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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL-APPLICATION-NO.1615-OF-1995

DATE-OF-ORDER:-----April, - 1997

BETWEEN:

Y.HARISCHANDRUDU

.. APPLICANT

AND

1. Union of India represented by the Secretary, Ministry of Urban Affairs & Employment, "C" Wing, Nariman Bhawan, New Delhi 110 011,
2. The Director General, Works, Central Public Works Department, "A" Wing, Nariman Bhawan, New Delhi 110 011.

.. RESPONDENTS

COUNSEL FOR THE APPLICANT: Mr. C.SURYANARAYANA

COUNSEL FOR THE RESPONDENTS: Mr. N.R.DEVARAJ, Sr.CGSC

CORAM:

HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMN.)

HON'BLE SHRI B.S.JAI PARAMESHWAR, MEMBER (JUDL.)

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ORDER

ORDER (PER HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMN.)

Heard Mr.C.Suryanarayana, learned counsel for the applicant and Shri N.R.Devaraj, learned standing counsel for the respondents.

2. The applicant in this OA who belongs to Scheduled Caste community was appointed as Assistant Executive Engineer in the Civil Wing of Central Public Works Department as a direct recruit on 15.10.68. ~~recruit~~ by the order No.9/16/(68)/-ECI-(20) dated 5.10.1968 (Annexure A-1 to the OA) ~~recruit~~ in the Central Engineering Service Class I. He was confirmed in that post by the order No.30/38/71-ECI dated 30/31.1.1973 (Annexure A-2 to the OA). He was promoted as Executive Engineer (Civil) by the order No.28/3/73-ECI dated 17/19.2.1973 (Annexure A-3 to the OA). He was confirmed as Executive Engineer (Civil) in Group-A service by the order NO.30/16/77-C1 dated 22.12.1977 (Annexure A-4 to the OA). This confirmation order is subject to the judgment of the Supreme Court in W.P.No.157-162 of 1976 (P.S.Mahal Vs. Union of India). His probation period as Executive Engineer was terminated after his passing the prescribed departmental examination prescribed for Executive Engineer by the order No.30/11/77-ECI/105 dated 18.6.77 (Annexure A-5 to the OA). He was promoted to officiate as Superintending Engineer (Civil) in the Central Engineering Services Group-A on regular basis with effect from the date he assumes the chrgc of the post of Superintending Engineer (Civil) by the order No.28/2/81-ECI/59 dated 24.4.81 (Annexure A-6 to the OA). He was brought on non-functional selection grade by the Office Order No.44/91 bearing No.30/3/87-EC-I/15 dated 14.2.91 (Annexure A-7 to the OA).

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3. In the meantime, it is stated that in view of the decision of the Supreme Court reported in 1992 SCC (L&S) 773 (R.L.Bansal v. Union of India) and the ~~recent~~ judgement delivered by the Central Administrative Tribunal, Principal Bench, New Delhi dated 30.12.1992 in OA 1765/92 ^(B.P.Bindal v. UOI) on the file of the Principal Bench, a revision of seniority took place from the lower feeder category of Assistant Engineer which was reflected on the higher grades also. The applicant appeared to have lost his seniority in the cadre of Superintending Engineer due to the revision of the seniority. He had filed OA 117/95 on the file of this Bench for restoration of his original seniority which was existing at the time of his promotion as Superintending Engineer ^{been}. That OA had disposed of by the order dated 15.4.97. However, as seen ^{from} the reply statement, the applicant was also considered for his further promotion as Chief Engineer (Civil) for the vacancy arisen during the year 1995-96. An Office Order No.30/21/94-EC.I(Vol.II)/EW.I dated 24.7.96 (Annexure R-I to the reply) was issued promoting some Superintending Engineers, ^{as} Chief Engineers (Civil). In that list, the name of the applicant was not included though some of his juniors ^{alleged to him} were promoted as Chief Engineer (Civil) through that list.

4. The applicant submits that 27 posts of Chief Engineers have to be filled whereas only 20 were promoted through the list dated 24.7.96. Hence he alleges that there is an error in assessment of the vacancies. The applicant further submits that his seniority was lowered down in the cadre of Superintending Engineer without even giving notice to him and hence the principle of natural

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and the Executive Engineers underwent changes due to the judgment of the Apex Court in R.L.Bansal's case and the direction of the Principal Bench in B.P.Bindal's case cited supra. The seniority as per the direction of the Apex Court and the Principal Bench of the Tribunal was finalised on 20.10.1994. The implementation of the judgments had necessitated the revision of seniority of not only in the lower category of Assistant Executive Engineer/Executive Engineer but also in the cadre of Superintending Engineer promoted even on regular basis upto 1981. Adhoc promotions made after 1982 which were based on the old seniority have also been regularised as per the afore said judgment. The revision of the seniority of the Superintending Engineers posted prior to 1981 and regularisation of adhoc Superintending Engineers from 1982 onwards necessitated holding of year-wise DPCs in consultation with UPSC in the month of October 1994 and on that basis a fresh list of promotion orders to the post of Superintending Engineer were issued. The applicant was superseded by his junior in the matter of promotion to the cadre of Superintending Engineer. The promotion to the post of Superintending Engineer is on the basis of the selection and the duly constituted DPC headed by the Member, UPSC had finalised the list. On the basis of the grading given by the DPC, the name of the applicant was placed at the appropriate place in the list of Superintending Engineers and in that revision, the applicant was superseded by his juniors on account of his service records and his juniors who had better service records. secured higher position.

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justice is violated. He also fears that his name would not have been considered for promotion to the post of Chief Engineer (Civil) even though he ^{was} ~~is~~ within the zone of consideration. He also alleges non adherence of the rules pertaining to the promotion to the reserved community candidate.

5. Aggrieved by the fact that he was not promoted as Chief Engineer (Civil) by the DPC which met in October 1994 and the result of which was published by the letter dated 24.7.96, the applicant filed this OA praying for direction to the respondent-authorities to take time-bound action to ensure that his case is considered and he is empanelled for promotion as Chief Engineer (Civil) against one of the 27 vacancies that were available during 1995 and ^{him} to promote/against those vacancies so that he could get the benefit of promotion before his retirement on superannuation on 31.12.1996 apart from granting other appropriate consequential reliefs with costs.

6. An interim order has been given in this OA on 1.1.1996. It was ordered in the interim order that promotions that have to be given in pursuance of the impugned panel will be subject to the result in this OA and it has to be mentioned in the order of promotion.

7. A reply has been filed in this OA. The respondent-authorities submit that the posts of Superintending Engineer are to be filled up 100% by promotion from the grade of Executive Engineer by selection method. The seniority of the Assistant Executive Engineers



8. It is further stated in the reply statement that on the basis of the revised seniority list of Superintending Engineers, the applicant was considered for promotion to the post of Chief Engineer. He cannot claim for promotion to the post of Chief Engineer based on the old seniority list which was superseded by the revised seniority on account of the Apex Court's judgement and the Principal Bench judgment referred to above. On the basis of the gradings given in the CRs, the DPC did not find him fit to be promoted to the post of Chief Engineer even though he was an SC candidate. The privileges extended to the Scheduled Caste candidates are only in the lower rung of Class I services and certain executive orders given in this connection are also applicable only upto the maximum pay of Rs.5700/- in the revised scales of pay. The post of Chief Engineer is in the grade of Rs.5900-6700 and is to be empanelled on the basis of the positive act of selection. The rules mentioned by the applicant in regard to the promotion of the reserved candidates do not apply for promotion to the post of Chief Engineer which is in the Senior Administrative Grade in the scale of pay of Rs.5900-6700 (RS). They also submit that the number of posts for which the panel is formed are only 20 and not 27 as mentioned by the applicant in this OA.

9. The applicant has also filed a rejoinder to this reply. It is not necessary at this juncture to state the contents of the rejoinder as this will be discussed in the course of the analysis of this case. However, it is to be pointed out that the rejoinder speaks of the seniority of

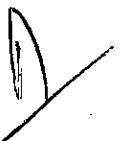
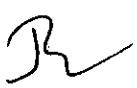
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the applicant in the seniority list of Superintending Engineers and he also questions the revised seniority of the applicant in the cadre of Superintending Engineer on the ground that his seniority in the post of Superintending Engineer should not be revised and his seniority should be considered on the basis of the seniority list as existing when he is promoted way back in 1981 as Superintending Engineer.

10. As can be seen from the OA and the rejoinder, the respect to applicant has prayed this Tribunal with two of his main grievances viz, his seniority position in the cadre of Superintending Engineer and his promotion to the post of Chief Engineer (Civil). The first prayer is an implied one. The view of ours as above is also confirmed by the order dated 23.7.96 in this OA by the other bench of this Tribunal where both of us were not parties to that order. The relevant portion of that order dated 23.7.96 which confirms our view as above reads as follows:-

"The subject matter of the instant OA (1615/95) is the claim of the applicant to be considered for promotion as Chief Engineer (Civil) in preference to his juniors. That substantially is part of the relief sought in OA.117/95 which is stayed. It is stated by the applicant that even if the proceedings in OA.117/95 have been stayed yet since the question of seniority has not been finalised yet, there is no obstacle to consider his case for promotion as he is within the zone of consideration even according to original seniority. Although this may appear to be a claim differently made, yet it cannot be considered in isolation and if



it is considered independently of the claim in OA 117/95 there may arise conflicting views & decisions decisions."

11. The learned counsel for the applicant submitted at the Bar that no necessity arise for reviewing seniority list on the basis of the Bansal's case. However, in para 3(a) of the rejoinder, the applicant himself submits that "Bansal's case relates to seniority of Assistant Engineers appointed on or after 22.12.59 on the basis of their date of confirmation". He also submits that the judgment declared that the action of the respondent-authorities in fixing the seniority of the Assistant Engineers is violative of rights guaranteed to the Assistant Engineers.

12. We have perused the judgment of the Bansal's case reported in AIR 1992 SCC L&S 773 cited supra. The operative portion of that judgement directs the respondents "to refix the seniority of the Assistant Engineers appointed on or after December 22, 1959 on the same basis and in the same manner as it is determined in the case of the Assistant Engineers appointed prior to the said date". The opening portion of the judgment clearly states that "This W.P. is an instance of classic seniority dispute between promotees and direct recruits." In view of the above, we do not agree with the view of the learned counsel for the applicant that Bansal's case is nothing to do with the seniority dispute. Bansal's case gives the ratio for fixing seniority in the categories of Assistant Engineers/Assistant Executive Engineers. When the

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respondents submit that in view of Bansal's case and the judgement of the Principal Bench referred to earlier, the revision of seniority was necessitated including the revision of the seniority in the higher grade viz, Executive Engineers and Superintending Engineers then that submission has to be accepted. If the seniority of Superintending Engineers was revised in view of the revision of the lower cadre, it cannot be questioned as the revision in the lower cadre has to be taken to the logical conclusion and reflected in higher grades. Even in the confirmation order issued on 22.12.77 confirming the applicant as Executive Engineer, it has been stated that that confirmation was subject to the judgement of the Supreme Court. Hence the applicant is aware that his seniority even in the Executive Engineer cadre, was likely to be revised way back on 22.12.77. Hence he cannot submit that he is not aware of the revision of seniority till disposal of the case by the Apex Court. When a principle is laid down by the Apex Court and the Principal Bench of this Tribunal for fixation of seniority, that directions have to be implemented by the respondent-authorities. The applicant cannot question the principles laid down by the Apex Court and the Principal Bench. It is no doubt ^{true} that an opportunity has to be given before revising the seniority list but that will only to the extent of correcting any factual error and not the principle laid down in the judicial pronouncements. The direction having been given by the Apex Court and the Principal Bench of the Tribunal, he cannot question that principle at this late stage. Even if an opportunity is given to him to submit his case in regard to the revision of the seniority it can only to the extent of correcting the factual errors, if any, and not the principle laid down for the purpose of fixation of



seniority. The applicant has not brought out in this OA any factual error in fixing his seniority as Superintending ^{been} Engineer. He might have shown junior to some of his erstwhile juniors, but that was the result of the judicial ^{grievance} pronouncement. Hence the applicant may not have any l if such revision in the seniority list is made. We do not have to further observe any thing in regard to the seniority dispute arising in this case as that will go against his interest in disposal of his representation dated 4.11.94 (Annexure-3 to the OA 117/95) which is to be disposed of by the respondent-authorities as per the direction in OA 117/95 decided on 15.4.97. As the decision regarding

seniority as per directions in OA 117/95 is yet to be taken by the respondents in that OA, we do not propose to
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further go into the merits of this contention in regard to the seniority. The applicant has to wait for a decision to be taken by the respondent-authorities as per the direction in OA 117/95 and decide his further course of action on the basis of the reply to be given. Hence we limit our further discussion only in regard to his grievance for promotion as

Chief Engineer (Civil),

13. It is a fact that the applicant was considered for promotion to the post of Chief Engineer as can be seen from the reply of the respondents. But he was not found fit for promotion to the post of Chief Engineer on the basis of the records. The contention of the applicant that he was not even considered for promotion to the post of Chief Engineer cannot be accepted as the respondents have categorically stated that his case was considered for promotion to the post of Chief Engineer but he was superseded on account of his reports. Hence the next question arises as to whether the supersession of the applicant is in order or not.

14. The first contention of the applicant in this connection is that he was qualified in all respects for

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promotion to the post of Chief Engineer. He was not given any opportunity to explain his short comings earlier and his supersession is not on the basis of the reports but (on) extraneous considerations. He also questioned the validity of formation of the selection committee.

15. It is an admitted fact that the post of Chief Engineer (Civil) is a selection post and a panel has to be formed by a DPC consisting of members of appropriate rank from the Department headed by the Member of UPSC associated by a reserved community member where ^{ever} required. The applicant has not questioned the formation of the DPC. The DPC headed by the Member of UPSC was formed. There is no reason to believe that the DPC was not formed as per the extant rules. Hence it has to be held that the duly formed DPC had looked into the cases of the candidates placed before them for promotion to the selection post of Chief Engineer (Civil). The applicant is one of the candidates placed before that Committee for consideration for promotion to the post of Chief Engineer (Civil). The Committee on the basis of the Confidential Reports and the other relevant records placed before them assigned the grading to the candidates before they ^{were} empanelled to the post of Chief Engineer (Civil). The DPC having been manned by the senior officers, its decision is final, as held by the Supreme Court reported in 1992(2) ATR 563 (National Institute of Mental Health and Neuro Sciences v. Dr.K.Kalyana Raman and others). The decision of the DPC cannot be questioned except on the basis of the bias. No such bias has been brought out in this connection against

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the DPC members. Hence the Court or the Tribunal should be very slow in interfering with the DPC proceedings unless there is strong reason to interfere with the same. In this OA, no such strong reason has been brought out to interfere with the final decision of the DPC in this connection.

16. The applicant relying on the judgment of the Supreme Court reported in AIR 1996 SC 1661 (U.P.Jal Nigam and others v. Prabhat Chandra Jain) submits that if the grading is down graded, the authority should record reasons for down grading on personal file of the employee and the change has to be communicated to the employee in the form of advice. In this case the applicant submits that he was not given any adverse remark nor his grading was down graded. Hence he is of the opinion that he was having consistently good reports which will enable him to be empanelled for the post of Chief Engineer (Civil).

17. It is not the case of the applicant that grading given by the reporting authority in his CR was down graded further by reviewing and the accepting authority. He only complains that a suitable grading was not given to him by the DPC and hence he was not empanelled. Hence the reliance on the reported judgment of the Apex Court may not come to his rescue. As the Supreme Court had observed that the DPC proceedings should not be interfered with unless there is strong reason to do so, we do not see any necessity to further enter into the controversy regarding his grading given by the DPC. Further, the Full Bench of this Tribunal reported in 1995(2) ATJ Page 1 (Shri V.Pallam Raju v. Union of India and others - O.A.No.777 of 1993 on the file of Hyderabad Bench decided on 10.2.95) had held that "the 'average' entry in the ACR cannot be considered

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as adverse" and "it is not the requirement of the principles of natural justice that a Government servant who has been given an entry of "average" should be given notice of that entry so as to enable him to improve his performance so that his chances of promotion may improve". From the above, even if the applicant had average report, the same need not have been informed to him unless there are other adverse entries requiring the respondents to inform the same.

18. The principle of selection lies on the grading as assessed by the DPC. If the DPC assessed the grading to be given to the candidates on the basis of the various factors mentioned in the ACR including the grading as approved by the accepting authority, then that grading will decide the ranking in the panel. "Outstanding" officers will rank senior to officers having a grading of "Very Good" and officers having the grading of "Very Good" will be placed above that of officers having the grading of "Good". The above selection procedure is to be followed in the selection to the post of Chief Engineer (Civil). If the applicant does not come within that parameters of grading to enable him to be placed in the empanelled list, then he cannot have any grievance. If no adverse entry is included in the Annual Confidential Report and the grading in the Annual Confidential Report is given only "Average", then the applicant need not have informed of any adverse remarks. The above rule was in force at the time of formation of the panel for which the DPC met in October, 1994. Hence the contention of the applicant that he was not conveyed of any adverse remarks and because of that he should have been empanelled, is not a tenable stand. We hold that the DPC prepared the selection list for the post



of Chief Engineer (Civil) in accordance with the rules in force on that date and on that basis his promotion to the post of Chief Engineer (Civil) was denied.

19. The applicant submits that he is a Scheduled Caste candidate. Hence the privileges extended to SC candidates through the O.M. of Ministry of Home Affairs letter No.1/9/69-Estt.(SCT) dated 26.3.70 should be extended to him. We have perused the above letter. As per the above letter, "In promotions by selection to the posts within Group-A (Class-I) which carry an ultimate salary of Rs.2000/- per month, or less, there is no reservation, but the Scheduled Castes/Scheduled Tribes officers, who are senior enough in the zone of consideration for promotion so as to be within the number of vacancies for which the select list has to be drawn up, would be included in that list provided they are not considered unfit for promotion". The ultimate salary of Rs.2000/- mentioned in that letter has been revised to the salary of Rs.5700/- to accord with the IVth Pay Commission scales of pay. Such a procedure as indicated in that letter is to be adhered to only if the ultimate salary in a Class-I selection post is Rs.5700/- (RS). The starting pay of the Chief Engineer (Civil) in the Senior Administrative Grade itself starts from Rs.5900/- and the ultimate salary is Rs.6700/- (RS). Thus it is evident that the above procedure is not applicable in the selection to the post of Chief Engineer (Civil) in the scale of pay of Rs.5900-6700. Hence the OM of the Ministry of Home Affairs is not relevant to this case. ~~xx~~

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20. The applicant also submits that the reservation exists in Group-A service and hence it has to be adhered to. We have no doubt in our mind that the reservation principle do apply for Group-A post of lowest rank. The present post is not in the lowest rank and such principles cannot be applied for selection to the post of Chief Engineer (Civil). The guiding principle is to show somewhat leniency in the case of selection for the reserved community candidates so as to enable them to come up in the ladder. It does not mean that such leniency should also be shown even in the post of Head of the Department. These posts are to be filled from amongst the suitable and eligible candidates in accordance with the rules. No rule was shown to us by the learned counsel for the applicant to the effect that the reservation is provided for promotion to the post of Chief Engineer (Civil) and that those rules are not adhered to. Hence the circulars relied upon in the present contention are not helpful to the applicant.

21. The learned counsel for the applicant relying on para 3 of the Ministry of Home Affairs O.M.No.1/9/69.Estt.(SCT) dated 26.3.70 submits that the essence of that para is not followed in the case of the applicant. This para reads as below:-

"3. In order to improve the chances of Scheduled Castes/Scheduled Tribes officers for selection to the higher categories of posts in Class I, it has further been decided that:

(i) Scheduled Castes/Scheduled Tribes officers in Class I service/posts should be provided with more opportunities for institutional

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training and for attending seminars/Symposia/conferences. Advantage could in this connection be taken of the training facilities available at the National Academy of Administration, Mussoorie, National Police Academy, Mount Abu, Indian Institute of Public Administration, New Delhi, the Administrative Staff College, Hyderabad, etc.; and

(ii) It should be the special responsibility of the immediate superior officers of the Schedules Castes/Scheduled Tribes officers in Class I to give advice and guidance to the latter to improve the quality of their work."

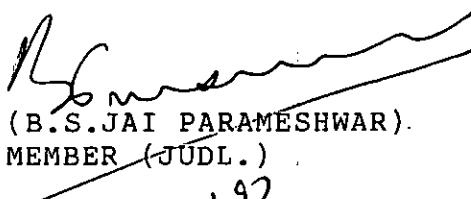
22. This para is only for guidance for improving the knowledge of the applicant. The applicant is working as Superintending Engineer right from 1981. We do not take special steps to consider it necessary to educate him further to improve his knowledge. Further, during the course of his career, he would have attended a number of training courses and those courses should be treated as sufficient to enable him to knowledge and get necessary expertise. It is not possible for the immediate superior officers to keep on guiding the employees of SCs/STs working under them every now and then. It is for them to approach the superior officer to get necessary guidance. It does not mean that the superior officer need not give them any guidance. If superior officer feels that the officers under them are to be given some guidance irrespective of the fact whether they belong to the reserved community or not such guidance may have to be extended. The above para is only to increase the representation of the SC/ST canidates in Class I service.

It does not mean that the applicant can question his non selection to the post of Chief Engineer (Civil) basing on the above executive order of the Ministry of Home Affairs. In this connection, we will like to quote the observation of the Apex court reported in 1994 SCC (L&S) 230 (Union of India and others Vs. S.L.Abbas).

"The guidelines, however, does not confer upon Government employee a legally enforceable right."

When an executive order was relied upon to challenge the transfer of an SC/ST employee, the Full Bench of this Tribunal in OA 848/95 relying on the Abbas case had held that the executive orders are not legally enforceable in a court of law. In that view, the present contention of the applicant in this OA cannot succeed.

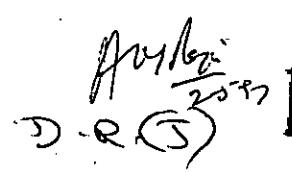
23. In the result, we find no merit in this OA. Hence the OA is dismissed. No order as to costs.


(B.S.JAI PARAMESHWAR).
MEMBER (JUDL.)


(R.RANGARAJAN)
MEMBER (ADMN.)

DATED: - 25th April, - 1997

vsn


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