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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

OA No. 1120/87 .. Date of decision: 28.8.92
Sh. Ashok Aggarwala .. Applicant
Sh. G.D. Gupta .. Counsel for the applicant
Versus
U.O.I & Another .. Respondents
Sh. P.P. Khurana .. Counsel for the respondents

CORAM

Hon'ble Sh. P.K. Kartha, Vice Chairman (J)

Hon'ble Sh. B.N.Dhoundiyal, Member (A)

1. Whether the Reporters of local papers may be allowed to see the Judgement ? *yes*
2. To be referred to the Reporters or not ? *yes*

JUDGEMENT

(Of the Bench delivered by Hon'ble Sh.B.N.Dhoundiyal,
Member (A)).

This OA has been filed by Shri Ashok Aggarwala *Dr*
under Section 19 of the Central Administrative Tribunals
Act, 1985 against the impugned orders dated 26.3.87,
12.6.87 and 8/10.7.87, issued by the Central Public
Works Department (C.P.W.D. for short) giving promotion
to his juniors. as Superintending Engineer (Civil) on
adhoc basis.

2. The applicant was initially appointed as Assistant
Executive Engineer after successfully competing at the
Combined Engineering *Dr* Services Examination in 1972 and was
promoted as Executive Engineer through the DPC in July,
1977. He had become eligible for promotion to the post
of Superintending Engineer in 1984 but according to his
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seniority, his turn for promotion came in March 1987. The contention of the applicant is that in terms of impugned orders dated 26.3.87, 12.6.87 and 8/10.7.87, persons junior to him were promoted as Superintending Engineer on adhoc basis. On enquiry, he was informed vide memo dated 8.7.87, (Annexure-I), that his case for adhoc promotion as Superintending Engineer (Civil) shall be considered only after conclusion of the vigilance case pending against him. On 31.10.83, a memorandum was issued to him to submit explanation to certain allegations which was duly complied with, in December, 1983. Certain clarifications were asked in February, 1985, which were also given promptly. He never heard about this matter later and had not been served with any chargesheet. The sealed cover procedure was not adopted in his case. His representations to the authorities submitted on 30.3.87 and 15.6.87 did not elicit any response. He has prayed for a declaration that he is entitled for promotion to the post of Superintending Engineer from the date his junior was promoted with all consequential benefits.

3. The respondents have admitted that officers junior to the applicant have been promoted as Superintending Engineer (Civil) on adhoc basis. His name was considered but he was not empanelled due to the pendency of a vigilance case against him. They have also admitted that he became eligible for promotion to the post of Superintending Engineer in 1984 and as per his seniority he was within the zone of consideration in 1987. The competent authority had already decided to proceed against him in respect of certain irregularities committed while he was serving on deputation with the Delhi Development Authority. The charge-sheet could not be served due to delay in receipt of documents from that office. During the hearing of the case, we have

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been informed that a charge sheet has been issued to him in June, 1988.

4. We have heard the arguments put forth at the Bar by the learned counsel for both parties and perused the documents on record. In our opinion, the contention of the respondents is not legally sustainable in view of the decision of the Supreme Court in C.O. Arumugam and Ors. Vs. The State of Tamil Nadu (1989 (2) SCALE 1041) and in The State of M.P. Vs. Bani Singh & Another (1990 (1) SCALE 675). It has been held that if at the time of preparation of the panel by the DPC, there is no charge framed against a Government servant, it would not be proper to overlook his case for promotion. If the departmental enquiry had reached the stage of framing of charges after a prima facie case has been made out, the 'Sealed Cover Procedure' can be followed. If the departmental proceedings had not reached the stage of framing the charge after prima facie case is established, the consideration for promotion to a higher or selection grade cannot be withheld merely on the ground of pendency of disciplinary proceedings. This position has also been clarified by the DP&T vide their Office Memorandum dated 31.7.91. The decision of the Supreme Court in Union of India Vs K.V. Janakiraman, 1991 (2) SCALE 423 is also to the same effect.

5. In the facts and circumstances of the case, we allow the application and direct the respondents to convene a meeting of the DPC as on the date when the case of his juniors was considered for promotion to the post of Superintending Engineer on adhoc basis. The DPC shall consider the case of the applicant for adhoc promotion to the post of Superintending Engineer on the said basis. In case the DPC finds him fit for such promotion, he should be promoted from the date his juniors were promoted as Superintending Engineer. In that

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event, he shall be entitled to all consequential benefits including arrears of pay and allowances. The respondents will however, be at liberty to review the matter after the conclusion of the departmental enquiry initiated against him and take appropriate action depending on the outcome of the enquiry.

There will be no order as to costs.

B. N. Dhoundiyal
(B.N. Dhoundiyal) 28/8/92
Member (A)

P. K. Kartha
28/8/92
(P.K. Kartha)
Vice Chairman (J)