

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

REGN.NO. OA 488/91

Date of decision: 10.4.92

Shri D.N.Sharma Applicant

versus

Union of India & anr..... Respondents

For the Applicant Applicant in person.

For the Respondents Mrs.Raj Kumari Chopra,
Counsel.

CORAM: THE HON'BLE MR.S.P.MUKERJI, VICE CHAIRMAN(A)
THE HON'BLE MR.T.S.OBEROI, MEMBER(J)

1. Whether Reporters of local papers may be allowed to see the Judgement ? yes.
2. To be referred to the Reporters or not ? yes.

JUDGEMENT

(OF THE BENCH DELIVERED BY HON'BLE MR.T.S.
OBEROI, MEMBER)

In this application filed under Section 19
of the Administrative Tribunals Act, 1985, the
applicant seeks the following reliefs:-

- " A(i) Retrospective promotion to the post of Executive Engineer w.e.f w.e.f.24.4.1964.
- (ii) Retrospective promotion to the post of Superintending Engineer w.e.f.24.4.1971.
- (iii) Retrospective promotion to the post of Additional Chief Engineer w.e.f.24.4.1973.
- (iv) Retrospective promotion to the post of Chief Engineer Level II w.e.f.24.4.1977.

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(v) Retrospective promotion to the post of Chief Engineer level I w.e.f 24.4.1978.

(vi) Retrospective promotion to the post of Additional Director General w.e.f. 1.1.1986.

B. arrears of salary on account of such promotions alongwith 18% interest, thereon till the date of payment from the date of accrual.

C. Quashing of transfer order dated 18.9.1990 whereby the petitioner has been ordered to be posted at Madras.

D. Costs of litigation and also special costs/ damages for the period the petitioner was made to suffer humiliation by serving under his juniors."

It may be mentioned here that, on 22.2.1991, when the OA came to be heard by a Bench of this Tribunal, for the first time, on account of multiplicity of reliefs sought for, the OA was admitted in respect of reliefs, excluding that of item at 'C' above.

2. Other necessary details, in order to appreciate the issues involved, briefly stated, are that the applicant was recruited as Assistant Executive Engineer in the Military Engineering Service, upon his selection by the Union Public Service Commission, through the combined Central Engineering Service Examination of 1960 and he joined in that capacity on 24.4.1962. He was not satisfied with his placement in the seniority list prepared in August 1963 and accordingly, after rejection of his representation in that regard by the department concerned, he had filed a suit in the Civil

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Court, which was dismissed by the Trial Court, and an appeal therein, was also rejected by the District Judge as well as the High Court. However, while deciding an appeal against the judgement of the High Court, the Hon'ble Supreme Court in their judgement dated 8.8.1989 observed as under, ^{two} in the concluding/paragraphs:-

" We take it that when this Court in Janardhana's case held on the facts placed before it that 'there was no justification made out for redrawing the seniority list affecting persons recruited or promoted prior to 1969' is meant a total topsy-turvyng of the list. Individual claims, if any, could not have been barred from consideration if by the time Janardhana's case came to be disposed of, claims were pending adjudication before the Court. Applicant's case was already before the High Court by the time Janardhana's appeal was disposed of by this Court. The appellant was certainly entitled to be treated as a recruit of 1960 and to be placed above the recruits of 1961. The stand taken before this Court in the counter-affidavit filed by respondent No.1 that it was open to him to appeal in the competitive examination in the succeeding year, that is, in the year 1961 to better his position is no justification for depriving him of his legitimate claim to a higher placement in the seniority in the cadre.

While we affirm the view in Janardhana's case that the seniority list should not be disturbed, the applicant's claim has also to be accommodated. In these circumstances, we direct that the appellant's position shall be shown below the recruits of 1960 and above those of 1961 and he may be bracketed with one who has been assigned that position and an appropriate rectification shall be made in the seniority list of 1967 on the basis of the placement in terms of this judgement. His entitlement to promotion on the

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basis of such position shall be considered by the respondents within four months hence. The appellant shall be entitled to his costs throughout. Hearing fee is assessed at Rs.2,000/-."

After the above judgement, the applicant filed a CCP against the respondents, for non-implementation of the said judgement, in its letter and spirit, which, however, was disposed of by the Hon'ble Supreme Court, in the following words:-

"We have heard counsel for the petitioner and are satisfied that no case for contempt has been made out. However, we make it clear that the grievances of the petitioner, if any, may be examined before an appropriate forum. It is open to the petitioner to move an appropriate Forum at Delhi before his transfer."

It is in this background that the applicant has preferred the present application.

3. The applicant's case, in the present OA, briefly is that in spite of the Hon'ble Supreme Court having directed the respondents, in their judgement dated 8.8.1989, to consider the petitioner for promotions as per his entitlement on account of his revised position in the seniority list within four months, the respondents have not given due promotions which accrued to the applicant on account of such seniority at Serial No.114A/1967 list. His plea is that before his appointment as Assistant Executive Engineer, he had worked as Design Assistant in the Central Water and Power Commission from 1.4.58. to 28.1.60 and later as

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Lecturer in Delhi Polytechnic from 28.1.60 to 24.4.62 and in view of his experience in these posts, he was granted three advance increments in the post of Assistant Executive Engineer and this should have been taken into account in his subsequent promotions as Executive Engineer, which should have been given effect in 1964 while carrying out promotions, against year-wise vacancies, as against clubbing of the same and promoting him as Executive Engineer in 1968, when he was promoted as such. This would have further been reflected in his subsequent promotions as Superintending Engineer, Additional Chief Engineer and even as Chief Engineer etc. His grievance is that though his seniority as Assistant Executive Engineer has been set right by giving him a place at serial No. 114A, instead of 483, which was originally granted, this has not been done properly in the subsequent promotional posts, or the seniority list of the said positions. He is also aggrieved for having been made to serve under his juniors, who might have, with ulterior ends, toned down his ACRs, which eventually adversely affected his promotional prospects, in the higher posts. He has thus prayed for setting right all these aspects, by giving suitable directions to the respondents, by ^{listed} claiming reliefs, In para 1 above. He has also alleged discrimination inasmuch as some others like him have been given the benefit of their past service, which has been denied in his case.

4. In the counter filed on behalf of the respondents, the applicant's case has been opposed. Their plea is that the contempt petition having been filed by the

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applicant, against the respondents, for allegedly non-implementing properly, the judgement dated 8.8.89 of the Hon'ble Supreme Court, and the same having been disposed of with the remarks that no case for contempt has been made out, there is very little scope left for this Tribunal, to interfere in the matter. The respondents also contended that the posts from Executive Engineer onwards are Selection posts, and therefore, mere experience possessed by the applicant, in the posts which were not even equivalent posts, being only Class-II posts, the benefit thereof could not be carried forward, in those posts. It was further contended that whatever was intended to be given to the applicant, by virtue of his earlier experience, had since been granted to him, by giving three advance increments, in the post of Assistant Executive Engineer. It was also contended that the applicant's case has been duly considered by the review DPCs, at all next stages, and all that one can ask for is proper consideration of his case and nothing can be claimed as a matter of right, which ~~has~~ ^{to} be allowed, on the basis of one's record and performance etc., and in this way, whatever was due to the applicant, has since been allowed to him, by revising his position in the seniority list at 114A, as against 463, as it earlier stood. As regards the cases of other officers referred to by the applicant, in his application, as having been given the benefit of their previous service, the respondents took up the plea that the cases of the said officers were different from that of the applicant. Further, the respondents stated that Office Memorandum No.22011/3/76-Estt(a) dated 24.12.80 issued by the

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Ministry of Home Affairs regarding year-wise vacancies to be filled as such, was effective from that date only, and previous to it that the DPCs used to be conducted on the basis of the total requirements. Moreover, according to the respondents, the applicant was not at all affected adversely on account of the DPC held in 1968, having been conducted on the basis of clubbed vacancies pertaining to the years 1965 to 1968, in view of the fact that he became eligible for promotion to the grade of Executive Engineer in 1967 and his name had been included in the panel of Executive Engineers pertaining to the DPC held in 1968 at Serial No. 72A, while taking the vacancy position brought out, as in the year 1968. Likewise, the applicant's contention that his ACRs written by his juniors, who might have been swayed by ^{other} some considerations, and with that end in view, had toned down his character rolls, was also refuted by the respondents, stating that no junior officer to the applicant had written his ACRs, as those who wrote were senior to him, by virtue of their appointment in higher posts, at a given point of time. Lastly, it was contended on behalf of the respondents that however high one may place oneself, in one's own estimation, regarding his merit, it falls on his superiors to adjudge him in that respect, and for that purpose, the remarks of the Initiating Officer in the ACRs and also those of the Reviewing officers have to be kept in view, by the DPC, convened for the purpose and that mere allegations of malafides, are not enough and that the onus to prove the same falls on one who alleges and that too very heavily, which has not been done in this case.

5. In the rejoinder filed by the applicant, while reiterating his earlier submissions in the OA, he claimed compensation at the rate of Rs.500 per month for the period for which he was made to serve under his juniors; compensation of Rs.5 lakhs for the torture sustained by him, affecting his health adversely; compensation of Rs.5 lakhs for the alleged vindictive attitude and wilfully delaying his promotion, resulting in unlawful promotions of those who did not deserve the same; Rs.10 lakhs as compensation for not granting timely promotions in various capacities; and interest at the rate of 18% on the entire amount so due, with costs of litigation.

6. We have given our careful consideration to the rival contentions, as briefly discussed above. We have also carefully perused the entire material placed by both the parties on record, together with written arguments filed by the applicant, in support of his contentions, and also those addressed by the learned counsel for the respondents, who broadly urged the five contentions forming part of the preceding paragraph which need not be dilated upon again to avoid repetition. We are not inclined to grant any of the prayers for which, this case was admitted, vide order dated 22.2.99, referred to earlier. Needless to say that the two posts, benefit of which the applicant craves for being granted in his higher promotional posts, from that of the Executive Engineer onwards, were Class II posts and, therefore, by no means, equivalent to those posts, ^{and} the benefit of which the applicant deserved, by virtue of his experience in those two posts, was granted to him by way of three

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advance increments which, to our mind, would not subsists, in fetching to the applicant, any such benefit, in other promotional posts, from that of the Executive Engineer onwards. This was also pressed by the applicant in the CCP moved by him against the respondents for not implementing the Hon'ble Supreme Court's judgement dated 8.8.89, as but so far this aspect is concerned, the same was declined holding that no case of contempt was made out against the respondents. In result, we do not find any merit in the present OA which is accordingly dismissed. However, in the circumstances of the case, we make no order as to costs.

Member 10.4.92
(T.S. OBEROI)

MEMBER(J)

Secretary 10.4.92
(S.P. MUKERJI)

VICE CHAIRMAN(A)