

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the 21st day of DECEMBER 2006.

Original Application No. 349 of 2003.

Hon'ble Mr. Justice Khem Karan, Vice-Chairman
Hon'ble Mr. P.K. Chatterji, Member (A)

Jeevan Singh Tomar, S/o Shri Hari Singh,
R/o Type IV, Quarter No. 3, Survey of India Estate,
Hathibarkala, Dehradun.

....Applicant

By Adv: Sri S. Narain

V E R S U S

1. Union of India, through Secretary to Govt. of India, Ministry of Science & Technology, Department of Science and Technology, Technology Bhawan, New Delhi.
2. Surveyor General of India, Dehradun.

....Respondents

By Adv: Sri S. Singh

O R D E R

BY Hon'ble Mr. P.K. Chatterji, AM

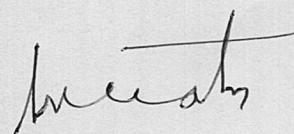
The applicant is an employee of Surveyor of India. After joining as Group 'c' he was promoted as Surveyor Selection Grade on 12.09.1977 and, thereafter, he was promoted as Officer Surveyors on regular basis on 20.05.1985. As per rule after 8 years regular service as Officer Surveyor he became eligible for promotion as Superintending Surveyor. On 24.03.1993 a seniority list was published of Officer Surveyor Group 'B' which is the feeding Cadre of the post of Superintending Surveyor. In

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the list the applicant was placed at Sl No. 31 of the list. The applicant belongs to ST community.

2. The applicant was promoted as Superintending Surveyor on adhoc basis vide order dated 16.07.1993. He served in the same capacity in different places. In the order of adhoc appointment it could be seen that 40 adhoc appointments were made to the post of Superintending Surveyor in 1993 thereby implying that as many vacancies were available. Respondent No. 1 issued a Gazetted notification on 17.05.1995 in which the officers Surveyor were promoted as Superintending Surveyor on adhoc basis for a further period of three months and in that list the applicant was placed at Sl. No. 24.

3. While the applicant was working as Superintending Surveyor a regular promotion order was issued by the respondents from officer Surveyor Group "B to Superintending Surveyor Gr. 'A' on regular basis vide order dated 15.12.1995. But the name of the applicant did not figure in the list. The applicant has stated that the name of Sri Somra Tirkey of ST community was at Sl. No. 14 of the list and another ST candidate Sri S.D. Semwal was at Sl. No. 31. But the applicant's says that in the seniority list of Officer Surveyor Sri Somra Tirkey was at Sl. No. 32 while the applicant was above him.



4. The applicant made a representation on 23.02.1996 before the respondents against the suppression. In the said representation he stated that during the last 18 years he was serving to the satisfaction to his authority without any adverse entry in the CR or any other communication. Not only that he was considered suitable for adhoc promotion and in the list of adhoc promotes also he was shown as senior to Sri Somra Tirkey. Therefore, the cause of his sudden supercession was inexplicable. The applicant made further representation in October 1997 and issued another reminder dated 18.01.1998. During this period he was moving from one place to another, and therefore, was unable to peruse his case adequately. Although he came to the Tribunal seeking its intervention against the unjust and illegal order of promotion somewhat late, the Tribunal should appreciate the extenuating circumstances and admit the applicant in view of the glaring injustice to him.

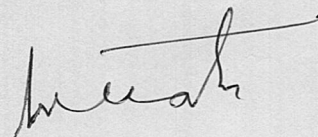
5. The relief which has been sought by the applicant is a direction from the Tribunal quashing the order of promotion dated 15.12.1995 and further direction to the respondents to hold review DPC and promote the applicant with reference to his juniors from 16.12.1995 and also to offer consequential

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benefit to him. The ground on which the relief is based are as follows:

- a. The applicant was working as Superintending Surveyor on adhoc promotion for several years thereby implying that he was not unsuitable for promotion as Superintending Surveyor. For this reason his supersession has taken him by surprise.
- b. His juniors have been given promotion superseding his claim in complete violation of the Rules of 1989. The respondents misinterpreted and erred on the Rules of promotion dated 10.04.1989 in making the selection for promotion against vacancies to the years 1992 and 1993. This resulted in supersession of the applicant.
- c. The ST candidates who were selected on merit should have been placed in the General Quota as per the rules but they were placed in the ST quota although they deserved to be selected on merit as per the 89 guidelines.
- d. No adverse remarks about his performance was ever communicated to him. If his grading fell below the benchmark it should have been communicated to him. In this context he cited the relevant judgment from the Apex Court in three cases as follows. In all these cases the Court decided that grading below the benchmark, if it was likely to result in deprivation of promotion ought to be considered as adverse and should be communicated.

- i. ((1996) 33 ATC 802 Uday Krishna Vs. U.O.I. & Ors



ii. *Judgment Today 1996 (1) SC 641, JP Jal Nigam Vs. State of Uttar Pradesh & Others.*

iii. *2001 (1) (CAT) All India Service Law Journal 97, Charan Singh Azad Vs. State of Maharashtra.*

e. His repeated representations fell on deaf ears.

f. According to DOPT instruction the respondents should hold the DPC regularly and in time and clubbing of vacancies are not permissible. However, the respondents were not holding the DPC regularly and combining DPC for several years thus creating complication in a matter.

g. The applicant has further stated that as per OM No. 22011/5/86-Estt. (D) dated 10.04.1989 (Annexure A-7A) i.e. the procedure for reservation in promotion, the Benchmark "Good" was not applicable for reserved communicate and the suitability of SC/ST officers was to be adjudged separately.

h. The applicant has further stated in the rejoinder affidavit by citing MHA OM No. 1/12/67-Estt. (C) dated 11.07.1968 that as per guidelines after excluding the unfit amongst the SC/ST employees the DPC has to give the suitable amongst the SC./ST candidates one grading higher than the grading otherwise assignable to them on the basis of their record of service.

6. The responders denied the allegations.

Firstly they are of the view that the Tribunal would

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be committing error in admitting this case because it sought to set aside the promotion order issued seven years earlier. The representations made by the applicant in the meantime could not help in as for the settled law is concerned. In this respect there are several judgment of the Apex Court to the effect that appeal/representations could not enable the applicant to get an extension of the limitation.

7. The respondents further stated that the applicant relied his claim on the OM dated 22011/5/91-Estt. (D) dated 27.09.1997, but this is effective from 15.04.1997 while the impugned promotion order pertains to the year 1995. Against this, however, the learned counsel for the applicant pointed out that the applicant was seeking the benefit on the basis of the guidelines of 10.04.1989 and the explanation given by the respondents in para 33 would amply prove that the applicant was fully justified in making the claim. At para 33 the respondents have clarified the manner of selection of the candidates vis-à-vis the applicant by the DPC on the basis of the 1989 guidelines.

8. The respondents have further stated that the selection to Superintending Surveyor was to be made not on the basis of seniority but seniority-cum-merit. If there is one post and there are two persons fulfilling the benchmark the post will be given to the official who has better grading in the

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CR. This was, however, contradicted by the learned counsel for the applicant who referred to the submissions of the respondents themselves vide their CA at para 33. According to this submission of the respondents themselves the basis of selection was the guidelines of 10.04.1989 and the manner in which the DPC was conducted was as follows:

"The list of candidates be the DPC and the overall grading assigned to each candidates, would form the basis for preparation of panel for promotion by the DPC. The following principles should be observed in the preparation of the panel:

i. Having regard to the levels of post to which promotions are to be made, the nature and importance of duties attached to the post a bench mark grade would be determined for each categories of posts for which promotions are to be made by selection method. For all Group 'C' Group 'B' and Group 'A' posts upto (and excluding) the level of Rs. 3,700 - 5,000 excepting promotions to Group 'A'. All officers whose overall grading is equal to or better than the bench mark should be included in the panel for promotion to the extent of the number of vacancies. They will be arranged in the order of their inter-se-seniority in the lower category without reference to the overall grading obtained by each of them provided that each one of them has an overall grading equal to or better than the bench mark of 'Good'. When ever promotions are made for induction to Group 'A' posts of Service from lower groups, the bench mark would continue to be 'Good'. However, officers graded as 'Outstanding' would rank en block senior to those who are graded as 'Very Good' and officer graded as 'Very Good' would rank en block senior to those who are graded as 'Good' and placed in the select panel accordingly upto the number of vacancies. Officers with same grading maintaining their inter-se-seniority."

9. It would be evident from the above mentioned submission that the contention of the respondents that regardless of the benchmark the one having better grading should have a higher claim for promotion, is not tenable. All officers whose overall grading is equal to or better than the benchmark should be included in the panel for

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promotion up to the extent of the number of vacancies. In this context the clause "to the extent of the number of vacancies is significant". It means in other words the list of eligible officials on the basis of benchmark up to the number of vacancies has to be drawn up. Any one below this list, even though he might be having better grading than one or more official in this list have no right to be selected. There is however, scope for revising the inter-se-seniority amongst the officials in the list (up to the number of vacancies) on the basis of grading such as outstanding and very good.

10. At this point we would like to revert to para 9, 10 and 11 of the counter affidavit. This will elucidate the manner in which the DPC made the selection to fill the ST vacancies for the years 1992 and 1993 for which the applicant was one of the candidates. It would be pertinent to reproduce the paras verbatim as this would clear the doubts and ambiguities:

" That regular promotion to the post of Superintending Surveyor are made by selection cum merit and bench mark required for promotion is good. The name of the applicant was considered by Departmental Promotion Committee held on 09.01.1995 for the vacancies of 1992 for regular promotions to the grade of Superintending Surveyor against the 18(14 General, 3 SC and 1 ST) for the year 1992. The seniority of ST category candidates at the time of DPC for the year 1992 was as below:

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1. Shri S.D. Semwal (ST) at serial 11
2. Shri J.S. Tomar (ST) at serial 24
3. Shri Somra Tirky (ST) at serial 25

The overall grading of these officers belong to ST category were as below:-

1. Shri S.D. Semwal (ST) Good
2. Shri J.S. Tomar (ST) Average
3. Shri Somra Tirky (ST) Very Good

That the name of the applicant was not in the select Panel for the promotion to the grade of Superintending Surveyor (Group: A) due to his lower grading as 'Average' which is below the bench mark required for promotion. Shri Somra Tirky (ST) had better grading (Very Good) than Sri S.D. Semwal (having Good Grading) and the applicant having average grading therefore, Shri Somra Tirki was selected against one post served for ST categories and empanelled by the DPC for the vacancy of 1992. Thus Shri Somra Tirky though junior but superceded both S/Shri S.D. Semwal and the applicant because of his better grading. It is however mentioned that all general applicant could not be empanelled against General Category vacancies also. Thus no discrimination has been done to comparison of General Category candidates as well as ST candidates in DPC held for 1992 vacancies.

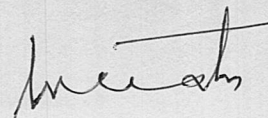
The Departmental Promotion Committee held on 09.10.1995 for promotion to the post of Superintending Surveyor (Group 'A') against the 15 (12 General, 2 SC and 1 ST) vacancies for the year 1993 also considered the name of the applicant alongwith Shri S.D. Semwal. The seniority of ST candidates at the time of DPC for 1993 was as below:-

1. Shri S.D. Semwal (ST) at serial 5
2. Shri J.S. Tomar (ST) at serial 10

The overall grading of these officers were:

1. Shri S.D. Semwal (ST) Good
2. Shri J.S. Tomar (ST) Good

Shri S.D. Semwal having good grading and senior to the applicant was empanelled by the DPC against the vacancy of ST of 1993. The applicant also had good grading but could not find place in select panel for want of vacancies for ST category. It is however, mentioned that all general categories selected were having very good grading and the that all general category selected were having very good grading and the applicant could not be empanelled against General category vacancies also. Thus no discrimination has been done to the applicant in comparison of General category candidates as well as ST candidates in the DPC



held for 1993 vacancies. Thus no injustice was done to the applicant in the matter of -promotion declared vide letter No. C-4497/853-SS dated 15.12.1995 against the vacancies for the year 1992 and 1993 as an ST candidates as well as general candidates. After the regular promotion were declared in 1995, adhoc promotion declared in 1994 were not more valid."

11. From the aforementioned submission it would be clear that the first mistake that the respondents made was that Sri Semwal (at Sl. 11) was not considered for promotion against the General quota although he had overall grading good in the records. Instead they brought Somra Tirkey above Sri Semwal irregularity thus creating completions for the selection for 1993 and further queering the pitch for the applicant.

12. Even if we ignore the mistake committed for the year 1992 there was scope for correcting it in the year 1993 in which both Sri Semwal and the applicant had fulfilled the bench mark of grading "Good". In this year there was scope for providing the two official under the general quota as per the guidelines. The respondents have observed - "it is however, mentioned that all general category candidates selected were having very good grading and the applicant could not be empanelled against the general category". We are unable to agree with this observations, as it contradicts the provisions of circular dated 10.04.1989.

13. The applicant has also referred to the two OM from the Ministry of Home Affairs which stipulates

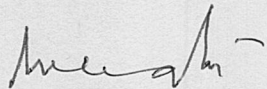
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that the SC/ST candidates for promotion should be adjudged separately. Further, the SC/ST candidates in a promotion should be graded one notch higher than the grading they have in the CRs for the purpose of comparative assessment with the other general candidates. This provisions appears to be more favorable to the reserved community candidates compared to what has been envisioned in the provisions of the OF Board dated 10.04.1989. We do not think it is necessary to examine the authenticity of the claim of the applicant with reference to aforementioned OMs and to resolve the contradiction between these on the one hand and the provisions of 10.04.1989. But even if we apply the provision which are less favorable to the applicant being a number of the ST community, we find that there was scope to promote him to the post of Superintending Surveyor in the year 1993.

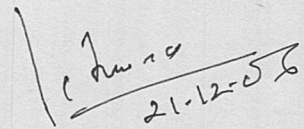
14. The mistake committed by the respondents are too glaring. Although there is strength in the arguments of the respondents that the applicant is time barred and repeated representation would not help the applicant to get extension, we are of the view that the OA deserves to be considered as apart from this merely technical aspect it has so much to say when it comes to merit. Firstly, in view of the extenuating circumstances explained by the applicant which stood in the way of filing the OA in time and

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also keeping in view the glaring irregularity committed by the respondents we are inclined to condone the delay. For this reasons and on the abovementioned consideration we are of the view that the OA should be allowed. We, therefore, allow the OA and quash the order dated 15.12.1995. We also direct the respondents to hold review DPC and promote the applicant with reference of his juniors from 16.12.1995. No cost.



Member (A)


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Vice-Chairman

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