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CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH
NEW DELHI.

O.A.No. 171/1987

New Delhi: dated this the 26th day of May, 1997.

HON'BLE MR.S.R.ADIGE MEMBER(A)

HON'BLE DR.A.VEDAVALLI MEMBER(J)

Shri S. S. Agarwal, S/o Late Shri Ram Chandra Agarwal
SW in the office of the CWE Delhi,
Delhi Cantt- 10

R/o 7-B, Kotwali Road, Delhi Cantt-110010.

.....Applicant.

(By Advocate: Shri G. D. Gupta)

Versus

Union of India through
the Secretary,
Ministry of Defence,
Govt. of India, South Block,
New Delhi.

2. Engineer-in-Chief, Army
Headquarters,
New Delhi.

.....Respondents.

(By Advocate: Shri V.S.R.Krishna)

JUDGMENT

BY HON'BLE MR.S.R.ADIGE MEMBER(A).

Applicant impugns respondents' action in allegedly denying him seniority in the grade of Executive Engineer(EE) from the date of seniority in the grade of Surveyor of Works (SW) and non-consideration of his service as SW for promotion as Supdt. Engineer (SE), as communicated in respondents' order dated 13.8.85(Ex. 22). Respondents' Signal dated 22.8.85 (Ex. 24) seeking his unconditional absorption in Engineers cadre as per panel dated 12.7.85, has also been impugned and direction has been sought for fixing his seniority as E.E ex post facto from the date of his promotion as SW on 9.9.75 with counting of his service as SW and onwards promotion as SE(SG)

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and Addl. CE. Alternatively it has been prayed that respondents be directed to promote him as CE above one Shri P.S.Pariyani and his promotion as SE; SE (SG) and Addl. CE be regularised ex post facto accordingly.

2. This OA was heard on merits and was dismissed by judgment dated 26.9.95. Thereupon applicant filed SLP (c) No. 1279/96 upon which the Hon'ble Supreme Court passed the following order on 5.2.96:

"Learned counsel for the petitioner states that he wishes to approach the Tribunal in review application having regard to what is stated in Ground-N of the SLP. The SLP is dismissed as withdrawn, with such liberty. The application for condonation of delay, if any, before the Tribunal may be considered accordingly."

3. Accordingly applicant filed R.A. No. 41/96. That RA was heard in presence of both parties, during which it was noted that in the impugned judgment dated 26.9.95 it had been recorded that applicant's promotion as SW made on the basis of the impugned 1974 seniority List had been quashed, while in actual fact his promotion as SW had not been quashed, a fact which respondents themselves had admitted in reply to the R.A. Accordingly this Bench was satisfied that the judgment dated 26.9.95 contained a factual error apparent on the face of the record, and the judgment therefore warranted review in the background of Section 22(3) (f) AT Act read with Order 47 Rule 1 CPC. Accordingly by order dated 28.2.97 the judgment dated 26.9.95 was recalled and the case was posted for re-hearing.

4. We have heard applicant's counsel Shri G.D. Gupta and respondents' counsel Shri V.S.R. Krishna. We have perused the materials on record and given

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the matter our careful consideration.

5. Admittedly applicant was recruited through UPSC and joined MES as AEE on 8.5.64. At that point of time, by respondents' letter dated 23.3.64 the Engineers cadre and Surveyors cadre in MES stood merged up to the level of AEE (Engineer cadre) and ASW (Surveyors cadre), and officers in Surveyors Cadre were required to give their option for absorption in equivalent grade in Engineers Cadre within the stipulated period. According to respondents, AEE's could be considered for promotion to the grades of E.E. or SW subject to their fulfilling the eligibility criteria for promotion as laid down in the recruitment rules. Once they accepted promotion to the next higher grade of EE or SW, they would be borne on the strength of the respective cadre concerned and not in a combined cadre.

6. Thereafter respondents issued letter dated 28.2.67 (Ex- 3) providing for

"(a) OFFICER OPTING FOR ENGINEER CADRE

- i) The AEE and those ASWs who have opted for Engineer Cadre would be brought on to a common seniority roster;
- ii) For selection to EE as well as to SW rank, officers borne on this common roster will be eligible provided they qualify in all other respects for the post i.e.

For EE-5 years service as AEE/ASW
For SW-5 years service as AEE/ASW
passed the prescribed professional examination conducted by the Institution of Surveyors.

- iii) An Officer selected both for EE and for SW will have the option to choose the cadre he would like to be promoted to

"(b) ASW NOT OPTION FOR ENGINEER CADRE

- (i) They will be eligible for selection to SW rank only subject to their eligibility with regard to qualification and service.

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(ii) They will be considered for promotion to SW rank along with other AEEs who are eligible for appointment to the rank of SW by virtue of seniority and qualification".

7. In 1973 applicant passed the final examination of Institute of Surveyors which was essential for promotion from AEE/SW to SW.

8. Admittedly applicant was considered by a DPC which met in 1974 for promotion as EE, but he could not be promoted, owing to his low position in the seniority list and the limited number of vacancies. In September, 1975 he was again considered by a DPC, this time for promotion as SW. He was selected for promotion. Meanwhile respondents issued a seniority list of AEE's who were going to be considered for promotion as EEs on 22/23.12.75. Applicant's name did not find mention in that list. He represented on 12.1.76 for promotion as EE in turn, and for inclusion in the seniority list of AEEs dated 22/23.12.75, but even as his representation dated 12.1.76 was pending, he joined as SW on 19.2.76. Applicant contends that had he been told that he would not be considered for promotion as EE if he joined as SW, he would never have joined as SW.

9. Applicant cannot legitimately claim to have been unaware of the contents of respondents' letter dated 23.3.64 which stated that the merger of Engineers and Surveyors cadre in MES was up to the level of AEEs and ASWs alone. In other words beyond the level of AEE/ ASW, the cadres were not merged and stood distinct and separate. When applicant accepted the promotion offer and joined as SW on 19.2.76, it implies that he had freely

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chosen to seek his career prospects in Surveyors cadre. Applicant's contention that his acceptance was conditional upon respondents continuing to consider him in the line of promotion of EEs cannot stand scrutiny, because the promotion order admitted no such condition, and in applicant's case no such option was available to him in terms of respondents' letter dated 28.2.67, he not having been selected for promotion as EE in the 1974 DPC. For this reason also, applicant's case is not on the same footing as that of S/Shri M.L.Grover and D.K.Srinivas, both of whom were selected for promotion as E.Es in 1974 and SWs in 1975. The said letter dated 28.2.67 cannot be understood to mean that if applicant was not selected for promotion as EE, but was selected for promotion as SW and joined there, he had again to be considered for selection as E.E., and then if he found he has been selected both as EE as well as SW he had to be given the option to choose one or the other. Under the circumstance having not been selected as EE in the 1974 DPC, but having been selected as SW in the 1975 DPC, and having joined as SW on 19.2.76, the question of applicant having again been considered for promotion as EE did not arise.

10. Furthermore if applicant had a grievance regarding non reply to his representation dated 12.1.76 for promotion as EE, or indeed his non-consideration for promotion as EEs in the DPCs held in 1976, 1977 and 1978 despite subsequent representations, it was open to him to have agitated the matter in the appropriate legal forum, which he did not do. Those who seek to enforce their rights have to be vigilant on that score and not sleep over

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them. In this connection, the Hon'ble Supreme Court in R.C. Samanta Vs. UOI 1994(26) ATC 228 has observed that delay itself deprives a person of a remedy available in law and one who has lost a remedy by lapse of time loses his right as well.

11. Even assuming for a moment that applicant was wrongly overlooked for promotion as EE in 1976 the above situation underwent a qualitative change after (i) respondents policy decision of March, 1978 to separate the Surveyors cadre from the Engineers cadre completely and form two wholly independent cadres, and ii) The Hon'ble Supreme Court's judgment dated 26.4.83 in A. Janardhana Vs. UOI 1983 SCC (L & S) 467. Consequent to the demerger decision, options were called for from all personnel borne on the then existing combined cadre for transfer to Surveyors cadre and all options which were unconditional and found in order were accepted. Consequent to the judgment in Janardhana's case (Supra) respondents conducted review OPC against the original OPCs of 1974, 1976, 1977 and 1978 for promotion to E.Es grade. Applicants low position in the combined cadre did not bring him within the zone of consideration for promotion as E.E. in the review OPCs of 1974, 1976 and 1977, while his grading stood in his way for his promotion as EE in the review OPC of 1978. He was again considered in the June, 1985 OPC for promotion and was selected for promotion as EE against the vacancies of 1979-80, but upon being asked whether he would ^{like} to come over to Engineers cadre or remain in Surveyors cadre, he set a condition that he would be willing to opt for Engineer cadre only if he was given seniority as EE with effect from the

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date he joined as SW on 19.2.76.

12. Manifestly applicant could not legitimately set any such condition, nor respondents agree to the same. Consequent to Janardhana's judgment (supra), the promotions to the grade of EE made as a result of original DPCs of 1974, 1976, 1977 and 1978 ~~was~~ ^{had} erased and review DPCs were held for each of those years, in none of which applicant was selected for promotion, either because of his low seniority position or his grading. Having failed to be promoted as EE w.e.f. 1976 by the review DPC because of his low seniority position, applicant by setting the aforesaid condition was seeking to acquire that very same seniority by the back-door.

13. During the course of hearing applicant's counsel sought to interpret our earlier judgment dated 26.9.95 to suggest that in the background of the Army Instructions No.241 of 1950, we would have granted applicant the relief sought for, but for the fact that we had held ~~expressly~~ ^(expressly) that his ~~the~~ promotion as SW was quashed. We make it clear that any such interpretation of our judgment dated 29.6.95 is incorrect. Army Instructions No.241 of 1950 cannot be torn out of context and applied to the particular facts and circumstances of the present case as explained above.

14. In the result, the OA fails and is dismissed. No costs.

A.Vedavalli
(DR.A.VEDAVALLI)
MEMBER(J).

S.R.Adige
(S.R.ADIGE)
MEMBER(A).