

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 1352/90
T.A. No.

199

DATE OF DECISION 1.2.1991.Shri D.R. MittalPetitioner ApplicantShri M.C. Juneja,Advocate for the Petitioner(s) Applicant

Versus

Union of India through Secy., RespondentMiny. of Defence & Anr.Shri M.L. VermaAdvocate for the Respondent(s)**CORAM**

The Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)

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? */*
4. Whether it needs to be circulated to other Benches of the Tribunal? *no*

(Judgement of the Bench delivered by Hon'ble
Mr. P.K. Kartha, Vice-Chairman)

The applicant, who is working in the Military Engineering Service, filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying for the following reliefs:-

- (i) To quash the impugned order dated 15.5.1990;
- (ii) To order immediate opening of the sealed cover containing DPC's recommendation in respect of the applicant and if it has recommended him for promotion, to order his promotion to the Grade of Executive Engineer from the date his junior has been promoted; and

(iii) To order payment of arrears of pay and allowances to him from that date.

2. The facts of the case in brief are as follows. The applicant has been holding the civilian post of Assistant Engineer in the Military Engineering Service (M.E.S.) since 1.2.1977. On 15.9.1989, the respondents published a panel for promotion of Assistant Executive Engineers and Assistant Engineers to the grade of Executive Engineer in M.E.S. The name of the applicant did not figure in the said panel. No disciplinary proceedings had been pending against the applicant on or about 2.8.1989, when the D.P.C. held its meeting to consider the suitability of persons for promotion as Executive Engineer. The applicant made a representation to the respondents on 7.5.1990 to which he received the following reply dated 15.5.1990 which has been impugned in the present proceedings:-

"1. Reference your note No.22749/DRM/E2 Plg.(Pav) dated 07 May, 90, forwarding application dated 07 May 90 in respect of MES-8464210 Shri Dev Raj Mittal, AE.

2. The Officer's representation has been examined in detail. It is stated that Shri DR Mittal was duly considered by the DPC held in 1989 for promotion to the grade of EE. Being involved in disciplinary proceedings in terms of Govt. of India, DP&T OM No.22011/2/86-Estt.(A) dated 12 Jan 88, the recommendations of the DPC in respect of him have been kept in 'sealed cover' pending finalisation of the disciplinary proceedings.

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3. As regards the court decision cited by him in his application, it is stated that in absence of any Government orders stipulating adoption of sealed cover procedure only after issue of charge-sheet, no cognizance can be taken by us on the officer's request.

4. Shri DR Mittal may please be informed accordingly."

3. It will be evident from the foregoing impugned order that a D.P.C. had met in 1989 to consider persons for promotion to the grade of Executive Engineer and that the case of the applicant was also considered by the D.P.C., but its recommendations have been kept in 'sealed cover' pending finalisation of the disciplinary proceedings against him.

4. No disciplinary proceedings had been pending against the applicant at the time of the meeting of the D.P.C. On 23.9.1989, the respondents had, however, issued to him a letter asking for his explanation in respect of some defective construction of buildings at Suratgarh. The said letter reads as under:-

"STAFF COURT OF INQUIRY : DEFECTS IN
BUILDINGS (PROJECT MERCURY) AT
SURATGARH

1. It has been noticed by the Staff Court of Inquiry convened vide HQ Western Command Convening Order No.56750/25/Q3H dt 26 Oct 87, that while performing the duties as Engineer-in-Charge from Mar 83 to June 83, you failed to supervise effectively the quality of material and workmanship under the Project 'MERCURY' at Suratgarh.

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2. In view of the above, please fwd your version/reply if any to this HQ within ten days from the date of receipt of this letter for our further necessary action."

5. The charge-sheet was issued to him under Rule 14 of the C.C.S. (CCA) Rules, 1965 only on 10.1.1990. This was after the D.P.C. had considered his case for promotion in 1989.

6. The applicant has relied upon the judgement dated 6.12.1988 of the Chandigarh Bench of this Tribunal in Sital Singh Vs. Union of India & Others (Regn. No. 113/J&K/88) in which the Tribunal had held that the respondents should promote the applicant provided the D.P.C. duly recommended him for promotion. In that case also, 'sealed cover' procedure had been resorted to by the respondents at a time when no disciplinary proceeding was pending against him. The charge-sheet was, however, issued to him at a later point of time. The Union of India had filed Special Leave Petition No.4612/89 against the aforesaid judgement which was dismissed by order dated 11.12.1989. The Supreme Court also made the following observations:-

"The promotion, if made pursuant to the direction of the Tribunal would of course be subject to the result of the disciplinary proceedings and Government would be entitled, in the light of and if justified by the findings therein, to review the promotion. With these observations, the Special Leave Petition is dismissed."

7. The respondents have filed counter-affidavit in which they have admitted that the name of the applicant was duly considered by the D.P.C. held in 1989. As he had been involved in disciplinary proceedings, the recommendations of the D.P.C. in respect of the applicant have been kept in 'sealed cover' pending finalisation of the disciplinary proceedings.

8. We have gone through the records of the case carefully and have heard the learned counsel for both the parties. In our opinion, the contention of the respondents is legally unsustainable, in view of the recent decisions of the Supreme Court in C.O. Arumugam & Others 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.

9. 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

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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.

10. 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."

11. In the conspectus of the facts and circumstances

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of the case, we allow the application and order and direct as follows:-

- (i) The respondents are directed to open the 'sealed cover' in which the recommendations of the D.P.C. held in 1989 for promotion to the grade of Executive Engineer have been kept insofar as it applied^α to the applicant. In case, he has been found fit for promotion as Executive Engineer, he should be promoted immediately according to the order of merit adjudged by the D.P.C. and from the date his immediate junior, if any, was promoted.
- (ii) The applicant would be entitled to arrears of pay and allowances and all consequential benefits from the date of his promotion as Executive Engineer as directed in (i) above.
- (iii) The promotion would be subject to the result of the disciplinary proceedings and Government would be entitled, in the light of and if justified by the findings therein, to review the promotion.



(iv) The respondents shall comply with the above directions in (i) and (ii) above within a period of one month from the date of receipt of this order.

There will be no order as to costs.

D. K. Chakravorty 1/2/89
(D.K. Chakravorty)
Administrative Member

P. K. Kartha 11/2/89
(P.K. Kartha)
Vice-Chairman (Judl.)