

CENTRAL ADMINISTRATIVE TRIBUNAL

CUTTACK BENCH, CUTTACK

O.A. No.510 of 2007

(Decided on 22nd June, 2007)

.....
K.Rama Rao Applicant
Vrs.
Union of India and others Respondents

FOR INSTRUCTIONS

- 1) Whether it be referred to the Reporters or not? *Yes*.
- 2) Whether it be sent to the Principal Bench of the Central Administrative Tribunal or not? *Yes*.

B.B.M
(B.B.MISHRA)
ADMINISTRATIVE MEMBER

NDR
(N.D.RAGHAVAN)
VICE-CHAIRMAN

12

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.510 of 2003

Cuttack this the 22nd day of June 2007 *for*

CORAM:

THE HON'BLE SHRI N.D.RAGHAVAN, VICE-CHAIRMAN
AND
THE HON'BLE SHRI B.B.MISHRA, MEMBER(ADMINISTRATIVE)

K.Rama Rao, S/o. K.Raghunath, aged about 53 years, working as Superintending Surveyor No.11, D.O.(SEC), Survey of India, At-Survey Bhavan, PO: RR Laboratory, PS-Chandrasekharpur, Bhubaneswar, Dist-Khurda

...Applicant

Advocate for the Applicant : M/s. S.N.Mishra, B.Dash

-Versus-

1. Union of India represented through Secretary, Department of Science and Technology, New Meherauli Road, New Delhi
2. Surveyor General of India, At-Hatibarkala Estate, Dehra Dun-248001
3. Director, South Eastern Bhavan, PO-RR Lab, PS-Chandrasekharpur, Bhubaneswar, Dist-Khurda
4. A.K.Uniyal, Superintending Surveyor, No.69© Party)G & R.B.), Survey of India, No.17 EC Road, Dehra Dun-248001
5. T.S.Rana, Superintending Surveyor, No.33 Party (N.C) Dehura Dun-248001
6. J.C.Rekhi, Superintending Surveyor, DSC Platoon (Northern Circle), Survey of India, No.17, EC Road, Dehura Dun-248001

Advocate for the Respondents Mr.B.Dash, A.S.C.

O R D E R

MR.N.D.RAGHAVAN, VICE-CHAIRMAN:

Applicant at present is working as Superintending Surveyor being posted under Res. No.3 at Bhubaneswar. He has sought for the following relief.

[Signature]

"... to direct the Respondents to hold another review DPC and consider the case of the applicant for promotion to the post of Superintending Surveyor w.e.f. 15.12.1995 and allow him suitable seniority in the cadre of Superintending Surveyors and also the applicant be allowed to place in the post of Deputy Director w.e.f. 7.6.2002, with all consequential promotional and financial benefits".

2. The Respondents-Department have filed their counter to which applicant has filed rejoinder too.
3. The undisputed facts of this case are that the applicant is senior to Private Respondent Nos. 4 to 6 in the grade of Officers Surveyors vide Annexure-1 dated 29.1.2001. The seniority list so published maintains the seniority of the applicant at Sl. No.80 vis-à-vis the private Res. Nos.4, 5 and 6 at 87, 88 and 91 respectively. It is also not in dispute that these private respondents have been promoted to the next higher grade of Superintending Surveyor (Group-A) vide Annexure-2 dated 15.12.1995 being placed at Sl. Nos.28, 29, and 30 respectively in the said promotion order. The grievance of the applicant is that before the combined seniority list in respect of Limited Departmental Competitive Examination (in short L.D.C.E.) appointees and promotees in the grade of Officers Surveyor could be finalized in the year 2001 under Annexure-1, private Respondent Nos.4,5 and 6 were already promoted to the grade of Superintending Surveyor in the year 1995 under Annexure-2. Thus, ventilating his grievance, he made representations vide Annexure-4 and 5 dated



22.1.2002 and 18.4.2002 respectively to Res Nos. 1 and 2 and the result being unpalatable vide Annexure-A/6 dated 16.9.2002, he has approached this Tribunal with the prayers referred to above.

4. The Departmental Respondents, apart from narrating the factual aspects of the matter, have in their counter revealed the true reflection of fact which stood in their way for considering the applicant's case for promotion. In the fitness of things, it would be worthwhile to quote hereunder Annexure-6 dated 16.9.2002, the reasons for rejecting his prayer for promotion.

"Regarding representations of Shri K.Rama Rao, received vide your letter referred above, it is stated that revised seniority list of Officer Surveyors was issued in implementation of judgment of Hon'ble CAT Cuttack Bench delivered in OA. No. 221/96 and upheld by Full Bench Cuttack in OA No.438/98 and on the basis of revised seniority list, the Review DPC for the panel of 1995 was held on 25.6.2001 for promotion to the grade of Superintending Surveyor. Only 5 LDCE Officer Surveyors were recommended for promotion by review DPC."

4.1 It is further stated that the promotion to the grade of Superintending Surveyor is on the basis of seniority-cum-merit and on attaining the bench mark of the overall assessment of ACRs of preceding 5 years at least Good and those attaining higher overall assessment than that of Good e.g. "Very Good", "Out Standing" are empanelled above and promotions are offered as per select panel.



4.2 As per para 18 of the above Court's judgment dated 04.05.1998 in O.A. 221/96, S/Shri A.K.Uniyal & T.S.Rana are DPC promotees of 1995 and according to their eligibility & suitability, they were promoted. There is, therefore, no case for quashing their promotion/appointments as such the promotion of S/Shri A.K.Uniyal & T.S.Rana were continued.

4.3 In order to buttress their action, their Respondents in Paragraph-5.7 (Page-7) of the counter have averred that "it is most important to point out that other juniors to the applicant in the revised seniority list who were promoted in the DPC of 1995 were also not considered by the Review DPC. Their names did not come into the zone of consideration, but in terms of direction contained in Para 18 of the Hon'ble Tribunal's order dated 04.05.98 in O.A. No.221/96, their promotions were not quashed".

4.4 While submitting so, they have brought to light as to what the Tribunal in Para 18 in O.A. No.221/96 held, which reads as under:

"As regards the second prayer for quashing the promotion of private Respondent 3 to 32, the prayer is without any merit. Admittedly they are DPC appointees of 1985 (as Officer Surveyors) and according to their eligibility and suitability, they have been promoted (as Superintending Surveyors). There is therefore, no case for quashing their promotions/appointments. It is, however, ordered that after the Respondent bring out the seniority list (in Officer Surveyors), in accordance with the directions



given above, they should consider the cases of these applicants for promotion to the post of Superintending Surveyor, from the date, their juniors, if any, in the revised list got promotion to the post of Superintending Surveyor. This prayer is therefore, disposed of with the above directions".

5. The stand point of the Respondent-Department that on the basis of the revised seniority list the review DPC held on 26.6.2001 had considered all eligible officers falling in the zone of consideration and accordingly, 5 LDCE officers were empanelled by the Review DPC for promotion to the post of Superintending Surveyor with effect from 15.12.1995 vide Annexure-3 dated 26.7.2001. They have emphasized that the orders passed by this Tribunal in O.A.Nos. 221/96 and 438/98 have since been implemented in case of similarly situated officers although the applicant was not one among the petitioners in either of the Original Application. Thus, the Respondent-Department have prayed that the O.A. being devoid of merit is liable to be dismissed.

6. Private Res. No.4 to 6 have neither entered appearance nor filed any counter.

7. Vide order dated 9.2.2007 the Respondent-Department were directed to produce the proceedings of the review DPC dated 26.6.2001 and despite the fact that the matter having been adjourned time and again for the purpose, it appears that no such document has been produced facilitating the Tribunal to come to a just decision in



the matter. Ultimately, on perusal of the records and after hearing the arguments as advanced by the learned counsel for the parties, hearing was concluded on 11.5.2007.

8. From the above pleadings of the parties, the sole point for consideration is as to whether this Tribunal while disposing of the 2nd prayer of the applicants in O.A. No.221/96 had in fact left any scope for the Respondent – Department to consider only the case of those applicants who were before it in that O.A. without having regard to the seniority of the incumbents who were not before the Tribunal in any form whatsoever.

9. In order to bring out the picture in its proper perspective, the findings and observations of this Tribunal (Paras-16) made in O.A.No.221/96, as quoted by the applicant in Page- 6 of the O.A., may be extracted as hereunder:

“The next question is that even though as against 175 D.P.C. promotees, there were 58 slots for LDCE appointees, only 17 qualified out of which, 6 persons are the applicants in this Original Application. The applicants have not stated what their inter-se seniority position is amongst the 17 persons who qualified in the examination. While giving them their position, according to recruitment roster, among the 175 DPC appointees, the relative position of these six applicants will have to be taken note of by the respondents. In other words, if applicant No.1 has occupied 6th position, out of 17 qualified examinees, then his position would come after the 19th persons amongst the 175 D.P.C. appointees and he would occupy the 20th position. We are unable to order inter-se fixation of position in respect of the eleven L.D.C.E. appointees, who are not before us. But their position, cannot be usurped by the present applicants. The



applicants, who must be given position, according to their inter se position, amongst the 17 qualified persons, Respondents should also consider giving relative position to the other eleven LDCE appointees, according to recruitment roster who are not before us, and therefore, about whom, we are not in a position to pass any orders. After the 17 persons are assigned positions as above, rest of DPC appointees will have to be bunched together because in their cases, even though examination was held, adequate number of LDCE appointees, did not qualify and were not available in requisite manner".

q.1 From the above quoted findings of this Tribunal in O.A. 221/96 we are almost certain that the Tribunal had left no scope for the persons who were not before it. Rather the Tribunal had gone to the extent by observing that

"We are unable to order inter-se fixation of position in respect of the eleven L.D.C.E. appointees, who are not before us. But their position, cannot be usurped by the present applicants. The applicants, who must be given position, according to their inter se position, amongst the 17 qualified persons, Respondents should also consider giving relative position to the order eleven L.D.C.E. appointees, according to recruitment roster who are not before us and therefore, about whom, we are not in a position to pass any orders"

q.2 Based on these findings, the Tribunal issued directions (in Para-18 as quoted above) that after the respondents bring out the seniority list, in accordance with the directions in O.A. 221/96, they should consider the cases of these applicants (as in O.A. 221/96) for promotion to the post of Superintendent Surveyor, from the date their juniors, if any, in the revised seniority list got promotion to the post of Superintendent Surveyor. Admittedly the Respondents, vide Annexure-I dated 29.1.2001, have determined the



seniority position of the Officers Surveyor in pursuance of the directions of this Tribunal in O.A. 221/96. There is no dispute with regard to seniority position of the applicant vis-à-vis Res.4 to 6. Thus, when the entire facts were very clear before the Respondent-Department and promotion to the grade of Superintending Surveyor is made on the basis of seniority-cum-merit and on attaining the benchmark of overall assessment of ACRs of the preceding five years at least 'Good', there was apparently no reason, far less justifiable, ~~not to consider~~ ^{not to consider} the case of the applicant for promotion in the Review DPC, particularly when it is the case of the Respondent-Department that Shri J.C.Rekhi, who is junior to the applicant in the revised seniority list, was offered promotion to the post of Superintending Surveyor on selection in the DPC held in 1995, but was not promoted because of his refusal.

9.3 This apart, the Respondents have not thrown any light as to how the applicant could not come within the zone of consideration by the review D.P.C. for promotion to the grade of Superintending Surveyor. As regards private Respondents, S/Shri A.K.Uniyal and T.S.Rana, admittedly, they are the DPC promotees of 1995 having their seniority position below the applicant at Sl.No.86 and 87 respectively. However, the facts remain that the direction of the Tribunal in O.A. 221/96 has not been complied with in letter and spirit in as much as it was the categorical direction of the Tribunal while declining to quash the promotions/appointments of private Resp. 3 to 32 in O.A. 221/96, it had directed that after the Respondents bring out the



seniority list (in Officer Surveyors) in accordance with the directions given above (in O.A. 221/06) they should consider the cases of these applicants (in O.A. 221/96) for promotion to the post of Superintending Survey, from the date their juniors, if any, in the revised seniority list got promotion to the post of Superintending Surveyor. When admittedly A.K.Uniyal and T.S.Rana are junior to the applicant in the revised seniority, the Respondents were duty bound to consider the case of the applicant in the review DPC having due regard to the order of the Tribunal. The respondents have averred that the orders passed in O.A. 221/96 and O.A. 438/98 by this Tribunal have been implemented in respect of all similarly situated Officers although the applicant was not one among the petitioners in either of the Original Applications. From this, it is not clear as to what the Respondents meant to say "similarly situated officers" whether in O.As filed before the Tribunal or in the status of Officers Surveyor irrespective of the fact of having approached this Tribunal. Be that as it may, we once again reiterate that the applicant's case has not been considered in the light of the findings based on which the Tribunal had issued directions in O.A. 221/96.

10. Having regard to what has been discussed above, we direct the Respondents to consider the case of the applicant in a review D.P.C. for promotion to the grade of Superintending Surveyor with effect from the date his juniors, S/Shri A.K.Uyiyal and T.S.Rana were so promoted having regard to the observations and directions made in O.A. 221/96 upheld by the



Full Bench of this Tribunal in O.A. 438/98 keeping in mind the observations made by us above. This exercise shall be completed within a period of 90 (ninety) days from the date of receipt of this order.

11. Before parting with this case, we would mention that the applicant has not made any prayer for quashing the impugned order of rejection dated 16.9.2002 vide Annexure-6. It would not be proper for us to reject this O.A. on the ground of technicality.

12. In the result, the O.A. is allowed in part. No costs.

B.B.M.
(B.B.MISHRA)
ADMINISTRATIVE MEMBER

N.D.R.
(N.D.RAGHAVAN)
VICE-CHAIRMAN