

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No.155 of 1999

Jabalpur, this the 14th day of May, 2004

Hon'ble Shri M.P.Singh, Vice Chairman
Hon'ble Shri G.Shanthappay, Judicial Member

Indresh Kumar Pandey, aged about 37 years,
Superintending Engineer, Ministry of
Surface Transport, 1st Floor, Satpura
Bhavan, Bhopal (M.P.).

- APPLICANT

(By Advocate - Shri S.Paul)

Versus

1. Union of India through its Secretary,
Ministry of Surface Transport
(Road Wing), Transport Bhavan,
No.1 Sansad Marg, New Delhi.

2. V.S.Prasad, Superintending Engineer,
(Road Wing), through Secretary,
Ministry of Surface Transport,
(Road Wing), Transport Bhavan,
No.1, Sansad Marg, New Delhi.

3. Union Public Service Commission
through its Chairman, Dhaulpur House,
Shahjahan Road, New Delhi

- RESPONDENTS

(By Advocate - Shri B.da.Silva for official respondents)

O R D E R

By M.P.Singh, Vice Chairman -

By filing this Original Application, the
applicant has claimed the following main reliefs-

"(ii)direct the respondent to place the applicant
over and above the respondent no.2 in the
order dated 23.7.98(Annexure A/6).

(iii)direct the respondent to provide all consequen-
tial benefits to the applicant as if his name
is shown ab initio over and above the
respondent no.2 w.e.f. 23.7.1998."

2. The brief facts of the case are that the
applicant was appointed in Central Engineering Service
(Roads) Group 'A' under respondent no.1 on the
recommendations of the Union Public Service Commission.
According to the applicant, no adverse confidential report

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has been communicated to him nor any disciplinary proceeding or criminal case is pending or contemplated against him. The applicant was promoted as Superintending Engineer in the pay scale of Rs.3700-5000 on 1.8.1997 on adhoc basis. On 1.1.1998 vide Annexure-A-3 the applicant was granted the pay scale of Rs.14,300-400-18,300 on completion of 13 years of service with effect from 28.9.1997. The applicant was working in the post of Executive Engineer. According to the recruitment rules which are called 'Ministry of Surface Transport (Roads Wing) Central Engineering Services (Roads) Group 'A' Rules, 1995', the criteria for promotion for the post of Superintending Engineer is as under-

"Selection of Superintending Engineer (N.F.), Selection Grade shall be made in the order of seniority based on their suitability taking into account the overall performance, experience and other related matters as per the guidelines issued by the Government from time to time".

2. The contention of the applicant is that he was all along senior to respondent no.2 Shri V.S.Prasad and therefore had a preferential right of promotion and seniority over him. According to the applicant, a DPC for promotion to the post of Superintending Engineer was held on 4.3.1998. On that day, the respondent no.2 had not completed 13 years in Group-A, therefore, he could not have been considered for the post of Superintending Engineer. In the meanwhile 5th Central Pay Commission's recommendations have been received and the pay scales have been revised. Certain recommendations have been made by the Pay Commission to make the changes in the pay scale of Superintending Engineer. The recommendations of the Pay Commission are as under-

"Promotion to the scale of Rs.4500-5700/- (Revised as Rs.14300-18300) would be permitted only on completion of 13 years of service in Group 'A'".


Thereafter, on 23.7.1998 office order no.42/98 was passed promoting the applicant and private-respondent no.2 as

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Superintending Engineer, however, in the said promotion order the private-respondent no.2 has been placed at serial no.1 and the applicant at serial no.3, although the date of appointment has been shown as same i.e. 9th July, 1998. According to the applicant, he should have been placed at serial no.2 after Shri A.K. Shrivastava, who is all along senior and having meritorious record in comparison to private-respondent; and the private-respondent should have been placed at serial no.5. Aggrieved by this, he had filed a representation. The said representation was rejected vide order dated 14.12.98. Hence this OA.

3. In this case notices were issued to the respondents on 24.6.1999. The private-respondent has filed his reply on 27.7.1999. Numerous opportunities were given to respondent no.1 to file their reply. It was only on 10.2.2004 the reply has been filed by respondent no.1. We highly deprecate the casual approach of the respondent no.1 in this regard. The applicant had also made an application (M.A.No.55/2001) to incorporate certain amendment including the impleadment of UPSC as respondent no.3. The said MA 55/2001 was allowed on 21.1.2004 with a direction to the applicant to incorporate the amendment within a week. Accordingly, the amendment has been incorporated by the applicant. The learned counsel for respondent no.1 had sought further time to file reply on behalf of respondent-UPSC on 11.2.2004. Since the matter has already delayed, it was decided to hear the case on merits. Accordingly, the case was finally heard on 11.2.2004.

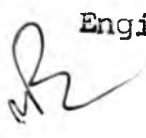
4. The respondent no.1 in their reply have stated that for promotion to the post of Superintending Engineer, the eligibility criteria is 5 years' regular service in the grade of Executive Engineer, and the post of Superintending Engineer being a selection post,



the principle of merit-cum-seniority is to be followed. The respondent no.2, who was fulfilling the eligibility criteria of 5 years service was considered by the DPC which met on 4.3.1998 and was placed at serial no.1 in the select list recommended by the DPC. The respondent no.2 superseded as many as 5 officers. The respondent no.1 have further stated that adhoc promotions are made on seniority-cum-fitness basis. The applicant was promoted as Superintending Engineer on adhoc basis as per his seniority as and when vacancies arose in the grade of Superintending Engineer. It was specifically stated in the order of adhoc promotion that "appointment to the grade of Superintending Engineer is purely on adhoc basis and will have no right for regular claim or seniority in the grade of Superintending Engineer". The applicant was given the pay scale of Rs.14300-18300 in accordance with rules on the date he completed 13 years of Group-A service.

4.1 It has been further stated by the respondent no.1 that the rule referred to by the applicant is not applicable as the same applies for selection of Superintending Engineer (Non-functional Selection Grade) whereas the applicant and respondent no.2 were considered for regular promotion to the post of Superintending Engineer. The respondent no.1 have admitted that the applicant was senior to respondent no.2, however, it does not automatically give the applicant a preferential right of promotion as claimed by him on account of the fact that promotion to the post of Superintending Engineer is done on selection basis, and for selection posts assessment is made on the basis of merit-cum-seniority and not on seniority-cum-fitness.

5. We have carefully considered the rival contentions of the parties and heard the learned counsel. We find that as per the Ministry of Surface Transport (Roads Wing) Central Engineering Service (Roads) Group 'A' Rules, 1995, for

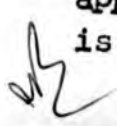


promotion to the post of Superintending Engineer, the eligibility criteria is 'Executive Engineer (Civil) with 5 years' regular service in the grade'.

5.1 We have also perused the minutes of the meeting of the DPC, conducted by the UPSC, on 4.3.1998. There were 6 vacancies which were earmarked for general category candidates for the post of Superintending Engineer (Rs.3700-5000). The respondent no.2 was eligible as he has completed 5 years of service in the grade of Executive Engineer. We find from order dated 7.6.1990 (Annexure-RJ/1) that respondent no.2 had been appointed to the grade of Executive Engineer ^{we.f.25.5.1990}. The respondent no.2 has, therefore, completed 5 years of service in the grade of Executive Engineer and he was thus eligible for being considered for the post of Superintending Engineer in accordance with the aforesaid recruitment rules. The selection has been made by the UPSC. The respondent no.2 was assessed as 'outstanding' whereas the applicant was assessed as 'very good' by the DPC. Since the post of Superintending Engineer is a selection post, the respondent no.2 has been placed at serial no.1 in the select panel by the DPC. Thus, the applicant has been superseded ^{by respondent no.2} in the grade of Superintending Engineer, which is a selection post. Once the applicant has been superseded in the grade of Superintending Engineer, he has been ranked junior to respondent no.2.

5.2 The contention of the applicant with regard to promotion to the post of Superintending Engineer Selection Grade (Rs.14,300-18,300) is not relevant at all. As per the recruitment rules, ^(a) officers in Junior Administrative Grade who have entered the fourteenth year of Group 'A' service as on 1st July of the year calculated from the year following the year of examination on the basis of which the member was appointed/recruited, is eligible for promotion

to the post of Superintending Engineer (Selection Grade) non-functional (Rs.4500-5700). The applicant has been superseded in the grade of Superintending Engineer (Rs.3700-5000) and has become junior to private-respondent no.2. Therefore, the further recruitment in the higher grade of Superintending Engineer (Selection Grade) (non-functional) (Rs.4500-5700) is not relevant in the case of the applicant. The applicant had already become junior in the grade of Superintending Engineer (Rs.3700-5000) when he was superseded by the private-respondent no.2. The order dated 23.7.1998(Annexure-A-6) clearly shows that 8 officers have been appointed on the post of Superintending Engineer (Selection Grade) in the scale of Rs.14300-18300 w.e.f. 9.7.1998 strictly in the order of seniority in the grade of Superintending Engineer. The applicant is contesting his claim with regard to his seniority in the grade of Executive Engineer. He has not contested the fact that he has been superseded in the grade of Superintending Engineer(Rs.3700-5000) as he was given lower grading by the DPC. The recommendations of the Vth Pay Commission referred to by the applicant are not relevant at all in this case. The respondents have taken action promoting the applicant as well as the private-respondent no.2 in accordance with the recruitment rules which existed on the date of holding of DPC. Therefore, the action taken by the respondents placing the private-respondent no.2 above the applicant in the seniority list of Superintending Engineer is fully justified.



6. In view of the facts and circumstances discussed above, we find that the respondents have rightly considered the promotion of the applicant as well as respondent no.2 in accordance with the relevant recruitment rules and the existing instructions issued by the DOPT on the date of holding of the DPC. We, therefore, do not find any fault in promoting the respondent no.2 on the post of Superintending Engineer, and placing him above the applicant.

7. In the result, for the reasons discussed above, this Original Application is bereft of merits and is accordingly dismissed, however, without any order as to costs.

(G. Shanthappa)
Judicial Member

(M.P. Singh)
Vice Chairman

rkv.

पृष्ठांकन सं ओ/न्या..... जयपुर, दि.....
प्रतिनिधि कार्य निम्न:-

- (1) सचिव, जयपुर जल संयंत्र, जयपुर
- (2) अध्यक्ष श्री/श्रीमती/श्री..... के कार्यालय S. Paul
- (3) प्रत्यक्षी श्री/श्रीमती/श्री..... के कार्यालय B. dandla
- (4) जल संयंत्र, जयपुर जल संयंत्र

सूचना एवं आवश्यक कार्रवाई हेतु

By order
जयपुर जल संयंत्र 20/5/04

Filed
20/5/04