

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 748 of 2002

Jabalpur; this the 20th day of August, 2004

Hon'ble Mr. M.P. Singh, Vice Chairman  
Hon'ble Mr. A.K. Bhatnagar, Judicial Member

Dr.R.S. Madame,  
S/o Shri Sonbaji Madame,  
Date of birth 24.12.1948  
Director, Central Circle,  
Survey of India, Survey  
Colony, Vijay Nagar,  
Jabalpur (MP)

APPLICANT

(By Advocate - Shri S. Paul)

VERSUS

1. Union of India,  
Through its Secretary,  
Ministry of Science & Technology,  
(Department of Science & Technology)  
New Mehrauli Road,  
New Delhi.
2. Surveyor General of India,  
Post Box No.37,  
Hathibarkala Estate,  
Dehradun-248 001(Uttaranchal)

RESPONDENTS

(By Advocate - Shri S. P. Singh)

O R D E R (ORAL)

By M.P. Singh, Vice Chairman -

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

- "(i) Set aside the impugned orders dated 18.4.2002 Annexure A/1 & 29.8.2002 Annexure A/2;
- (ii) Consequently command the respondents to treat consider and promote the applicant as Deputy Director from 1993 with all consequential benefits as if he is holding the said post from 1993.
- (iv) Accordingly, command the respondents to treat the applicant as Deputy Director from 1993 in the pay-scale of Rs.12000-16500/- with seniority and other attendant benefits;

In alternatively

- (v) The respondents be directed to place the applicant in the pay-scale of Rs.14300-18300/- w.e.f. 1.1.1996 with arrears of pay and all other consequential benefits arising thereof as per operation of clause 3(a) of O.M. dated December 20, 2000 Annexure A/5;

- (vi) Consequently, command the respondents to place the applicant in the pay-scale of Rs.14300-18300/- w.e.f. 1.1.1996 with dues of arrears of pay till 30.7.2001;

- (vii) The respondents be further directed to pay the arrears arising out of aforesaid relief within a stipulated time as deemed fit by this Hon'ble Tribunal;

(viii) The respondents be further directed to pay interest on delayed payment as per the rate deemed fit by this Hon'ble Tribunal".

2. The brief facts of the case are that the applicant was initially appointed as Deputy Superintending Surveyor (Group-A Service) on 15.10.1979. He was promoted to the post of Superintending Surveyor on 10.4.1985. He had completed 9 years of regular service as Superintending Surveyor on 9th April, 1994. However, he was promoted to the post of Deputy Director (Functional) vide order dated 26.7.2001 (Annexure-A-3). According to the applicant, he was promoted as Deputy Director by the aforesaid order dated 26.7.2001 against the vacancy which arose due to retirement of Shri N.K.Raman w.e.f.31.10.1993. Since the respondents have not promoted him to the post of Deputy Director from the date the vacancy arose, and instead promoted him vide order dated 26.7.2001 from a prospective date, he has filed this OA claiming the afore-mentioned reliefs.

3. The contention of the applicant is that he has completed the residency period/qualifying service for the next promotional post of Deputy Director on 10.4.1990 whereas the promotional post of Deputy Director has become available in the year 1993. According to him, the department was required to conduct a DPC for filling up the vacancies yearwise in terms of the guidelines issued by the Department of Personnel & Training (for short 'DOPT') dated 10.4.1989 (Annexure-A-4). However, for the reasons best known to the respondents, the vacancy arose in the year 1993 was not filled up in time and he was promoted as Deputy Director (functional) in the scale of Rs.14,300-18,300 vide order dated 26.7.2001. The applicant has contended that because of the delay on the part of the respondents in holding the DPC, he cannot be made to suffer since the vacancy was available in the year 1993 and he has completed the residency period/qualifying service required for promotion to the post of Deputy Director in the pre-revised scale of Rs.3700-5000. Therefore, the respondents ought to have held the DPC in the relevant period as required under the

instructions issued by the DOPT and the applicant could have been promoted to the post of Deputy Director in time.

4. On the other hand, the respondents have stated that a proposal for promotion from Superintending Surveyor to Deputy Director was initiated for the vacancies for the years 1993 and 1994 after circulation of separate seniority lists of Civil and Defence streams in accordance with the Survey of India (Group 'A' Posts) Service Rules, 1989 and subsequent DPC proposals were prepared from time to time. A Court case was filed by the then Lt. Col. A. K. Rew in Hon'ble High Court Delhi in C.W.P. No. 1141/1992 regarding restoration of his depressed seniority due to non-passing of Part 'D' Promotional Examination on due date as laid down by the Army Authority for grant of substantive promotion. The judgment was delivered by the Hon'ble High Court on 28.3.1998 and on the basis of this judgment the seniority in the grade of Superintending Surveyor was revised and circulated to the concerned officers. DPCs were convened but could not be held in 1998 and later also. Finally, the DPC was held on 27th & 28th June, 2001 for all the vacancies for the years 1993 to 2000 keeping in view the safeguard provisions of 1989 Rules for both defence and civil streams. The promotion order in the grade of Deputy Director in respect of the applicant in this case, was issued vide office order dated 26.7.2001. On assuming the charge of Deputy Director, the applicant was promoted to the grade of Deputy Director w.e.f. 30.7.2001 vide DST's notification dated 9.10.2001. In due course, the applicant was placed in the higher pay scale of Rs. 14,300-18,300 of Director/Deputy Director (Selection Grade) vide DST's notification dated 31.5.2002 w.e.f. 30.7.2001. The respondents have further contended that as per Para 6.4.4 of the DOPT's OM dated 10.4.89 where promotions are made on the basis of consolidated select list, such promotions will have only prospective effect even in cases where the vacancies relate to earlier years.

5. Heard the learned counsel of both sides.

6. The learned counsel for the applicant has contended

that there was no stay granted, by the Hon'ble High Court of Delhi in C.W.P.No.1141/1992, to hold the DPC for promotion to the post of Deputy Director. Moreover, Lt.Col.A.K.Rew was altogether in a different stream of Army Officers which has nothing to do with the seniority list maintained for the civilian officers for promotion to the post of Deputy Director. He has further submitted that there are separate seniority lists for Civil and Defence Stream, and as per Survey of India (Group 'A' Post) Service Rules, 1989 there is a different statutory quota and stream for civilian Group 'A' and Army Group 'A' officers for promotion. He has further contended that in the previous year a DPC was required to be convened for the post of Deputy Director against the vacancies of 1992 declared in 1993. Lt.Colonel M.L.Shanbhag and others filed a writ petition before Hon'ble Hyderabad High Court against some of the candidates who were to be considered by the DPC of 1992. In spite of pendency of writ petition directly against the DPC in question, the DPC was convened in time and result were declared in 1993 vide letter dated 7.7.1993 with the condition that the DPC result and promotion shall be subject to final orders in the writ petitions nos.1403/1992 and 1547/1992 filed in the High Court of Andhra Pradesh at Hyderabad. Thus, on the one hand where the DPC was directly in question before the Hon'ble Hyderabad High Court, it was convened in time and promotion order was given effect to, but in the case of the applicant the DPC was delayed for a considerable long time and thus there was a deliberate inaction on the part of the respondents. The learned counsel for the applicant has also stated that QM dated 20.12.2000 provides safeguards in three ways as under, besides provides scope of structuring of the department -

"(i) To those who were promoted to DD before 1.1.96 giving them retrospective benefit by placing them in the scale of Rs.14300-18300/- w.e.f. 1.1.96 (ii) To those eligible officers who completed 13 years of Group A service (9 years in SS grade) by providing them retrospective benefit by placing them in the pay scale of Rs.14300-18300/- from the day they completed 9 years in Superintending Surveyor on their promotion as functional DD and (iii) to those Superintending Surveyor who have completed 5 years of service by placing them in the grade of Dy.Director non-functional in the scale of Rs.12000-16500/- prospectively."

According to these instructions, the post of Deputy Director ~~Surveyor~~ is placed in the pay scale of Rs.14300-18300 and the scale has been made functional. The pay scale of Rs.12000-16500 for the Superintending Surveyor has been made non-functional. According to him, the post of Superintending Surveyor is equivalent to the post of Executive Engineer and that of Deputy Director is equivalent to Superintending Engineer. On the recommendations made by the 5th CPC, <sup>for</sup> ~~the post of~~ <sup>is placed</sup> Superintending Engineer in the higher scale of Rs.14300-18300, which <sup>is</sup> made functional and the earlier functional grade of Superintending Engineer in the pre-revised scale of Rs.3700-5000 and the revised scale of Rs.12000-16500 <sup>for Executive Engineer</sup> ~~is~~ made non-functional. Accordingly, the Department of Personnel have issued guidelines/instructions vide aforesaid letters dated 20.12.2000 and 6th June, 2000. As per para 4 of the said OM, appointment to the scale of Rs.14300-18300 "will consequently be governed by the instructions contained in paragraph 2.2 of this Department's O.M. No.22011/10/84-Estt (D) dated February 4, 1992. In other words, in the case of regular incumbents of these posts (Superintending Engineer and equivalent), who had completed the prescribed qualifying service as of sub-para 3(a) on or before January 1, 1996, they may be placed in the scale of Rs.14300-18300 from the date (January 1, 1996). In the case of other regular incumbents of these posts, who fulfil the said qualifying service on a later date, they should be appointed to the scale of Rs.14300-18300 only from the date on which they complete the prescribed Qualifying service as of sub-para 3(a) above. Their placement in the scale will be further subject to the condition that they had been promoted functionally to the posts of Superintending Engineer and equivalent against vacancies and after observing the prescribed selection procedures".

6.1 The learned counsel for the applicant has further contended that in the present case ~~if~~ the respondents had held the DPC for the post of Deputy Director in time i.e. in the

year 1993, the applicant would have been promoted to the post in that very year of Deputy Director/and, therefore, he would have been placed in the scale of Rs.14300-18300 from January 1,1996. In any case, the applicant had already put in 9 years of service in the grade of Superintending Surveyor before 1996 and was, therefore, eligible for being placed in the scale of Rs.14,300-18,300.

7. On the other hand, the learned counsel for the respondents has contended that the DPC for the vacancy of the year 1993 could not be held in time due to writ petition filed by Lt.Colonel A.K.Rew. According to him, the D.P.C. for defence and civil streams are held at the same time, so that safeguards provided in clause 3 of Annexure-I of Survey of India (Group 'A' Posts) Rules, 1989 are applied to the extent the benefit of supernumerary promotions to either stream officers i.e. D.P.C. cannot be held in isolation for either Civil Stream officers or Defence Stream Officers separately. He has also submitted that the DPC proposal for the vacancies for the years 1991 and 1992 was processed much earlier before the Writ Petitions No.14003/1992 filed by Major M.L.Shanbhag and 5 others in Hon'ble High Court of Andhra Pradesh, Hyderabad, which is still pending and W.P.No.15479/92 filed by Lt.Col. K.Balarathinam Vs. Union of India in Hon'ble High Court of Andhra Pradesh, Hyderabad has been dismissed vide order dated 7.7.1993. The DPC process for the vacancies of the years 1993 to 2000 for promotion to the grade of Deputy Director was taken up by the competent authority on 3.11.2000 on receipt of clarification from D.S.T. vide their letters dated 16.6.2000 and 25.8.2000. Therefore, the DPC was held on 27th & 28th June, 2001. According to the learned counsel for the respondents, the placement in the pay scale of Rs.14300-18300 w.e.f. 1.1.1996 would have been possible in the case of the applicant had he been promoted to Deputy Director prior to 1.1.1996.

8. We have given careful consideration to the arguments advanced on behalf of both the parties.

9. The admitted facts of the case are that the applicant

was appointed as Deputy Superintending Surveyor on 15.10.1979 and was promoted to the post of Superintending Surveyor on 10.4.1985. He was due for promotion to the next higher grade of Deputy Director in the pay scale of Rs.3700-5000 which was equivalent to the Superintending Engineer in other Engineering Services. It is also not in dispute that a vacancy arose in the year 1993 and the applicant could be considered against that vacancy for promotion to the post of Deputy Director. In fact he has been promoted against that very vacancy in the year 2001. It was due to the fact that DPC could not be held by the respondents on the ground that Lt.Col.A.K.Rew had filed a Writ Petition in Delhi High Court challenging his seniority. Although the said Writ Petition was decided in the year 1998, still the department took another three years' time to convene the DPC. As per the guidelines issued by the DOPT in the year 1989, the DPCs are required to be held every year. Earlier the post of Superintending Engineer was in the scale of Rs.3700-5000. It was a functional post. The next higher scale/selection grade of Superintending Engineer was in the pay scale of Rs.4500-7000. The 5th CPC had recommended that selection grade of Superintending Engineer Rs.4500-7000 should be made functional and the eligibility norms for occupying this grade should be 13 years of regular service in Group-A. The Pay Commission also recommended that the post of Superintending Engineer which was in the pay scale of Rs.3700-5000 and was functional should be placed in the pay scale of grade for Executive Engineers, Rs.12000-16,500 and be made non-functional. It was also recommended that the Executive Engineer with 9 years of service in the grade of Executive Engineer will be eligible for promotion to the post of Superintending Engineer (Functional) i.e. in the scale of Rs.14,300-18,300. The Government have accepted these recommendations and have issued instructions vide their OM dated 6.6.2000 and 20.12.2000 stating that those Superintending Engineer in the scale of Rs.3700-5000 (revised Rs.12000-16,500) may be placed in the pay scale of Rs.14300-18300 w.e.f.1.1.1996 provided they have completed 13 years of Group-A service. Those who have not completed 13 years of service as on 1.1.1996, they



:: 8 ::

will be considered for appointment to the scale of Rs. 14,300-18,300/- after following due procedure prescribed for promotion to the post of Superintending Engineer (Functional), and also with the condition that there is a clear vacancy in the grade of Rs.14,300-18,300. The circular issued by the Government also makes it clear that for this purpose restructuring of the cadre will be required and the post of Executive Engineer will be required to be bifurcated. 70% of the posts in the grade of Executive Engineer will be in the scale of Rs.10,000-15,200(functional) and 30% are to be placed in the pay scale of Rs. 12,000-16,500(non-functional). An executive Engineer with 9 years of service in the scale of Rs.10,000-15,200/- will be eligible for promotion to the post of 14,300-18,300 subject to actual availability of vacancy in the grade. In this connection instructions contained in para 3(a) and 3(b) of the OM dated 20.12.2000 (Annexure-A-5) are relevant, which are reproduced as below-

"Sub-para 3(a):

The functional grade of Rs.14300-18300 will be applicable to the posts of Superintending Engineer and equivalent. Executive Engineer and equivalent may be eligible to be considered for promotion to the grade of Superintending Engineer and equivalent only on completion of nine years of regular service in the grade of Executive Engineer and equivalent, including regular service, if any, rendered in the non-functional second grade for the Executive Engineer and equivalent in the pay scale of Rs.12,000-16,500. Placement of personnel in the functional grade of Rs.14300-18300 will, however, be subject to actual availability of vacancies in the grade.

Sub-Para 3(b):

It is likely that functional promotions to posts of Superintending Engineer and equivalent may be possible in some of the organized Group A Engineering services before completion of the eligibility service prescribed at sub-para 3(a) above, because of the cadre structure of individual services. Members of services so promoted will continue to remain only in the scale of pay Rs.12,000 to 16,500 till they become eligible for the scale of Rs.14,300-18,300 in terms of sub-para 3(b) above. They will, however, be entitled to the benefits of pay fixation under FR 22(I)(a)(i) on promotion. This benefit will not be available again on their placement in the scale of Rs.14300-18300."



9.1 From the instructions contained in para 3(a) & 3(b) above, it is clear that if the applicant had been promoted to the post of Deputy Director in the year 1993, he would have been placed in the pay scale of Rs.14,300-18,300 from 1.1.1996. This position has also been admitted by the respondents. In the present case, the applicant has been granted the scale of Rs.14,300-18,300 w.e.f. 30.7.2001 i.e. after a delay of more than five years. It is also a fact that the DPC for the vacancies of the year 1992 was held in time, although there was a writ petition filed by one Lt.Col.M.L.Shambhag challenging the seniority list in the Hon'ble High Court of Andhra Pradesh. The respondents, however, did not hold the DPC for the vacancy of the year 1993 on the ground that one Lt.Col.A.K.Rew had filed a Writ Petition before the Hon'ble Delhi High Court. Had the respondents held the DPC of 1993 and by putting a rider/condition that the <sup>appointment</sup> result will be subject to the final outcome of the writ petition, as was done in the DPC held in the year 1992, then the applicant would have got his promotion in the year 1993 itself and he would have been eligible for the new higher scale of Superintending Engineer(functional) of Rs.14,300-18,300/-, from 1.1.1996. Even otherwise, according to the DPC guidelines issued by the DOPT yearwise panels are required to be prepared by the DPC. As the respondents have considered the case of promotion of the applicant for the post of Deputy Director against the vacancy of the year 1993, he should be notionally promoted from 1993 and should also be granted the pay scale of Rs.14,300-18,300 w.e.f.1.1.1996 as provided in the instructions dated 20.12.2000.

10. In the result, for the reasons stated above, the O.A. is partly allowed. We direct the respondents to consider the promotion of the applicant to the post of Deputy Director in the year 1993 notionally and grant him pay scale of Rs.14,300-18,300 w.e.f.1.1.1996 with all consequential benefits within a period of three months from the date of communication of this order. No costs.

(A.K.Bhatnagar)  
Judicial Member

  
(M.P.Singh)  
Vice Chairman