

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 1037/1990
T.A. No.

199

DATE OF DECISION 19.04.1991.

<u>Shri U.C. Mishra</u>	Petitioner
<u>Shri S.C. Luthra</u>	Advocate for the Petitioner(s)
Versus	
<u>U.O.I. & Others</u>	Respondent
<u>Shri M.L. Verma</u>	Advocate for the Respondent(s)

CORAM

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

The Hon'ble Mr. D.K. CHAKRAVORTY, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement ? *yes*
2. To be referred to the Reporter or not ? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? */NO*
4. Whether it needs to be circulated to other Benches of the Tribunal ? */NO*

JUDGMENT

(of the Bench delivered by Hon'ble Mr. D.K. Chakravorty, Administrative Member)

The grievance of the applicant, who is working as Superintending Surveyor of Works in the CPWD relates to his non-promotion on the basis of the recommendation of the DPC held on 23.2.1981.

2. The facts of the case in brief are as follows. The applicant joined the CPWD in 1969 as Assistant Executive Engineer and was promoted as Executive Engineer in 1973. He became eligible for promotion as Superintending Engineer in 1980. A DPC for making promotion to the post of Superintending Engineer was held on 23.2.1981. The recommendations of the DPC were kept in Sealed Cover as

the Department had recommended to the Ministry of Urban Development issuance^{of} a major penalty charge-sheet to the applicant. A memorandum proposing to hold an enquiry against him under Rule 14 of the CCS(COA) Rules, 1965 was issued to him on 27.7.1981. After holding an enquiry, the penalty of censure was imposed on him by the President on 29.5.1985.

3. We have gone through the records of the case carefully and have considered the rival contentions. The admitted factual position is that on 23.2.1981, when the DPC held its meeting, no charge-sheet had been issued to the applicant.

4. The respondents have raised the preliminary objections that the application is not maintainable in law as it is barred by limitation and that he did not exhaust the remedies available to him under the relevant service rules. The learned counsel of the respondents have^{ed} cited several rulings in this regard and we have duly considered^{ed} them*. We see no

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*. Cases cited by the respondents:-

1987 (4) ATC 329; 1987 (4) ATC 328;
1989(1) SLJ 639; 1989(2) SLJ 49; 1989(2)
SLJ 81; 1989(9) ATC 61; 1970(1) SCC 84;
1976(3) SCC 579; AIR 1974 SC 2271; and
1989(3) SLJ 441.

force in the above contention. On 29.3.1990, the respondents disposed of his representation dated 19.9.1989 by passing a speaking order and this will have the effect of enlarging the period of limitation (vide B. Kumar Vs. Union of India and Others, 1988(7) SLR 462(CAT)).

5. The stand of the respondents on the merits is also not legally sustainable. The legal position in this regard is now well settled (vide recent decisions of the Supreme Court in C.O. Arumugam & Others Vs. The State of Tamil Nadu, 1989(2) SCALE 1041 and in State of M.P. Vs. Bani Singh and Another, 1990(1) SCALE 675).

6. In Arumugam's case, the Supreme Court observed that the consideration of promotion could be postponed only on reasonable grounds. The promotion of persons, against whom charge has been framed in the disciplinary proceedings or charge-sheet has been filed in the criminal case, may be deferred till the proceedings are concluded. In the case of respondent No.4 before the Supreme Court, his name was not included in the panel for promotion since there were disciplinary proceedings then pending against him. But when the panel was prepared and approved, there was no charge framed against him. The Supreme Court observed that

"it is, therefore, not proper to have overlooked his case for promotion". The Supreme Court, therefore, directed that his case be considered for promotion and if he was found suitable for promotion, he must be promoted with all consequential benefits.

7. In the same vein, the Supreme Court observed in Bani Singh's case that "normally, pendency or contemplated initiation of disciplinary proceedings against a candidate must be considered to have absolutely no impact upon, to his right being considered. If departmental enquiry had reached the stage of framing of charges after a prima facie case has been made out, the normal procedure followed as mentioned by the Tribunal, was 'sealed cover' procedure but if the disciplinary 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".

8. In the light of the foregoing, the application is disposed of with the following orders and directions:-

(1) The applicant must be deemed to have been promoted in accordance with the recommendations of the DPC with effect from 6.5.1981, the date from which his immediate junior was promoted as Superintending Engineer.

- (2) In the facts and circumstances of the case, we do not direct payment of arrears of pay and allowances. The promotion will be on notional basis. The applicant would be entitled to grant of ^{notional} increments and due seniority from the date of promotion of his immediate junior. He would also be entitled to all other consequential benefits. *D*
- (3) The respondents are directed to pass appropriate order as indicated in (1) and (2) above within a period of three months from the date of receipt of this order.
- (4) There will be no order as to costs.

Dickinson
(D.K. CHAKRAVORTY)
MEMBER (A) 19/4/1991

amr
19/4/91
(P.K. KARTHA)
VICE CHAIRMAN (J)