

Central Administrative Tribunal
Principal Bench: New Delhi

O.A.No 764/1990

New Delhi this the 9th Day of September, 1994

Hon'ble Shri J.P. Sharma, Member (J)

Hon'ble Shri B.K. Singh, Member (A)

Shri S.P.Jain,
Son of Shri P.M. Jain,
12/7183 Birla Officers Flat,
Kamla Nagar,
Delhi-110 007.

... Applicant

(By Advocate: Shri **U.S.** Bisht)

Vs

1. Union of India,
The Secretary,
Ministry of Defence,
New Delhi.

2. Engineer-in-Chief,
Army Headquarters,
DHQ Post Office,
Kashmir House,
New Delhi-110 011

... Respondents

(By Advocate: Shri VSR Krishna)

O R D E R (Oral)

Hon'ble Shri J.P. Sharma, Member (J)

The applicant is holding the post of Assistant Surveyor of Works (ASW), the Group "A" post on ad hoc basis with effect from 4.7.1984. He is serving in the Military Engineering Branch. The applicant has not been made regular because of delay in holding the DPC. His chance for further promotion to the post of Surveyor of Works are delayed/minimised. However, in the present case the grievance of the applicant is against the order of 7-8.3.1990 wherein the name of the regularly appointed ASW is mentioned. This is the list consisting of 90 officers. The other list is consisting of 123 officers. In the original application filed in April 1990, the applicant has

prayed that the impugned panels of 7th and 8th March be quashed and a direction be issued to the respondents to convene DPC meeting again for consideration of the case of the applicant for promotion to the post of ASW against the vacancies of 1981, 1985, 1986 and 1987. He has also prayed for clearing the EB at the stage of Rs. 900/- on 1.7.1985 and second EB in the revised scale at Rs. 2800/- due on 1.7.1987. He also claimed other benefits of seniority and further promotion to the post of Surveyor of Works.

2. The respondents in their reply opposed the grant of the relief on the ground that the applicant was alleged to have committed an act which amounted to misconduct under CCS(Conduct) Rules 1964 and his matter, therefore, was considered in the vacancies pertaining to the years 1985, 1986 and 1987 and has been kept in a sealed cover. The respondents have invoked the OM dated 24.12.1980 justified their action adopting sealed cover procedure. They have also invoked OM dated 12.1.1988 in this respect. The grant of Efficiency Bar was also opposed by the respondents in their reply filed on 30.11.1990. The applicant in the rejoinder reiterated the fact stated in the O.A but in reply to para 4.12 he has admitted that a charge memo was served to him in November 1988 and a joint enquiry alongwith Shri R.D. Sharma, Executive Engineer who has since been promoted to the post of Superintending Engineer. It is said that adopting of a sealed cover is illegal.

3. We heard the learned counsel also on the earlier sitting of the Bench on 6.9.1994 at a considerable length and during the course of the hearing it is desired that the

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respondents should produce the departmental file when a decision was taken to initiate disciplinary departmental proceedings against the applicant. The learned counsel for the respondents also placed before vs. the seniority list of Assistant Surveyor of Works as was before the DPC held in 1986 and he has also placed the panel of 91 ASWs who were regularised by that DPC. These documents have also been shown to the counsel for the applicant.

4. The learned counsel emphatically insisted on the contention that the applicant when the vacancy was available has not been under any cloud of any departmental enquiry. In view of this the DPC held in the year 1990 has to consider the case of the applicant as it was convened in the year 1986 and so the sealed cover procedure adopted in the DPC of 1990 was totally unjustified. We have given a careful consideration and also gone through the law laid down in the case of Union of India vs. K.V. Jankiraman reported in JT 1991(3) P 527. The learned counsel for the respondents have also placed reliance on the case of State of Madhya Pradesh and another Vs. Syed Nassem and ors. reported in JT 1993 (Supplementary) P 414. Relying on the decision of K.V.Jankiraman's case the Hon'ble Supreme Court quashed the order of M.P. Administration Tribunal which allowed the opening of the sealed cover of the respondents of the case Syed Nassem which was kept on account of the recommendations of the DPC which met on October 12.8.1987. The said respondents Syeed Nassem was served with a charge sheet on 15.4.1988. Obviously, the chargesheet was served later then holding of the DPC. The Hon'ble Supreme Court relying on the case of K.V. Jankiraman held that the sealed cover was properly kept and in case he is exonerated the sealed cover will be opened and if recommendations are in

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his favour he shall be notionally promoted from a date when a person junior to him was promoted to the post of Chief Engineer. In case he is punished in the proceedings then action would be taken in accordance with the guidelines as in K.V. Jankiraman's case. The learned counsel for the applicant again forcefully argued that in a similar case of R.D. Sharma who was co-delinquent with him in the said chargesheet has been given promotion to the post of Superintendenting Engineer from the post of Executive Engineer. If the respondents have acted in a manner which is contrary to law laid down by the Hon'ble Supreme Court, that cannot be taken as a exemplary for the case of the applicant. In fact the respondents made be now awaken in their wisdom by this judgement even in the case of R.D. Sharma.

5. Regarding the grant of EB that has since been granted to the applicant and in that regard relief does not survive.

6. In view of the above facts and circumstances the application is dismissed as devoid of merit leaving the parties to bear their own costs


(B.K.Singh)
Member(A)


(J.P. Sharma)
Member(J)

Mittal