

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH,
ALLAHABAD

Original Application No. 907 of 2007

Allahabad this the, 19/7/ day of January, 2011

Hon'ble Mr. Justice S.C. Sharma, Member (J)
Hon'ble Mrs. Manjulika Gautam, Member (A)

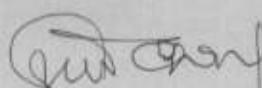
U.P. Bhakta aged about 38 years, S/o Shri Ram Chandra R/o House No. 107/4 C.G. Line Pawan Bihar, Old Cantt. Allahabad.

Applicant

By Advocate: Mr. Swayambar Lal

Vs.

1. Union of India through Defence Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. Director General, E.M.E. (EME-CIV) Army Headquarters, D.H.Q. P.O. New Delhi - 110011.
3. Commander, Headquarters, Base Workshop Group, E.M.E., Meerut Cantt.
4. Commandant & M.D., 508 Army Base Workshop, Allahabad Fort-210 005.
5. EE Bidyot Panging C/o DGEME (EME-Civ) Army Headquarters, D.H.Q. P.O., New Delhi - 110 011.
6. EE Rohit Aggarwal, C/o MC. EME, Secunderabad. (**Deleted**)
7. EE M. Ngahorpam, C/o Commandant No. 1 EME Centre, Secunderabad.



8. EE A Muthusundram C/o Commandant No. 1 EME Centre, Secunderabad.

Respondents

By Advocate: Mr. P.D. Tripathi

O R D E R

By Hon'ble Mr. Justice S.C. Sharma, Member-J

Instant O.A. has been instituted for the following relief (s): -

{A} To issue a writ, order or direction in the nature of certiorari to quash the impugned order dated 29 May 2007 passed by respondent No. 2 as communicated by letter dated 14 Jun 2007 by Respondent No. 3 (Annexure A-1 to Compilation No. 1);

{B} To issue, a writ, order or direction in the nature of mandamus commanding and directing the respondents to hold Review D.P.C. and to consider the case of applicant for promotion from 8.8.2003 with consequential benefits like payment of pay and allowances from 8.8.2003 for the promotion post of Executive Engineer and restoration of his original seniority of Asst. Executive Engineer on promotion to Executive Engineer."

2. The facts of the case may be summarized as follows: -

The applicant was selected for the post of Assistant Executive Engineer through U.P.S.C. under Engineering Services Examination 1995 and joined Corps of EME in 304 Station Workshop EME Pathankot on 25.07.1998 after completion of all the required formalities like police verification, medical examination etc. In the

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merit list prepared by the U.P.S.C., the applicant was placed at serial No. 7 and as such the seniority was given accordingly as on 03.10.2000 and circulated also. It is stated that for promotion to Executive Engineer, 5 years qualifying service in the cadre of Assistant Engineer is required. On account of late receipt of police verification the applicant could not be able to join earlier but some of the juniors to the applicant could join earlier to the applicant. The D.P.C. for the year 2003-04 was held and result of D.P.C. was circulated by respondent No. 2 on dated 24.07.2003 by which 4 juniors have been considered and approved by the D.P.C. for promotion to Executive Engineer in the scale of pay Rs.10,000-325-15200/-. But, the applicant has not been considered for promotion on account of being not completed required length of service for promotion to the grade of Executive Engineer for the panel 2003-04. The seniority roll of entire Assistant Engineers of the department was circulated by Army Headquarters and in that seniority list the applicant was placed at serial No. 37 and the juniors to the applicant were placed at serial

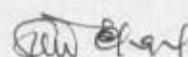
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No. 38, 39, 40 and 44. These four Assistant Engineers who have been approved by the D.P.C. were juniors to the applicant. The representation was submitted to the respondents for convening a review D.P.C. and providing him consequential benefits by promoting him from 08.08.2003, from the date when his immediate juniors were promoted. But the case of the applicant was rejected by the respondents on the ground that the applicant had not completed required length of service as Assistant Engineer. It is alleged that the contention of the respondents is wrong, and there are several Judgments of the Hon'ble Apex Court and the High Court contrary to the stand taken by the respondents. As the respondents have not passed the order on the representation of the applicant according to law hence, the O.A.

3. The respondents contested the case and filed the Counter Reply. It has been admitted by the respondents that the applicant had joined the service as Assistant Executive Engineer w.e.f. 25.07.1998 (i.e. almost nine months after his batch mate~~s~~) due to pending police verification. As per Recruitment Rule

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issued vide SRO 96 dated 23.05.2001, the minimum qualifying service for promotion to the rank of Executive Engineer is five years in the grade of AEE. Subsequently, all the officers of ESE 1995 batch except the applicant was due for promotion to the grade of Executive Engineer in the panel year 2003-04 and the crucial date for determining the qualifying service was taken as 01.01.2003 under the provision of model calendar for DPC. As the applicant was not fulfilling requisite length of service hence his name was not recommended and not approved by the DPC and a panel was prepared in the DPC of 2003-04 of the employees who had completed five years of qualifying service on the post of Assistant Executive Engineer as on 01.01.2003. The applicant was promoted as Executive Engineer in the year 2004 by the next DPC for the panel year 2004-05 held on 08.06.2004 after completion of 5 years of service as on 01.01.2004 and the applicant assumed higher appointment w.e.f. 05.07.2004. Since the applicant was promoted in the panel year 2004-05, he cannot claim seniority over the officers who were promoted in the earlier panel. In view of letter of the D.O.P.T., the



applicant had not completed the required length of service for promotion to the grade of Executive Engineer in the year 2003-04 and hence he was not promoted and he was promoted subsequently and seniority is to be fixed in the panel year of 2004-05. It is also alleged that the O.A. is barred by limitation and the respondents are relying on numerous Judgments on the point of limitation.

4. Afterwards, the applicant filed Rejoinder Affidavit also denying the allegations of the Counter Reply.

5. We have heard Mr. Swayambar Lal, Advocate for the applicant and Mr. S.N. Chatterji, Advocate holding brief of Mr. P.D. Tripathi, Advocate for the respondents and perused the entire facts of the case.

6. It has been primarily alleged by the respondents that the O.A. is barred by limitation. Cause of action arose to the applicant much earlier but, it is significant to state that the applicant had been pursuing his case before the respondents by moving

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several representations and ultimately his representation was decided on 10.06.2007 and the O.A. was instituted on 31.08.2007. Under these circumstances, the O.A. is well within time. The ground of limitation is not tenable.

7. In the present case, the simple question involved is whether a junior can be promoted earlier to the senior on the ground that he had not completed qualifying period of service. It is undisputed fact that the applicant and those promoted in the panel year of 2003-04 belong to the same batch, and the applicant is senior to the persons who were promoted in the panel of 2003-04. The main contention of the respondents is that at the relevant point of time on 01.01.2003, the applicant had not completed required qualifying period of service and hence he was not considered eligible for promotion in the panel year of 2003-04. It has been alleged by the applicant that there is a letter of the D.O.P.T., which provides that a junior cannot be promoted earlier to the senior on the ground that he has not completed required qualifying service. It has been alleged by the respondents that on the

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representation of the applicant, Ministry of Defence (for short MOD) has passed the order after consulting the D.O.P.T.

8. We have stated above that it is an admitted fact of the parties that the applicant is senior to the persons who were promoted earlier to the applicant in the panel year of 2003-04. The merit list was prepared by the U.P.P.S.C. and in that merit list the applicant was placed at serial No. 7, and the seniority list was prepared, according to the merit list, and circulated by the Army Headquarters, annexure A-2 is the seniority list. It has also been admitted by the applicant himself that for promotion to the post of Executive Engineer, 5 years qualifying service is required in the cadre of Assistant Engineer. But there had been a delay in receipt of police verification and hence applicant could not be able to join earlier but regarding some of the juniors to the applicant, formalities were completed earlier, and they joined earlier to the applicant. But irrespective of the fact that the applicant joined later on, he was placed senior to the persons who joined earlier. But

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in the panel year of 2003-04 the applicant was not considered fit for promotion as the applicant had not completed required qualifying period of 5 years service. There was shortage of 9 months in completion of 5 years of qualifying service. The respondents have alleged that the applicant had already been promoted in the panel year of 2004-05 after completion of 5 years qualifying service as on 01.01.2004. Learned counsel for the applicant placed reliance on O.M. No. AB-14017/12/87-Estt. (RR) dated 18.03.1988. It will be material to reproduce the extract of letter: -

"In this connection, attention is also invited to para. 3.1.2 of this Department's O.M. No. AB-14017/12/87-Est. (RR), dated the 18th March, 1988, in which all Ministries/Departments etc., had been requested to insert a note in the recruitment rules for various posts to the effect that when juniors who have completed the eligibility period are considered for promotion, their seniors would also be considered irrespective of whether they have completed the requisite service provided they have completed the probation period. In order to ensure that seniors who might have joined later due to various reasons are not overlooked for promotion, necessary action for amendment of recruitment rules may please be taken urgently wherever this has not been done by now."

Hence in view of letter of DOPT, wherein it has been provided that for various posts when juniors who have completed the eligibility period and considered for promotion, their seniority would also be considered irrespective

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of the fact they have ^{not} completed the requisite period of service provided they have completed the probation period. It has also been provided that there may be several reasons for the seniors to join later but, it cannot be overlooked. Placing reliance on this letter of the DOPT, that Hon'ble Supreme Court affirmed this letter of the DOPT in its pronouncement i.e. (2008) 1 SCC (L&S) 308 Union of India vs. Sadhana Khanna (Smt.). Relevant portion of the Judgment of the Hon'ble Supreme Court is material to be reproduced as follows: -

"11. It may be noted that the respondent was offered appointment vide letter dated 5-7-1983 which is after 1-7-1983 from which the eligibility was to be counted. Hence, it is the department which is to be blamed for sending the letter offering appointment after 1-7-1983. In fact, some of the candidates who were junior to the respondent were issued letters offering appointment prior to 1-7-1983. Hence it was the department which is to be blamed for this. Moreover, in view of the office memorandums of the Department of Personnel and Training dated 18-3-1988 and 19-7-1989 the respondent was also to be considered, otherwise a very incongruous situation would arise, namely, that the junior will be considered for promotion but the senior will not."

We have perused the Judgment of the Hon'ble Apex Court and in view of the Judgment of the Hon'ble Apex Court the senior cannot be overlooked on the ground that he ~~has~~ [?] not completed minimum qualifying period of service required for consideration of promotion. No other

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letter of DOPT had been produced by the respondents, however, it has been alleged in the Supplementary Counter Affidavit filed after Rejoinder of the applicant, that "it is stated that the amendment of Recruitment rules (SRO 96 dated 23.5.2001 to insert a new Note according to the DOP & T O.M. dated 18.3.1998 is under progress and is at final stage for publication. However, in the instant case the benefit of executive order dated 18.3.1988 cannot be extended in the absence of such provisions in the present Recruitment Rules." Hence this fact has been alleged that amendment is to be issued by the D.O.P.T. in view of the letter dated 18.03.1988. But, if ^{any} ~~any~~ stage amendment has been carried out then it ought to have been produced otherwise it cannot be accepted. It is material to state that the Supplementary Affidavit was filed on 12.11.2008 and till date no such amendment has been issued by the D.O.P.T. and the position is that the letter of the D.O.P.T. dated 18.03.1988 is perfectly in existence and reliance has been placed on the letter of the D.O.P.T. by the Hon'ble Apex Court. We disagree with the argument of learned counsel for the respondents that the

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applicant is not entitled for the benefit of the executive letter dated 18.03.1988 of the D.O.P.T. But there is no other rule contrary to it and moreover there is Judgment of the Hon'ble Apex Court.

9. We are of the opinion that the applicant ought to have been considered along with his juniors in the panel for the year 2003-04 and the seniority has to be given to the applicant according to that panel. It was most unjustified on the part of the respondents not to consider the case of the applicant along with the juniors. It is a fact that applicant's juniors had already been promoted in the panel year 2003-04 whereas the applicant was promoted in the panel of 2004-05. The applicant deserves to be promoted along with his juniors.

10. For the reasons mentioned above, we are of the opinion that the applicant ought to have been considered for promotion as Executive Engineer in the panel of 2003-04 along with his juniors irrespective of the fact that he has not completed qualifying period of five years

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as Assistant Executive Engineer. The applicant cannot be blamed for the delay. The time was consumed in completing the formalities and hence there had been delay of 9 months but in view of D.O.P.T. letter dated 18.03.1988, name of the applicant cannot be ignored and overlooked. The applicant deserves to be considered for promotion along with his juniors for promotion in the panel of 2003-04.

11. O.A. is allowed. The impugned order dated 29.05.2007 is quashed. The respondents are directed to convene a review D.P.C. to consider the case of the applicant for promotion as Executive Engineer in the panel for the year 2003-04, and the applicant shall be promoted from the date when his juniors were promoted.

No cost.

M. Gautam

[Manjulika Gautam]
Member - A

S.C. Sharma

(Justice S.C. Sharma)
Member - J

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