

CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH AT NAINITAL.

Dated : This the 14th day of January 2002.

Original Application no. 42 of 2001.(U)

Hon'ble Mr. Justice RRK Trivedi, Vice-Chairman
Hon'ble Maj Gen KK Srivastava, Administrative Member.

Chaman Lal Shah,
S/o Late D.L. Shah,
R/o Vikas Lok Lane-4, Sahastra Dhara,
Road, Dehra Dun, presently posted as
Superintending Surveyor (Ad-hoc),
Digital Mapping Centre, Survey of India,
DEHRADUN.

... Applicant

By Adv : Shri K.C. Sinha

Versus

1. Union of India through Secretary,
Ministry of Science & Technology,
(Department of Science & Technology),
Technology Bhawan, New Mehrauli Road,
NEW DELHI.
2. Surveyor General of India,
DEHRADUN.
3. Shri Ram Nath Nahak,
No. 17, DO (NWC), O/o Surveyor General,
NEW DELHI.
4. Shri P.K. Ganguly,
No. 93 P(SA), O/o Surveyor General,
NEW DELHI.
5. Shri B Mahapatra,
No. 29 P(NEC), O/o Surveyor General,
SHILLONG.

... Respondents

By Adv : Shri R.C. Joshi

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ORDER

Hon'ble Maj Gen K K Srivastava, Member-A.

In this O.A., filed under section 19 of the A.T. Act, 1985, the applicant has prayed that the order dated 26.07.2001 (Ann A11) regarding promotion of Officer Surveyor (Group 'B') be quashed and the same be modified to the extent that the applicant may be placed after Shri J.K. Rath who is at sl no. 1 with all consequential benefits.

2. The facts, in short, are that the applicant started his service career in the respondent's establishment as T.T.A. 'A' on 27.05.1972 and was promoted as Surveyor on 1.1.1975. As per 1962 Rules, 50% posts of Officer Surveyor (Group 'B') was to be filled by promotion whereas 50% was to be filled by open market through Competative Examination. The 1962 Rules were superse-ded by Survey of India Officer Surveyors Recruitment Rules, 1983, according to which 75% of the posts were to be filled by promotion quota by selection from Surveyours, Survey Assistant, Geodetic Computers and Draftsmen Division-I and 25% posts to be filled by promotion through Limited Departmental Competative Examination (in short LDCE). The applicant alongwith others appeared in the LDCE in August 1986 Followed by interview in January 1987. On the basis of LDCE the applicant was promoted to the post of Officer Surveyor (Group 'B') w.e.f. 1.7.1987. In the same examination, respondent no. 3 also appeared and was selected. The seniority list of Officer Surveyor was issued on 29.1.2001, in which the name of the applicant appeared at sl no. 52 and that of respondent no. 3 at sl no.56. However, the promotion order of Officer Surveyor (Group 'B') to the post of Superintendi
Surveyor (Group 'A') ^{he was in} issued on 26.7.2001, in which the name of the applicant does not appear, though he stands senior to

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respondents no. 3 ^{to 5} ~~and~~ as Office Surveyor. Aggrieved by this, the applicant filed a representation on 31.7.2001. Since the grievance of the applicant has not been redressed, he filed this O.A. on 26.9.2001 which has been contested by the respondents by filing counter affidavit.

3. Shri K.C. Sinha, learned counsel for the applicant, submitted that the applicant was entitled for promotion on the basis of ^{seniority as in} ~~of~~ Officer Surveyor ^{which was fixed in} ~~alongwith~~ those applicants who were given the benefit of judgment dated 14.2.1992, in OA nos. 1050/88, S.N. Jugran Vs. Union of India & Ors, OA no. 1084/88, D.N. Pandey Vs. U.O.I. & Ors and OA no. 1134/99 J.C. Khurana Vs. Union of India & Ors. As per scheme dated 13.7.1989, issued by Department of Personnel and Training, ^{to} the post of Superintending Surveyor (Group A) ⁱⁿ the promotion has to be made ~~on~~ the basis of Selection-Cum-Seniority having bench mark 'Good'. The learned counsel for the applicant submitted that the Departmental Promotion Committee (in short DPC) while considering the suitability of Officers for promotion for which the bench mark has been determined as 'Good' would grade the officers as 'Good', 'Average' and 'Unfit'. The Officer who obtained the grade 'Good' have to be included in the panel in order of their seniority in lower grade. However, the respondents have not adhered to this rule and have ignored the claim of the applicant to the post of Superintending Surveyor by promoting his juniors i.e. respondents no. 3 to 5.

4. Shri K.C. Sinha, learned counsel for the applicant further contended ~~that the applicant's~~ that the applicant's service has been to the entire satisfaction of the respondents. He has never been communicated any adverse entries in his Confidential Report (in short CR) and, therefore, it is not

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understood as to why his claim for promotion to the post of ⁱⁿ ~~Superintending~~ ^{been} ~~Surveyor~~ ^{has} ~~been~~ ^{ignored}. In case any adverse grading has been given to the applicant the same should have been communicated. Any down grading of bench mark also is to be communicated and any uncommunicated adverse remark have to be ignored. In absence of any communication of respondents, there is no doubt that the applicant has earned 'Good' entry and his claim to the promotion of ⁱⁿ ~~Superintending~~ ⁱⁿ ~~Surveyor~~ ^{could not be} ~~xxx~~ ~~xxx~~ ~~xxx~~ ignored. The learned counsel for the applicant also submitted that in view of circular dated 13.7.1989 issued by Ministry of Personnel and Training, the suitability of the applicant has to be adjudged from C.R. of five years in the feeding cadre. Making promotion on the post of Superintending Surveyor, the seniority list of the Officers Surveyor dated 29.1.2001 ^{which had to be} ~~which~~ ^{should the Seniority list dated 29.1.2001 itself} ~~was~~ taken into account was illegal as the ratio of 3:1 has not been maintained ^{and} ~~and therefore~~, the promotion order dated 26.7.2001 superseding the applicant infavour of his juniors is bad in the eyes of law. The learned counsel for the applicant finally submitted that the D.P.C. should be held every year and year-wise panel should be prepared. In the instant case, the D.P.C. was not held for number of years, hence, the promotion order dated 26.7.2001 is illegal as the same has not been done without giving the number of vacancies against which the promotion has been made.

5. The learned counsel for the applicant has placed reliance on the judgment of Hon'ble Supreme Court in case of UP Jal Nigam & Ors Vs. Prabhat Chand Jain & Ors, JT 1996 (1) SC 641 in which the Hon'ble Supreme Court has held that if Overall Assessment was done affecting ^{his} ~~his~~ career, the same is to be treated as adverse and is required to be communicated to the person concerned ⁱⁿ ~~in~~ the form of advise. The same principle,

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as laid down by Hon'ble Supreme Court, has been followed by Allahabad Bench of this Tribunal in case of Udai Krishna Vs. Union of India & Ors, (1996) 33 ATC 802 and also by Mumbai Bench of this Tribunal in case of Charan Singh Azad Vs. State of Maharashtra & Ors, 2001 (1) A.I.S.L.J. 97

The learned counsel for the applicant contended that the respondents have grossly violated the settled legal norms and, therefore, the impugned promotion order dated 26.7.2001 is liable to be quashed.

6. Resisting the claim of the applicant Sri R.C. Joshi learned counsel for the respondents submitted that the list of Office Surveyor was^afinalised in compliance and implementation of the judgment of Cuttack Bench of this Tribunal dated 27.3.2000 passed in O.A. no. 438 of 1998, S.K. Chakarverty & Ors Vs. U.O.I. & Ors (Full Bench) and judgment dated 4.5.1998 in O.A. no. 221/96, B Mahaparta Vs. Union of India & others. This Tribunal also passed a common judgment on 14.2.1992 in O.A. no. 1050/88, 1084/88 & 1134/88 filed by Shri S.N. Jugral, D.N. Pandey & J.C. Khurana respectively. The D.P.C. for selection to the post of Superintendent Surveyor held on 9.10.1995, did not include the name of the applicant in the select list. However, the year wise panel was drawn by the^{h An} review D.P.C. in pursuance to the Full Bench judgment of Cuttack Bench of this Tribunal in O.A. no. 438/98 and OA 221/96 for the vacancies for the year 1992 and 1993 for which the D.P.C. was held earlier on 9.10.1995 and in the review D.P.C., held on 26.7.2001, the applicant could not find place in the select list according to the recommendation of the U.P.S.C. Learned counsel for the respondents submitted that the recommendation of the D.P.C. are final and since selection to the post of Superintending Surveyor is on the basis of selection cum merit, the applicant cannot claim his selection on the basis of seniority alone as Office Surveyor.

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7. Learned counsel for the respondents submitted that though the bench mark is 'Good', but the name of Officers are arranged according to the over-all grading and the select panel is drawn upto the number of vacancies. Adhoc promotions are granted purely on seniority basis and the persons promoted on adhoc basis cannot claim for regular promotion according to seniority. Learned counsel for the respondents submitted that no illegality has been committed and O.A. lacks merit and is liable to be dismissed.

7. We have heard learned counsel for the parties carefully considered their submissions and perused records.

8. The main contention of the applicant is that he is entitled for promotion as Superintending Surveyor because of his seniority ⁱⁿ vis-a-vis ⁱⁿ respondents Nos. 3 to 5 and also because of fact that he was already working as Superintending Surveyor on adhoc basis. The respondents in para 13 of the Counter Affidavit have clarified the Rule position which reads as under:

"Notwithstanding the provisions mentioned above, in the case of promotion made for induction to Group 'A' posts/services from lower groups, while the benchmark would continue to be 'Good' the D.P.C shall grade the officers as 'Outstanding' 'Very Good', 'Good', 'Average' and 'Unfit' as the case may be, and the officers will be arranged according to the grading obtained, placing the 'Outstanding' officers on top followed by those graded as 'Very Good' and so on in the select panel upto the number of vacancies, with the officers having the same grading maintaining their inter-se-seniority in the feeder grade".

9. It is an admitted fact that review D.P.C. was held on 26.7.2001 in pursuance of the Full Bench judgement of Cuttack Bench of this Tribunal in O.A 438/98 and O.A.221/96 (Supra) separately for the vacancies for the year 1992 and 1993. We find

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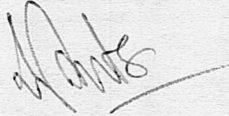
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force in the submission of the respondents that since juniors have better grading than the applicant, the applicant could not find place in the select list. The Bench Mark of the selection to the post of Superintending Surveyor is 'Good' and the applicant could not find place in the select list drawn by the review D.P.C. because there were Officers having grading of 'Outstanding' and 'Very Good' and since as per rules the panel had to be drawn upto the number of vacancies, there is nothing on record to show that the applicant did not get the Bench Mark grading. The law laid down by Hon'ble Supreme Court in case of U.P. Jal Nigam (supra) followed by this Tribunal in case of Udai Krishna (supra) and also by Mumbai Bench of this Tribunal in case of Charan Singh Azad (supra) will not be of any help to the applicant. The main issue raised in the above cases was that the applicants were not given Bench Mark grading which should have been considered as adverse in absence of any communication, which is not so in the present case.

10. It is not disputed that the applicant was senior to respondent no. 3 as Officer Surveyor as per the seniority list of Officer Surveyor dated 29.1.1991, in which the applicant's name is shown at sl no. 52 and the respondent no. 3 at sl no. 56. Therefore, the pleadings of the applicant raised in the various paras of OA prior to 29.1.2001 are of no relevance. The legal position is well settled that the Courts cannot sit in the judgment on the recommendation of D.P.C. The legal position is also well settled that adhoc promotion on the basis of seniority does not confer any right for regular promotion where the promotion is to be given on the basis of the recommendation of the D.P.C. We do not find any illegality warranting our interference as the case of the Surveyor has been considered by a duly constituted Review D.P.C. held on 26.7.2001 in pursuance to the order dated 27.3.2000 of ^{the} Cuttack ^{the} Bench of this Tribunal passed in OA no. 438 of 1998 (supra)

11. In the facts and circumstances and our aforesaid discussions, we do not find any good ground for interference. The O.A. is devoid of merit and, therefore, the same is dismissed.

12. There shall be no order as to costs.



Member (A)



Vice-Chairman.

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