

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

O.A No. 1144/2007

, this the 30th day of November, 2012.

CORAM

**HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE MR SHASHI PRAKASH, ADMINISTRATIVE MEMBER**

J.N. Yadav (MES – 408926) Ex. AE (QS & C) From GE (AF), Bamrauli,
Allahabad and R/o 138-E, Bargahiya, Nanda Nagar, Post Kunraghat,
Gorakhpur.

... Applicant

By Advocate : Shri Pankaj Srivastava

VERSUS

1. Union of India, through the Secretary, Ministry of Defence, DHQ, PO – New Delhi.
2. The Engineer-in-Chief, Army Headquarters, Kashmir House DHQ PO – New Delhi – 11.
3. The Chief Engineer, Head Quarters Central Command, Lucknow – 2.
4. Chief Engineer (Air Force), Allahabad – 12.
5. G.E. (AF) Bamrauli, Allahabad – 12.

... Respondents

By Advocate : Shri Saurabh.



ORDER**HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER**

The applicant entered the services of respondents' organisation as Supt B/R grade II in March 1966. In the year 1979, on being asked for option, the applicant consented to switch over to Supervisor cadre and the same was accepted in 1980. The applicant was promoted as SA Grade I in the year 1984. He passed the direct final examination Sub Div II (Building and Quantity Surveying) from the Institution of Surveyors (India) in the year 1994. It is the case of the applicant that as per the then extant rules, promotion from SAI is to the post of ASW on completion of five years of service as SAI. Thus, according to the applicant, since he had been promoted as SA Grade I in 1984, he became eligible for consideration for promotion as ASW in the year 1989 itself. However he was not considered for this post and instead, he was considered for the post of AE (QS & C) and promoted to the post in the year 2001 and in the panel he was placed as serial number 8. By that time, a number of juniors to the applicants in SA I Graded were alleged to have been promoted to the grade of ASW. Promotion to the said post of ASW for the year 1992 – 93 materialised in the year 2003 vide Annexure A-4. At the material point of time when the applicant switched over to Surveyor Cadre, there is no requirement of qualifying in the Final Exam Sub Div II from the Institution of Surveyors. In fact, those promoted earlier to that post did not possess the aforesaid qualifications. Thus the claim of the applicant is that had he been considered and promoted to the post of ASW in the year 1989 itself,

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by 1994 he would have become eligible for being considered as SW. According to him, not only he was not considered for the said promotions, but that even the financial upgradation available in lieu of promotion too has not been granted to him. Hence this OA, seeking the following reliefs:

- (i) To issue a suitable order or direction commanding the respondents to consider the promotion of the applicant from SA-1 to ASW, ASW to SW and SW to SSW with effect from the appropriate dates and allow him all consequential benefits.
- (ii) To issue a suitable order or direction commanding the respondent No.2 to decide the applicant's representation dated 14.8.2007 (filed as Annexure No.10) preferably within a period of two months.
- (iii) To issue any other such order or direction which the Hon'ble Court may deem fit and proper under the circumstances of the case.

2. Respondents have contested the OA. They have filed objections over the delay in filing the application by the applicant. A number of decisions have been cited by the respondents in the objection in respect of limitation under section 21 of the Administrative Tribunal's Act, 1985.

3. The applicant had filed his rejoinder affidavit in which he stated that the fact of juniors to him having been promoted as ASW came ^{to his} ~~with~~ knowledge of the applicant in late 2001 and many ^{times he} ~~times he~~ contacted his superiors and he was informed that another promotion panel was likely to be issued soon. Thus waiting for the next panel, the applicant did not make any representation. The second panel was issued in the year 2003 and since



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in this panel also the name of the applicant was missing, he filed a representation dated 3rd April, 1003 vide Annexure A-5. The applicant retired on 30th of April 2005 and a representation was still pending. Meanwhile he had been under constant medical treatment. Sometimes in November 2006, the applicant came to know that the earlier promotion from SA I to ASW was sought to be reviewed. He could obtain a copy of the order dated 5th October, 2006 issued by respondent No. 2 which contained names of 602 suitable candidates in which the name of the applicant figure in at serial number 333. Thus the applicant was hopeful of being considered for promotion as ASW reckoning his services as SA I from 1984 and that he would also be afforded the monetary benefits arising out of that promotion. Thus the cause of action which commenced in 1989, continued up to 2006 and therefore there is no delay in filing the application.

4. Delay in filing the OA had been condoned vide order dated 08-05-2009. Pleadings were directed to be completed.

5. On the pleadings being completed, the case was taken up for final hearing. The applicant has filed written arguments also on 11-10-2012 with the permission of the Tribunal. In February 2012, the applicant filed one supplementary affidavits stating that the Ernakulam Bench of the Tribunal ~~was~~ ^{passed} an order in OA No. 466/2003 and 794/2003, and the order ~~of~~ having been upheld by the High Court of Kerala, in compliance of the order, the review DPC was constituted for conducting a review of the promotions

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made from SA I to ASW on 04-08-2003. The promotion of the applicant against the 1999 – 2001 vacancies to the post of Junior Surveyor of Works had been granted vide order dated 03-01-2009. The name of the applicant figures in at serial No. 36.

6. On the part of the respondents, they have issued a Pay Fixation Proforma in respect of the applicant on promotion from JSW to AE (QS & C) vide order dated 17-07-2012. By the pay fixation, the pay of the applicant in the then existing pay scale of Rs 6,500 – 10,500 in the stage of Rs 9,700/- as on 01-04-2000 had been fixed at Rs 9,925/- in the pay scale of Rs 8000 – 13,500.

7. The applicant in his written arguments as also in his supplementary affidavit dated 26th April, 2012 contended that his turn for promotion from SA I to ASW came much before introduction of the intermediate post of JSW. And the respondents arbitrarily and illegally did not afford the applicant the promotion to the post of ASW and thereafter to SW. More than 60% juniors had been promoted in the year 1992-93 and 1883 – 94.

8. The counsel for the respondents argued on the basis of the counter and supplementary counter affidavits and stated that the applicant had been given his due promotion as JSW and thereafter A.E. and as such he is not entitled to any other promotion.

9. Arguments were heard and documents perused. The applicant

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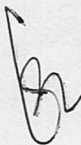
came to the cadre of Surveyor from B/R cadre on his own in 1984 when he became Surveyor Assistant Grade I. This was admittedly his first promotion vide para 4(iv) of the O.A. His case is that at that time, there was no post of Junior Surveyor of Works and that the next promotional post is A.S.W. for which the eligibility condition is five years in the grade of S.A Grade I, which he fulfilled as early as in 1989. Further, for promotion to the said post, there is no requirement of passing the direct final examination Sub Div II (Building and Quantity Surveying) from the Institution of Surveyors (India). Thus, he was fully ripe for being considered for that post in 1989 and had he been considered and promoted to the grade of ASW, he would have, by 1994 become entitled to be considered for the post of Surveyor of Works. He has not been considered for the post of ASW at the appropriate time nor even in the year 2003 when bulk of the S.A. 1 were considered for promotion against the 1992-93 and 1993-94 vacancies. The applicant did file a representation on 03 April, 2003.

10. Admittedly, when the applicant was promoted to the post of Assistant Engineer in July 2001, the applicant had taken over this post without any protest or without any representation against his non-promotion to the post of Assistant Surveyor of Works. But, cause of action arose in the wake of a number of orders/judgments of various Benches of the Tribunal/Hon'ble High Courts, as detailed in Annexure A-4, review DPC was conducted and there has been review of all the cases in 2003 and consolidated giant panel was published vide order dated 11-02-2003.

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This contains a number of juniors to the applicant as contended by the applicant which has not been rebutted. The respondents have not specifically stated any reason as to why the name of the applicant did not figure in, in the review panel. Review does not mean only the earlier panel names alone should be reviewed. If the applicant comes within the consideration zone but had not at all been considered in the Review DPC, then he has a full fledged right to be considered. Instead, if the name of the applicant had been considered but he had not been found fit, he cannot have any grievance. Since the applicant already stood retired, even if the applicant is considered and found fit for promotion to the post of ASW, the same may not upset the settled position as his promotion has to be only notional and there may not be any further promotion. The applicant has not anywhere contended that any of his juniors had been promoted further to the grade of SW. He has only stated that had he been considered in 1994 for the post of ASW, he could have been promoted as SW as well. Unless there is a contention that juniors have been promoted as SW, his case for SW need not be considered.

11. In view of the above, the **OA is disposed of** with a direction to the respondents to verify from the records of review DPC as to whether the applicant came within the zone of consideration for the post of A.S.W. and if so, whether he had been considered under the Review DPC for promotion to the post of ASW. If not, his case be now considered for the year in which his immediate junior had been considered and if on the basis of the ACR relevant for that particular DPC year he was found to be

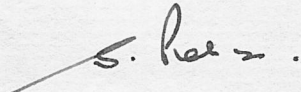


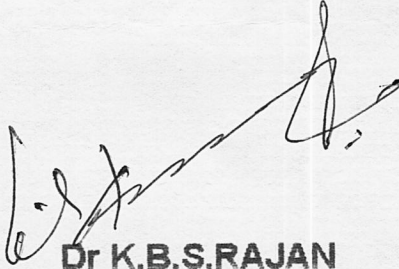
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meritorious, his name be included in the list of A.S.Ws and his pay notionally fixed from the date his junior had been promoted. Such a fixation followed by annual increments upto the date of his superannuation be worked out on notional basis and if there be any difference in pay on the date of his superannuation, then the difference in pension and terminal benefits be worked out and the balance paid. In case the applicant does not come in the merit for promotion, he be communicated the decision accordingly.

11. As the old records are to be dug out for this purpose, the same being a time consuming process, a period of eight months is granted for full compliance of this order.

12. No cost.


SHASHI PRAKASH
ADMINISTRATIVE MEMBER


Dr K.B.S. RAJAN
JUDICIAL MEMBER

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