

AS

O.A. No. 398/91

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Applicant

Vs .

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Respondents.

Hon. Mr. Justice U.C. Srivastava, V.C.

Hon. Mr. V.K. Seth, A.M.

(By Hon. Mr. Justice U.C. Srivastava, V.C.)

The applicant was initially appointed on the post of Superintendent B/R grade I in the Services known as Military Lands & Cantonment Services under the control of Ministry of Defence. The applicant, vide order dated 22-9-72, was promoted on adhoc basis on the post of Assistant Military Estate Officer (Technical) which is a Group B- Gazetted post in the services known as Military Lands & Cantonment Service, which was later on redesignated as Defence Land & Cantonment Service. The Departmental Promotion Committee took place and the said DPC recommended that the persons who are already working on the post of Assistant Military Estate Officer (Technical) on adhoc basis are to be kept on probation for a period of two years in order to give a regular appointment to the said persons on the post of Assistant Military Estate Officer (Technical), and vide order dated 22-2-83 the applicant was put on probation for a period of two years on the post of Assistant Military Estate Officer (Technical w.e.f. 23-12-82. Those who are promoted/appointed to the post of Assistant Defence Estate Officer & are on probation, as per rule 8(4) of the Military Lands & Cantonment (Asstt. Military Estate Officer Services Group-B Rules 1983, have to appear

and pass examination. The applicant also, alongwith other candidates appeared in the said examination in 1983 and passed and Director General, Defence Lands & Cantonment Service Opposite Party No.2 issued an order that the probation of the applicant will expire on 22-12-84. In the-meantime the applicant has passed the necessary examination and as such he will be deemed to be regularly appointed and confirmed on the post of Assistant Military Estate Officer (Technical).

2. The opposite party No.3(T.B. Bhowmik) was promoted on adhoc basis on the post of Assistant Military Estate Officer (Technical) from the post of Superintendent B/R Grade I on 5-4-76. On 10-3-89 an order<sup>of promotion</sup> was issued on the recommendation of DPC stating therein that in order to appoint persons regularly on the post of Assistant Defence Estate Officer which was previously called as Assistant Military Estate Officer (technical), the name of the persons mentioned in the said order are kept for probation for the period of two years. A seniority list of the persons who were working on the post of Assistant Military Estate Officer (Technical) was issued and the name of the applicant was placed at Sr.No.27 and the name of Shri T.B. Bhowmik was at Ser. No.39.

3. According to the applicant, in view of the Rule 7(3) of Indian Defence Estate Service Group-A, the persons who have ~~not~~ rendered not less than 3 years' regular service in Group B Post, were eligible for promotion to the next higher post i.e. Cantonment Executive Officer Group-A, Junior Time Scale Post. But ignoring the case of the applicant, the respondents promoted opposite party No.3 to the post of Contonment Executive Officer Group-A, Junior Time Scale Post and started giving salary and allowances although he has not rendered 3 years' service in a particular post on a particular date. Feeling

aggrieved against this promotion, the applicant has approached this Tribunal praying that the applicant be given promotion to the post of Cantonment Executive Officer Group-A Junior Time Scale Post, prior to the date of promotion of the respondent No.3 (Shri Bhowmik), with all consequential benefits and the promotion of the opposite party No.3 may also be quashed, and the seniority list may also be published in accordance with the Judgement passed by the Principal Bench in the case of M.P. Singh Vs. Union of India & Others.

4. The private respondent as well as the respondent No.1 & 2 have opposed the application. According to respondents No.1 & 2, it was the case <sup>of</sup> only adhoc promotion and the applicant was considered by the D.P.C. and in the year 1982 he was not graded in a higher position. So far as the respondent No.3 is concerned, he has passed the examination in that year and that is why he was given promotion in that year.

5. As far as passing of examination is concerned, it is relevant for regular promotion and not for adhoc promotion. Merely one person passes examination earlier and for one reason or the other some persons pass examination later, it will not confer a right for regular promotion. From the documents which have been placed before us it appears that the respondent No.3 (Shri T.B. Bhowmik) approached the the Bombay High Court when was reverted by the Central Government. The Writ Petition filed in the High Court was admitted and an interim order was granted. Subsequently it was transferred to the Central Administrative Tribunal, Bombay Bench, Bombay. The said application -T.A.No.29/89- was decided on 30-10-92. The Bench, after taking into consideration the case decided in the case of M.P. Singh Vs. U.O.I. & Ors.

decided by the Principal Bench, referred to above and the order passed by the Supreme Court against the S.L.P., allowed the said application and directed that he shall be deemed to be promoted on regular basis w.e.f. 15-3-86 and he shall be given revised seniority on the basis of decision of review DPC and shall be considered for promotion to Group 'A' for the vacancies for which he is eligible in his turn and he will be appointed regularly in accordance with the DPC recommendation.

5. The learned counsel for the respondents have placed before us the instructions which were received by him to the effect that the department has proposed to file an SLP against the said judgement before the Supreme Court.

6. Shri A.K. Chaturvedi, learned Counsel for the respondent, during the course of his argument, has pointed out that the judgement given by the Bombay Bench is contrary to the judgement given in the case of P. Madhavan Vs. Union of India & Others which was upheld by the Supreme Court vide its order dated 20-2-89. The Bangalore Bench in its order dated 29-8-88 in the case of P. Madhavan & UNION OF INDIA held that the applicant has no legitimate claim in regard to the post ear-marked for the direct recruits and applying that analogy, in case the regularisation of the applicant could have been made <sup>it could have been made</sup> only against the respective quota of direct recruits. The stand of the department so far as the applicant is concerned <sup>it is stated</sup> that he was promoted as regular ADEO as per DPC on 22-12-82 and the respondent No.3 on 10-3-89 against the respective quota and they will be considered for promotion to Group 'A' in their turn. The applicant in fact was considered for promotion by DPC in 1982 but could not make the requisite grading and in case the matter is decided against the same it will create further complication. Merely because certain decision were taken by different Courts or Tribunals and SLP has been filed against such

appear in the examination subsequently only, even though he was senior to him. The adhoc promotion of respondent.

decision, the same cannot be a ground for adjourning or not deciding a case. The Principal Bench in M.P. Singh's case observed that in view of the fact that the applicant was officiating in a junior time scale and senior time scale post continuously and uninterruptedly we are of the view that he will be deemed to be holding the post on regular basis and in that circumstances the recruitment rules in this regard must be deemed to have been relaxed. In the SLP the Supreme Court observed that AMOs were granted seniority from the date of appointment and in MLC service similar benefits were denied to AMED as they were working on adhoc, to remove this, the Tribunal directed that they shall be deemed to be holding regular posts. Officers who are working since 1964 without any field could not be treated as <sup>regularised</sup> ~~not~~ and in any case, once the DPC was held, they should be included and if it is necessary to evaluate their services it shall be got evaluated by appropriate authority and regularise them and then determine their seniority. By ignoring them in 1987 even though they have become member of Military service is arbitrary and not justified. From the facts it is quite clear that so far as the M.P. Singh's case is concerned, it was decided under the rules which ~~were~~ then existed, and the promotions were made as early as in the year 1964. These persons were holding the said post for the last several years i.e. for more than a decade and a particular order was passed. In the instant case it is not a regular promotion and it is an adhoc promotion. The respondent No.3 who has not completed 3 years service was allowed to appear for examination for regular promotion and adhoc promotion was given to him while the applicant was allowed to

appear in the examination subsequently only, even though he was senior to him. The adhoc promotion of respondent is justified on the ground that he has appeared earlier and later on the Central Government had reverted him.

The applicant was not a party in the case before the Bombay Bench of C.A.T. and hence the order passed by the Bombay Bench is not binding on him. When the applicant was senior, notwithstanding the fact that the applicant was allowed only to appear in the examination which took place subsequently, the applicant cannot lose his rights or interest on that ground. If Mr. Bhowmik, who was junior to him, was promoted, though on adhoc basis, not fully complying with the departmental rules in this behalf, there appears to be no reason as to why the applicant <sup>also</sup> cannot be promoted and that too when he has completed the probation period successfully and got confirmed on the earlier post. Whatever may be position, the junior was given promotion earlier and the senior was made to lag behind. As such the senior is also entitled to get promotion at least on the date the junior got promotion. Accordingly the respondents are directed to give promotion, from the date the said Shri T.B. Bhowmik was promoted in Grade 'A', to the applicant also notionally. As far as the seniority is concerned, it is to be decided in accordance with law. Accordingly the respondents are directed to give promotion to the applicant notionally as directed above within a period of 3 months from the date of communication of this order. No order as to the costs.

Member (A)

Vice-Chairman.

Dated: 26th April, 1993, Lucknow.

(tgk)