

~~AP~~ 9

Present

Registration (O.A.)No.602 of 1987

-VS.-

This application coming on for hearing  
this day, Hon'ble Vice Chairman made the following:

O r d e r

In Miscellaneous Application No.116 of 1988, the respondents had sought for vacating the interim order made in this case. But, as agreed to by both the sides, the original application itself is treated as listed for final hearing to-day and is accordingly heard.

2. In this application made under Section 19 of the Administrative Tribunals Act, 1985(Act), the applicant has challenged the order dated 2-7-1987(Annexure-3) made by the Chief Engineer, Headquarters Central Command, Lucknow (CE).

### 3. Prior



3. Prior to 26-2-1985, the applicant was working as Superintendent B/R Grade-I in the Office of the Garrison Engineer, Itarsi, (Superintendent). On 26-2-1985, the Engineer-in-Chief, Army HQ., New-Delhi (EIC), promoted the applicant and 34 others, with whom we are not concerned, as Assistant Engineers B/R Grade-I (AE), on ad hoc basis and posted them to the places mentioned in his order. Some time in 1986, the Departmental Promotion Committee (DPC) constituted for the purpose, ~~was~~ considering the cases of the applicant and others for regular promotions, recommended for his supersession. On these and all other relevant matters, the CE with the prior approval of EIC, by his Order made on 2-7-1987, had directed that the continuance of the applicant on and after 1-1-1987 as AE, was unauthorised and stands terminated from 1-1-1987. Hence this application challenging the said order on more than one ground.

4. In their reply, the respondents have asserted that the continuance of the applicant as AE beyond 1-1-1987, was unauthorised and irregular and the same had been rightly terminated by CE.

5. Shri G.D. Mukerji, learned Counsel for the applicant, contends that the impugned order had really reverted his client from the post of AE to the post of Superintendent and that order made without issuing a show-cause notice and affording an opportunity of hearing, was in contravention of the principles of natural justice and illegal.

6. Shri



6. Shri N.B.Singh, learned Counsel for the respondents, sought to support to implement the order.

7. The order made by CE which also sets out the reasons, reads thus:

"Tele: Mil 666                      Engineers Branch  
   HQ Central Command  
   Lucknow-2  
901010/2/1404/EIB              02 July 87.  
  
Chief Engineer,  
Lucknow Zone,  
Lucknow-2.

Posting Officers

1. Reference your letter No.121001/3394/EIB.Dated 18 May 87 & 120101/4017/EIB dated 19 June 87.

2. A case for posting in respect of MES 216006 Sri Balwan Singh Bist was referred to E-IN-C Branch. It has been intimated under their No.84727/Engrs/2442/EIB dated 19 June 87, that the ad hoc promotion in respect of Sri Balwant Singh Bist was extended upto 31 Dec 86. No further extension of ad hoc AE B/R after 31st Dec 86, has been given to the above individual. It is not understood as to how the individual is still serving as AE B/R(ad hoc). The individual should have been reverted to Supdt. B/R Gd.I, after 01 January 87.

Please do the needful immediately and confirm.

Sd. R.P.Singh,  
Lt. Col.  
SO II (P)  
Chief Engineer."

In this order, the CE states that the applicant's continuance beyond 1-1-1987, had not been approved by EIC who had earlier promoted him on an ad hoc basis and that notwithstanding the same, he had been continued as an AE. If what is stated in the Order is correct, which



which we have no reason to doubt, then we are simply amazed and distressed <sup>at</sup> the way ~~in which~~ the matters are dealt in the concerned offices of Government.

8. In their reply, the respondents have asserted that in 1986, the applicant had not been found fit for promotion by DPC for regular promotion, when it considered the cases of eligible officers and recommended for the promotion of some of his juniors on that occasion. On these and other facts stated by CE, which are correct, we cannot take exception to the impugned order of the CE on any ground.

9. Before making the order, it would have been <sup>advisable</sup> ~~for the CE or EIC~~ to issue a show-cause notice to the applicant. But that procedural infirmity does not and will not make any difference in the result. We should not forget that the principles of natural justice have been evolved by Courts to advance the cause of justice and not to be performed as rituals only.

10. On the foregoing, we find it difficult to uphold the contention of Sri Mukerji and we reject the same.

11. We have earlier noticed that the authorities had continued the service of the applicant beyond 1-1-1987. On the applicant challenging the order of CE, this Tribunal had stayed its operation. On this, the applicant has continued to work as AE from 1-1-1987 to this date. If that is so, then notwithstanding all illegalities and irregularities in his functioning, he cannot be denied

the



the salary of the post of AE he held, at any rate till to-day. We must regulate the matters as above only.

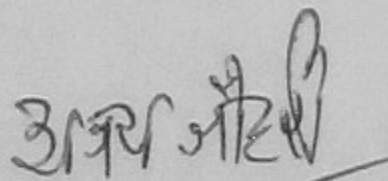
12. We have earlier noticed, the applicant had been passed over for regular promotion some time in December 1986. On the pendency of this proceeding, the applicant has not thought it necessary to challenge the same. We must reserve necessary liberty on this aspect to both sides.

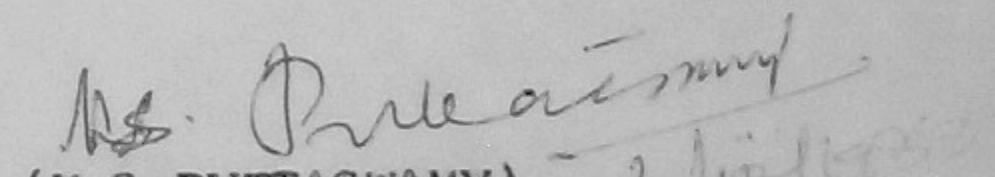
13. In the light of our above discussions, we make the following orders and directions:

(i) We declare that the impugned order made by the CE on 2-7-1987, is a valid order. We however direct that the same shall be given effect to, only from to-day and not for the period from 1-1-1987 to 3-10-1988.

(ii) We leave open the regular promotion of the applicant for the post of AE to be agitated by him, in such legal proceedings as are open to him.

14. Application is disposed of, in the above terms. But, in the circumstances of the case, we direct the parties to bear their own costs.

  
(AJAY JOHRI)  
MEMBER (A)

  
(K.S. PUTTASWAMY)  
VICE CHAIRMAN.