

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

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Original Application No. 746/02

Jabalpur, this the 15th day of June, 2004

Hon'ble Shri M.P. Singh, Vice Chairman
Hon'ble Shri Madan Mohan, Member (J)

Padam Singh son of Tarachand,
aged about 46 years,
Assistant Engineer,
Jabalpur Central Sub Divn.No.III,
Baldevbagh, Jabalpur (MP).

...Applicant

(By Advocate: Shri Gopi Chaurasia)

-versus-

1. Union of India,
through Secretary,
Ministry of Urban Development,
Nirman Bhawan, New Delhi.
2. Director General of Work,
C.P.W.D., Nirman Bhawan, New Delhi.
3. Deputy Director (EC-III), C.P.W.D.
Nirman Bhawan, New Delhi.
4. Deputy Secretary (Admn.II),
C.P.W.D., Nirman Bhawan, New Delhi. ...Respondents

(By Advocate: Shri Harshit Patel for Sh. S.C.Sharma)

O R D E R

By Madan Mohan, Member (Judicial)

By filing this original application, the applicant has sought the following main reliefs:-


- i) To quash the order dated 19.4.2002 saying that it is illegal and arbitrary.
 - ii) To direct the respondents to promote the applicant w.e.f. 18.9.1987, to the post of A.E. with further notional benefits of pay arrears, status and other consequential benefits.
2. The brief facts of the case are that the applicant was appointed as a Junior Engineer w.e.f. 11.2.1980 and got posted at Central Store Division No II Sanjeevani Nagar, New Delhi. He was got confirmed w.e.f. 20.9.1982 vide order dated 20.1.1988. There was no adverse remarks



against the applicant in his service record.

2.1 As many as 396 posts of A.E. (Civil) were created as a result of first grade review of Junior Engineer (Civil) to the year 1987, these vacancies were available with reference to the year 1987, although as per rules, all these vacancies ought to have been considered by a single D.P.C. and if required to conduct subsequent DPCs, the same ought to have been done by way of review DPCs. But in unusual fashion lots of DPCs were held between 1987 to 1998 for considering those vacancies. Since the applicant was confirmed vide order dated 20.1.1988 w.e.f. 20.9.1982 which clearly shows that the applicant was never considered at all in DPC meetings held before 20.1.1988, when his juniors were considered and promoted consequently/subsequently. The applicant has been raising his grievances before the higher authorities through representations. Finally the applicant was granted promotion as Assistant Engineer w.e.f. 31.5.1993 but he is entitled for the same w.e.f. 18.9.1987, as his juniors were promoted, therefore, he kept on making representations to the respondents.

2.2 One ^{Ram}Shri/Sajeevan, who was appointed as a Junior Engineer w.e.f. 13.2.1981 and confirmed w.e.f. 15.4.1983 vide order dated 10.6.1988, he was promoted as Assistant Engineer w.e.f. 9.7.1993. Shri Ram Sajeevan is much junior to the applicant but respondents acted illegally, unreasonably and mala fide and did not consider the case of senior employees like applicant but in fact they considered and passed the order in favour of Shri Ram Sajeevan on 2.1.2001 by promoting him w.e.f. 18.9.1987 with all other consequent notional benefits. The applicant was not getting any response from the respondents, therefore, he had filed an original application before this Tribunal i.e. OA No. 613/2001, which was disposed of the Tribunal vide its order dated 21.12.2001 with certain directions. Pursuant to the directions




of the Tribunal, the applicant submitted his representation dated 5.1.2001 to the respondents for redressal of his grievances. The respondents passed an order on the representation of the applicant rejecting his representation without assigning any reason as to why the claim of the applicant has been rejected. Hence, the present original application has been filed.


3. Heard the learned counsel for both the parties.

4. It is argued on behalf of the applicant that apparently applicant was much senior to Sh. Ram Sajeewan as he was appointed on 11.2.1980 as Junior Engineer and was got confirmed on 20.9.1982 and promoted as Assistant Engineer on 31.5.1993 whereas Shri Ram Sajeewan was appointed as Junior Engineer on 13.2.1981, confirmed on 15.4.1983 and subsequently promoted as Assistant Engineer on 9.7.1993. But the review D.P.C. treated him to be promoted w.e.f. 18.9.1987 as Assistant Engineer whereas the case of the applicant being genuine and legal was not considered for promotion as Assistant Engineer from 18.9.1987. Therefore, the whole proceedings of the D.P.C. and review D.P.C. are against the rules. The applicant cannot be superseded on the ground that he is assessed as 'GOOD' by the D.P.C. whereas the one Shri Ram Sajeewan is assessed as 'VERY GOOD' for promotion to the post of Assistant Engineer. There was no adverse remarks against the work, conduct and integrity of the applicant during his service tenure. Hence, he is entitled for promotion to the said post w.e.f. 18.9.1987 on which date his junior Ram Sajeewan was given promotion as A.E.

5. In reply, learned counsel for the respondents argued that the panel was prepared by placing the candidates in order of merit with 'outstanding' followed by 'very good' and 'good' to the next available vacancies for promotion.



The last candidate with grading as 'Good' was promoted who was at seniority no. 3641 and Shri Padam Singh(SC) i.e. the applicant was at serial no. 4932. After going through service record of the applicant for 5 years w.e.f. 1982-83 to 1986-87, the committee graded him as 'Good' and having 'Good' grading no junior Engineer to the applicant was empanelled as Assistant Engineer in 1987 except Shri Ram Sajeevan who had been promoted w.e.f. 18.9.1987 because of his having been assessed as 'Very Good' by the review D.P.C. It is further argued that 396 posts of A.E.(C) were created as a result of Ist Cadre Review of Junior Engineer (C) during 1987. All the cases were considered by the D.P.C. constituted for this purpose. The left out cases due to incomplete record were considered later by D.P.C. It is, therefore, no correct to say that unusual fashion was adopted to hold lots of DPCs between 1987-98 for the above vacancies. Learned counsel for the respondents further argued that the applicant was considered by the DPC which met on 26.10.1988 but he could not be promoted on the basis of his lower grading vis-a-vis Ram Sajeevan, his junior as J.E. During the period, promotions were made on selection by merit. By this method, those categorized as 'outstanding' had been given precedence over others categorised as 'very good' or 'good'. On the same analogy, those categorised as 'very good' had precedence over those categorised as 'good' dependent on the vacancies available. The applicant has been given promotion as and when he had been adjudged fit by the DPC. He could not be promoted earlier as he did not meet the requirement of benchmark set out for this purpose. It is further argued that the panel was prepared during 1987 placing the candidates in order of merit with 'outstanding' followed by 'very good' and 'good' dependent on the availability of vacancies for promotion. Shri Ram Sajeevan was promoted



w.e.f. 18.9.1987 on the basis of merit who was graded as 'very good' while the applicant was graded as 'Good' by the D.P.C. Hence, no irregularity or illegality has been committed by the respondents while considering the case of the applicant for promotion. Learned counsel further argued that Shri Ram Sajeevan, who is the necessary party for adjudication of this case, has not been impleaded as a party because no adverse order can be passed by this Tribunal against a person without giving an opportunity of hearing to him.

6. After hearing the learned counsel for both the parties and perusal of record available on court file and the D.P.C. proceedings produced by the learned counsel for the respondents before this Tribunal, we find that the case of the applicant for promotion to the post of Assistant Engineer was considered by the D.P.C. on 10.4.2002 and he was not found fit as he was assessed as 'Good' by the D.P.C. It is also mentioned that the panel was prepared in 1987 on the basis of selection on merit. The panel was prepared by grading the candidates as 'outstanding', 'very good' and 'good' and the list was prepared by placing candidates in their order of merit with 'outstanding' followed by 'very good' and 'good' to the extent of available vacancies. The last candidate with grading 'good' who was promoted as Assistant Engineer was at serial no. 3641 in the seniority whereas the applicant was at serial no. 4932. Hence, no irregularity or illegality has been committed by the respondents. The contention of the applicant that Sh. Ram Sajeevan, who was junior to the applicant, has been promoted in an illegal manner and ignoring the genuine claim of the applicant is incorrect, as Shri Ram Sajeevan was assessed as 'very good' by the D.P.C. held at the relevant point of time. Hence, he was promoted as A. E. w.e.f. 18.9.1987 because the selection was on the basis of merit-cum-seniority. The aforesaid contention of the applicant could have been accepted if the above selection would have been on the basis of seniority-cum-merit basis.

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However, the Hon'ble High Court of Punjab & Haryana in case of Mulkh Raj, Superintendent Grade-II vs. State of Punjab through the Chief Electoral Officer, reported in 2003(1) ATJ 431 has held that "even promotion based on seniority-cum-fitness, seniority alone is not sufficient to claim promotion. It is further held that the promotion of a person who has a better service record than his senior is justified." It is apparent that the overall record of the so called junior, namely, Shri Ram Sajeevan relating to the five years was much better than that of the applicant. In this situation, it cannot be said that the respondents had erred in preferring Shri Ram Sajeevan to the applicant. Seniority-cum-merit does not mean that a senior person has a right to be promoted irrespective of the lack of merit. It only implies that seniority is the primary consideration. However, even merit has to be kept in view. In this case the respondents has shown a predilection for merit. It cannot be said to have acted arbitrarily. Hence, the present O.A. is devoid of any merit and the same is accordingly dismissed with no order as to costs.

(MADAN MOHAN)
Member (J)

(M.P. SINGH)
Vice Chairman

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Issued
On 24-6-04
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(1) सचिव, उच्च न्यायालय एवं एडमिनिस्ट्रेशन, जयपुर
(2) आवेदक श्री/श्रीमती/कु
(3) प्रत्यक्ष श्री/श्रीमती/कु
(4) बंधुभाऊ, कोचन, जयपुर न्यायपीठ
सूचना एवं आवश्यक कार्यवाही हेतु
Capt Chaurasia
SC Sharma
34.6.04