

Central Administrative Tribunal, Principal Bench, New Delhi

O.A.No.832/2004

Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. S.A. Singh, Member(A)

New Delhi, this the 31st day of January, 2005

V.K. Jambholkar,
A-3/71, Sector-III, Rohini,
Delhi-85

....Applicant

(By Advocate: Shri G.K. Aggarwal)

Versus

1. Union of India thro'
Secretary,
Ministry of Urban Development &
Poverty Alleviation,
Nirman Bhawan,
New Delhi-11

2. Secretary,
Union Public Service Commission,
Shahjahan Road,
New Delhi-11

....Respondents

(By Advocate: Shri D.S. Mahendru)

Order(Oral)

Justice V.S. Aggarwal, Chairman

The applicant was promoted as Executive Engineer (Electrical) in Central Public Works Department (CPWD) in the year 1978. The next promotion is to the post of Superintending Engineer (Electrical) for which he was considered by the DPC in the year 1989. Before he could be promoted, a chargesheet was served on him on 18.8.1989, pursuant to which an enquiry was held and ultimately a major penalty was imposed on him in the year 1996 which lasted upto 1999. He had filed O.A.No.496/98 before this Tribunal. A direction was given to hold the Departmental Promotion Committee meeting after opening the sealed cover maintained in the department in respect of the applicant. In pursuance of that, a DPC meeting was held and the applicant was promoted as Superintending Engineer on 15.1.2002.

2. After he was promoted, he requested for antedating the promotion with effect from 1989 when his junior was given the promotion. As the respondents

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did not accede to his request, he filed another O.A.No.905/2002 before this Tribunal. That O.A. was dismissed on 3.4.2002 by this Tribunal holding that the applicant could have prayed for this relief in the earlier O.A.No.496/98. Since he did not claim this relief, therefore, his claim was held to be barred under Order 2 Rule 2 of the Code of Civil Procedure.

3.The applicant filed C.W.P.No.4351/2002 in the High Court of Delhi at New Delhi. So far as the earlier order of this Tribunal dated 3.4.2002 is concerned, the Delhi High Court held that there is no ground to interfere.

4.However before the High Court, it was submitted that the applicant was considered for promotion in the year 1997 and his result had been kept in the sealed cover only because of the penalty imposed upon him in the year 1996. Before the Delhi High Court, the matter was considered pertaining to the relief that is being prayed and the Delhi High Court held:

"He referred us to the guidelines issued by Department of Personnel and Training (DOPT), to contend that after the period of penalty was over, the respondents were required to open the sealed cover and give effect to the recommendation of the DPC from the date penalty period came to an end. However, he has conceded at the bar that such a plea was neither raised in the application nor during the course of hearing before the Tribunal. Thus, admittedly this plea has been raised before us for the first time at the time of hearing. Although learned counsel for the petitioner points out that in his representation to the Department before filing the OA which is annexed at page-61 of the paper-book, he had raised this plea but since no such case was sought to be made out in OA, it is not permissible for the petitioner to raise this issue for the first time before us in this writ petition filed under Article 226 of the Constitution of India in terms of the Constitution Bench decision of the Supreme Court in L. Chandra Kumar Vs. Union of India & Ors. AIR 1997 SC 1125. Accordingly, we decline to go into the merits of the aforesaid point raised by learned counsel for the petitioner. However, liberty is granted to the petitioner to file fresh application before the Tribunal raising the said plea, if so desired. As and when such application is filed, the same would be considered by the Tribunal in accordance with law and subject to all defences that may be available to the respondents in this behalf.

With aforesaid observations, this writ petition is dismissed."

Resultantly, the applicant has filed the present application.

5.The sole grievance made on behalf of the applicant is that vide the impugned order of 9.3.2004, the applicant has been given the notional date of appointment as Superintending Engineer (Electrical) from 31.3.92. It is contended that it should have been from 31.12.89, when junior Shri A.K.Morarka has been so promoted.

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6. The petition is being opposed contending –

(a) that the prayer with respect to the said relief has already been refused;
and

(b) in any case, there was no vacancy available in the year 1989 and,
therefore, the applicant could not have been promoted for that period.

7. So far as the first contention of the respondents is concerned, indeed if the matter had ended to which we have referred to above, Order 2 Rule 2 of the Code of Civil Procedure would come into play. In the present case, the cause of action now raised is as a result of the DPC that was held in the year 1997. In the earlier O.A.905/2002, the DPC under consideration was which was held in the year 1989. Keeping in view these facts, therefore, even the Delhi High Court had permitted that applicant could file a fresh O.A. In this backdrop, therefore, we hold that the earlier decision of this Tribunal will not stand in the way of the applicant filing the O.A.

8. Pertaining to the second contention raised at the Bar, the plea, at the risk of repetition is being re-mentioned that as per the respondents, there was no vacancy available in the year 1989. However, it has not been disputed that A.K. Morarka was junior to the applicant and had been so promoted in December, 1989. The plea of the respondents consequently that there was no vacancy in the year 1989, cannot be accepted.

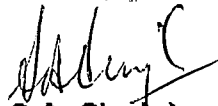
9. Taking stock of the totality of facts, it is obvious that by the DPC that was held in the year 1997, the claim of the applicant necessarily could have been considered from 31.12.1989. The applicant admittedly has since superannuated and, therefore, he can only be given notional benefits without arrears to be paid to him.


10. Resultantly, we allow the O.A. in the following terms:

- (a) the claim of the applicant should be re-considered from 31.12.89 when his junior was promoted;
- (b) if the applicant is so promoted, he should be given the notional benefit;
- (c) but he will not be entitled to any arrears till he superannuated; and

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(d) notional benefit of pay fixation should be accorded to the applicant.


(S.A. Singh)
Member(A)


(V.S. Aggarwal)
Chairman

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