

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1573/90
T.A. No.

199

DATE OF DECISION 26.4.1991

Shri R.K. Garg	Petitioner Applicant
Shri T.C. Aggarwal	Advocate for the Petitioner(s) Applicant
Versus	
Union of India through the Secty., M/Urban Dev. & Another	Respondent
Shri M.L. Verma	Advocate for the Respondent(s)

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

The Hon'ble Mr. M.M. Singh, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yu*
2. To be referred to the Reporter or not ? *GM*
3. Whether their Lordships wish to see the fair copy of the Judgement ? */MC*
4. Whether it needs to be circulated to other Benches of the Tribunal ? */MC*

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

The applicant, who is working as an Assistant
Engineer in the C.P.W.D., filed this application under
Section 19 of the Administrative Tribunals Act, 1985,
seeking the following reliefs:-

(i) To set aside and quash the impugned order
dated 14.9.1989 withholding the inclusion
of his name in the panel of promotions
from Assistant Engineers to Executive
Engineers;

(ii) to direct the respondents to include his name in the panel prepared by the Screening Committee on 12.5.1988 for such promotion; and

(iii) to direct the respondents to open the 'sealed cover' and promote him without considering the effect of pending vigilance case from the same date his next junior was promoted as Executive Engineer.

2. The facts of the case in brief are that the applicant was appointed in the C.P.W.D. in 1958 as Junior Engineer. He was promoted as Assistant Engineer in 1967, which post he is holding continuously for nearly 23 years. He was sent on deputation to the Delhi Development Authority (D.D.A.) from October, 1979 to January, 1984. On 7.2.1985, the D.D.A. wrote to him asking for his explanation in regard to the execution of some defective work. He sent a reply giving his explanation. On 25.7.1985, the Superintending Engineer, C.P.W.D., issued a memorandum to him asking for his explanation in regard to the same matter. He gave his explanation on 6.12.1985.

3. A D.P.C. was held on 12.5.1988 to consider the case of promotion of Assistant Engineers to the post of Executive Engineers. The name of the applicant was also

considered, but the assessment of the D.P.C. has been kept in a 'sealed cover', in view of the pendency of a vigilance case against him. This has been called in question in the present application. The respondents have stated in their counter-affidavit that the findings of the D.P.C. have been kept in a 'sealed cover' as serious allegations were being investigated against the applicant. Subsequently, two charge-sheets were served on the applicant on 10.8.1990 and 24.8.1990, respectively. The hearing in these cases has yet to take place.

4. We have carefully gone through the records of the case and have considered the rival contentions. 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 State of M.P. Vs. Bani Singh and Another, 1990 (1) SCALE 675.

5. 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
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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.

6. 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."

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7. In the conspectus of the facts and circumstances 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 on 12.5.1988 for promotion to the Grade of Executive Engineer has been kept, insofar as it applies 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. The respondents shall do so notwithstanding the fact that a vigilance case was pending against the applicant as on 12.5.1988.

(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 above.

(iii) We make it clear that the promotion of the applicant would be subject to the result of the disciplinary proceedings and the Government would be entitled in the light of, and if

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justified by the findings therein, to review the promotion.

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

There will be no order as to costs.

M M Singh 26/4/91
(M. M. Singh)
Administrative Member

Partha 26/4/91
(P. K. Kartha)
Vice-Chairman (Judl.)