

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. No.2665 OF 2004

New Delhi, this the 9th day of September, 2005

**HON'BLE JUSTICE SHRI B. PANIGRAHI, CHAIRMAN
HON'BLE SHRI M.P. SINGH, VICE CHAIRMAN (A)**

Shri P.K. Sarin S/o Shri S.N. Sarin
492/KG-1,
Vikas Puri
New Delhi.

.....Applicant.

(Applicant in person)

VERSUS

1. Union of India
Through Secretary,
Ministry of Urban Development,
Nirman Bhawan,
New Delhi.
2. Director General of Works,
Central Public Works Departments,
Nirman Bhawan,
New Delhi.
3. Chairman
Union Public Service Commission,
Shahjhan Road,
New Delhi.

.....Respondents.

(By Advocate Shri H.K. Gangwani)

O R D E R

SHRI M.P. SINGH, VICE CHAIRMAN (A):

By filing this Original Application, the applicant is claiming the following reliefs:-

“(A) Call for the records relating to the promotion of the applicant and after perusal of the same, quash the impugned order dated 21.10.2004 bearing no 30/3/2000-EC-1 (Vol. I) (Partl) (Annexure A1) passed by Respondent no.2.



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- (B) Direct the respondents to grant promotion to the applicant without any further delay by ignoring the adverse ACRs if any.
- (C) Direct the respondents to pay the arrears pertaining to the period promotion along with interest @ 18%.
- (D) Order the respondents to pay the Costs of Rs.10,000 of this O.A. in favour of the Applicant.
- (E) Pass any other or such order(s) which this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the case in the interest of justice."

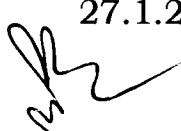
2. Brief facts of the case, as stated by the applicant, are that he joined as Junior Engineer with the C.P.W.D. on 2.8.1976 and promoted as Assistant Engineer in 1984. The applicant along with another person was implicated in false case leveling allegation of demanding and accepting bribe on 13.3.1991. Applicant was granted bail on 14.3.1991. He was suspended and was tried by a criminal court of law. He was acquitted vide order dated 20.8.2002 by the Special Judge, CBI, Tis Hazari from all the charges levelled against him. Thereafter applicant preferred a representation dated 21.8.2002 for consequential benefits on account of acquittal, i.e., reinstatement, treating suspension period as period 'spent on duty', promotion with posting etc. Respondent No.2 revoked the suspension of the applicant vide order dated 29.1.2003. The applicant filed OA No.2401/2003 before this Tribunal. The Tribunal vide its order dated 9.2.2004 in OA 2401/2003, directed the respondents to pass speaking order on the promotion and arrears of pay to the applicant in



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accordance with FR 54-B. The respondents vide order dated 21.10.2004 declined the promotion to the applicant on the ground that the ACR of the applicant are below the benchmark. Hence this OA.

3. The respondents in their reply have stated that in C.P.W.D., promotions to the grade of Executive Engineer (Civil) have been made as per the provisions of the 1954 Recruitment Rules, till such time revised Recruitment Rules were notified on 29.10.1996. As per the 1954 Recruitment Rules, Assistant Executive Engineers with three years service in permanent or temporary capacity and having Degree in Engineering were eligible for promotion to the grade of Executive Engineer. The applicant is a Degree holder Assistant Engineer. His case for promotion to the grade of Executive Engineer (Civil) was considered by the DPC for the year 1995-96 and 1996-97 but the finding of the DPC were kept in sealed cover as a vigilance case was pending against him. The applicant was charged of an offence punishable under the provisions of Prevention of Corruption Act and was placed under suspension w.e.f. 29.4.1991. He was acquitted by the learned Special Judge vide judgement dated 20.8.2002 and the suspension of the applicant was revoked with immediate effect vide order dated 27.1.2003. Further in compliance of the order of this Tribunal in OA No.2401/2003, the period of suspension of the applicant from 29.4.1991 to 27.1.2003 was allowed as period 'spent on duty' for all





purposes with consequential benefits of full pay and allowances for the said period to the applicant vide order dated 12.3.2004. Thereafter the proceedings of the DPC under the sealed cover for the year 1995-96 and 1996-97 in respect of the applicant were opened and the observations of the DPC was that "the committee could not give their recommendations in the case of Shri P.K. Sarin against whom vigilance case is pending, because his CR was not available."

The applicant remained under suspension w.e.f. 29.4.1991 to 27.1.2003. His CRS were not written for the period and, therefore, in the absence of his ACRs, the DPC which met in September, 1999 could not give its recommendations in respect of the applicant as stated above. The case of the applicant for promotion to the grade of Executive Engineer (Civil) was again sent to the UPSC for consideration by a review DPC in respect of the vacancies pertaining to the years 1995-96 and 1996-97 on the basis of CRs which were available prior to his suspension i.e., from 1984-85 to 31.3.1991. The review DPC in its meeting held on 21.9.2004 made their assessment on the basis of available CRs prior to the suspension of the applicant and did not recommend his name for inclusion in the panel either for the vacancies of 1995-96 or 1996-97. The recommendations of the DPC were accepted by the competent authority and accordingly, the applicant was not promoted to the grade of Executive Engineer (Civil). The case of the applicant for promotion to the



grade of Executive Engineer (Civil) has again been considered along with other eligible officers against the vacancies of the years between 1996-97 and 2002-2003 by the DPC held in the UPSC on 3.11.2004, 5.11.2004 and 17.11.2004. The recommendations of the DPC have not yet been implemented due to stay order dated 3.11.2004 passed by the Hon'ble High Court of Delhi in CWP No.840/2003 filed by Shri Gurbaz Singh and Ors. In view of these facts, OA is without any merit and deserves to be dismissed.

4. Heard applicant, who is present in person, and learned counsel for the respondents.

5. Applicant has submitted that the view of the review DPC that it did not find ACRs of the applicant up to the requisite benchmark is illegal as the respondents had never communicated entries, which were below benchmark and adverse. It is submitted by the applicant that all entries, which were below benchmark, are required to be communicated. Therefore, as per law DPC cannot take into consideration the adverse effect of uncommunicated ACRs and was bound to ignore them while considering the case of the applicant for promotion. Applicant has also submitted that on the one hand the respondents have allowed the applicant to cross the efficiency bar but on the other hand they have declined the promotion to the applicant. In both the cases of crossing of efficiency bar as well as promotion, the ACRs for the same period are considered. Therefore, the

decision of the respondents declining the promotion to the applicant is tainted with malice and illegality and is not sustainable in the eyes of law and is liable to be quashed. The decision of the respondents also runs contrary to the judgement of the Hon'ble Supreme Court in ***Brij Nath Pandey Vs. State of U.P. and others***, 2000(5) SLR 76. In this case, the Hon'ble Apex Court has held that "In our view this contention of the appellant is correct and the adverse entries in 1985-86 and 1986-87 cannot come in the way of the appellant for further promotion once he was allowed to cross the efficiency bar on 20.5.92." He has also submitted that as per the ratio of this judgement of the Apex Court, even if the Government has wrongly allowed the Govt. servant to cross the efficiency bar, the same benefit could be extended to him for granting him next higher promotion to the post of Executive Engineer.

6. On the other hand, learned counsel for the respondents has submitted that the applicant has remained under suspension for the period from 29.4.1991 to 27.1.2003, as he was involved in a criminal case, no ACRs have been written during this period. ACRs for the earlier period before the applicant's suspension, which were available with the respondents', have been considered by the respondents. Applicant's case was considered for promotion for the vacancies pertaining to the years 1995-96 and 1996-97 and has not been found fit by the DPC, as he did not meet the



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requisite benchmark. Learned counsel for the respondents has also submitted that the applicant has again along with other eligible officers been considered for the vacancies of the years between 1996-97 and 2002-03 but because of the stay granted by the Hon'ble Delhi High Court in CWP No.840/2003, no action has been taken upon the recommendation of the DPC.

7. We have given careful consideration to the rival contentions of the parties. We find that the applicant was promoted as Assistant Engineer in 1984 and was involved in a criminal case in 1991 and, therefore, he was placed under suspension from 1991. He remained under suspension upto 27.1.2003. No ACRs have been written during the period he remained suspended. He has been considered by the DPC for the vacancies pertaining to the years 1995-96 and 1996-97 and his ACRs written from 1984-1991 have been taken into consideration. Respondents on our direction have produced the relevant records for the perusal of this Tribunal. We have perused the DPC proceedings as well as CR dossiers of the applicants and we find that the applicant has got only two CRs as 'Good' and rest of his CRs are only 'Average'/'fair' and, therefore, he does not meet the minimum benchmark for promotion to the post of Executive Engineer which is fixed as 'Good'. Therefore, the DPC has rightly not recommended him for his next promotion to the post of Executive Engineer. As regards DPC convened for the consideration of the applicant

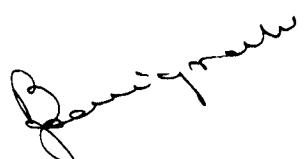
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(B)

for promotion to the post of Executive Engineer for the vacancies from 1996-97 to 2002-03, the DPC has already met but the result has not been declared as the stay has been granted by the Hon'ble Delhi High Court. With regard to the contention of the applicant that as per the judgment of Hon'ble Supreme Court in the case of ***Brij Nath Pandey*** (supra) wherein it has been held that once a person has been allowed to cross the efficiency bar, the adverse entries for the same period could not have come in his way for further promotion, on the same analogy, even if the CRs were not upto the benchmark as required for promotion, once he is allowed to cross the efficiency bar those CRs could not have come in his way for his promotion to the post of Executive Engineer is not acceptable and is accordingly rejected. We do not find any ground to interfere in this case.

8. In the result, for the foregoing reasons, the present Original Application is dismissed being devoid of merit. No costs.


(M.P. SINGH)
VICE CHAIRMAN (A)


(B. PANIGRAHI)
CHAIRMAN

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