

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
CALCUTTA

OA NO. 1471/1996

This the 20 day of July, 2005

HON'BLE MR. JUSTICE M.A.KHAN, VICE CHAIRMAN (J)
HON'BLE MR. S.K.NAIK, MEMBER (A)

A.K.Sharma
97 (GF), Ramakrishna Vihar
IP Extension-29,
Delhi-110092.

(By Advocate: Sh. P.Chatterjee with
Sh. S.Sengupta)

Versus

1. Union of India through
Secretary,
Ministry for Urban Affairs & Employment,
Nirman Vihar,
New Delhi-110011.
2. The Director General (Works),
Central Public Works Deptt.
Nirman Vihar,
New Delhi-110011.
3. The Secretary,
Union Public Service Commission,
Shahjahan Road,
New Delhi-110011.
4. Sh. R.D.Agarwal,
SE (C) through
Director (Admn)-EC-I, CPWD,
Nirman Bhawan,
New Delhi-110011.

(By Advocate: Mr. S.K.Dutta)

ORDER

By Hon'ble Mr. Justice M.A.Khan, Vice Chairman (J)

OA is filed for the following relief:-

- (a) Call for relevant records
- (b) Declare and order that non-inclusion of applicant's name in promotion-cum-seniority list of Ses(C) A/1 dt. 20.10.94 is illegal
- (c) Declare and order that the applicant shall be promoted just above Mr. R.D.Agarwal (who is at 74 in A/1 as SE (C) under next-below-rule and
- (d) If (C) is not granted, declare and order that the applicant is entitled to be

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(e) If even (D) is not granted, declare and order that the applicant's regular promotion from EE(C) to SE (C) shall be reviewed for 1989-90 onwards by taking into account his ACRs for 1.4.88 – 31.3.91 also and the applicant shall be promoted with retrospective effect and arrears, etc. if he made the grade, grant any other relief with costs.

2. Applicant joined CPWD on 17.1.1975 as an Assistant Executive Engineer (Civil) as a direct recruit of the batch of 1973. He was promoted as Executive Engineer on 6.10.78 along with his junior Sh. R.D. Aggarwal and others. He was regularized as Executive Engineer w.e.f. 17.1.79. On 17.10.90 he along with his junior Sh. R.D. Aggarwal and others was promoted as Superintending Engineer (Civil) on ad hoc basis. Sh. R.D. Aggarwal and other juniors to the applicant pertaining to the batches of 1973, 1974 and 1975 were promoted as regular Superintending Engineers on 20.10.1994. Applicant was not given regular promotion. His representation did not bear any fruit.

3. Applicant has sought relief on the ground that his promotion from the post of Executive Engineer (Civil) vide order dated 17.10.90 was regular promotion against a long term vacancy and was made after considering all eligible persons as per prescribed selection criteria; the adverse decision relating to 1987-1994 was conveyed vide order dated 20.10.94 which is denial of reasonable opportunity to defend or to make amends right from 1987-88; applicant deserves to be promoted under next-below-rule at par with his junior Sh. R.D. Aggarwal; in the yearwise DPCs meeting in 1994 the prescribed procedure was not followed which resulted in grave prejudice to the applicant; the DPC was not held financial yearwise and up-to-date ACRs were also not considered, applicant's ACRs for the financial year 1988-89, 1989-90, 1990-91 were not taken into consideration when he was given ad hoc promotion in 1990 and that is the reason why the recommendation of the DPC was different; the consultation with the UPSC in 1994 was post-decisional and it was also not mandatory and; DPC are to have given more weight to the more recent ACRs whereas it had given weight to the stale ACRs.

4. The respondent contested the OA. It was stated that the seniority in different grade of CPWD, i.e., Assistant Engineers and Executive Engineers remained under litigation for a long time before the Courts, as a result, the promotion in the grade of Executive Engineers were made on ad hoc basis for a long time since 1972. The post of

Engineer by selection method. Since the seniority in the feeder grade, i.e., Executive Engineer could not be finalized for a long time due to continued litigation, the promotions to the post of Superintending Engineer were made on ad hoc basis since 1982. After the judgment of Hon'ble Supreme Court in R.L.Bansal's case on 8.5.92, the seniority list of Executive Engineer and Superintending Engineer was finalized on 20.10.94 in compliance with the direction in the Principal Bench of the Tribunal dated 30.12.92 and order dated 9.6.94 in OA-1765/92. The ad hoc promotion to the grade of Superintending Engineer were made on recommendation of Screening Committee consisting of all departmental members of the DPC without involving the UPSC. In October 1994 a DPC was held in UPSC to prepare yearwise panels of Executive Engineers (Civil) from 1982 to 1993-94 for promotion to the grade of Superintending Engineer (Civil) on regular basis. Applicant has submitted that he has been superseded by his junior in the matter of regular promotion to the grade of Superintending Engineer in the DPC held on 10.10.94 in UPSC. The promotions were made on selection basis in accordance with the rules in force on the date of the DPC. The petitioner has been superseded on account of service record and his juniors with better service record securing higher position. In the order dated 17.10.90 it was clearly mentioned in the ad hoc promotion order that ad hoc promotion would not confer any right to continuance on regular basis or to seniority in the grade of Superintending Engineer (Civil) and that the promotees were liable to be reverted at any time without assigning any reason. The post of Superintending Engineer was a selection post and applicant was also considered at his own position but was superseded by his junior because of his ACRs. Applicant's claim for promotion under next-below-rule at par with Sh. R.D.Agarwal is not covered by rules. It was denied that the applicant's ACRs for the year 1988-89 and 1989-90 were not available in the ACR dossier. Only the ACR for the year 1988-89 was not available in his dossier. DPC has accordingly considered the ACRs as per DOP&Ts instruction. Upto the year 1990, the vacancies were calculated on calendar year basis but from 1991 the vacancies were calculated on financial year basis i.e. from 1.4.92 to 31.3.93. In the transition year 1991, the panel was made for the vacancies of 15 months i.e. from 1.1.91 to 31.3.92. The scrutiny of the record of service of the officers is limited to the records that would have been available had the DPC met at the appropriate time. The DOP&T

record of service he was empanelled for promotion in the year 1992-93. The DPC did not empanel him for promotion for all these years because of his own service record as reflected in the ACRs.

5. In the rejoinder applicant has reaffirmed his own case and denied those of the respondents.

6. We have heard the learned counsel for the parties and perused the record.

7. Applicant was promoted as Superintending Engineer (Civil) on ad hoc basis by order dated 17.10.90. The post of Superintending Engineer is a selection post and as per the allegation made in the counter reply selection was made on the recommendation of the Screening Committee consisting of departmental members of the DPC. The UPSC was not involved in this promotion. The ad hoc promotion order dated 17.10.90 (Annexure A-4) clearly stipulated "such ad hoc promotion will not confer any right to continuance on regular basis or to seniority in the grade of Superintending Engineer (Civil) and that they are liable to be reverted without assigning any reason". Beside the applicant his immediate junior Sh. R.D. Aggarwal was also promoted. Sh. R.D. Aggarwal is impleaded as respondent No.4 in the OA. The grievance of the applicant is that a DPC was held in October 1994 for considering the promotion of the Executive Engineer to the post of Superintending Engineer on regular basis against yearwise vacancies and while Sh. R.D. Aggarwal has been given promotion w.e.f. 1987 the applicant has been promoted on regular basis against the vacancies pertaining to the year 1992-93 and not against the vacancies which occurred in 1987. The case of the respondents is that being a selection post the DPC did not empanel the applicant for the year 1991-92 on the basis of his record (ACRs) whereas Sh. R.D. Aggarwal immediate junior of the applicant was recommended for promotion on the basis of his good service record. As regards the contention of the applicant that his ACR for 2 years, i.e., 1988-89 and 1989-90 were not made available to the DPC for consideration, the respondents controverted this allegation and pleaded that ACR for only one year, i.e., 1988-89 was not available.

8. Learned counsel for applicant has argued that the respondent should be directed to convene a review DPC and the ACR pertaining to year 1989-90 be placed before the DPC for reconsideration of the case of promotion of the applicant. He has referred to an order of Patna Bench of this Tribunal in OA-329/95 Arun Kumar Sinha vs. Union of

which the junior was promoted. Applicant has also referred to another order of the Principal Bench of the Tribunal dated 13.12.92 in OA No.1765/2002 titled B.P.Bindal and others vs. Union of India, copy of which is Annexure A-6 in which the Tribunal had directed to prepare the correct seniority list of Executive Engineers and for considering promotions following the prescribed proceeding in accordance with the correct seniority list of August 1992 etc. Applicant has also referred to a decision of Principal Bench of the Tribunal dated 1.8.96 in OA-1855/95 in the case titled Surender Kumar vs. Union of India where certain directions were given for holding the DPC and considering the Executive Engineers who fell within the consideration zone for promotion.

9. The order of this Tribunal in Arun Kumar Sinha's case will not advance the case of the applicant since his prayer is that he ought to have been promoted to the post of Superinending Engineer (Civil) from the same date from which Sh. R.D.Aggarwal was promoted against the vacancy pertaining to the year 1987. It is not the case of the applicant that his ACR dossier for the years pertaining proceeding to 1987 i.e. for relevant years were not available. His grievance is that his ACR dossier for 1988-89 was not made available to the DPC which was held in October, 1994. Sh. R.D.Aggarwal has been promoted w.e.f. 1987 whereas the applicant has been promoted on the recommendation of the DPC against the vacancies for the year 1992-93. The ACR dossier of the year 1988-89 could have been considered for the vacancies for the year 1988-89 and subsequent years. Therefore, this order does not advance the case of the applicant.

10. The order in B.P. Bindal's (Supra) was rendered before the seniority lists of Executive Engineers was finalised in 1994. So it is not much help to this case. Order in Surender Kumar (Supra) was a ~~conse~~nsus order and was on its own peculiar facts. So cannot be taken as a precedent in this case.

11. Conversely counsel for respondent has fairly submitted that question for regularization of the service of the Superintending Engineer whether appointed on ad hoc basis was considered in OA No.412/2000 titled Dhruba Jyoti Bose vs. Union of India and OA-812/2001 titled Ramesh Chandra Mishra vs. Union of India and that both these OAs were decided by the Calcutta Bench of the Tribunal by order dated 22.1.2004. He submitted that this OA also involves similar question and it should also be disposed of in

12. As regards the prayer of the applicant in sub para (b) and (c) is concerned, the applicant cannot be granted this relief since he was not empanelled by the DPC against the vacancies pertaining to the year 1987 to 1991-92 and that even if a review DPC is held on the ground that the ACR of the applicant pertaining to the year 1988-89 was not placed before the DPC for which no reason has been given, applicant would not be able to have parity in the matter of promotion with his junior Sh. R.D. Aggarwal who was empanelled for promotion by the DPC against vacancies pertaining to the year 1987. Further the applicant cannot be promoted under next below rule.

13. But the applicant has also prayed that his service should be regularized in the grade of Superintending Engineer (Civil) w.e.f. 17.12.90 when he was given ad hoc promotion. As regards the plea of the applicant that he should be granted promotion from the same date from the date his junior Sh. R.D. Aggarwal under next-below-rule, applicant has not been able to justify that it would be covered by the extant rules. In fact counsel for applicant has not argued on this plea.

14. In sub para (d) of para 8 of the applicant, applicant has pleaded that his service should be directed to be regularized w.e.f. 17.10.90 i.e. from the date on which he was given ad hoc promotion. In the case of Dhruba Jyoti Bose, the case of the applicant was that they were initially appointed as Executive Engineer between 1979-1981 after having been screened by the Screening Committee though without association of UPSC and they have all along been functioning as Executive Engineer without any blemish and that they were entitled for promotion, consequential seniority and further promotion accordingly. The plea of the respondents was that applicants were promoted as Executive Engineer in 1979-81 only on ad hoc basis and no regular DPC was held at that time and further that they were promoted to the post of Executive Engineer far in excess of their quota fixed by the recruitment rules and therefore they cannot claim regularization in respect of initial appointment and consequential seniority. The Tribunal disposed of the OA with a direction to the respondents to review and reconsider their order so that backlog vacancies may relate back to the period subject to the condition that Assistant Executive Engineer promoted in excess of ear-marked quota in particular year to year and against existing or carried forward vacancies which can be had by setting apart vacancies in equal number of such excess Assistant Executive Engineers promotees from the 430 and

respondent thereafter shall also consider antedating the date of absorption/regularization in the case of Assistant Engineers from the date of their promotion in excess of their quota in accordance with their seniority and eligibility against these diverted backlog vacancies and further that their next promotion to the post of Superintending Engineer will be made according to revised date of absorption and seniority to be fixed as per decision of Apex Court in Mahal's case, i.e. with reference to length of service rendered from the date of regular absorption in the respective quota, which will be available for both groups, however, without disturbing the promotion already made to the higher grades.

15. The facts of the case referred to by the counsel for respondents were, indeed, not exactly similar but the Tribunal relying upon the judgment of the Hon'ble Supreme Court in P.S.Mahal and others vs. Union of India and others 1984 (4) SCC 545 held that the seniority of Executive Engineers who were given ad hoc promotions against the vacancies which were meant for Assistant Executive Engineers in the absence of adequate Assistant Executive Engineers for promotion should be counted with reference to length of service rendered from the date of absorption in the respective quota which will be available for both groups without, however, disturbing the promotions already made to the higher grades. In other words, the Tribunal had directed that the ad hoc promotion followed by regularization in the grade shall be counted for reckoning the seniority position. In the instant case the applicant was promoted to the grade of Superintending Engineer (Civil) in 1990 on ad hoc basis on the recommendation of the Screening Committee on selection basis accepting that UPSC was not associated and it is not stated that association of DPC in the Selection Committee was mandatory. Since the applicant has been regularized in service in 1992-93 the respondent ought to consider regularization in service w.e.f. 17.10.90 when he was given the ad hoc promotion against a clear vacancy.

16. With regard to the prayer of the applicant made in sub para (e) of para 8 since we have proposed to grant relief prayed for in sub para (d), we need not grant it otherwise the two directions will come in conflict with each other.

17. As a result of the above discussion, the OA is partly allowed. The respondents are directed to consider the case of the applicant for regularization of his service w.e.f.

412/2000/OA No.812/2001 abovementioned. This exercise will be carried out by the respondent within a period of 3 months from the date on which the certified copy of the order is received by them. Parties are, however, left to bear their own costs.

S. NAIK
(S.K. NAIK)
Member (A)

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M. A. KHAN
(M.A. KHAN)
Vice Chairman (J)