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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI.

O. A. No. 2342 of 1993.

New Delhi, this the 12th day of December, 1994.

HON'BLE MR. B.N.DHOUNDIYAL, MEMBER(A).

Shri Lakshman Dass Kataria,  
Surveyor of Works E-in-C Branch  
Army Headquarters, Kashmir House,  
New Delhi. . . . . Applicant.

(through Mr. R.P.Oberio, Advocate).

vs

1. Union of India  
(through the Secretary,  
Ministry of Defence)  
South Block, New Delhi.
2. The Engineer-in-Chief,  
Army Headquarters,  
Kashmir House, New Delhi.
3. Commander Works Engr., Mhow Cantt. (M)...Res pts.

(through Mr. J.C.Madan, Advocate).

ORDER(Oral)

(delivered by Hon'ble Mr. B.N.Dhoudiyal, Member(A))

Heard the learned counsel for the parties.

The applicant has challenged the order dated 1.2.1993 notifying his promotion as Surveyor of Works notionally from 15.10.1987 and denial of financial benefits. He had also sought re-fixation of his pay in the grade of A.S.W.w.e.f 1.4.1979 on the basis that he was promoted against the vacancy of that year. The learned counsel for the applicant stated that he will confine the relief only to the question of his promotion to the grade of A.S.W. with effect from 01.04.1979 as during

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the pendency of this Q.A., the other reliefs have already been granted to him.

2. The applicant is a Group-A officer of Surveyor's cadre of the Military Engineering Service. He is a pre-1964 recruit and was working as Surveyor Assistant Grade-I in that cadre. In 1964, the respondents decided to merge the Surveyor's cadre and the Engineers Cadre and the Surveyors were given the option to join the joint cadre with the assurance that their seniority will be based on the date of appointment to the grade. Again in 1978 these cadres were separated by demerger and options were asked for by the respondents. It was also clarified that the seniority would be based on the basis of the date of appointment as Superintendent(B&R) Grade-I. The applicant opted to serve in the Surveyor's cadre and based on this option, he was promoted on adhoc basis as ASW on 14.7.1982 and was regularised w.e.f. 14.4.1986. Later, he came to this Tribunal by means of OA No.1626 of 1987, decided on 16.3.1990. An order was issued on 7.3.1990 wherein the applicant is shown as selected for the vacancy of 1982. The applicant was senior to Shri Krishan Chand and on 10.10.1991 an order was issued revising his seniority and placed him above Shri Krishan Chand. This order clearly states that he was considered against the vacancies pertaining to the year 1979. It is on the basis

of this order that the applicant claims that he should have been given notional promotion and financial benefits as Assistant Surveyor of Works from the year 1979. The learned counsel for the respondents refers to the operative part of the judgment of this Tribunal in OA No.1625/87 dated 16.3.1990 which reads:

"In case, he is found fit to be included in the panel, he should be promoted as ASW on a regular basis w.e.f. the date his next junior in the revised seniority list got the promotion in 1982."

The contention of the learned counsel for the respondents is that the directions of this Tribunal contained in the above judgment have been fully implemented. In case of Krishan Chandra, in para 8 of the judgment dated 28.8.1987, this Tribunal had observed that he was admittedly eligible to be considered for the post of ASW right from 1982. The applicant claims that he was eligible to be considered for the post of ASW much earlier. This is a question for verification as no evidence has been brought before us to show that the applicant had become eligible during the pre-1982 period in accordance with the then prevalent recruitment rules. However, as this Tribunal had observed in the aforementioned case of Krishan Chander vs. Union of India & ors., ATR 1987 (2) CAT 631, the authorities had erred in clubbing of the vacancies during the years preceding the meeting of the D.P.C. Both the orders relating to the promotion of Krishan Chander as well as the applicant mention that they are being adjusted against the 1979 vacancies. If the applicant had become eligible under the then prevalent rules, for

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promotion as ASW, even before 1982, he has a right to be considered against the vacancies of the earlier years. The intention of the Tribunal was not that the normal procedure relating to calculation of the year-wise vacancies, preparing lists of eligible candidates and yearwise selection was not to be followed. It is directed that this question shall be examined by the respondents and if it is found that the applicant became eligible to be promoted as ASW, in any year between 1979 and 1982, a review D.P.C. will be convened to consider his case for vacancies arising from the year when he became so eligible as per the prevailing recruitment rules. If he is considered and found fit for promotion against the vacancies arising during the years earlier to 1982 he shall be entitled to the benefit of notional promotion from that year. The required exercise shall be carried out by the respondents within a period of three months of the receipt of a certified copy of this order. There will be no order as to costs.

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/sds/

*B.N.Dhoudiyal*  
( B.N.Dhoudiyal )  
Member(A)