

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1294/87 198
~~MAX NOX~~

DATE OF DECISION 19.9.91

SHRI ISHWAR SINGH

~~PETITIONER~~ APPLICANT

SHRI G.D. GUPTA

Advocate for the Petitioner(s)
APPLICANT

Versus

UNION OF INDIA AND OTHERS

Respondents

SHRI P.P. KHURANA

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. JUSTICE RAM PAL SINGH, VICE CHAIRMAN

The Hon'ble Mr. R. VENKATESAN, ADMINISTRATIVE MEMBER

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

JUDGEMENT

(Delivered by Hon'ble Mr. R.
Venkatesan, Administrative Member)

The applicant in this case is a person whose seniority in the cadre of Assistant Engineers (CPWD) was

D. Venkatesan

retrospectively revised on 29.12.1982, with effect from 1959. He has come before this Tribunal with the prayer to review the promotions to the post of Executive Engineer made in November, 1969, in which, he contends that one Shri M.S. Bhatti, who was junior to him, in the revised seniority list but was senior to him in the earlier list, had been promoted, and to consider the applicant for promotion through a review DPC from the same date, namely, 8.11.69. It is further prayed that if the Review DPC does not consider him fit for promotion from this date, he may be considered for promotion from subsequent dates when other juniors had been promoted. Further promotions to the grade of Superintending Engineer have also been prayed for on the same grounds.

2. The facts of the case are briefly that the applicant was recruited in 1953 as a Junior Engineer. He was promoted, against the promotion quota, as an Assistant Engineer on 7.1.1959. Direct recruits to the post of Assistant Engineers against a separate quota for direct recruitment was also made as per the Rules, and Shri M.S. Bhatti was appointed on 3.11.61. As per the Rules, direct recruits appointed against permanent posts are confirmed with effect from the date of their initial appointment, on their completing probations satisfactorily, and Shri Bhatti was confirmed w.e.f. 3.11.61 accordingly.

3. The applicant was, however, not confirmed, presumably because there were no permanent post available against/a long time. After revised Rules for seniority/confirmation in the cadre had been issued in March, 1982, orders were issued in January, 1984 retrospectively confirming the applicant from the date of his promotion, namely, 7.1.1959 under the said revised rules.

4. Seniority in the cadre of Assistant Engineers having been reckoned from the date of confirmation in terms of the

than existing orders, Shri Bhatti and other direct recruits appointed after the date when the applicant was promoted, but confirmed earlier than the applicant, were ranked senior to him. In 1969, Shri Bhatti was promoted as Executive Engineer by a D.P.C. Other promotions of direct recruits appointed after the applicant's date of promotion as Assistant Engineer were also made to the grade of Executive Engineers from time to time, while the applicant continued as Asstt. Engineer.

5. As per the averments of the respondents, the seniority/ confirmation rules for the cadre were published in 1979 and further amended in March, 1982. As per these amended Rules, the seniority of persons appointed on or before 21st December, 1959, whether by promotion or by direct recruitment, was to be determined with reference to their date of appointment as Assistant Engineers irrespective of whether they had been confirmed in the grade or not, and they would rank en bloc senior to those appointed after 21.12.59. Thereafter, the respondents circulated a provisional seniority list in terms of these Rules in which the applicant was shown at serial no.588 whereas Shri M.S.Bhatti was shown at serial no.625, that is to say, the applicant Shri Ishwar Singh became senior to Shri Bhatti by 37 places.

7. It is stated by the respondents in their reply that they had considered the question of review of promotions of Assistant Engineers to the grade of Executive Engineers in the light of the revision of the seniority in the cadre of Assistant Engineers in December, 1982. However, on an overall assessment, it had been concluded that it was not possible to hold Review Departmental Promotion Committees in respect of promotions made upto 1972, especially as these had been made a long time back on a regular basis by following the seniority list in vogue at the appropriate time. The respondents have averred that this decision has been taken due to the absence of service records which had already been destroyed in the case of number

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of officers.

8. The applicant submitted a series of representations for review of earlier promotions from Assistant Engineer to Executive Engineer, after the revision of the seniority-list in 1982. The applicant only received interim replies from the respondents to the effect that the matter regarding review of promotions to Executive Engineers (EEs) from Assistant Engineers (AEs) in the light of the revised seniority list was still under consideration. The applicant has thereafter come before this Tribunal on 2.9.87 for the reliefs mentioned.

9. The learned counsel for the applicant cited case law to show that in many cases, consequent on decisions and directions of the courts revising seniority of individuals or cadres retrospectively with effect from dates several years earlier, Review DPCs had been held and promotions according to the revised seniority list carried out retrospectively. He referred in particular to a judgement of the Supreme Court in P.S. Mahal vs. U.O.I. - AIR 1984 SC 1291. In that case, the Supreme Court had quashed a seniority list of Executive Engineers of the Central Engineering/Electrical Engineering Service published in 1975 and directed the Govt. to prepare a new seniority list of Executive Engineers in the light of the observations in the judgement. The Court further directed that after the seniority was so-re-arranged, the cases of Asstt. Engineers who would have been due for consideration for promotion as Superintending Engineers and thereafter as Chief Engineers on the basis of the revised seniority, would be considered by a duly constituted Departmental Promotion Committee as on the dates on which they would have been due for such consideration after the correct seniority had been given to them. If on the basis of their performance and record as on those dates, they would have been selected for

D. Venkatesan

promotion, they must be given promotion with retrospective effect from such dates and if necessary, supernumerary posts in the grades of Superintending Engineers and Chief Engineers should be created for the purpose of accommodating them and all arrears of salary and allowances should be paid to them on the basis of such retrospective promotions. However, it was made clear that those who had been promoted as Superintending Engineers or Chief Engineers upto the date of judgement written, on account of revised seniority in the grade of Executive Engineers, should not be disturbed from the positions which they were occupying at the time, but their seniority in such higher grades would have to be re-arranged on the basis of the directions given in the judgement. The counsel, therefore, contended that the respondents could very well follow the same procedure which was directed to be adopted by the Supreme Court in the above case and persons like Shri Bhatti who had earlier been promoted need not be reverted consequent on the promotion of the applicant and others similarly placed like him. The counsel also contended that the above judgement of the Supreme Court showed that lapse of time was no justification for not carrying out the review of promotions.

10. The counsel also relied on certain orders of the Govt. of India reproduced in the Swamy's Compilation "Establishment and Administration", 1st Edition, November, 1986, reprint March, 87 P.473). In Swamy's Compilation, instructions issued by the Department of Personnel on 26th March, 1980 regarding convening of Review DPCs, are reproduced according to which it may be necessary to convene a Review DPC under certain

D. Venkatesa

circumstances, which include inter-alia the following:-

- (a) When eligible persons were omitted to be considered or
- (b) Ineligible persons are considered by mistake, or
- (c) Where the seniority of a person is revised with retrospective effect, could differ with the seniority list placed before the earlier DPC. (emphasis added)

11. In the light of all the above arguments, the Counsel for the applicant strongly contended that the prayer of the applicant should be granted.

12. The counsel for the respondents reiterated the contention in the reply affidavit that it was not possible at this distance of time to review the promotions retrospectively, as prayed for by the applicant.

13. From the facts and averments in this case, we find that the respondents have not denied the fact that the applicant was entitled to be promoted in accordance with his seniority. They have only harped on review of promotions carried out prior to 1972 not being feasible and have cited non-availability of service records for the prior periods as the reason. They are silent, however, on the question why such Review DPCs could not be held at least from a date after 1972, when presumably service records are available.

14. The respondents have stated in the reply that the applicant could not be considered for promotion in 1968 when Shri M.S. Bhatti, who was then junior to him was promoted, as in terms of the existing seniority list, the applicant was too junior to be included in the zone of consideration for promotion. No other reason having been put forth, it follows, therefore,

Draftsman

that if the revised seniority list had been applied at that point of time, the applicant would have been eligible for being considered for promotion.

15. There are well-known decisions of the Supreme Court in which it has been held that Article 14 and 16 of the Constitution strike at arbitrariness in state action and that fairness and equity of treatment and non-discrimination in administrative action are essential requirements under Articles 14 and 16. It is sufficient to quote E.P. Royappa Vs. State of Tamil Nadu AIR 1974 SC 555 in which it was held:

"Articles 14 and 16 strike at arbitrariness in state action and ensure fairness and equity of treatment. They require that state action must be based on relevant principles applicable alike to all similarly situated and it must not be guided by any extraneous or irrelevant considerations because that would be denial of equity."...

16. It was, therefore, discriminatory and violative of Articles 14 and 16 of the Constitution to have denied to the applicant his right to be considered for promotion when his juniors in the cadre of Assistant Engineers had been promoted earlier. In term of both the law as laid down by the Supreme Court and instructions of the Govt. of India which have been referred to, it was incumbent on the respondents to have held Review DPC's to consider the case of the applicant for promotion with effect from dates when juniors had been promoted based on the earlier seniority list. While we appreciate the contention of the respondents that it would not be practicable to review promotions carried out prior to 1972, we see no reason why such a review should not be carried out at least from a date after 1972.

17. We accordingly give the following directions, ^{broadly} ~~following~~

D. Venkatesa

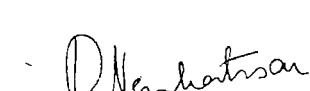
the precedent laid down for carrying out review promotions consequent on revision of seniority, laid down by the Supreme Court in P.S.Mahal Vs.U.O.I. (supra) :-

- (i) The respondents shall constitute a Review Departmental Promotion Committee to review the case for promotion to the post of Executive Engineer of the applicant with effect from 1.1.1973 on the basis of the records available and in terms of the seniority list of Assistant Engineers which had been published in December, 1982; The Review DPC shall apply the same standard and criteria as had been applied earlier, as and orders per the Rules to the candidates junior to the applicant;
- (ii) If the applicant is not considered fit for promotion by the Review DPC as on 1.1.73, his fitness for promotion shall be considered with effect from succeeding dates when DPCs had met for considering promotions from A.E. to E.E.;
- (iii) The respondents shall promote the applicant as Executive Engineer on a national basis from such date as may be recommended by the Review DPC. The non-availability of the post in the cadre of Executive Engineer shall not stand in the way of such national promotion which shall, if necessary, be carried out by creation of supernumerary or shadow posts;
- (iv) None of the Assistant Engineers, junior to the applicant, who had been earlier promoted as Executive Engineers need be reverted for the purpose of accommodating the applicant, if he is promoted;
- (v) In the event of the applicant being promoted, as per the recommendations of the Review DPC, he will rank for seniority in the grade of Executive Engineer from the date of such promotion;
- (vi) His eligibility for promotion to the higher grade of Superintending Engineer will also be considered on the

basis of review seniority in the grade of Executive Engineer by a Review DPC on the same lines as sent out in (i) to (v) above;

(vii) While the applicant will be entitled to notional promotion from the date recommended by the Review DPC, and to seniority and pay fixation from such date, he shall be entitled for arrears of pay and allowances as Executive Engineer only from the date of his coming before this Tribunal, namely, 2.9.1987, on which date he was already working as Executive Engineer. In the event of his being promoted notionally as a Superintending Engineer, he shall likewise be entitled to draw pay in that scale only from the date from which he actually commenced working as Superintending Engineer, but his seniority and pay fixation shall be based on the date of his notional promotion.

The respondents shall implement this order within a period of four months from the date of receipt of this order. There shall be no order as to costs.


(R. VENKATESAN)

MEMBER (A)


Lam 14/19.9.91
(RAM PAL SINGH)
VICE-CHAIRMAN