

CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A.No. 417/92

Date of Decision 16th FEBRUARY, 1996

P K Gupta

Petitioner

Mr. S.P. Saxena

Advocate for the Petitioner.

Versus

U.O.I. & 4 ors.

Respondent

Mr. R K Shetty

Advocate for the Respondents.

Coram:

The Hon'ble Mr. B.S. Hegde, Member (J)

The Hon'ble Mr. P.P. Srivastava, Member (A)

1. To be referred to the Reporter or not?
2. Whether it needs to be circulated to other Benches of the Tribunal?

  
MEMBER (J)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH, 'GULESTAN' BUILDING NO.6  
PREScot ROAD, BOMBAY-1

O.A. No. 417/92

DATED THIS: 16<sup>th</sup> DAY OF FEBRUARY, 1996

Coram: Hon. Shri B.S. Hegde, Member (J)  
Hon. Shri P.P. Srivastava, Member (A)

P.K. Gupta  
S.E., SO-I (PLG)  
Chief Engineer  
Bathinda Zone  
Bathinda Mil Stn. 151004

by Mr. S.P. Saxena, Counsel ..Applicant

v/s.

Union of India through  
Secretary  
Ministry of Defence  
New Delhi 110001 & 4 others

by Mr. R.K. Shetty, Counsel ..Respondents

ORDER

( Per: B.S. Hegde, Member (J) )

In this O.A. the applicant is not aggrieved by any order in particular, but is aggrieved because of the inaction/non-action of the respondents in not considering him for promotion to the post of Executive Engineer and to the higher post of Superintending Engineer though his juniors have been promoted superceding the applicant.

2. The applicant is a civilian employee in the Military Engineering Service (MES) and he joined the respondent department on 15.12.1967 as Assistant

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Executive Engineer through the U.P.S.C. selection in the office of Garrison Engineer, (Air Force), Pathankot. During his tenure in the department a police complaint was filed by the respondents on 30.10.1974 against the applicant and others for alleged misappropriation of Government money amounting to Rs.4,173/-. Accordingly the applicant was suspended on 29.7.76. He was not proceeded against in the departmental inquiry. However, in the criminal trial before the special Judge, Anti Corruption, Jammu, has resulted in conviction in 1981, and as a result of the conviction he was dismissed from service with effect from 21.4.1981. He preferred an appeal against the order of dismissal in J&K High Court and vide their judgment dated 25.4.89 the J&K High Court allowed the appeal and ordered as follows:

"For the reasons stated, both the appeals filed by P.K.Gupta, A-1 and K L Dahn A-2 are allowed and conviction and sentences recorded by the Trial Court is set aside.

They shall stand acquitted of all the charges framed against them."

Consequent to the judgment of the J&K High Court P K Gupta was reinstated in service and allowed to join duties as A.E.E. with effect from 18.8.1989. Thereafter, the President of India vide his order dated 13.2.90 decided to regulate the period of suspension preceding dismissal as well as absence

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between dismissal and reinstatement as period spent on duty for all purposes and full pay and allowances for the entire period.

3. Subsequent to his reinstatement the applicant had submitted representation requesting for fixation of his seniority in A.E.E. grade and further promotion to the posts of Executive Engineer and Superintending Engineer as his juniors have superseded him in higher posts. During the pendency of the O.A. he has been promoted to the post of E.E. & S.E. vis-a-vis his juniors.

4. The Lt. Counsel for the applicant Mr. Saxena vehemently urged that despite the clear acquittal by the High Court and the presidential order to give him all consequential benefits, the respondents have not paid the same even after a lapse of nearly six years. Though the applicant was due for promotion to the post of E.E. in the year 1981, he was promoted only with effect from 31.12.1992 and his junior Banvarilal Singhal in the grade of A.E.E. was promoted to the post of E.E. in the year 1981 and that the applicant should be promoted to the post of E.E. from that date i.e., w.e.f. 31.12.1981. Likewise, he was promoted to the post of S.E. on 4.4.94 whereas he is entitled to be considered and promoted to that post on 3.5.89.

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5. Ld. Counsel for respondents Mr. Shetty, urged that pursuant to the acquittal of the applicant, the applicant has been paid all the dues. However, in the reply he has not disputed the factual averments of the applicant that they have treated the period between 21.4.81 to 18.8.89 a period spent on duty and paid the applicant full back wages and allowances for the entire period. However, after the reinstatement apart from payment of full back wages they have called for review DPC in respect of the applicant for his case of promotions to the grade of E.E. and further promotion as S.E. in accordance with the rules. It is contended that mere seniority of the applicant will not entitle him to be promoted to the post of S.E. but at the same time he has a right to be considered for promotion, but cannot claim it as a matter of right, just because his juniors have been promoted.

6. It is true that the applicant is at Sr.No. 40 and is senior to Banwari Lal Singhal who is at Sr.No. 43 and Mr. D Suryanarayana, who is at S.No.42 in the grade of A.E.E. However, further promotion to the post of E.E. is by selection and not by seniority, depends upon the service records of the applicant and others under consideration and the assessment of the DPC concerned. The applicant has specifically prayed that a direction be given to the respondents to fix the pay and seniority of the applicant in the

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post of E.E. & S.E. and pay him all arrears of pay fixation due to the applicant retrospectively. The respondents pursuant to a direction of the Tribunal filed an affidavit in December 1995 and stated that upon promotion to the post of E.E. & S.E. the applicant's pay has been fixed 'notionally' from the date of his promotion as E.E. & S.E. respectively thereby the prayers made by the applicant in this O.A. have been implemented. At the same time, it is stated that the arrears of pay and allowances after fixation of pay will have to be claimed by the applicant. In our view, that is not what is intended by the Presidential order dated 13.2.90 which clearly states that the period between dismissal to reinstatement should be treated as a period spent on duty for all purposes and he should be paid the full pay and allowances for the period to which he would have been entitled had he not been dismissed.

7. We had directed the respondents to furnish us the Review DPC proceedings for our perusal and on perusal, we are satisfied, that the proceedings of the DPC had given seniority to the applicant w.e.f. 1983 as E.E. with that of his junior Shri D. Suryanarayan who was promoted to the post of E.E. in the year 1983. The short point for consideration is from what date the applicant would be eligible to be considered for promotion to the post of E.E. The DPC had considered him in the years 1979 and 1981 but did not find him suitable on the grades of his service record.

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Though he has been considered by the Review DPC he was not found fit to be promoted on the basis of his CRs. Since both V.S. Venkataraghavan, immediate senior and D. Suryanarayan, immediate junior, in the grade of AEE were considered and promoted to the post of E.E. in the year 1983 on their obtaining the grading of good, the applicant was also promoted as E.E. in the year 1983. The Review DPC which met on 1984 was further informed by the respondents that consequent on the dismissal of the applicant in 1981 his CR dossier was destroyed and as such no CR records were available for consideration and only service book of the applicant was produced before the DPC. Since the applicant was dismissed in the year 1981 and as per the instructions prevailing/in vogue at that time, the CRs/records are to be kept for five years and thereafter destroyed. The records were destroyed in the year 1986 and the judgment of the High Court came in 1989. It is also noticed that 4 DPCs for promotion to the post of E.E. were held during 1974 - 1978 and the applicant was considered by the DPC. However, keeping in view the observations of aforesaid periods of the DPC and considering the fact of non-availability of the CRs of the applicant prior to dismissal, the Review DPC took a lenient view and decided that he should be considered for promotion to the grade of E.E. for a vacancy of 1983 by reviewing the proceedings of the DPC held in 1986 since his junior D. Suryanarayan

though graded as good was promoted in the year 1983. Accordingly, the Committee recommended that the grading in respect of the applicant for the vacancy of 1983 considered by the DPC held in 1986 may be taken as Good.

8. In so far as Singhel is concerned, his CRs were stated as 'Very Good' and since the post is filled through selection due to his better grading he superceded the applicant and others in 1981 and the applicant was treated only Good by the DPC and hence he could not find a place in 1981. The Petitioner therefore, was placed in the panel immediate for the year of vacancy where his/junior who was graded as Good was promoted in the year 1983. Therefore, the question of giving seniority of applicant at par with Singhel, even though he was junior to the applicant in the grade of AEE, does not arise.

9. The Lt. Counsel for the applicant also urged that the missing or destroying the service records of the applicant is the fault of the respondents for which he should not be penalised. In this connection, he has relied on the decisions of the Tribunal which are given below:

(1) 1993 24 ATC 221 - ANIL MAHAJAN Vs. UNION OF INDIA

(2) 1993 24 ATC 925 MRS. VARSHA MALHOTRA Vs. UNION OF INDIA, decided by the Principal Bench, New Delhi.

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In ANIL MAHAJAN's case it has been held in the absence of any evidence to the contrary, it must be presumed that there was nothing against the applicant during the period for which the reports were missing. On that basis selection to higher post cannot be postponed. In VARSHA MALHOTRA's case it was held that the minutes of the DPC must indicate that available CRs of all the years were seen. The Tribunal had directed to convene a Review DPC and consider the case of the applicant in that case keeping in view the Department of Personnel and Training OM dated 10.4.1989. Para 6.2.1 of the OM reads as under:

"Where one or more CRs have not been written for any reason during the relevant period, the DPC should consider the CRs of the years preceding the period in question and if/any case even these are not available, the DPC should take the CRs of the lower grade into account to complete the number of CRs required to be considered as per (b) above. If this is also not possible, all the available CRs should be taken into account".

10. As stated earlier, after perusal of the DPC record in the instant case, we are convinced, that the decision arrived at by the DPC is just and proper keeping in view of the service record of the applicant and the missing CRs, the respondents had destroyed the

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CRs before the decision of the High Court could be rendered. As a result of this, they have given the applicant the seniority with effect from 1983 with that of his immediate junior. In our view, this is clearly in accordance with para 6.2.1 of OM Dt. 10.4.1989 of the Department of Personnel and Training. In the result, we find no infomity in the DPC proceedings.

11. The applicant was given only notional promotion for the higher posts. Since the Presidential order is very clear that the applicant should be paid the full pay and allowances, we are of the opinion that the applicant should be paid the actual pay and allowances for the post of Executive Engineer from the date of his notional promotion to that post. Similarly he should be paid actual pay and allowances for the post of Superintending Engineer from the date of his notional promotion. All the arrears of pay be calculated and be paid on or before 30.4.1996 positively. Failure to make the payment within the specified period would entail the liability on the respondents to pay interest @ 12% per annum if the payment is not effected by 30.4.1996. With these directions the O.A. is disposed of with no order as to costs.

  
(P.P. Srivastava)  
Member (A)

  
(B.S. Hegde)  
Member (J)