

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

OA NO.2774/91

DATE OF DECISION:08.05.1992.

N. CHAUDHURY

...APPLICANT

VERSUS

UNION OF INDIA & OTHERS

...RESPONDENTS

CORAM:-

**THE HON'BLE MR. P.K. KARTHA, VICE-CHARIMAN (J)**

**THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)**

FOR THE APPLICANT

SHRI V.S.R. KRISHNA, COUNSEL.

FOR THE RESPONDENTS

SHRI M.L. VERMA, COUNSEL.

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

*I.K. RASGOTRA*  
(I.K. RASGOTRA)

MEMBER(A)

8.5.92.

*Ques*  
(P.K. KARTHA)

VICE-CHAIRMAN

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(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE  
MR. I.K. RASGOTRA, MEMBER (A))

Shri N. Chaudhury who retired on superannuation as Superintending Engineer on 30.11.1991, after the filing of this Original Application, under Section 19 of the Administrative Tribunals Act, 1985 is aggrieved by the action of the respondents in not promoting him as Chief Engineer (Bridges) when a clear vacancy had arisen on 01.07.1991 and he had been recommended for promotion to the higher grade by the Departmental Promotion Committee (DPC) held on 22.09.1991.

2. The undisputed facts of the case are that two vacancies in the grade of Chief Engineer arose in 1991. The first vacancy arose w.e.f. 01.07.1991 while the second one arose w.e.f. 01.10.1991. The respondents sent their proposal for convening a DPC to the Union Public Service Commission (UPSC) on 11.02.91. The UPSC sought certain clarifications/further information which too was furnished by the respondents besides sending reminders for convening DPC expeditiously, the last one being at the level of Secretary, Ministry of Surface Transport on

24.07.1991. The DPC meeting was ultimately held on 22.08.1991. Since the convening of the DPC by the UPSC was taking time the respondents also forwarded a proposal to the Department of Personnel and Training (DOP&T) on 19.06.1991 for considering the applicant for adhoc promotion to the post of Chief Engineer. The case was, however, returned by that department for obtaining the approval of the new Minister. In the meantime the DPC was held on 22.08.1991 and, therefore, the adhoc promotion was not processed further. Simultaneously the proposal based on the recommendations of the DPC received on 23.08.91 from UPSC was processed and sent to the DOP&T after obtaining the approval of the Minister. For obtaining the approval of the Appointments Committee of the Cabinet (ACC), on 05.09.1991 the DPC had recommended S/Shri N. Choudhury and R.G. Thawani for the available vacancy. Since, however, the applicant Shri N. Choudhury and Shri Thawani were both on the verge of retirement w.e.f. 30.11.1991 and 30.09.1991 respectively, the DPC had recommended <sup>an</sup> extended panel comprising S/Shri Prafulla Kumar and R. Ardhansari who were to be promoted in the event of retirement of applicant and Shri Thawani. The approval of the ACC was received on 30.10.1991. According to the respondents the approval of the ACC was received on 30.10.1991 and Shri Prafulla Kumar was promoted as Chief Engineer in the first vacancy. The applicant retired on 30.11.1991.

3. The learned counsel for the applicant Shri V.S.R. Krishna urged that the applicant had suffered because of the complacency and lethargy of the respondents, as the applicant had clear four months of service left from the date when the vacancy arose on 01.07.1991. Had the DPC been held well in time the applicant would have been promoted as Chief Engineer (Bridges) w.e.f. 1.7.1991. In this connection the learned counsel referred us to

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the DOP&T OM No.22011/11/89-Est.(D) dated 25.1.1990, which for convenience is reproduced below:-

"...The undersigned is directed to invite attention to the Department of Personnel and Training, O.M. No.27(4) EO/89(ACC), dated the 11th April, 1989, communicating the order of the Government to the effect that in respect of appointments which fall within the purview of the Appointments Committee of the Cabinet, no officer should be promoted to a higher post in his own line of promotion unless he would have a minimum service of three months before retirement. Where, however, a longer minimum service is already prescribed, the same will apply. These instructions are hereby reiterated for compliance by all Ministries/Departments. In order that officer approaching superannuation are not denied the promotion due to them subject to this limitation on account of the delay processing of their cases for promotion, Ministries/Departments are requested to ensure that the meetings of the D.P.C. are held well in time and proposals for submission to the A.C.C. are sent to the Establishment Officer in the Department of Personnel and Training well in advance before the date of occurrence of the vacancy.

2. These instructions may also be brought to the notice of all officers for their information."

The learned counsel, therefore, submitted that had the respondents acted with alacrity the applicant could have been at least promoted for his last 3 months service.

4. On the other hand Shri M.L. Verma, learned counsel for the respondents submitted that the respondents were alive to the situation as is seen by the fact that they made a proposal to the UPSC for holding a DPC on 11.2.1991 well before the date on which the first vacancy was to arise. The

UPSC, however, took its own time despite being reminded and ultimately the DPC was held only on 22.08.91. The learned counsel for the respondents submitted that when the next junior to the applicant was promoted the applicant had been left with only one months' service. In the circumstances the promotion of the applicant could not be considered.

5. We have heard the learned counsel for both parties and considered the record very carefully. The applicant in support of his case also brought to our notice the decision of the Tribunal (Madras Bench) in **OA No.531/87 decided on 4.11.1988.** The facts of the case, however, are distinguishable as the Bench itself had noted "having regard to this and also the fact that there has not been any notified criterion in specific terms as to how such service should be left to a person for being promoted as Head of the Department, we are inclined to allow the prayer of the applicant...."

In the matter before us the OM dated 25.1.1990 clearly lays down that "in respect of appointments which fall within the purview of the Appointments Committee of the Cabinet no officer should be promoted to a higher post in his own line of promotion unless he would have a minimum service of three months before retirement."

From the data given by the respondents we have no reason to doubt that they acted with alacrity and bonafide manner. There has been no delay or procrastination on their part. Since, however, the applicant was left with very short time when the vacancy arose even though he had been recommended by the DPC he could not be promoted, as the formalities regarding the ACC's approval etc. were completed only on 30.10.1991 when he was left with one month's service.

In the above facts and circumstances of the case the application does not merit judicial interference and is dismissed with no order as to costs.

*Ably*  
(I.K. RASGOTRA)

MEMBER(A) 8/5/1992

*arred*  
8/5/92

(P.K. KARTHA)

VICE-CHAIRMAN

May 8, 1992.