Court in a Writ Petition filed by him in that High Court.

3. The hierarchy of posts in the P&T Civil Wing is Assistant Executive Engineer (Electrical)/Assistant Engineer (Electrical), Executive Engineer (Electrical), Superintending Engineer (Electrical) and Chief Engineer (Electrical). The rules relating to the recruitment to the above posts are contained in the P&T Civil Engineering (Electrical Officers) Recruitment Rules, 1975, as amended in 1983 and 1984. The rules provide, inter alia, that an Assistant Engineer who has rendered not less than 8 years service in the grade after appointment thereto on a regular basis is eligible for promotion to the post of Executive Engineer. An Executive Engineer with 5 years service in the grade rendered after appointment thereto on a regular basis is eligible for promotion to the post of Superintending Engineer. A Superintending Engineer with seven years regular service in the grade is eligible for promotion to the post of Chief Engineer. All these are selection posts for which an Assistant Engineer can aspire to, subject to his eligibility.

4. When the recruitment rules were amended in 1984, provision was made for initial constitution of the posts

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as under:-

"4" Initial Constitution of the posts - Appointments at the initial constitution of the Posts of officers already working in the Posts and Telegraphs Department before the commencement of these rules shall be regulated in the following manner, namely:-

- (a) all officers who had been appointed on a regular basis prior to the date of commencement of these rules to any of the posts of Superintending Engineer (Electrical), Executive Engineer (Electrical), Assistant Executive Engineer (Electrical) or Assistant Engineer (Electrical) and all those officers who were recruited for appointment on a regular basis to the posts of Assistant Executive Engineer (Electrical) and Assistant Engineer (Electrical) specially in the Posts and Telegraphs Department on the results of the Combined Engineering Service Examinations held by the Union Public Service Commission prior to the date of such commencement shall be deemed to have been appointed under these rules to the respective posts on a regular basis with effect from the date of their appointment to the said posts;
- (b) the Union Public Service Commission shall constitute a Screening Committee to consider the suitability of officers referred to in clauses (c) and (d) for appointment at the initial constitution of the posts of Executive Engineer (Electrical) and Superintending Engineer (Electrical);
- (c) the screening committee shall determine the suitability of Assistant Executive Engineers (Electrical) and Assistant Engineers (Electrical) covered by clause (a) and prepare a list, arranged in order of preference, of officers considered suitable for appointment to the post of Executive Engineer (Electrical) at the initial constitution of the posts. The officers found suitable shall be deemed to have been appointed on a regular basis to the post of Executive Engineer (Electrical) with effect from the date of their appointment on an ad hoc to the said post or on the day they completed 5 years and 8 years of regular service as Assistant Executive Engineer (Electrical) and Assistant Engineer (Electrical) as the case may be, from the date of their appointment in the respective post, whichever is later;
- (d) the screening committee shall determine the suitability of Executive Engineers (Electrical) whose case were scrutinised under clause (c) and prepare a list, arranged in order of preference, of officers considered suitable for appointment to the post of Superintending Engineer (Electrical) at the initial constitution of the posts. The officers

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found suitable shall be deemed to have been appointed on a regular basis to the post of Superintending Engineer (Electrical) with effect from the date of their appointment on ad hoc basis to the said post or on the day they completed 5 years of regular service as Executive Engineer (Electrical) from the date of their appointment in that post, whichever is later".

5. In the Explanatory Memorandum accompanying the aforesaid provisions in the Rules, it has been stated, *inter alia*, as follows:-

"As per a decision of the Allahabad High Court, Lucknow Bench, Shri V.P. Dewan who had come on deputation from CPWD is also deemed to have been regularly appointed in the Posts and Telegraphs Department. Some of the officers were promoted to the higher grades on ad hoc basis. In order to ensure that these officers are not deprived of the service rendered by them before commencement of the rules, it is proposed to incorporate retrospectively a provision for initial constitution of these posts. The provision for initial constitution of these posts gives in detail the salient features of the initial constitution."

6. The applicant was promoted as Executive Engineer (Electrical) on ad hoc basis with effect from 22.10.1965. At that time, he was holding the post of Assistant Engineer (Electrical) on deputation from CPWD to P&T Deptt. He was promoted to the post of Superintending Engineer (Electrical) with effect from 7.1.1979 on ad hoc basis. In accordance with the recruitment rules, he can be promoted to the grade of Executive Engineer on regular basis only on completion of eight years in the grade of Assistant Engineer commencing from his date of absorption. Accordingly, he was regularised in the grade of Executive Engineer with effect from 1.7.1971.

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7. The Union of India have stated in their counter-affidavit that the seniority in the grade of Executive Engineer (Electrical) has been fixed on that basis and his promotion to the grade of Superintending Engineer and Chief Engineer depends upon his position on the seniority list and also his performance as reflected in the annual confidential reports. They have further stated that on the above basis, he had been given regular promotion to the grade of Superintending Engineer with effect from 7.1.1979 on ad hoc basis and with effect from 6.12.1985 on regular basis and that though his name was considered for promotion to the grade of Chief Engineer also, he was not selected by the DPC.

8. In view of the above, we see no merit in the claim of the applicant that he be given the benefit of regular service as Assistant Engineer from 16.12.1957 and that he be given the benefit of regular service as Executive Engineer from 22.10.1965. The applicant has not challenged the validity of the Rules prescribing 8 years regular service as Assistant Engineer for appointment to the grade of Executive Engineer. According to the amendment to the Rules made in 1984, the ad hoc service in the post of Assistant Engineer could also be counted for that purpose. There is no justification to reckon any period of service prior to the absorption of the applicant w.e.f. 1.7.1963.

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9. The posts of Superintending Engineer and Chief Engineer are selection posts and the applicant has only a right to be considered along with the other eligible officers. He was promoted as Superintending Engineer but was not selected to the post of Chief Engineer.

10. The applicant has challenged the seniority of Respondent Nos. 2 and 3 and their promotion to the higher posts. In the seniority list of officers in the grade of Executive Engineer (Electrical) the applicant's date of regular appointment as Executive Engineer is mentioned as 1.7.1971 while that of Respondent 2 as 11.6.1970 and of Respondent No.3 as 1.8.1970. Respondent Nos. 2 and 3 are direct recruits and they belonged to Class-I while the applicant was only Class-II in the grade of Assistant Engineer. They had the requisite 5 years regular service from the dates of their appointment on regular basis w.e.f. 21.8.1976 to make them eligible for promotion to the grade of Superintending Engineer. They, along with the applicant, were appointed as Superintending Engineer on regular basis w.e.f. 6.12.1985. The fact that Respondent Nos. 2 and 3 were shown as senior to the applicant cannot be called in question as they were senior to the applicant in the lower grades of Executive Engineer and Assistant Engineer also. *✓*

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11. In the conspectus of the facts and circumstances of the case, we see no merit in the present application and the same is dismissed.

There will be no order as to costs.

B.N. DHOUDIYAL
(B.N. DHOUDIYAL) 28/8/92
MEMBER (A)
28.08.1992.

~~28/8/92~~
(P.K. KARTHA)
VICE CHAIRMAN (J)
28.08.1992

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