

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1589/87 with
~~Text No.~~ OA 583/87.

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DATE OF DECISION 26.7.1991.

<u>Shri Vipin Kumar Maini</u>	Petitioner Applicant
<u>Shri R.P. Oberoi</u>	Advocate for the Petitioner(s) Applicant
Versus	
<u>Union of India & another</u>	Respondents
<u>Smt. Raj Kumari Chopra</u>	Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. **I.P. GUPTA, ADMINISTRATIVE MEMBER**

The Hon'ble Mr. **JUSTICE U.C. SRIVASTAVA, VICE CHAIRMAN**

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 ?

JUDGEMENT (ORAL)

(Per Hon'ble Mr. Justice U.C.
Srivastava, Vice Chairman)

As these two applications are by a single applicant and there are two different stages of proceedings against him, they are being disposed of together. The applicant is a member of Military Engineering Service - a Group A Central Service, Engineer in Chief, Army Headquarters, Respondent No.2 is the Head of the Service.

2. The applicant was appointed (after due selection) in the year 1974. During the period April, 1980 to August, 1984, the applicant was posted as Assistant Executive Engineer in the office of the Garrison Engineer and at the

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relevant point of time, he was posted at Bhatinda Cantonment. On 19.12.1981, the applicant proceeded on leave upto 2.1.82. According to the applicant, he fell ill during this period and applied for extension on medical grounds, but he continued to be ill. Therefore, he could not join the duties and he had been duly intimating the Garrison Engineer(P) the need for extension of leave, and his applications were supported by certificates of authorised medical attendants. He has filed copies of medical certificates - one dated 10.5.82 requesting for leave on medical grounds upto 15.7.82 sent under Postal Certificate and application dt.13.7.82 requesting for extension on medical grounds which was sent by registered post. According to the applicant, he was frustrated and depressed. He sent in a notice of three months for his resignation from service but as he improved and he became fit for duty he resumed duty w.e.f.1.8.84, alongwith medical certificates from Medical College, Jammu. The applicant got sanction for leave for all the period and the last sanction received by him was upto 14.5.82 and this sanction was modified after 18 months vide the Order dated 26.9.83 and the leave sanction was changed from 14.5.82 to 11.5.82. In October, 1982, he was informed that the leave account/service book have not been received and in absence thereof, the leave period could not be regularised and his pay and allowances will be paid after regularisation of leave, and sanction for further periods of leave applied were not issued due to non-availability of leave record and thus the period of absence from 12.5.82 to 31.7.84 remained to be regularised. In the meantime, the Garrison Engineer in July, 1983 recommended initiation of disciplinary proceedings for absence from duty without

permission w.e.f.12.5.82. Even HPL leave was available to his credit in May, 1982 for grant of leave beyond 12.5.82 and extra ordinary leave on medical grounds in excess of the Credit balance could be granted on the merits of the case. In March, 1984, orders regarding promotion of the applicant as Executive Engineer and posting as SO2 (Staff Officer Grade II) in the office of Chief Engineer Bhatinda, were issued. But this order was amended by the order dated 8.6.1984 for rectification of a clerical error as the office from where the applicant was being posted out was had been shown erroneously. In pursuance of the promotion orders referred to above, the applicant ^{was} relieved of his duty by Garrison Engineer (P). The applicant reported at the office of posting on 24.8.84 and was taken on strength with effect from the same date. Although the applicant was promoted as Executive Engineer but he was shown as Assistant Executive Engineer. The applicant represented the matter to Chief Engineer personally and he was informed that as a disciplinary case was being initiated against him, the promotion could not be effected and thus he had been taken on strength of A.E.E. The applicant has been regularly performing the duties of Executive Engineer and has been allocated duties of Executive Engineer of different divisions. The applicant is not only deprived of his designation but also his pay of Executive Engineer was not being paid to him. The applicant gave representations for release of annual increments earned by him and legally due to him and which have been illegally withheld. The applicant has alleged that he has suffered a loss of Rs.25,000/- on account of arrears due to him. Even his salary for the month of October, 1984 was not paid to him and he is suffering a monthly loss of Rs.400/-. From the panel of promotion, announced on 13.6.86, it was noticed that the

name of the applicant was not included in the said panel. A representation was made on 19.9.1986 of the same but no reply to the same was given and in further panel for ad hoc promotions to the Grade of Executive Engineer from 1.1.87 to 30.6.87 his name was not included in the list.

3. The disciplinary action against him started with the following charge:

"Shri V.K.Maini, A.E.E. B/R has been absenting himself from duty without permission w.e.f.12.5.82, thereby exhibiting gross misconduct and lack of devotion of Govt. duty which is unbecoming of Govt. Servant and therefore violating Rule 3(ii) and (iii) of CCS (Conduct) Rules, 1964."

4. An application was submitted by the applicant and after a period ^{of} one year, orders regarding appointment of Enquiry Officer and Presenting Officer in the proposed enquiry under rule 14 of CCS (CCA) Rules, 1965 were issued. Enquiry proceedings started against the applicant in this manner. It was completed on 27.1.86 and the report was submitted in February, 1986. Thereafter, the applicant filed the first application in OA 583/87 praying that the Order passed by respondent no.2 dated 29.6.86 (annexure 23) by which the applicant was intimated that as he is involved in a disciplinary case, his case for promotion as well as placing in position will be considered only after finalisation of disciplinary proceedings and sealed cover procedure is applied only in case of promotion on regular basis be quashed.

5. Subsequently, some 16 months thereafter the penalty of reduction of pay by one stage from Rs.2800/- to Rs.2725/- in the time scale for a period of two years with cumulative effect was passed by the appointing authority. Along with it a copy of the order of the enquiry report was also given to the applicant. According to the applicant, the proceedings of the enquiry were not given to him nor even the report of the enquiry officer was given. The report was available to

him on 26.9.87 only. The applicant was thus not given reasonable opportunity to defend himself and was deprived of the opportunities to represent on the Enquiry Report. This was thus, according to him, violation of the principles of natural justice and procedural lapses including in the matter of chargesheet. The Enquiry Officer had come to the conclusion that the charge against the applicant was not proved. The respondent no.1 did not accept the findings and took the view that the charge stands proved. The Union of India, respondent no.1 resisted the application ~~taking the usual course~~ and has stated that disciplinary proceedings were under contemplation and as such the applicant was not promoted to the post of Executive Engineer though orders were passed but he was posted only as Assistant Executive Engineer. So far as his leave is concerned, whatever leave applications were received, they were ~~not~~ sanctioned.

6. It is to be noticed that at the time of ad hoc promotion order along with Assistant Executive Engineers, there was no disciplinary proceeding against him. The order was passed in the month of March, 1984 and disciplinary proceedings were initiated only in the month of July, 1984. The promotion order was passed while the enquiry against him was under ~~Contemplation~~ ^{Completion}. Even if something was being searched out, no chargesheet had been served upon the applicant. Accordingly, the action of the respondents in not promoting the applicant to the post of Executive Engineer is not legal or supported by any law and is without sanction of law. It was always open to the disciplinary authority to hold disciplinary proceedings against the applicant and this action could also be taken against him after his posting as Executive Engineer. As the disciplinary enquiry had already started, that is why twice he was not promoted as Executive Engineer on ad hoc basis. As a matter of fact, there was no occasion for considering him

for promotion as he was entitled to be promoted even prior to the disciplinary proceedings and he should have been promoted as Executive Engineer in view of order passed in the month of March, 1984.

7. So far as inquiry proceedings are concerned, the same Enquiry Officer was to consider the second application of the applicant as it was by registered post and to dispose it off. Further, the Enquiry Officer's report was not given to the applicant which ought to have been given to him before imposition of penalty. A reference may be invited to a case, i.e., UNION OF INDIA & OTHERS VS. MOHD. RAMZAN KHAN 1991(1) SLJ 196 decided by the Supreme Court of India. In this context, the application deserves to be allowed and following orders are being passed :

- i) The applicant shall be deemed to be in the post of Executive Engineer in view of Order dated March, 1984 or with effect from the date similarly placed other Assistant Executive Engineers were promoted and he will be entitled to the consequential benefits including pay and salary etc.;
- ii) So far as leave period is concerned, the applicant's application for leave will be considered in the light of relevant rules and whatever leave is admissible to him will be granted to him and the other period can also be treated to be leave without pay and payment shall be made to him as permissible according to the nature of leave granted;
- iii) The punishment order is quashed. It is for the respondents to hold the inquiry in case they desires to do so in accordance with law from the stage of giving of the Enquiry Report to the applicant.

The above directions shall be complied with within

a period of three months from the date of communication of this Order.

There will be no order as to costs.

/PKK/

I.P. Gupta
(I.P. GUPTA)
MEMBER (A)
26.7.91.

U.C. Srivastava
(U.C. SRIVASTAVA)
VICE CHAIRMAN (J)
26.7.91.