

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI.

REGN.NO. O.A. 335/87.

DATE OF DECISION: 26.10.1992.

R.K. Gupta & anr.

..Petitioners.

Versus

Lt. Governor, Delhi & anr.

..Respondents.

CORAM:

THE HON'BLE MR. JUSTICE V.S. MALIMATH, CHAIRMAN.  
THE HON'BLE MR. I.K. RASGOTRA, MEMBER(A).

For the Petitioner. Shri Sant Lal, Counsel.

For the Respondents. Shri A.K. Sikri, Counsel.

JUDGEMENT (ORAL)

(By Hon'ble Mr. Justice V.S. Malimath, Chairman)

The petitioners in this case are Shri R.K. Gupta and Shri M.K. Puri. They have come to the Tribunal with a prayer for issue of a writ in the nature of mandamus to consider their cases for promotion to the cadre of Assistant Engineers w.e.f. 19.4.1976, the date from which their juniors were promoted with all consequential benefits. The petitioners were Junior Engineers at the relevant point of time and the next promotional cadre was that of the Assistant Engineers. A Departmental Promotion Committee was convened on 20.4.1976 which resulted in recommendation and appointment of Sarvashri R.K. Gupta, S.R. Vasudeva and N.R. Asnani as Assistant Engineers. The petitioners' case is that all these persons were juniors to them and that the authorities could not have considered their cases without considering the cases of the

petitioners who are senior to them. The petitioners were agitating that their cases should have been considered when their juniors' cases were considered. The remedial measure was taken to convene a review D.P.C. on 11.4.1979. That review D.P.C. resulted in promotion being accorded to a colleague of the petitioners, namely, Shri P.C. Jain from 4.5.1979. Shri Jain made a representation stating that the D.P.C. held its proceedings on 11.4.1979 was to review the earlier proceedings of the D.P.C. held on 20.4.1976 and he having been found fit and suitable for promotion as Assistant Engineer, he should have been given retrospective promotion with effect from 20.4.1976 the date on which his juniors were promoted. The representation of Shri P.C. Jain was accepted and an order was made as per Annexure 'E' dated 24.5.1982 giving him promotion retrospectively from 20.4.1976. It is necessary to notice that in the month of April, 1979 it is after the review DPC was held on 11.4.1979 a regular DPC was held on 21.4.1979. The petitioners were not promoted in pursuance of the said regular D.P.C. held on 21.4.79. The regular DPC held on 21.4.1979 was again reviewed on 26.6.1980. As a result of the said review D.P.C., the petitioners and one Shri Gajraj Singh were found fit and suitable and duly promoted as Assistant Engineers by an order dated 2.7.1980 (Annexure 'D'). On a representation of the aggrieved parties being considered, the said order (Annexure 'D') dated 2.7.1980 was modified by an order dated 4.3.1986 by which the petitioners were given retrospective promotion from 10.5.1979. This was obviously on the basis that the D.P.C. held in the year 1980 was a review D.P.C. in respect of regular D.P.C. held on 21.4.1979. The petitioners have filed this petition complaining about retrospective promotion having been accorded to them only w.e.f. 10.5.1979. The petitioners' case is that they should be given promotion

with effect from 20.4.1976 the date on which their juniors were promoted, namely, Sarvashri R.K. Gupta, S.R. Vasudeva and N.R. Asnani in pursuance of the D.P.C. held on 20.4.1976.

2. It is necessary to state at the outset that the respondents though have filed a reply affidavit to which the petitioners have filed a rejoinder, no counsel appeared for the respondents whereupon we had requested Mrs Avnish Ahlawat, Counsel, to appear for the respondents. She having expressed her inability to argue this case as the authorities had refused to engage her and give necessary records, we released her from the obligation to appear for the respondents as per our earlier directions. As we felt that on the question of non-impleading of the petitioners' juniors as parties it is necessary to be assisted, we requested Shri A.K. Sikri, Counsel, to assist the court in this behalf. Accordingly, he entered appearance and rendered valuable assistance to the Tribunal in this behalf for which we are thankful to him.

3. After hearing the parties, as we feel that this petition can be disposed of on merits without examining the question of impleading necessary parties in these proceedings, we have decided not to address ourselves to this question. Whereas petitioners' counsel relied upon three judgements of the different Benches of the Tribunal, Shri Sikri invited our attention to two judgements of the Supreme Court for the proposition that when the question of seniority is in issue persons above whom the petitioners claim seniority ought to be impleaded and given an opportunity of being heard. Though much can be said in favour of this view, we propose to defer adjudication of this issue to another appropriate occasion.

4. The / that requires consideration is as to whether the petitioners are right in maintaining that their cases were not considered for promotion as on the date on which their

juniors' cases were considered by the D.P.C. held on 20.4.1976. It is clear from the averments as also the reply filed in this case that the petitioners' case was not considered when their juniors were promoted in pursuance of the D.P.C. held on 20.4.1976. But then the stand taken by the respondents is that this mistake or inadequacy was removed when the review D.P.C. was held on 11.4.1979. Some confusion has arisen from the fact that in the month of April, 1979, two D.P.Cs were held, one on 11.4.1979 and the other on 21.4.1979. The D.P.C. held on 11.4.1979 is admittedly a review D.P.C. The petitioners have themselves stated in the petition that two D.P.Cs were held in April, 1979, one as review D.P.C. and the other as regular D.P.C. The case of the respondents is that in the review D.P.C. held on 11.4.1979, the cases of the petitioners along with that of Shri P.C. Jain and others were considered. It is their case that whereas Shri P.C. Jain was found fit and suitable for promotion, it was not possible to promote the petitioners as the D.P.C. did not on consideration of their cases find them fit and suitable for promotion. It is no doubt true that regular DPC was held on 21.4.1979 when the cases of the petitioners were not considered. Therefore, it was necessary to hold a review D.P.C. on 26.6.1980. In pursuance of the said D.P.C., the petitioners were found fit and suitable and they were accorded promotion which was subsequently modified and was given retrospective promotion w.e.f. 10.5.1979. According to the respondents, the petitioners's cases were considered by the review D.P.C. held on 26.6.1980 in respect of the vacancies that fell for being filled up in the year 1979. So far as the case of the petitioners for promotion w.e.f. 20.4.1976 is concerned, though their cases were not considered by the D.P.C. held on 20.4.1976, their

cases were duly considered by the review D.P.C. held on 11.4.1979. That is the positive stand taken in the reply affidavit. The counsel for the petitioners submitted that none having entered appearance for the respondents and they having not produced the relevant records of the D.P.C. held in the year 1979, we should draw an adverse inference and hold that the cases of the petitioners were not considered by the review D.P.C. held on 11.4.1979. As we find that the clear facts emerge from the pleadings which are sufficient to render justice, we would not be justified in drawing an adverse inference in this case. We find from the petition that this is what they have themselves stated in paragraph 7 as follows:-

"That it was learnt that persons junior to the applicants were promoted and that the names of the applicants and Sarvashri P.C. Jain and Gajraj Singh were not even considered".

This is a clear statement of the petitioners that their cases were considered by the review D.P.C. held in April, 1979. That there were two D.P.Cs held in the month of April, 1979, one as review D.P.C. and another as regular D.P.C. is also admitted, as the petitioners themselves have stated in paragraph 7, as follows:

"Thus, it is understood that two D.P.Cs were held in April, 1979 -one as a fresh D.P.C. for making further promotions to the post of Assistant Engineer and another a review D.P.C. in which applicants and Sarvashri P.C. Jain and Gajraj Singh alone were considered as they were not considered in the D.P.C. held in April, 1976. The review D.P.C. of 1979 was just a review D.P.C. of the D.P.C. held in April,

1976. As a result of the said review D.P.C. held in April, 1979, Shri P.C. Jain was ordered to be promoted as Assistant Engineer vide Order dated 4.5.1979, a copy of which is attached herewith and marked as Annexure 'C'.

5. This averment makes it clear that there were two D.P.Cs held, one was review D.P.C. and another was regular D.P.C. The respondents have stated that the D.P.C. held on 11.4.1979 was a review D.P.C. and one held on 21.4.1979 was a regular D.P.C. There is no good reason to disbelieve this statement as to which was the review D.P.C. and which was the regular D.P.C. The petitioners themselves have come forward with the case that their cases were considered by the D.P.C. held in April, 1979. Though they have not stated as to which of the D.P.C. held in the year 1979 has not considered their cases, we are inclined to take the view that the D.P.C. held on 11.4.1979 was the review D.P.C. as asserted by the respondents and the cases of the petitioners were duly considered along with Shri P.C. Jain. Shri P.C. Jain was promoted in pursuance of the said D.P.C. w.e.f. 4.5.1979 which was subsequently made retrospective from 20.4.1976. These facts make it clear that the cases of the petitioners were also considered by the review D.P.C. held on 11.4.1979. So far as regular D.P.C. is concerned, though cases of the petitioners do not appear to have been considered when the D.P.C. was held on 21.4.1979, it cannot be disputed that their cases were duly considered by the review D.P.C. held on 26.6.1980 in pursuance of which they were given promotion w.e.f. 2.7.1980 which was subsequently made retrospective from 10.5.1979. We are, therefore satisfied, that the petitioners have not really suffered. Their cases were duly considered by the review D.P.C. held on 11.4.1979 and they

were found unfit and unsuitable for promotion. Their cases were further considered for regular promotion in the year 1980 and they having been found fit and suitable were accorded promotion w.e.f. 10.5.1979. In view of these findings, the petition has to fail.

6. For the reasons stated above, this petition fails and is dismissed. No costs.

*I.K. Rasgotra*  
(I.K. RASGOTRA)  
MEMBER(A)

*V.S. Malimath*  
(V.S. MALIMATH)  
CHAIRMAN

'SRD'

271092  
281092