

Central Administrative Tribunal  
Principal Bench: New Delhi.

Regn. No. CA-1742/1987

Date of Decision: Sept 5, 1990

Shri Balbir Sardana

... Applicant.

Vs.

Union of India & Ors.

... Respondent.

For the applicant:

... Shri R. Venkataraman,  
Advocate.

For the respondent

... Shri M.L.Verma,  
Advocate.

CORAM: Hon'ble Shri P.C.Jain, Member(Admn.)  
Hon'ble Shri J.P.Sharma, Member(Judl.)

JUDGEMENT

(Delivered by Hon'ble Shri J.P. Sharma)

The applicant filed this application under Section 19 of the Administrative Tribunals Act, 1985 for the redressal of his grievance that he has not been promoted as Assistant Engineer(A.E.) in terms of the prescribed procedure for promotion to the selection post as contained in the O.M. dated 30.12.1976 as amended on 24.12.1980. The applicant claims the following reliefs:

- (i) to "pass an order quashing the office order dated 18.9.1987 effecting promotion to the grade of Assistant Engineer, has been violative of Article 14 and 16(1) of the Constitution;"
- (ii) To "pass an order directing <sup>the</sup> respondent to effect the promotion to the existing vacancies in the grade of Assistant Engineer for the year 1987-88, strictly in terms of the principles laid down and the procedure prescribed in the office memorandum dated 30.12.1976 as amended on 24.12.1980" (Annexure A)

2. The brief facts of the case are that the applicant as joined Junior Engineer(J.E.) in the CPWD Circle I, Delhi in the year 1967. According to Rule 9, CPWD Rules and Regulations, the applicant became eligible for promotion to the grade of Assistant Engineer in the year 1977. The applicant has filed a supplementary seniority list of A.Es. (Civil) in C.E.S. Group B(Annexure 'B'). By this the applicant alleged in the application that the last promotion was effected in April, 1986. According to the applicant, by order dated

18.9.1987, the respondent circulated a list containing J.E. (Civil) promoted to the grade of A.E. (Civil) on regular basis. The seniority position of the J.Es. in the seniority list as on 1.1.1986 was also indicated in the said office order. The Serial number of the applicant in the said seniority list is 2717. This list was filed as Annexure 'C' and it shows that 316 J.Es. had been promoted as A.Es. besides 21 belonging to reserved category i.e. in all 337. The name of the applicant does not find mention in the promotion list (Annexure 'C').

At Serial No.45 in this promotional list, the name of Shri Harish Bhardwaj exists at serial No. 2824 in the seniority list; though he is junior to the applicant, has been promoted. By this the applicant has stated that either his case has not been considered at all or that he has been superseded without any reason whatsoever. The applicant has referred to the selection method as given out in the O.M. (Annexure 'A') and according to the applicant as the maritorious J.Es. have been promoted while the applicant who has earned good entries during all the last 5 years has not been promoted. The applicant has illustrated that at Serial No.1 Shri M.B.Bhatia and from serial No.306 to 316, Shri S.N.Deb and others of the impugned order (Annexure 'C') are less maritorious if the grading is done according to the O.M. of 1976 (Annexure 'A') on the basis of the A.C.Rs. of the J.Es. According to the applicant the above depicts illegality and arbitrariness of the procedure adopted by the respondents and the selection/promotion has been effected against the provisions of law. The applicant had made representations but to no effect. The main grievance of the applicant, therefore, is that there has been deviation from the procedure prescribed in the OM referred to above by splitting the number of vacancies to be filled up in the year 1988-89 and constituting two D.P.Cs. for effecting promotion which has resulted in arbitrariness

to the extent of violation of Articles 14 and 16 of the Constitution of India.

3. The respondents filed the reply to the application opposing the application and taking the preliminary objections that the application is bad for non-joinder of necessary and proper parties i.e. Union of India and the application therefore, liable to be dismissed in view of Section 79 and Order 27 of the C.P.C. and preamble Section 3(d)(q) and (r) of the Administrative Tribunals Act, 1985. Further, the application is premature as the representation of the applicant made on 26.10.1987 is still to be considered by the respondents. Further, it is said that the present application is barred by principle of res judicata and public policy as in an identical matter the writ petition was dismissed by the Hon'ble High Court. That the application is also barred on account of the fact that the matter is sub judice in S.L.P. before the Hon'ble Supreme Court of India.

4. On merits, the case of the respondent is that 397 posts of A.E. (Civil) were created as a result of first ~~Cadre~~ review of Junior Engineers by the Ministry of Urban Development letter dated 8.5.1987 (Annexure R-1), 50% of the posts were to be filled by selection from among the permanent J.Es. and 50% by a limited departmental competitive examination in consultation with the U.P.S.C. as per relevant recruitment in relaxation of the above rules (Annexure R-II). It was decided by the Government to fill up all the 396 posts of A.Es. (Civil) by selection with a view to affording full advantage of these posts to Senior Junior Engineers. The respondents further referred to the O.M. of 1976 as amended in 1980 (Annexure 'A') contending that the promotions were made by selection i.e. merit-cum-seniority and the zone of consideration was three time the number of

vacancies. The persons in the zone of consideration are to be graded by the D.P.C. as outstanding, very good and good etc. on the basis of their service record. The select list is then prepared by placing the officers graded as 'outstanding' in the order of their inter se seniority in the feeder grade followed by 'very good' and 'good' to the extent of the vacancies. In accordance with the instructions contained in O.M. dated 20.7.1974 as amended from time to time reservation for Scheduled Caste/Scheduled Tribes candidature was also made. The D.P.C. met on 5.9.1987 and adopted the procedure explained above as per O.M. of 1976 as amended in 1980 (Annexure 'A'). The case of the applicant was duly considered by the D.P.C. and on the basis of grading assigned to him by the D.P.C. on assessment of his service record, the applicant's name was not recommended for promotion. The respondents have also denied the various paras of the application but admitted that the applicant completed the eligible service in 1977 but mere completion of the prescribed service does not entitle him to promotion. Regarding the supplementary list (Annexure 'C') the regular promotion in the grade of A.E. upto the year 1985 has been shown. The panel was prepared by the D.P.C. by placing the J.Es. categorising as outstanding, very good and good on the basis of their service record and in accordance with the instructions contained in OM (Annexure 'A'). It is denied by the respondent that J.Es. of inferior merit have been promoted. The respondent gave the reply to the applicant (Annexure R-V) to the representation made, that there has been no deviation from the prescribed procedure for selection. It is further stated by the respondents that junior to the applicant who have been promoted are of higher merit. It is also alleged by the respondent that as per Department of Personnel and Training O.M. No. 22012/1/77-Estt.(D) dated 31.1.1981, the D.P.C.

enjoys full discretion to devise its own method and procedure for subjective assessment for the suitability of the candidate for promotion. The respondent, therefore, contended that the case of the applicant has not been discriminated in any manner whatsoever nor he has been prejudiced in the assessment of the D.P.C. which has been done according to the aforesaid O.M. of 1976 as amended in 1980. It is also said that there is no violation of Articles 14 and 16 of the Constitution of India and the applicant is not entitled to any relief prayed for.

counsel

5. We have heard the learned for the parties at length and have gone through the records of the case. It is not disputed that a D.P.C. was held on 5.9.1987 to consider the promotion of Junior Engineers (Civil) to the grade of A.E. (Civil). This is a selection post and the selection was to be done by the D.P.C. as per O.M. of 1976 as amended in 1980 (Annexure-A). The said O.M. provides that the D.P.C. will assess each individual candidate on the basis of the entries earned by the candidate in his character-roll and at least 5 years earlier entries before the meeting of the D.P.C. shall be considered. However, this does not preclude the D.P.C. to consider the whole of the character roll of each and every candidate and to assess on the basis of the entries in the character-roll. The committee had prepared a panel placing those who have been adjudged as outstanding in their performance foremost and after that they placed those who have been judged very good. The proceedings of the D.P.C. have been placed before the Tribunal. The D.P.C. recommended 316 general candidates for promotion to the post of A.E. and 21 Scheduled caste/scheduled tribes candidates. The committee decided to leave 30 vacancies unfilled for such officers who were not confirmed or their complete C.Rs. were not available and observed that the cases of such officers may be resubmitted after their confirmation has been done or their complete C.Rs. become available. In

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the panel prepared on the basis of the recommendations of the D.P.C. from Serial No.1 to 45 are those Junior Engineers who have been assessed as outstanding in their work. At Serial No.45 is Shri Harish Bhardwaj. The grievance of the applicant is that though Harish Bhardwaj is junior to him yet he has been recommended for promotion in the panel and the case of the applicant has not been properly assessed and recommended. Besides Harish Bhardwaj is junior to the applicant, Shri A.K. Goel at Serial No.2736, Shri B.R.Sapra at Serial No.2784, Shri R.L.Arora, at Serial No.2788, Shri C.P.Mittal, at Serial No.2807 and P.Gopal Krishna at Serial No.2814, have also been recommended. The character roll of Shri Harish Bhardwaj as well as above named Junior Engineers admittedly junior to the applicant in the seniority list has been considered by the D.P.C. As per the O.M. of 1976, the D.P.C. in the panel placed all 'outstanding' officers above those who earned the assessment as 'very good' to the extent necessary, (Annexure I). The minutes of the meeting of the D.P.C. show the assessment made by the D.P.C. of each of the Junior Engineers. The D.P.C. considered J.Es. upto serial No.2980 of the seniority list of 1986. The D.P.C. has recommended 316 from the general category and 21 from the reserved category. Thus, the D.P.C. recommended 327 J.Es. for promotion to A.E. The total number of vacancies to be filled up were 396. Out of these 59 posts were to be filled by Scheduled Caste and 30 from Scheduled Tribes candidates. Since, sufficient number of SC/ST candidates were not available so 29 reserved vacancies were left unfilled for such SC/ST candidates who have not been confirmed or whose complete C.Rs. were not available. The remaining 27 vacancies were got unreserved and were to be filled up by general category candidates. It appears that in the panel of 1987, 21 Scheduled Caste/Scheduled Tribes candidates

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were recommended and the remaining were recommended sometime in the year 1988 but it is not necessary to go in detail as the short point involved in this case is about the promotion of the applicant in the general category. From the perusal of the Minutes of the Meeting of the D.P.C. as well as from the panel it is evident that the applicant was duly considered by the D.P.C. and he was ranked as very good. However, in the existing vacancies, the name of the applicant could not be reached among those very good Junior Engineers who have been recommended for promotion. The last J.E. recommended is Bodh Raj who is at ~~317~~ No. 317 and his serial No. in the seniority is 2039. The serial No. of the applicant in the seniority list is 2717. A perusal of the Annexure-I attached to the panel, it is evident that any officer ranked very good after the seniority list No. 2039 was not included in the panel though he was graded as very good. There are 222 J.Es. Officers who have been graded as Very good who come above in the seniority list above the applicant and if the number of vacancies were to be filled from general category not only 316 but 538, then only the name of the applicant could have been recommended for promotion in the panel. Thus, from the proceeding of the D.P.C. it is evident that there is a complete compliance of the O.M. of 1976 as amended in 1980 Annexure A and the applicant in the application has only prayed that the said O.M. should have been complied with and that has been followed in letter and spirit, so there is no case of discrimination against the applicant.

6. The next arguments of the learned counsel for the applicant is that the J.Es. at serial No. 306 to 376 are not of such a merit as they could be given the grading of very good by the D.P.C. Firstly, taking the arguments of the learned counsel as such, if these 11 persons are not considered for promotion on the assumption that they could not have been ranked for grading as very good even then the ~~306 to 376~~

name of the applicant only comes after 211 more officers and the applicant in that respect also cannot be said to have been discriminated.

7. The learned counsel for the applicant could not make out any case that the O.M dated 30.12.1976 as amended in 1980 (Annexure A) has not been complied with by the D.P.C. in grading the J.Es. as outstanding, very good and good and so this arguments of the learned counsel has no force.

8. The learned counsel for the respondent has rightly pointed out that the Tribunal cannot sit in appeal over the grading done by the D.P.C. because the D.P.C. has to take into account overall suitability of the candidates for the promotional post. In this connection the authority of Dalpat Abasahseb Solunke etc. Vs. B.S. Mahajan etc. I(1990)ATLT(SC) 14, has been relied upon. The Hon'ble Supreme Court held in para 12 as follows:

"It is needless to emphasise that it is not the function of the Court to hear appeal over the decisions of the Selection Committees and to scrutinize the relative merits of the candidates. Whether a candidate is fit for a particular post or not has to be decided by the duly constituted Selection Committee which has the expertise on the subject. The Court has not such expertise. The decision of the Selection Committee can be interfered with only on limited grounds, such as illegality or patent material irregularity in the constitution of the Committee or its procedure vitiating the selection, or proved malafides affecting the selection etc. It is not disputed that in the present case the University had constituted the Committee in due compliance with the relevant statutes. The Committee consisted of experts and it selected the candidates after going through all the relevant material before it. In sitting in appeal over the selection so made and in setting it aside on the ground of the so called comparative merits of the candidates as assessed by the Court, the High Court went wrong and exceeded its jurisdiction."

Even the character roll of the Junior Engineers from S.L. Deb at Serial No.306 of the panel to Budh Raj at Serial No.316 of the panel have been perused and it cannot be said that the

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is an arbitrary manner grading done in arbitrary. Applicant's own character roll for the year 1986-87 shows that he was given excellent entry in the relevant years but in the earlier years he was only ranked as Very good officers by the reporting and reviewing officer. Earlier to that even he has been ranked as good officer. Now taking all these entries and that of other J.Es. from S.N. Deb to Bodh Raj from Serial <sup>in</sup> No.306 to 316, all the panel, there is obvious difference even in the character roll entries of various years. The learned counsel desired to give the evaluation of each year in his own way but that is not prescribed in the O.M. referred to in the application. Thus, the evaluation by the D.P.C. cannot be said to be in any way faulty. Moreover, the character roll entries are the guide and the D.P.C. has to make his own assessment on the basis of the whole of the record available of an individual candidate. The respondents has also placed reliance on AIR 1990 SC 535 J. Rangaswamy Vs. State of Andhra Pradesh, where it has been held that "it is not for the court to consider the relevance of qualifications prescribed for various posts....., it is not for us to assess the comparative merits of such a doctorate and the BARC diploma held by the petitioner and decide or direct what should be the qualifications to be prescribed for the post in question." The reliance has also been placed by the learned counsel for the respondents on J.K. Joshi Vs. Union of India and Ors. reported in 1990 Vol. I CAT 193 by Chandigarh Bench where it has been specifically held that the D.P.C. can classify candidates as outstanding, very good and good. Again, the learned counsel for the respondents relied upon 1986 Supplement. SCC page 617 R.S. Das Vs. Union of India & Ors., where the Hon'ble Supreme Court held that where merit is the sole basis for promotion, selection of juniors for promotion does not amount to supersession and

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promotion on the basis of the superseded officer has no right to claim  the seniority list.

9. Having given a careful consideration and having gone through the character-roll of all the eligible Junior Engineers who were considered by the D.P.C., we are of the opinion that the applicant has not at all been discriminated in any manner whatsoever and he has been properly adjudged on merits as per entries in the character-roll. We also find that there has been no breach of any rules or regulations in not giving promotion to the applicant as his turn could not reach on the grading awarded to him by the D.P.C.

10. We find no force in the application which is devoid of merits and dismiss with costs on the parties.

J. P. Sharma  
( J.P. Sharma )  
Member (J)

P. C. Jain  
( P.C. Jain )  
Member (A)