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IN THE CENTRAL ADMINISTRATIVE TRIEUNAL, JAIFUR BENCH,

J A I P U R.

O.A. NO. 434/94

Date of decision: 6.1.95

S.C. JAIN

: Applicant.

VERSUS

UNION OF INDIA & ORS : Respondents.

Mr. S. Kumar : Counsel for the applicant.

Mr. Praveen Balwada : Counsel for the respondents.

CORAM:

Hon'ble Mr. Gopal Krishna, Judicial Member

Hon'ble Mr. N.H. Verma, Administrative Member

PER HON'BLE MR. N.H. VERMA, ADMINISTRATIVE MEMBER:

In this application, Shri S.C. Jain has prayed for quashing the impugned order dated 5.5.94 under which his representation (Annexure A-5) regarding consideration for promotion for the post of Chief Engineer was examined and the applicant was informed that the same cannot be decided in view of the matter being subjudice. He has also prayed for direction to the respondents to prepare seniority list/eligibility list for promotion to the post of Chief Engineer in consonance with the existing promotion rules and consider the applicant for promotion to the post of Chief Engineer accordingly. He has further prayed for quashing ~~(.....)~~ the impugned seniority list issued on 14.2.94.

2. The matter was heard at length. The submissions made by the learned counsel for the applicant were based on the Notification of the Ministry of Defence dated 9.7.91 in which under Schedule III, it was stipulated that the Chief Engineer will be selected by promotion from amongst the "Additional Chief Engineer with 8 years regular service in the grade (JAG) including service, if any, rendered in the non-functional selection grade failing which 8 years combined regular service in the grades of Additional Chief Engineer and Superintending Engineer or 17 years' regular service in Group A posts of which at least 4 years' regular service

should be in the grade of Superintending Engineer (JAG) and possessing degree in Engineering from a recognised University or equivalent." The post of Additional Chief Engineer in the same Schedule was shown to be filled up by promotion after selection from amongst Superintending Engineer with 3 years' regular service in the grade possessing degree in Civil, Mechanical or Electrical Engineering from a recognised University or equivalent. The applicant was shown at Serial no. 17 in the Seniority List issued on 12.4.90 of the All India Seniority List of Superintending Engineers. The official at Serial no. 37 was one Shri P.S. Paryani who was substantively appointed as Superintending Engineer on 22.7.86 whereas the applicant was appointed substantively to the same post on 10.1.86. So the applicant was decidedly senior to the said Shri Paryani. However, the seniority list issued on 14.2.94 in regard to the Additional Chief Engineers showed this Paryani at serial no. 7 working as Additional Chief Engineer w.e.f. 25.5.92 and Superintending Engineer from 22.7.86. In this list, the applicant has been shown at serial no. 19 wherein his date of officiation in the Additional Chief Engineer and even his date of appointment as Superintending Engineer has not been shown. As per the learned counsel for the applicant, the rules of promotion clearly stipulated that an Additional Chief Engineer with the requisite number of years in the post of rendered in the Superintending Engineer/ non-functional selection grade, was eligible for consideration for promotion to the post of Chief Engineer and in the light of this interpretation, the applicant had seniority over the official at serial no. 7, Shri P.S. Paryani who became a Superintending Engineer later than him in 1986. The seniority list of Additional Chief Engineer prepared for selection of the Chief Engineer was circulated in February, 94 is, therefore, not correct and the selection based thereon is, therefore, liable to be

quashed. This also has not been prepared according to the rules.

3. The learned counsel for the respondents has refuted the very basic contention of the applicant that the field of selection for the post of Chief Engineer includes the combined service of an individual both as Additional Chief Engineer and Superintending Engineer. According to him, there are three streams from which the post of Chief Engineer has to be filled up. In the first stream, an Additional Chief Engineer with 8 years' regular service in the grade (JAG) has to be considered failing which an Additional Chief Engineer with the combined service of the Superintending Engineer will be considered. If they are not able to find adequate number of candidates even under this category, then a Group A officials having 17 years' regular service with at least 4 years' regular service in the post of Superintending Engineer (JAG). ^{will be available} The learned counsel for the respondents produced a chart and in the reply, he has also shown the number of vacancies which arose from 1990 onwards and according to which the applicant's name did not come up within the zone of consideration for the post of Chief Engineer. If one looks at the stipulations, it is clear, according to him, that the selection for the post of Chief Engineer has to be firstly limited to the Additional Chief Engineer with 8 years' regular service in the grade (JAG) which does not include the service rendered as a Superintending Engineer. When the Additional Chief Engineer with 8 years' regular service is not found available, then the Selection Committee has to proceed to consider officials having 8 years' combined regular service both as Additional Chief Engineer and Superintending Engineer. Both the Additional Chief Engineers and the Superintending Engineers are JAG Officers. ^{The} ~~one to~~ mention ^{of the word} 'JAG' has been made as a qualifying ~~one to~~ the service as an Additional Chief Engineer, ~~one to~~

bringing into the focus JAG Officers as a whole including the Superintending Engineer post. The restriction is that an Additional Chief Engineer has to have 8 years' regular service and not otherwise. Had it not been so, then the stipulation would have been as given in the second and last alternative, the officer with a prescribed number of years of combined service as Addl. Chief Engineer and Superintending Engineer (JAG) with the requisite qualification required for the post. The entire force of the argument of the learned counsel for the applicant is only in this interpretation of the recruitment rules for the post of Chief Engineer. If this argument is conceded for the applicants, they can succeed or otherwise the O.A. has to fail.

4. We have given our anxious consideration to the contentions of both the parties. We are inclined to agree with the learned counsel for the respondents that the stipulation of field of promotion for the post of Chief Engineer is clearly weighted in favour of the Additional Chief Engineers with 8 years' regular service in the grade or level which is also a post in the JAG. Otherwise, there was no purpose in prescribing any stream of promotion for a combined number of years both as Addl. Chief Engineer and Superintending Engineers as the secound soure of recruitment. This is amplified further by stipulating the third source of recruitment in which 17 years including 4 years' in the grade of Superintending Engineer (JAG) has been prescribed. Having prescribed three sources for the promotion of Chief Engineer, the selection process cannot straightaway come to the third process without having exhausted the first two processes. Since the DPC found adequate number of officers fulfilling the requirement of first two processes, the selection was limited to the Addl. Chief Engineers and it is incidental that the officer at serial no. 7 was found eligible and also worthy of selection. We, therefore, find no grounds for interfering either with the seniority list published in

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February, 1994 as also selection made by the Departmental Promotion Committee in regard to the official at serial no.7. In any case, since the applicant has not impleaded the official at serial no. 7 as one of the respondents, it will not be fair and just to interfere with the selection made in this regard.

5. We, therefore, find that the selection procedure adopted by the respondents is correct and, therefore, the O.A. fails. The application is accordingly dismissed, with no order as to costs.

N.K. Verma

(N.K. VERMA)
Administrative Member

Gopal Krishna

(GOPAL KRISHNA)
Judicial Member