

8

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.790/2002

Cuttack, this the 23rd day of June, 2004

CORAM:

HON'BLE SHRI R.K. UPADHYAYA, MEMBER (A)
HON'BLE SHRI M.R. MOHANTY, MEMBER (J)

Bal Sidh Sharma, aged about 52 years S/o late Indra Deo Sharma,
Permanent Address: Ved Nagar, Rukunpura, Baily Road, Patna-
800014 (Bihar). At present working as Executive Engineer,
Bhubaneswar Central Division No. II, Central Public Works
Department (CPWD), C/86 HIG Colony, Barmunda,
Bhubaneswar.....Applicant.

By the Advocate(s) Mr. J. Sengupta.

-Vs-

1. Union of India, represented through its Secretary to Govt. of India, Ministry of Urban Development, At-Nirman Bhawan, New Delhi-110011.
2. Director General of Works, Central Public Works Department, Nirman Bhawan, New Delhi-110011.
3. Additional Director General of Works, Central Public Works Department, (Eastern Region) Nizam Palace, Kolkata-20 (West Bengal).
4. Chief Engineer, Central Public Works Department (Eastern Zone-II), 7th Floor, Panth Bhawan, Bailey Road, Patna (Bihar).
5. Superintending Engineer, Central Public Works Department, Bhubaneswar Central Circle, CPWD, At-Surya Nagar, Plot No. A/17, Bhubaneswar (Orissa).
6. Deputy Director (EC-1), At Office of DG (W), CPWD, Nirman Bhawan, New Delhi-110011.....Respondent(s)

By the advocate(s)Mr. A.K. Bose.

O R D E R (ORAL)

SHRI R.K. UPADHYAYA;

Shri Bal Sidh Sharma, who was at the relevant time working as Executive Engineer, has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

- "(1) Declare that order of reversion passed against the applicant vide Annexure-3 is unsustainable and the Hon'ble Tribunal shall further be pleased to quash Annexure-3.
- (2) The Hon'ble Tribunal shall be pleased to direct the respondents, more particularly to the respondent No. 2 to regularise the service of the applicant in the post of Executive Engineer (Civil) from the due date i.e. 31.03.96 from which other similarly situated persons appointment vide Annexure-4 have been regularised and further direct to pay all the service benefits to the applicant which he is entitled to under law from such date.
- (3) Allow the application with cost.
- (4) Pass any other relief/reliefs due in favour of the applicant as deem fit & proper in the facts and circumstances of the case".

Office Order dated 28.8.2002 Annexure-3 referred to above relates to reversion of 23 ad hoc Executive Engineers (Civil) to the grade of Assistant Engineers (Civil). The applicant has claimed promotion on regular basis from the date of promotion of his juniors as per Office Order dated 28.9.2001 Annexure-4.

2. It is stated by the applicant that he joined as Junior Engineer in the Central Public Works Department (CPWD)

anurag

on 12.7.1973. It is further stated that after qualifying the Departmental Competitive Examination, the applicant was promoted to the post of Assistant Engineer in December, 1983. It is ^{also} further stated by the applicant that he was appointed as Executive Engineer (Civil) on ad hoc basis for a period of six months in the Civil Engineering Service Group 'A' in the pay scale of Rs.10,325-15200, as per Office Order dated 23.9.1998. The learned counsel of the applicant states that the applicant was working continuously till his ^{as per} reversion/orders dated 28.8.2002 as Executive Engineer (Civil), which was obviously beyond the period of six months. The learned counsel states that the applicant should have been given regular promotion as Executive Engineer from the date of promotion of his juniors in view of his working as Executive Engineer for long period. He, therefore, urged that the reversion order should not have been passed. It was also stated by the learned counsel that the reversion order dated 28.8.2002 at Annexure-3 states the reason for reversion as follows:

"In compliance of Hon'ble CAT, PB, New Delhi Judgement/order dt. 9.5.2002 in O.A. No.2026/2000 (CPWD Graduate Engineers Association VS. UOI & Ors) and their further order dt. 27.8.2002 in CP No. 293/2002/MA No. 1380/2002 in OA No.2026/2000, President is pleased to revert the following 23 ad hoc Executive Engineers (Civil) to the grade of Assistant Engineers (Civil) with immediate effect".

The learned counsel states that the applicant was not a party in the Original Application filed before the Principal Bench. Therefore, the reversion order in pursuance to the orders of the Principal Bench of this Tribunal was bad

Caribon

in law. He, therefore, urged that the reversion order should be quashed and the respondents be directed to promote the applicant as Executive Engineer on regular basis with effect from the date of promotion of the juniors of the applicant.

3. The respondents have opposed the prayer of the applicant and filed a reply. In the reply of the respondents, it is stated that the applicant was holding the post of Executive Engineer on ad hoc basis. He has been reverted to the post of Assistant Engineer by the impugned order dated 28.8.2002 Annexure-3 to the substantive post of Assistant Engineer. According to the respondents, a person appointed to the post on ad hoc basis has no right to continue in that post indefinitely. In this case, the applicant was initially appointed for a period of six months. The appointment on ad hoc basis was allowed to be continued to meet the exigency and urgency.

4. It is further stated by the respondents that the revised rules of promotion for the posts of Executive Engineer have come into force w.e.f. 29.10.1996. The regularisation of ad hoc promotions was delayed on account of pendency of the Original Applications in Madras Bench as well as Principal Bench. With the permission of the Tribunal, the respondents started process of making regular

cm307gum

promotions. Accordingly, the DPC meetings were held in UPSC from 13.9.1999 for regularisation of ad hoc Executive Engineers both diploma holders and degree holders. As per earlier Rules of 1954, only degree holder Assistant Engineers with three years or more service were eligible for promotion to the grade of Executive Engineers. However, in view of the introduction of a proviso in Rule 21 (3) of the 1954 Rules introduced in 1972, diploma holder Assistant Engineers with 'outstanding ability and record' had also become eligible. The applicant was also considered for regular promotion in the vacancies of 1995-96 and 1996-97 upto 28.10.1996. However, he was not recommended for promotion. On the basis of the recommendations of the DPC, the respondents promoted 314 Assistant Engineers (Civil) and 83 Assistant Engineers (Elect.) on regular basis to the grade of Executive Engineers (Civil) and (Elect.) vide orders dated 3.11.1999. Along with the applicant, several others were also recommended for promotion. Since the applicant was not the junior most Assistant Engineer, who had officiated as Executive Engineer (Civil) on ad hoc basis, ^{he} was not reverted. The CPWD Graduate Engineers Association and Ors. filed O.A.2026/2000 in the Principal Bench of this Tribunal which directed to revert all ad hoc Executive Engineers (Civil) and (Elect.) who have been considered and found unsuitable and ineligible by the DPC

cmo 307 gum

held in September, 1999. It is stated by the respondents that in compliance of the Tribunal's orders dated 9.5.2002 and 27.8.2002, the respondents have issued the reversion orders of ad hoc Executive Engineers (Civil) and (Elect.) numbering 23 and 2 respectively vide Office Order dated 28.10.2002 Annexure-3. The learned counsel of the respondents stated that an order passed in pursuance to the directions of the Principal Bench of this Tribunal, cannot be found fault with even if the applicant was not a party before the Principal Bench of this Tribunal.

5. At the time of hearing of this application, the learned counsel of the applicant stated that pending final regularisation of the applicant on the post of Executive Engineer, he has again been given ad hoc promotion to the post of Executive Engineer.

6. We have heard the learned counsel of the parties and have perused the material available on record.

7. The undisputed fact remains that the applicant was regularly promoted as Assistant Engineer (Civil). He was temporarily promoted on ad hoc basis as Executive Engineer (Civil) as per Order dated 23.9.1998 for a period of six months. Any promotion on ad hoc basis will not accrue any right in favour of the applicant for being regularised. The promotion on regular basis is by following different

Chaitanya

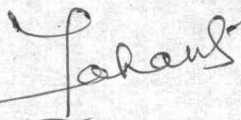
14

criterion than that which is followed for promotion on ad hoc basis. The fact remains that the applicant was considered for regular promotion, [^]Some of the juniors have been found fit and suitable for promotion to the posts of Executive Engineer on regular basis as per DPC convened in UPSC in September, 1998. As can be seen from the reliefs extracted earlier, the applicant has not challenged the proceedings of the DPC. He has also not found fault with the procedure followed by the DPC in giving regular promotion to his juniors on the recommendations of the DPC held in September, 1998. A person has only right of being considered. The applicant has been considered and found not suitable. Therefore, this Tribunal cannot now issue a direction to the respondents to grant him regular promotion to the post of Executive Engineer, particularly when the DPC proceedings are not challenged before us. The argument of the learned counsel regarding the applicant not being a party before the Principal Bench on the basis of which reversion order has been passed has also to be rejected. The directions are not against the applicant per se. It was directions to the ^{official} respondents to see that regularly appointed persons were given postings and the Assistant Engineers holding the posts of Executive Engineers on ad hoc basis should be reverted to make room for them. The Department has subsequently promoted the applicant again on ad hoc basis till regular

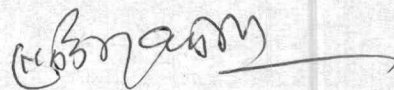
1

promotion of the applicant on account of exigency and requirement of the respondents.

8. Considering all the facts and circumstances of the case, we do not find any justification to interfere with the order of the respondents. Therefore, this application is dismissed without any order as to costs.



(M.R. MOHANTY)
MEMBER (JUDL.)



(R.K. UPADHYAYA)
MEMBER (ADMN.)

'SRD'