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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1626/87
T.A. No.

198

DATE OF DECISION 16.3.1990

Shri Lakshman Das Kataria Applicant (s)

Shri R.P. Oberoi Advocate for the Applicant (s)

Versus
Union of India & Another Respondent (s)

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

CORAM :

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

The Hon'ble Mr. I.K. Rasgotra, 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 ? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No*
4. To be circulated to all Benches of the Tribunal ? *No*

JUDGEMENT

(delivered by Hon'ble Shri P.K. Kartha, V.C.)

The applicant, who is working as an Assistant Surveyor of Works at Bhatinda, filed this application under Section 19 of the Administrative Tribunals Act, 1985 praying for the following reliefs:-

- (i) to direct the respondents to publish a list of vacancies which has occurred in the grade of Assistant Surveyor of Works between the years 1978 to 1986 and also the vacancies in existence prior to 1978;
- (ii) to hold a review D.P.C. for preparation of select panels for year-wise vacancies which had occurred since the last D.P.C. held before 1980;
- (iii) to accord to the applicant his due place of seniority in the Select List on the basis of

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- his eligibility and suitability;
- (iv) pending completion of review by the proposed review D.P.C., to treat him as having been regularly promoted as Assistant Surveyor of Works w.e.f. 14th July, 1982 and to fix his pay in the scale of Rs.700-1300 by stepping up, if necessary, so that his pay is not fixed at a stage lower than that of his juniors;
 - (v) to consider his name for promotion to the next higher grade of Surveyor of Works on the basis of the revised seniority assigned to him;
 - (vi) to grant consequential benefits by way of seniority, promotion, arrears of pay, etc.; and
 - (vii) to award interest at the rate of 18 per cent per annum on the arrears of pay and allowances from the date the same fell due to the date of actual payment.

2. The case of the applicant in brief is as follows. He is a member of the Military Engineering Service (hereinafter referred to as 'Service'). He originally joined the Service on 18.9.1957 as Supdt., Buildings and Roads, Grade II (a Class III post). He was promoted as Supdt., Buildings and Roads, Grade I (a Class III post) w.e.f. 10.4.1963 and he was confirmed as Supdt. Grade I/SA/ w.e.f. 10.4.1974. OA Grade I

3. Prior to 1964, there were two parallel cadres - the Surveyor Cadre and the Engineer Cadre. In 1964, the two cadres were merged into a single cadre of Engineers.

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Some Surveyor Assistants Grade II and Grade I opted for the Surveyor Cadre and some, for the Engineer Cadre. In 1978, the respondents decided to demerge the cadre into two separate cadres of Engineers and Surveyors, as was the position prior to 1964. The demerger scheme provided that the existing Assistant Executive Engineers who were on the regular list of encadared officers, Supdts. B/R Grades I and II could exercise option for transfer to the equivalent posts of Assistant Surveyor of Works, Surveyor Assistant Grades I and II, respectively in the Surveyor Cadre within a period of four months from the date of issue of the order dated 31.3.1978 (vide Annexure II, pp.29-30 of the paper-book). The said order further provided that the 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:-

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| a) Asstt. Executive Engineers (Encadared) | Will be merged with the ASWs seniority list on the basis of the dates of assuring appointments as AEE (before demerger)/ASW and in the same order of seniority. |
| b) Asstt. Engineers(Group B, Supdts. B&R Gde I (Cadre holders), Supdts. B&R Gde I. | Will be merged with the seniority list of surveyor Asstt. Gde I on the basis of the dates of assuming appointment as Supdts B&R Gde I (before demerger)/Surveyor Asstt Gde I and in the same order of seniority. Asstt. Engineers (Group B) and Supdts. B&R Gde I (Charge Holders) will be placed above Supdts B&R Gde I. |
| c) Supdts B&R Gde II | Will be merged with the seniority list of Surveyor Asstt Gde II on the basis of the dates of assuming appointment as Supdt. B&R Gde II (before demerger)/Surveyor Asstt. Gde II and in the same order of seniority. |
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4. The applicant exercised his option on 11.7.78 for Surveyors' Cadre and his name was placed at Sl. No.63 in the seniority list circulated on 23.10.1978. He again submitted a fresh option, as desired, on 6.10.1979.

5. The respondents gave further time to exercise the option upto 31.10.1980. They issued a revised seniority list as on December, 1980, wherein the name of the applicant figured at Sl. No.71.

6. On 19.4.1982, the respondents issued orders for promotion of 105 Surveyor Assistants Grade I to the Grade of Assistant Surveyor of Works on an ad hoc basis for a period of one year, or till regular candidates became available. The name of the applicant figured at Sl. No.78 of the panel for promotion. Pursuant to this order, the applicant was appointed as Assistant Surveyor of Works w.e.f. 14.7.1982.

7. Thereafter, on 28.6.1982, the respondents promoted four Surveyor Assistants Grade I ~~on regular basis as~~ Assistant Surveyor of Works. Their names had figured at Sl. Nos.2 to 5 of the panel prepared in April, 1982.

8. The applicant has contended that the promotion of 105 officers on an ad hoc basis in 1982 was against regular vacancies which had been in existence prior to 1980 and that promotion of only four officers on regular basis out of 105 officers was arbitrary, discriminatory and violative of Articles 14 and 16 of the Constitution.

9. Recruitment Rules for the post of Surveyor of Works Cadre were notified on 16th January, 1985. ~~un~~Under the said Rules, 50 per cent of the posts of Assistant

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Surveyor of Works are to be filled by promotion and the remaining 50 per cent by direct recruitment. The following categories of persons are eligible for promotion:-

- (a) Surveyor Assistant Grade holding Degree in Civil Engineering or equivalent, or who have passed final examination of the Institution of Surveyors (India) with five years' regular service in the grade; and
- (b) Surveyor Assistant Grade I, who have passed Intermediate Examination of Institution of Surveyors (India), or holding Diploma in Civil Engineering or equivalent with ten years' regular service in the grade.

10. It was also provided that for the purpose of counting the period of eligibility for promotion, the regular service rendered by Surveyor Assistant, Grade I in the equivalent grade in the Engineering Cadre as Supdt., Buildings/and Roads, Grade I or Supdt., Buildings and Roads, Grade I (Charge Holder), or Assistant Engineer prior to 4.1.1981, shall also be taken into account.

11. According to the Recruitment Rules in force prior to 1985, the educational ^{and} ~~and~~ qualifying service criteria for promotion to the post of Assistant Surveyor of Works, were as under:-

- (a) Degree holders with five years' regular service in the grade;
- (b) Diploma holders with ten years' regular service in the grade; and
- (c) unqualified service with 15 years' regular service in the grade.

12. The applicant was assigned seniority in the grade of Surveyor Assistant, Grade I w.e.f. 10.4.1963. He is a Diploma-holder. He completed ten years' qualifying service on 10.4.1973. He, therefore, fulfilled the prescribed qualification of length of service in 1973. According to him, he was eligible for consideration subject to his position in the seniority list and number of vacancies available each year against the vacancies which had occurred from 1973 onwards.

13. In April, 1986, the respondents circulated a list of 91 names stating that it was the approved panel for officiating promotions to the grade of ASW. The applicant's name figured at Sl. No.60 of the List and he was assigned seniority w.e.f. 14.4.1986.

14. In the above factual background, the applicant has raised the following contentions:-

- (i) A large number of vacancies in the grade of ASW had occurred upto 1980 which had not been filled up. Ad hoc promotion of nearly 170 officers were made between 1982 and 1984. However, regular promotions on the recommendations of the D.P.C. were made in 1986 only in respect of 4 officers promoted in 1982.

The respondents bunched the vacancies from 1982 to 1984 instead of preparing year-wise panels on the basis of the number of vacancies which had occurred year-wise. This was in contravention of the administrative instructions issued by the Department of Personnel & Administrative Reforms in their O.M. dated 24.12.1980. It has the effect of depriving him of his legitimate and rightful place in the seniority list;

- (ii) He has been assigned seniority in the grade of ASW w.e.f. 14.4.86. His seniority should have been fixed w.e.f. 14.7.82 after taking into account the entire period of ad hoc service rendered by him for the purpose of fixation of seniority;

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- (iii) ineligible officers have been promoted to the next higher grade of Surveyor of Works, overlooking his legitimate claims for promotion;
 - (iv) on his regular promotion to the grade of ASW. w.e.f. 14.4.1986, his pay has not been correctly fixed. His juniors are drawing more pay than him; and
 - (v) he has not been allowed to cross the Efficiency Bar and is held up at the stage of Rs.2800/- in the revised pay-scale of Rs.2200-75-2800-EB-100-4000.

15. The respondents have denied the aforesaid contentions in the counter-affidavit filed by them. Their contentions may be summed up as follows:-

- (i) As he was promoted as ASW on regular basis only in 1986, he cannot have any grievance relating to the promotions made in the grade of SW earlier than his regularisation in the feeder post of ASW. They admit that 35 Assistant Surveyors of Works were promoted to the grade of Surveyors of Works vide letter dated 22.3.1985, but according to them, these promotions have no relevance in his case.
- (ii) He was taken into Surveyors' Cadre on the basis of the option exercised by him in pursuance of demerger letter dated 5.9.80. The then existing recruitment rules were not applicable in the case of optees.
On The D.P.C. held in 1982 was conducted against the vacancies of 1979, i.e.,

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the vacancies pertaining to the period prior to demerger, viz., 1979 and only the original SAs I in whose case the old recruitment rules were applicable, were considered by the D.P.C. Accordingly, four officers appearing at Sl. Nos. 2 to 5 in the Panel for promotion to the Grade of ASW on ad hoc basis, were promoted to the posts of ASW on regular basis vide letter dated 26.8.1982. The revised recruitment rules incorporating the provisions of demerger and allowing the optees to reckon their seniority in the corresponding grades in Surveyor Cadre with effect from the date of their assuming appointment in the equivalent grade in Engineer Cadre for the purpose of determining their eligibility for promotion in the Surveyor Cadre, were finalised in 1985 only and, therefore, promotion D.P.Cs. could not be conducted till 1986.

- (iii) A panel for promotion to the grade of A.S.W. on ad hoc basis containing the names of 105 Surveyor Assistants Grade I, was published vide letter dated 19.4.1982 in which the name of the applicant figured at Sl. No. 78. The ad hoc promotions were made in order to meet the immediate requirement of the Government and pending the revision of the existing recruitment rules with a view to incorporating the provisions of demerger. The panel was drawn on the basis of seniority.
- (iv) The applicant cannot claim promotion against the vacancies pertaining to the period prior to his absorption in the Surveyor Cadre w.e.f. 5.1.1981.
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The then existing rules were not applicable to the optees. He was promoted to the post of ASW on regular basis on the recommendations of the D.P.C. which was held in 1986 after the recruitment rules were revised in 1985.

- (v) The applicant's name figures at Sl. No.60 in the list of officers approved for regular promotions as ASW on the basis of the recommendations of the D.P.C. held in 1986. He was promoted w.e.f. 14.4.1986. However, the Panel published on that date stands quashed in OA-1037/86 filed by one, Kishan Chander, in this Tribunal (vide Kishan Chander Vs. Union of India, A.T.R. 1987(2) C.A.T. 631). The competent Appointing Authority have decided to implement the judgement of the Tribunal. In view of this, the case of the applicant for promotion to the Grade of Assistant Surveyor of Works on regular basis, will be considered by the review DPCs afresh as per the directions given by the Tribunal in Kishan Chander's case.

- (vi) The case of the applicant for stepping up of his pay has been duly recommended by the Audit and will be processed for consideration and approval.

16. The applicant has stated in his rejoinder affidavit that in view of the orders of this Tribunal in Kishan Chander's case, the matter would need a fresh look and consideration only after the result of the review D.P.C. ordered by the Tribunal becomes known.

17. We have carefully gone through the records of the case and have heard the learned counsel for both the parties. The issues raised in the present application had figured in Kishan Chander's case. In this context,

a brief mention may be made about the facts in Kishan Chander's case and the directions given by the Tribunal in its judgement dated 28.8.1987.

18. Kishan Chander was also working as an ad hoc Assistant Surveyor of Works. He was appointed as Supdt. (B/R) Grade II on 13.12.1956. He was promoted as Supdt. (B/R) Grade I on 19.1.1963 and took over as such on 18.2.1963. However, in the cadre of Superintendent Grade I, he was given seniority w.e.f. 8th April, 1963 which, according to him, was arbitrary. In 1964, the respondents decided to merge the Surveyors' and Engineers' Cadres. The Cadres were, however, separated by demerger in 1978 and options were asked for by the respondents. He opted to serve in the Surveyors' Cadre and based on this option, he was promoted on an ad hoc basis as A.S.W. on 19.4.1982. His grievance was that no meeting of the D.P.C. could be held after his ad hoc promotion in 1982 till 1986 for regular promotion as A.S.W. His further grievance was that all the 91 regular vacancies in the Grade of ASW which occurred till 1985, were clubbed together and a consolidated panel was prepared in which he was not included. This had 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 had 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 & Administrative Reforms O.M. dated 24.12.1980. He had also prayed that his seniority in the Grade of Surveyor Assistant (Grade I) should not be fixed from the date of option letter of 1980. He had also questioned the action taken by the respondents in not allowing him to cross the Efficiency Bar in the scale of A.S.W. at the stage of Rs. 900 in the scale of Rs. 700-1300 merely on the ground

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that he was an ad hoc appointee.

19. The contention of the respondents was that Kishan Chander was considered by the D.P.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. As regards the clubbing together of vacancies till 1985, they contended that the recruitment rules were finalised on 9th February, 1985 and, therefore, year-wise vacancies could not be filled earlier. They had further stated that as soon as these rules were finalised, the meeting of the D.P.C. was held in March, 1986, in accordance with the procedure laid down in the O.M. dated 24.12.1980. Since the vacancies were belonging to the year 1985, after the publication of the recruitment rules, the ACRs of the applicant were considered for the years from 1982 to 1985. Promotions of Surveyor Assistant Grade I as ASW were made on an ad hoc basis during 1982-85 because the recruitment rules had not been finalised. His Efficiency Bar could not be cleared as he was an ad hoc ASW. Since he was taken in the seniority list of Surveyor Assistants Grade I w.e.f. 5.1.1981, he could not claim promotion as ASW given to Surveyor Assistants Grade I against the vacancies of ASW of 1979 filled on the recommendation of the D.P.C. which met in 1982.

20. The Tribunal allowed the application in Kishan Chander's case 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 being in complete violation of the 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;
 - (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 supernumerary
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post with effect from 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 yearwise regular vacancies in the promotion quota in the grade of ASWs 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 ASW should be made on the basis of year-wise panels so prepared; and
- (e) if the applicant is included in any of the panels so prepared through the review DPC, 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.

21. It will be noticed that most of the contentions advanced before us in the instant case, had been made by the applicant in Kishan Chander's case. The respondents have stated that they are in the process of implementing the judgement of this Tribunal in Kishan Chander's case and that the applicant's case for promotion to the Grade of Assistant Surveyor of Works on regular basis, will be considered by the review D.P.Cs. afresh as per the directions given in Kishan Chander's case.

22. Following the ratio in Kishan Chander's case, we hold that on the demerger of the two Cadres in 1978, the applicant who had opted for the Surveyors' Cadre, must count his total service as Supdt. (B/R) Grade I w.e.f. 10.4.1963 in the seniority list of Surveyor Assistants I. No Surveyor Assistant Grade I and Supdt. (B/R) Grade I who had commenced officiation after 10.4.1963, should be ranked above him in the seniority list of SA-I after demerger. He is also eligible to be considered for the post of ASW from 1982. He should, therefore, be considered for such promotion by a review D.P.C. of 1982 on the basis of his seniority in the revised list in the grade of SA-I as mentioned above. In case, 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. In case, he 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. He should be considered for further promotion in the light of the revised seniority list as indicated above. He would also be entitled to other consequential benefits, including arrears of pay and allowances. The respondents are also directed to pass appropriate orders on the claim of the applicant for stepping up of his pay as expeditiously as possible and release the same to him together with interest at the rate of 10 per cent per annum from the due date till the date of payment.

The parties will bear their own costs.

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I. K. RASGOTRA
(I. K. Rasgotra)
Administrative Member

16/3/90
(P. K. Kartha)
Vice-Chairman(Judl.)