

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 108/92

Tuesday, this the 22nd day of March, 1994

SHRI N.DHARMADAN, JUDICIAL MEMBER

SHRI S. KASIPANDIAN, ADMINISTRATIVE MEMBER

Applicant:

Shri M.Viswamithran,
Executive Engineer (Civil),
C.P.W.D.,
Trivandrum.

By Advocate Shri Santhosh Kumar

Versus

Respondents:

1. Union of India, rep. by Secretary
to the Govt. of India,
C.P.W.D.,
New Delhi.
2. Director General of Works,
Central Public Works Department,
New Delhi.
3. Deputy Director of Administration,
Directorate General of Works,
C.P.W.D.,
Trivandrum.
4. The Supdg. Engineer,
Trivandrum Central Circle,
C.P.W.D.,
Trivandrum.

By Advocate Shri C.Kochunni Nair

O R D E R

S.Kasipandian, AM

The applicant filed the Original Application on 16th January, 1992. Subsequently, he amended the OA and the revised OA was submitted on 22.2.93. The applicant joined as Section Officer in the Central Public Works Department on 9.6.56. This post was re-designated as Junior Engineer. He was confirmed as J.E. on 26.10.65. He got Selection Grade in that post from 27.9.73. He was promoted as Assistant Engineer on adhoc basis from 21.2.77 as per

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Annexure-A2. He was confirmed in that post by Ann.A3 order on 1.7.77. The applicant was further promoted as Executive Engineer by Ann.A1 order dated 28.8.91 and he has since retired from service on 31.3.92. The case of the applicant in brief is that as per Ann.A3 order he was assigned seniority in the rank of Assistant Engineer as 111. This was changed by Ann.A4 order to 233. Subsequently, by order at Ann.A5, he was assigned the seniority as 477. This was further modified by Ann.A6 order and assigned him seniority as 304. Finally, as per Ann.A12 order he has been placed in the seniority list at 2030. Ann.A3 order made it clear that the seniority assigned was purely adhoc, subject to the outcome of an appeal on seniority in that cadre pending before the Supreme Court filed against the judgment of the Delhi High Court. Ann.A4 order was passed following a change in the policy of combining the seniority of promotees and departmental examinees and appointing them regularly in the grade of Assistant Engineers. Ann.A5 order was issued as a supplementary seniority list and when the applicant represented against the same, the seniority was re-fixed in Ann.A6 order. The applicant's contention regarding the order at Ann.A12 is that in this consolidated seniority list, he should have been assigned No. 1841 between T.S.Narayana who is No. 1840 and senior to him and S.P.Goel at Sl.No.1842 who is junior to him. Instead, he has been wrongly assigned No. 2030. The revision of the seniority lists have been undertaken by the Department in pursuance of the instructions of the Government of India in Ann.A9 and A14. The applicant has, therefore, challenged these instructions and prays for their being quashed.

2. The learned counsel for the applicant disputed the contention in Ann.A9 that the Department had earlier decided to give retrospective operation to the amendment to the Recruitment Rules which was made on 5.2.77. The justification put forward by the Department that since some officials have challenged the above decisions the Department later decided that the amended rules shall not be applied to vacancies which

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arose prior to 5.2.77 and those vacancies were to be filled up by 100% promotion would result in injustice. The learned counsel for the applicant further argued that there were no satisfactory and cogent reasons given in Ann.A9 as to how persons selected on the basis of the assessment by a regular DPC in 1977 were arrayed at different levels and how the juniors to the applicant and those who were promoted much later than the applicant have been given higher placement in the seniority list. He further argued that the Review DPC should have strictly followed the guidelines in the Department of Personnel & Training O.M. No. 22011/3/76 (Estt) dated 24.12.80 as given in Ann.A15.

3. The learned counsel for respondents argued that the original positions in the seniority list, as quoted by the applicant, relate to the promotions made on an adhoc basis since 1973 by adopting a more relaxed standard than that required for regular promotion. As such, no sanctity can be attached to the earlier seniority lists. All these adhoc promotions were to be reviewed by a regularly constituted DPC in accordance with rules. The review DPC while making selection strictly followed the guidelines of the DOP&T as contained in Ann.A15. It was submitted by the learned counsel for the respondents that "the applicant has not been discriminated in the matter of fixing of his seniority and date of regular promotion in the grade of AE(Civil). The name of the applicant was considered along with the officers viz. T.S.Narayana, S.P.Goel and ML Venkatakrishnan, for promotion against the vacancies for the year 1973, but on the basis of the service records which were assessed by the DPC he could not be included in the panel of 1973 whereas the other officers as mentioned by him were empanelled in the year 1973, and were given deemed date of promotion as 31.12.73. The name of the applicant was considered for promotion along with other eligible officers for subsequent years i.e. 1975, 1976 and 1977 and on the basis of his service records he could be empanelled for promotion in the year 1977 only." He also submitted

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that "it is quite natural that the officers with comparatively better record of service get included in the panel while officers who are having just good record are left out. The submission of the applicant that his record was very good and there was no adverse remarks in his service records is not sufficient ground for his inclusion in the panel of 1973. Promotion to the grade of Assistant Engineer is made on selection basis and therefore selection of an officer though junior in service, in preference to senior does not legally amount to supercession. Senior officer has no legal right to promotion except that he has only a right to be considered for promotion along with others."

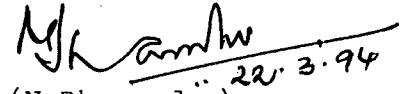
4. After having heard the learned counsels on both sides the question that comes up for consideration in this case is whether the review DPC followed the guidelines given by the Department of Personnel & Training as in Ann.A15. The impugned order at Ann.A9 itself confirms that "after the judgement of the court on 23.8.85, regular Departmental Promotion Committee meetings were held to consider the regularisation of adhoc promotion with effect from 1973 in accordance with DOP&T O.M. No.22011/3/75 dated 24.12.80. In preparing the yearwise panels for yearwise vacancies, Junior Engineers (including those working on adhoc basis) were arranged in the order of their seniority in the grade of Junior Engineer and their merit reflected by their service records were arranged and panels were prepared accordingly." The learned counsel for the respondents also drew our attention to the fact that a similar petition challenging the seniority list dated 25.4.86 was filed by Sri N.K.Sarkar and Sri Kalidas Banerjee before the Calcutta Bench of the Tribunal (OAs 285 and 286 of 1987). The Tribunal by an order dated 30.5.91 had dismissed those petitions on the ground that they were devoid of any merit (Ann.R1). Just because a few juniors to the applicant could get higher placement in the seniority list, as a result of the fresh assessment made by the DPC, it cannot be said that the orders at Ann.A9 and A14 cannot be sustained. The assessment made



by the DPC has to be respected. We, therefore, do not find any justification for interference in this case. Accordingly we dismiss this application as devoid of merit. There is no order as to cost.



(S. Kasipandian)
Member (A)



(N. Dharmadan)
Member (J)

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