

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

OA 69/97

Mumbai, this the 31st day of July, 2001

HON'BLE SHRI S.L.JAIN, MEMBER (J)
HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)

Shri P.D.Joshi
Assistant Engineer (Elect.)
Mumbai Central Electrical
Division-III, Central P.W.D.
Mumbai - 400 099.

...Applicant

(By Advocate Shri K.B.Rajan)

V E R S U S

1.Union of India : through

Director General (Works)
Central Public Works Department
Nirman Bhawan, New Delhi - 110 011.

2.The Chief Engineer (E)

South West Zone
Nishta Bhavan, 3rd Floor
Churchgate,
Mumbai - 400 020.

...Respondents.

(By Advocate Shri V.S.Masurkar)

O R D E R

BY HON'BLE SHRI GOVINDAN S. TAMPI,

Following are the reliefs claimed by the
applicant Shri P.D.Joshi in this OA :-

(i) declare that the Office Order No.288 of
1995 Ref.No.28/.5/.95-EC I/Vol.IV 173 dated 27-11-1995
be null and void in so far as the omission of the name
of the applicant is concerned.

(ii) hold and declare that the applicant has a
right to be re-considered for the promotion to the
post of E.E. (E) in the scale of pay of Rs.
3000-100-3500-125-4500;

b2

(iii) direct the respondents No.I to reconsider the Applicant through a review DPC for the promotion to the post of Executive Engineer (Elect.) in the Central Electrical And Mechanical Engineering Service Group 'A' in the scale of pay of Rs. 3000-100-3500-125-4500 from the date his immediate junior, as per the Seniority List published by the Respondent No.1, was promoted. *and* *b*

iv) grant all consequential benefits.

2. S/Shri K.B.Rajan and V.S.Masurkar, learned counsel, represented the applicants and the respondents respectively.

3. The applicant who joined as a Junior Engineer in CPWD on 20-10-1963 became an Assistant Engineer on 31-12-1973 and he was placed at S1.No. 29 in the Supplementary Seniority List circulated vide OM No. 30/18/85-ECI/22 dated 25-4-1986. On 6-11-1991, an adverse entry, stating "lacks initiative" recorded in his ACR for the period 1-4-1990 to 31-3-1991 was communicated to him. He filed the representation against the same on 2-12-1991, referring to his excellent performance and appreciation thereon by D.G. (Works) himself and the Special Screening Committee of Asian Games, 1982. On 27-11-1995, 38 Assistant Engineers (E) were appointed to officiate as Executive Engineers (E) on ad hoc basis, though the applicant who was at S1. No.29 was not so promoted. On 4-12-1995, he represented against his omission from the list. His case was also taken up by the CPWD Engineers Association on 8-1-1996. The respondents

b

replied on 8.1.96 that the "Screening Committee" which met on 20-9-1995, did not recommend him for inclusion in the panel for promotion and that supersession was inevitable in selection promotion and that his name will be considered in future also in his turn as and when promotions to the grade of Executive Engineer (Elec.) are made. On 4-7-1996, the applicant was informed that his representation dated 2-12-1991 for removal of the adverse entry in his report was accepted and the same has been expunged. He filed a representation on 26.8.96 requesting for re-consideration of his case by a review DPC for promotion as it was found that he was left out for promotion due to the un-sustainable report which was not removed in time due to inadvertence or oversight of the authorities but was expunged only on 4.7.96. While forwarding the representation, the respondents indicated in their letter of 2.9.96 that his representation against the adverse remarks in the report for 1990-91, had been mis-placed in their office and the decision taken to expunge the adverse remarks was communicated only in July, 1996, on the receipt of his reminder. The applicant made representations for re-consideration of his case. The first representation made on 4-12-1995 was rejected on 8-1-1995/96. The subsequent representations of 8-1-1996 and 26-8-1996 were not even replied. No review DPC has been held and he had suffered on account of the oversight on the part of the Department. Hence his application.

4. Reiterating the above, Shri K.B.Rajan, learned counsel pointed out that the applicant had suffered at the time of consideration for promotion

only on account of an adverse entry in his ACR, which was expunged on a date subsequent to the date of DPC due to the failure or oversight of the respondents. He referred to the decision of the Hon'ble Supreme Court in the case of U.P. Jal Nigam Vs. S.C.Atri and Anr. (1998 SCC (L&S) 1733) which squarely covered his case.

5. The respondents hotly debate the points raised by the applicant. According to them, the application is bad in law for non-joinder of necessary parties as some other persons who have became Executive Engineers superseding the applicant and who would suffer if this application succeeds have not been impleaded as respondents. Besides, the Application was also hit by limitation as the order of promotion was issued on 27-11-1995 while the application has been filed on 3-1-1997 and therefore is liable to be set aside on delay and latches. Promotion to the post of Executive Engineers was a selection promotion and therefore supersession was in-built the Recruitment Rules. The applicant cannot have a right for automatic promotion, plead the respondents. The applicant has been superseded on the basis of his own performance and he cannot therefore complain against it. Further the review for ad-hoc promotion was not possible and there was no provisions for the same, and the Hon'ble Supreme Court had granted stay on ad hoc promotions to the grade of Executive Engineer in CA Nos. 5363/64 of 1990 filed by Shri J.N.Goel and Ors. on 10-1-1996, The applicant has already retired on 31-1-1997 on superannuation. When the ad-hoc promotions took place

earlier

-5-

Recruitment Rules, 1954 were in operation. The same have been replaced by the revised Recruitment Rules 1996, modifying the criteria. Respondents were undertaking the regularisation of earlier promotion and therefore no review of ad-hoc promotions was possible. The application was therefore clearly misconceived and did not have any merit. The respondents indicate\$ that the adverse entries recorded in the ACR of the applicant for 1990-91 have been duly communicated and subsequently expunged after considering the representation against it. The applicant's case was duly considered by the Selection Committee for promoting officers to the grade of Ex.Engineer, which ^{not} ~~not~~ on 20.9.95 but did not find him fit on the basis of his overall performance, but empanelled for promotion his juniors with better records. These juniors have not been impleaded as respondents, which also vitiates the application. According to the respondents, the subsequent expunction of the adverse entries would not at all have changed the final grading in the ACRs, for the year and the assessment by the Selection Committee/DPC. The Selection Committee has arrived at the decision, not to empanel the applicant on the basis of his overall record, spanning ten years and therefore the adverse entry during one year, even if expunged subsequently did not make any change in the grading . In view of the above, the respondents plead that the application deserved to be dismissed, as being without any merit.

h

6. The above points were forcefully

reiterated by Sh. V.S.Masurkar learned counsel for the respondents who called for the dismissal of the application both on preliminary grounds and on merits.

7. Replying on behalf of the applicant Shri K.B. Rajan , learned counsel for the applicant, invites our attention to the decision of the Hon'ble Supreme Court in the case of V P Shrivastava & ORs. Vs. State of M.P. & Ors. (1996 (1) SCSLJ 253) wherein it was held that when the principle of determination of seniority by the State Government was under challenge the State Government was the only necessary party to be impleaded and the Tribunal's conclusion that non-inclusion of the affected parties was fatal to the cause of the appellant was quashed. In this case, it is the action of the respondents which is under challenge and not by any of the individuals who have been promoted, superseding the applicant. He also states that the challenge to the application on the grounds of laches and limitation was misplaced, as only after the expunction of the adverse entry the applicant's cause of action against his non-promotion arose.

8. We have carefully considered the matter and perused the relevant records including the minutes of the Selection Committee, placed before us. Respondents have raised before us two preliminary objections - of delay as well as laches and of non-joinder of affected parties. Neither has any merit. The applicant had represented against his not being promoted along with his juniors on 27.11.95 but

b2

at the same time he knew that the representation filed by him against the adverse entry was not disposed and the entry was alive. But once the said adverse entry was expunged on 4.7.96 he genuinely felt he had a stronger case for agitating against the denial of promotion. His representation filed on 26.8.96 was not responded to. Hence he has filed this OA in January 1997. The same is therefore not hit by limitation. The objection raised regarding non-joinder of parties also has no basis. As has been held by the Hon'ble Apex Court in the case of V.P. Shrivastava & Others Vs State of MP and Others (supra) cited by the applicant, the challenge in this application being not against the other individuals who have superseded him in the ad hoc promotion but against the denial of promotion by the respondents, there was no need to have impleaded the others as respondents. Even otherwise, the applicant having retired from service, even if this application is allowed, it would not hurt any one else and what the applicant would derive are only consequent pensionary benefits. Both the objections, therefore, fail and are accordingly dismissed.

9. Coming to the merits, while the applicant feels that he has been denied promotion as Executive Engineer on account of an adverse entry in the ACR, which was expunged after the DPC meeting, the respondents hold that the denial of promotion was on account of his none-too-satisfactory over all performance and the single adverse entry has nothing to do with it.

h/v

10. It is not disputed that an adverse entry reading "lacks initiative" has been recorded in the applicant's ACR for the period 1990-91. The same was communicated to him on 6-11-1991. On 4-7-1996 he was informed that his representation dated 2-12-1991 against the adverse entry had been accepted and the same has been expunged. Delay in the disposal admittedly occurred due to misplacing of the same in respondents' office. In between the DPC/Selection Committee had met to consider the promotion of the Asstt. Engineer to Executive Engineers and the applicant did not make the grade. The point to be ascertained whether the applicant has missed out in promotion solely on account of the adverse entry, which was subsequently expunged or on other reasons.

11. Minutes of the meeting of the Screening Committee, held on 20-9-1995, in the room of D.G. (Works), CPWD for promotion from the grade of Asstt. Engineer (Elec.) to Executive Engineer (Elec.) shows that the applicant was among those who was considered by the Committee. The Committee considered the records of 129 Asstt. Engineers for the selection promotion including the applicant who was at S1.No.9 and empanelled 48 persons - 38 from the general category and 10 from the reserved category - who have been graded as 'Very Good'. On the basis of assessment of their performance appraisal for ten years i.e. 1984-85 to 1994-95. It is seen that only those who have obtained the grading of 'Outstanding/Very Good' in more than 5 out of 10 years have been as given the over all grading 'Very Good' and placed on the select panel. The applicant was

-9-

graded as 'Good' and, therefore, did not make to the panel. We observe that the presence of an adverse entry in the ACR for the period 1990-91, did bring down the grading of the applicant for that year but the fact remains that even on its expunction, it would not at have improved the grading to any categorization more than "Good" at all for that year. And it would not have changed the overall grading to "Very Good". Obviously, therefore, irrespective of the presence or otherwise of the adverse entry in the ACR for the year 1990-91, Selection Committee's assessment of the applicant could have only ^{been} 'Good' and not 'Very Good'. He has, therefore, not been empanelled for promotion and correctly so. We find that the applicant is not the only one who had missed out for promotion, but that a number of others, both seniors and juniors to him have been left out as they did not obtain the requisite grading "Very Good". We also observe that the Screening Committee has performed its function, correctly applying uniform standards for all those whose cases were under consideration and its findings cannot be faulted or assailed as being arbitrary or malafide. No prejudice of any kind has been caused to the applicant by the procedure adopted by the Selection Committee. Respondents are correct when the states that the 'Selection' promotion involved the supersession of a few who do not make the requisite grade. That precisely is what has occurred in this instance. The applicant cannot, therefore, have any case at all. That being the position. The

hr

decisions cited by the applicant cannot come to his help.

12. In the above view of the matter, we are convinced that the applicant has no case at all in law and that the application has to fail. We accordingly order so and dismiss the application. No costs.

(GOVINDAN S. TAMPI)
MEMBER (A)

P.C.J. -
(S.L.JAIN)
MEMBER (J)