

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW DELHI

O.A. No. 721/87  
TAX NO.

198

DATE OF DECISION 28.7.88

Shri Pritam Singh Petitioner

Shri J.P. Verghese Advocate for the Petitioner(s)

Versus

Union of India Respondent

Shri M.L. Verma Advocate for the Respondent(s)

**CORAM :**

The Hon'ble Mr. P. K. KARTHA, VICE CHAIRMAN (J)

The Hon'ble Mr. S. P. MUKERJI, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Y*
2. To be referred to the Reporter or not ? *Y*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *Y*

*S. P. Mukerji*  
(S. P. MUKERJI)  
ADMINISTRATIVE MEMBER

*P. K. KARTHA*  
(P. K. KARTHA)  
VICE CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, DELHI.

CA 721/87

Date of decision 28.7.88

Shri Pritam Singh ..... Petitioner

Vs.

Union of India ..... Respondent

Shri J.P. Verghese ..... Advocate for the Petitioner(s)

Shri M.L. Verma ..... Advocate for the Respondent(s)

CORAM:

THE HON'BLE MR. P.K. KARTHA, VICE CHAIRMAN(J)

THE HON'BLE MR. S.P. MUKERJI, ADMINISTRATIVE MEMBER

(The judgment of the Bench delivered by Hon'ble Shri S.P. Mukerji, Administrative Member)

The applicant who is working as an Assistant Engineer in the Central Public Works Department has filed this application dated 18th May, 1987, under Section 19 of the Administrative Tribunals Act praying that his supersession by his juniors during the period of his suspension, which has been treated to be on duty for all purposes, should be declared as illegal and that the respondents be directed to promote him with effect from the date his juniors were promoted and that he should be given all consequential benefits.

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2. The brief facts of the case are that the petitioner, who was recruited as a Jr. Engineer in 1951 was sent on deputation to the New Delhi Municipal Committee on 1.4.1958. He was placed under suspension on 8.6.1962 and criminal prosecution was launched against him. He was, however, acquitted of all the charges on 2.3.1965. Disciplinary action had also been initiated against him in 1962 itself. His acquittal was upheld in appeal both by the Delhi High Court and the Supreme Court and accordingly the respondents on 17.5.1968, reinstated him in service. On 7.9.1968 (Annexure-III to the application) the order of the Chief Engineer passed under FR 54 (2) was communicated by which the applicant was to be paid full pay and allowances for the period of suspension " and further that the entire period of suspension shall be treated as period spent on duty for all purposes under FR 54 (4) ". It was also clarified in that order that "the law of limitation need not be invoked at the time of paying the arrears of pay and allowances for the period from the date of suspension to the date of reinstatement in respect of Shri Pritam Singh".

3. After his reinstatement on 17.5.68, he was promoted to the Selection Grade by the order dated 25.3.1969 with retrospective effect from 9.6.1964. It is admitted that arrears of salary in the Selection Grade were also paid to him with effect from 9.6.1964. The petitioners' grievance is that even though he has received arrears of pay and allowances and promotion to the Selection Grade, he has not been given

promotion from the post of Jr. Engineer and further promotion to the cadre of Executive Engineer while his juniors have got such promotion. His representations have been of no effect.

4. In accordance with the respondents, the petitioner was acquitted of all charges and full pay and allowances were paid to the petitioner for the period of suspension.

Selection Grade  
He was also given with retrospective effect from  
9.6.1964, " in view of the period of suspension have been treated on duty". They have, however, indicated that his case was considered for promotion to the grade of Assistant Engineer by the DPC on 28.10.1958, 24.4.1961, 12.7.1963, 28.4.1966 and 30.8.1967, but he was not found fit for promotion. He was not considered by the DPC in March 1969 and September, 1970, as all the Officers considered were senior to him. The petitioner was promoted as Assistant Engineer on an ad hoc/in December, 1971, and through the he was DPC approved for regular promotion on 7.9.1972. They have further stated that in accordance with his seniority as Assistant Engineer, the question of his being considered for promotion as Executive Engineer did not arise.

5. We have heard the learned counsel for both the parties and gone through the documents carefully. It is an admitted fact that the respondents have treated the applicant to be on duty for all purposes during the period of suspension between 8.6.1962 and 17.5.1968. They also went to the

extent of promoting him to the Selection Grade with effect from 9.6.1964. The learned counsel for the respondents however conceded that in the meetings of the DPC held, on 12.7.1963, 28.4.1966 and 30.8.1967, even though the applicant was considered for promotion, he was found not fit for promotion as Assistant Engineer without following the "Sealed Cover Procedure" that is, even though, he had been charge-sheeted in 1962, the DPC assessed him in the normal manner and found him to be unfit in all the aforesaid three meetings. The contention of the learned counsel for the applicant <sup>is</sup> that the fact of his suspension and criminal prosecution must have weighed heavily against him in the normal assessment made by the DPC. His plea is that if the DPC had followed the prescribed procedure of assessing him for promotion and keeping his assessment in the Sealed Cover, they might have taken a more detached view. There is considerable force in the argument of the learned counsel. In any case now that the applicant has been fully exonerated and that the period of suspension has been treated as on duty, in the interest of justice, it will be necessary for his case to be considered by the Review DPC's of 12.7.63, 28.4.66 and 30.8.67, for no other reason than the fact of the <sup>is</sup> Sealed Cover Procedure not having been followed.

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6. In the facts and circumstances, we allow the application only to the extent of directing the respondents to get the case of the applicant for promotion as Assistant Engineer reconsidered by a Review Committee as on 12.7.63, 28.4.66 and 30.8.67 as if the disciplinary proceedings and his suspension did not exist. If <sup>he</sup> on the basis of the reconsideration by any of these Review DPC's, <sup>he</sup> is found fit for promotion, <sup>he</sup> should be promoted as Assistant Engineer from the date his next junior in the panel of that year was so promoted. He should thereafter be assigned seniority in the grade of Assistant Engineer from the date of his notional promotion and considered by a Review DPC for promotion as Executive Engineer in the year in which his next junior in the grade of Executive Engineer was so considered. If on the basis of the recommendations of these Review Committees', he gets promotion as Assistant Engineer and Executive Engineer, w.e.f. the date his next junior in the <sup>feeder</sup> grade of Jr. Engineer and Asst. Engineer was promoted, <sup>he</sup> should be given arrears of pay and allowances as Asst. Engineer and Executive Engineer, as the case may be. Action on the above lines should be completed within a period of <sup>three</sup> 1 months from the date of communication of this order. There will be no order as to costs.

*S. P. Mukerji*  
(S. P. MUKERJI)  
ADMINISTRATIVE MEMBER

*P. K. KARTHA*  
(P. K. KARTHA)  
VICE CHAIRMAN