

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 29th day of November, 2006

ORIGINAL APPLICATION No.578/2003


S.L.Meena
s/o Shri Har Chand Meena,
r/o C-328, Siddarth Nagar,
Sawai Gaitor, Jagatpura, Jaipur,
presently holding the post of
Executive Engineer (Civil),
CPWD, Jaipur.

.. Applicant

(By Advocate: Shri Saugath Roy)

Versus

1. Union of India
through the Secretary,
M/o Urban Development and
Poverty Alleviation,
Nirman Bhawan,
New Delhi.
2. The Director General (Works),
Central Public Works Department,
Nirman Bhawan,
New Delhi.
3. Union Public Service Commission,
Shahjahan Road,
New Delhi through its Secretary,
4. Chief Engineer,
North Zone-III,
Central Public Works Department,
Nirman Bhawan,
Vidyadhar Nagar,
Jaipur.

 .. Respondents

(By Advocate: Mr. Tej Prakash Sharma)

O R D E R

Per Hon'ble Mr. M.L.Chauhan

The applicant has filed this OA thereby praying for the following reliefs:-

- "i) By an appropriate order or direction the entire record relating to promotion for the post of Superintending Engineer (Civil) may kindly be summoned from the respondents and after examining the same, the recommendations made superseding the applicant while making promotions on the post of Superintending Engineer (Civil) and the order dated 25.11.2003 in pursuance to which a person junior to him has been promoted so far it relates to the supersession of the applicant is concerned, the same may kindly be quashed and set aside.
- ii) By further appropriate order or direction if any order of promotion if made by the respondents of officer junior to him in the cadre of Executive Engineer (Civil) on the recommendations already made for the post of Superintending Engineer (Civil) such orders be taken on record and be quashed and set aside.
- iii) By further appropriate order or direction the respondents be directed to hold Review DPC and to reconsider the candidature of the applicant for the post of Superintending Engineer (Civil) after taking into consideration the standard of evaluation which has been laid down by the respondents in terms of memorandum dated 3.10.2000 and if he is found suitable, he may be promoted on the post of Superintending Engineer (Civil) with all consequential benefits from the date, officers junior to him has been promoted.
- iv) Any other appropriate order or direction which may be considered just and proper in the facts and circumstances of the case may kindly be passed in favour of the applicants."

2. Briefly stated, facts of the case are that the applicant belongs to Schedules Tribe category. His grievance in this OA is regarding supersession while making promotion in the grade of Superintending Engineer (Civil) vide office order 25.11.2003 (Ann.A1). It is alleged that in the year 2003 Central



Public Works Department (CPWD) wanted to fill 12 vacancies of Superintending Engineer (Civil) and for that purpose DPC proceeding were held. According to the applicant, his name find mention at Sl.No.907 of the seniority list dated 20.10.1994 and the first person already promoted in the approved panel is Shri D.K.Garg of 1984 batch whose name finds mention at Sl.No. 883 and officers shown at No. 885 to 898 in the seniority list have already been retired. Thus, if officers to be considered for promotion are counted from Shri D.K.Garg, the name of the applicant stands at No.11 and he is well within the number of vacancies determined for which the selected list is to be drawn. Thus, according to the applicant, since his name is within the number of vacancies for which select list is to be drawn up, he could not have been superseded by his junior persons in terms of Department of Personnel and Training (DOPT) Office Memorandum dated 3.10.2000. The applicant has further pleaded that no adverse remarks were even communicated to the applicant till date and he was under the bonafide belief that he maintains outstanding record of service and fit to hold the post of Superintending Engineer (Civil).

3. Notice of this application was given to the official respondents as well as Union Public Service Commission, which is respondent No.3 in this case. The

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respondent Nos. 1 and 2 have taken a preliminary objection thereby stating that no relief can be granted to the applicant as he has not arrayed the junior person as party respondent in this case who will be affected in case the present OA is allowed. On merits, it has been stated that it is the seniority list dated 7.7.99 which is relevant where name of the applicant find mention at Sl.No.370. It is further stated that eligibility list of 28 senior most eligible officers was prepared on the basis of the aforesaid seniority list where name of the applicant find mention at Sl.No.23. It is further stated that on the basis of service record of the officers considered, the DPC could recommend a panel of 11 officers for promotion to the grade of Superintending Engineer (Civil). It is however admitted that few officers were included in the panel for promotion as they were assessed as fit by the DPC and after approval by the appointing authority they have been promoted to the grade of Superintending Engineer (Civil) vide impugned order dated 25.11.2003. It is categorically stated that although the applicant belongs to ST category, he was not within the number of vacancies i.e. 12 for which the panel was to be drawn up by the DPC and, therefore, no concession was provided under Department of Personnel and Training OM dated 10.4.1989 read with instructions dated 30.10.2000.

4. Respondent No.3 has also filed a reply. In the reply, it has been stated that the DPC meeting was held on 1.7.2003 in the office of Union Public Service Commission to consider selection of officers for promotion to the post of Superintending Engineer (Civil) in the CPWD against 12 vacancies pertaining to the year 2003-2004. It is further stated that the DPC guidelines were revised vide DOPT OM dated 8.2.2002 regarding assessment of officers, copy of which has been placed on record at Ann.R1. It is further stated that the earlier DPC guidelines issued by the DOPT which remained in force till 7.2.2002 permits supersession of the officers in the pay scale of 12000-16500 and above inasmuch as the persons who were graded as 'outstanding' would rank en bloc senior to those who are graded as 'very good'. It is further stated that the above DPC guidelines which permitted supersession were revised by the DOPT OM dated 8.2.2002. As per the revised DPC guidelines, the DPC shall determine with reference to the prescribed benchmark and accordingly grade the officers as 'fit' or 'unfit' only. It is further stated that only those who are graded 'fit' i.e. who meets the prescribed benchmark by the DPC shall be included in the select panel in order of their inter-se seniority in the feeder grade. Those officers who are graded 'unfit' in terms of prescribed benchmark shall not be included in the select panel. Thus, there shall be no supersession

in promotion among those who are graded 'fit' in terms of prescribed benchmark by the DPC. It is further stated that the applicant was duly considered by the DPC who was at Sl.No.23 of the eligibility list as furnished by the respondent Department for promotion to the grade of Superintending Engineer (Civil) which is in the pay scale of Rs. 14300-18300. The prescribed benchmark is 'very good'. It is further stated that on the basis of assessment of ACRs from 1997-98 to 2001-2002 as furnished by the respondent Department, the applicant was assessed by the DPC as 'unfit' as he failed to attain the prescribed benchmark 'very good' according to revised guidelines dated 8.2.2002. Thus, according to the UPSC, the applicant was not recommended for promotion by the DPC though some officers junior to him who were assessed by the DPC as 'fit' and were also covered under the available vacancies were recommended for promotion. The respondent No.3 has stated that the instructions issued vide OM dated 3.10.2000 were duly followed by the DPC which met on 1.7.2003 for promotion to the grade of Superintending Engineer (Civil) in CPWD. Since name of the applicant does not figure in the number of vacancies for which select list has to be drawn up and his name figured at Sl.No.23 of the eligibility list i.e. far beyond the number of vacancies i.e. 12 for which select list was to be prepared and hence the DOPT instructions were not

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applicable in his case. Thus, name of the applicant was rightly not included in the panel drawn by the DPC. The UPSC has also relied upon various decisions of the Apex Court which is to the effect that it is not within the province of the Tribunal to sit in judgment over the assessment of the DPC/Selection Committee save in the rarest of rare cases where findings of the DPC/Selection Committee may be tainted with malice.

5. The applicant has filed rejoinder. In the rejoinder, the applicant has relied upon the decision dated 11.11.2002 of the Principal Bench in OA No.538/2002, V.Thirunavakkarasu vs. Union of India and submitted that the matter is squarely covered by the said judgment.

6. We have heard the learned counsel for the parties and gone through the material placed on record.

7. At the outset, it may be stated that the applicant has challenged his non-promotion to the post of Superintending Engineer (Civil) on the basis of recommendations of the DPC mainly on the alleged ground that concession available to the SC/ST as per the DOPT OM dated 3.10.2000 was denied by the DPC by not including his name in the select list. For that purpose, he has placed reliance on the judgment of the

Principal Bench in V.Tirunavakkarasu's case decided on 11.11.2002. In order to appreciate the matter in controversy, it will be useful to quote DOPT OM dated 3.10.2000 as referred by the applicant on the subject of concession for SC/ST, which thus reads:-

"In promotions by 'selection-cum-seniority and 'selection by merit' to posts/services within Group 'A' which carry an ultimate salary of Rs. 5700/- p.m. or less in the IV Pay Commission pay scale, the SCs/STs 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 notwithstanding the prescription of benchmark be included in that list provided they are not considered unfit for promotion."

From the instructions as quoted above, it is clear that prescription of benchmark may not be insisted if name of SC/ST officers, who are senior enough in the zone of consideration for promotion is within **number of vacancies** (emphasis supplied to number of vacancies). The UPSC has categorically stated that the aforesaid instructions were duly followed by the DPC which met on 1.7.2003. It is admitted case between the parties that the DPC was held for 12 posts of Superintending Engineer (Civil) in CPWD. According to respondents, name of the applicant figured at Sl.No.23 of the eligibility list i.e. far beyond the number of vacancies i.e. 12 for which select list was prepared. The respondents have stated that eligibility list was prepared on the basis of seniority list dated 7.7.1999 (Ann.R1). The applicant has relied upon the seniority list dated 20.10.1994 which has been set aside by the Chennai Bench of this Tribunal vide its judgment dated

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4.9.1997 passed in OA No.493/95, A.S.Anandaram and other vs. Union of India and ors.. Thus, the assertion of the applicant that his name find at Sl.No.11 which is within number of vacancies i.e. 12 in the seniority list of 1994 cannot be accepted in view of the specific stand taken by the respondents that the said seniority list has been set-aside and quashed by the Chennai Bench. Thus, the only inference which can be drawn from reading of the instructions dated 3.10.2000, as quoted above, is that prescription of benchmark may not be insisted in respect of those SC/ST officers who are within the number of vacancies for which select list has to be drawn up, which in the instant case were 12. Since name of the applicant figured at Sl.No.23 of the eligibility list, he is not entitled to the benefit of the aforesaid instructions as the applicant has based his claim on the basis of the quashed seniority list of 1994, according to which seniority list, name of the applicant may find at Sl.No.11. Thus, we see no infirmity in case name of the applicant has not been included in the select list by the DPC as the applicant was found unfit.

8. That apart, yet for another ground the applicant is not entitled to any relief. The respondent No. 1 and 2 have categorically stated that the applicant has not impleaded the persons junior to him who has been promoted vide ann.A3 as party respondent in this OA

who will be affected by the decision of this case. On this score also, the applicant is also not entitled to any relief as the Apex Court in number of decisions has categorically held that no relief can be granted to a person in case he has not impleaded the necessary party as respondent who will be affected by the decision of the case. The Apex Court has also gone further to hold that decision rendered, where the necessary party has not been impleaded as respondent, is a nullity and does not have a binding effect. For that purpose, reference can be made to the case of Khetrabasi Biswal vs. Ajaya Kumar Baral and ors., 2004 (2) SCSLJ 228, Pramod Verma vs. State of U.P., 1984 SCC (L&S) 704 and Arun Tewari and ors. vs. Zila Mansavi Shikshak Sangh and other, 1998 SCC (L&S) 541. As regards the contention raised by the applicant that the present case is fully covered by the decision rendered in OA No.538/2002 by the Principal Bench, suffice it to say that the said judgment was challenged by the Union Public Service Commission before the Delhi High Court and the Delhi High Court vide order dated 19.5.2003 has stayed operation of the impugned order. Thus, the applicant is not entitled to any relief on the basis of the judgment, operation of which has been stayed, and which is under consideration before the Delhi High Court. Rather, we are of the view that the only interpretation which can be given to the instructions dated 3.10.2000 is that

prescription of benchmark may not be insisted in case the SC/ST officers are senior enough in the zone of consideration for promotion so as to come within the number of vacancies for which select list has to be drawn and the said benefit cannot be extended to a person who fall far below within the number of vacancies. Even otherwise also, from the pleadings it is clear that the case set out by the applicant in this OA is also to the effect that his name in the seniority list (quashed) is at Sl.No.11 and as such within the number of vacancies and in such circumstances, prescription of benchmark could not have been insisted. Thus, he cannot be heard to make submission relying upon the judgment rendered by the Principal Bench contrary to the pleadings which he has made in the OA thereby pleading entirely a new case as he has taken this new plea in the rejoinder, which is not legally permissible to be raised.

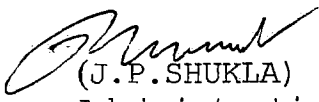
9. The learned counsel half heartedly argued that he has been declared 'unfit' as he did not have the prescribed benchmark i.e. 'very good' as such it was the duty of the respondents to communicate the ACR in case the applicant has not attained the prescribed benchmark, in view of the decision rendered by the Apex Court in the case of UP Jal Nigam vs. Prabhat Chandra Jain, AIR 1996 SC 1368. The contention raised by the applicant cannot be accepted as the applicant


has not pleaded this fact in the manner argued by him. What he has pleaded in para 4(E) is to the following effect:-

“That the applicant has never been communicated any adverse remarks in his career till date and he was under the bonafide belief that he maintains outstanding record of service and fit to hold the post of Superintending Engineer (Civil).

Thus, on the basis of the pleadings as quoted above, contention of the applicant cannot be accepted as he has not raised any plea in the manner as argued by him. Secondly, the decision rendered by the Apex Court in UP Jal Nigam (supra) has no universal application and the same is applicable to the employees of the UP Jal Nigam. This is what the Apex Court has held in the case of Union of India vs. Major Bahadur.Singh, 2006 (1) SC SLJ 169. Thus, even on this ground the applicant has not made out any case.

10. For the foregoing reasons, we are of the view that the present OA is bereft of merit, which is accordingly dismissed with no order as to costs.


(J.P. SHUKLA)
Administrative Member


(M.L. CHAUHAN)
Judicial Member

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