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CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH
CHANDIGARH

Filed on: 08.12.2014
Reserved on: 20.08.2016
Pronounced on: 23.8.2016,

OA No. 060/01103/2014

Coram: Hon'ble Mr. Justice L.N. Mittal, Member(J).
Hon'ble Mrs. Rajwant Sandhu, Member(A).

K.B. Sharma s/o Late Sh. Surinder Mohan Sharma, aged 65 years, resident of House No. 1546, Sector 38-B, Chandigarh.

.....Applicant

By Advocate : Sh. H.S. Sethi

Versus

1. Union of India through the Secretary, Government of India, Ministry of Home Affairs, New Delhi.
2. Union Territory, Chandigarh, through its Administrator.
3. Chief Engineer, Union Territory, Chandigarh.
4. Union Public Service Commission through its Secretary, Dholpur House, New Delhi.

.....Respondents

By Advocate : Sh. Aseem Rai for respondents No. 1-3
Sh. B.B. Sharma for respondent No. 4.

O R D E R

By Hon'ble Mrs. Rajwant Sandhu, Member(A):-

1. This OA has been filed under Section 19 of the Administrative Tribunals Act, 1985, seeking the following relief:-

- (i) Quash the DPC proceedings dated 19.5.2004 (Annexure A-1) as conveyed to the applicant vide letter dated 18.9.2014 for promotion to the post of Chief Engineer in the Chandigarh Administration for the year 2003-04 vide which the applicant has been assessed as unfit for promotion ignoring the rules and law and in any case after change in circumstances the proceedings are liable to be reviewed.
- (ii) Quash the order/memo dated 20.6.2014 (Annexure A-2) vide which the applicant has been conveyed that the DPC proceedings held on 19.5.2004 did not find him fit for promotion to the post of Chief Engineer (Group 'A') in the scale of pay of Rs. 18600-22100 in the Chandigarh Administration for the year 2003-04 due to pendency of

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a vigilance case which is illegal, arbitrary, discriminatory, violative of Articles 14 and 16 of the Constitution of India.

(iii) Issue direction to the respondents to reconsider the case of the applicant for promotion to the post of Chief Engineer (Group 'A') in the scale of pay of Rs. 18600-22100 in the Chandigarh Administration against vacancy for the year 2003-04 in view of changed circumstances, rules and regulations and if found fit, promote him as such from due date with all the consequential benefits of arrears of pay and allowances and retiral benefits on that basis and interest on such delayed payments @ 18% per annum from the date the amount became due to the actual date of payment.

2. It is stated in the OA that the applicant was appointed as Sub Divisional Engineer on 29.12.1976 and was promoted as Executive Engineer w.e.f. 20.08.1986. He was given current duty charge of the post of Superintending Engineer w.e.f. 15.10.1992 and was promoted as Superintending Engineer on regular basis w.e.f. 14.08.1995. Vide order dated 19.06.1998, the applicant was placed under suspension for remaining absent from duty from 08.06.1998 to 18.06.1998. Proceedings of the disciplinary case culminated in the punishment of penalty of stoppage of two increments with cumulative effect vide order dated 29.05.1999. Against this order, the applicant filed CWP No. 422 of 2000 which stands admitted and is pending. Besides, an FIR No. 1 of 1998 under Sections 406, 409, 420 and 120-B of the Indian Penal Code read with Sections 13(1) (a) (b) (c) (d) and 13(2) of the Prevention of Corruption Act was registered against the applicant on 03.02.1998. The suspension of the applicant was revoked vide order dated 07.03.2003 and he was given current duty charge of the post of Chief Engineer, on deputation, on 27.09.2003.

3. The DPC met for considering the case of promotion of eligible Superintending Engineers to the post of Chief Engineer on 19.05.2004. The junior to the applicant was promoted as Chief Engineer in the pay scale of Rs. 18600-22100 w.e.f. 24.05.2004 (Annexure A-5) and the case of the

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applicant was kept in sealed cover due to the pendency of the criminal case. The applicant filed OA No. 770-CH-2004 before the CAT, Chandigarh Bench, seeking quashing of the order dated 24.05.2004 and this OA was disposed of vide order dated 31.7.2008 (Annexure A-6). The respondents went in appeal against this order by filing CWP No. 15630 of 2009 titled Chandigarh Administration Vs. K.B. Sharma & Ors. During the pendency of the CWP, the criminal case pending against the applicant was decided on 27.7.2013 vide which the applicant was acquitted of the charges. The applicant then submitted a detailed representation dated 7.5.2014 seeking promotion to the post of Chief Engineer. In response to the representation, the applicant was informed vide letter dated 20.6.2014 (Annexure A-2) that the sealed cover in which name of the applicant was kept, pending decision on criminal case, was opened in which the applicant was found unfit for promotion on the ground that "Having examined the character roll of Sh. K.B. Sharma for the year 2003-04 against whom vigilance case is pending, the Committee do not consider that he is yet fit for promotion to the grade of Chief Engineer (Group 'A') in the scale of pay of Rs. 18600-22100 in the Chandigarh Administration for the year 2003-04". The CWP No. 15360 of 2009 was disposed of vide judgement dated 16.7.2014 (Annexure A-7). In view of the liberty given by the Hon'ble High Court, denial of promotion to the post of Chief Engineer to the applicant is being challenged through the present OA.

4. In the grounds for relief, it has, interalia, been stated as follows:-

(i) When the case of the applicant was considered in 2004, vigilance case related to the criminal case lodged against the applicant was pending in which he was exonerated on 27.7.2013 on merits and as such, any element which prevented in promotion of applicant in 2004 has also gone and therefore the case of the applicant has to be reconsidered in

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view of the changed circumstances and as such Annexure A-2 and DPC proceedings stand vitiated.

(ii) The service record of the applicant has been upto the mark in as much as he has been issued appreciation letters from time to time and given very good or excellent comments in ACR and overall effect of the same would be "Outstanding". In terms of the instructions on the subject, the DPC was to consider the overall attributes of the ACRs and not rely only on the overall grading which process has been ignored by the DPC and as such the proceedings of the same are not sustainable in the eyes of law.

(iii) The DPC while considering the case of the applicant for promotion to the post of Chief Engineer has committed irregularity while evaluating the ACR of the applicant. The perusal of Assessment Sheet attached with Annexure A-1 would prove that the vacancy year for the post of Chief Engineer is 2003-04 and ACRs for the period of five years prior to 2003-04 are to be considered as per the instructions of the Government of India. In DPC, ACRs of five years i.e. 2001-02, 2000-01, 1999-2000, 1998-99, 1997-98 have been considered and against these years, assessment of years 1994-95, 1993-94, 1992-93, 1991-92 and 1990-91 were considered respectively as assessment of those years were not available in record. DPC has assessed ACR of 1994-95, 1993-94 and of year 1990-91 were "Very Good" whereas of years 1992-93, 1991-92 as "Good". The DPC of UPSC has assessed the assessment of these two years i.e. 1992-93 and 1990-91 on 11.8.1995 for the post of Superintending Engineer as "Good+" and "Very Good" respectively. It is a well known fact that once finding is given by DPC regarding grading of any year and cannot be altered by another DPC without assigning any reason. The assessment of year 1991-92 was "Very Good" given by reviewing and accepting authority of department which has been lowered down by DPC of UPSC in meeting held on 19.05.2004 without assigning any reason and moreover, assessment of this year was rated "Very Good" by DPC of UPSC in meeting held on 11.08.1995. It is very clear that UPSC has not acted in impartial manner and it is clear irregularity on the part of UPSC. Regarding assessment of year 1992-93, DPC held on 11.8.1995, has assessed as Good+ whereas DPC held on 19.5.2004 has assessed Good. It is very clear that assessment of any year which is adverse and has not been communicated cannot be considered while making assessment of overall grading required for suitability for any post.

5. The applicant has also cited some judgements to press his claim that the assessment of the year 1991-92 has not been done by the DPC for the post of Chief Engineer in a proper manner. Also, since the ACRs with "Good" entry have not been conveyed to the applicant, these could not be

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taken into account for reckoning for assessing him while considering his case for promotion as Chief Engineer. These are as follows:-

- (i) Abhijit Ghosh Dastidar Vs. UOI & Ors., 2010 (1) SCC (L&S) 959
- (ii) A.K. Narula, AIR 2007 SC 2296
- (iii) U.P. Jal Nigam and Ors. Vs. Prabhat Chandra Jain & Ors., 1996(2) SCC 363
- (iv) State of U.P. Vs. Yamuna Shanker Misra & Anr., 1997(4) SCC 7
- (v) Dev Dutt Vs. UOI, 2008 (2) SCC (L&S) 771
- (vi) Ashim Kumar Sharma & Ors. Vs. Arun Kumar Roy, 2002 (1) SLR Page 472

6. In the written statement filed on behalf of the respondent No. 4, UPSC, the facts of the matter have not been disputed. It has further been stated therein that the benchmark for promotion to the post of Chief Engineer was "Very Good" and an officer attaining at least four benchmark gradings out of the five ACRs as relevant to the assessment matrix of the vacancy year was to be assessed as "Fit" for promotion. As the applicant's ACRs for reckonable period i.e. 1997-98 to 2001-02 were not available, the DPC assessed his available ACRs from 1990-91 to 1994-95 for the purpose as provided in para 6.2.1(C) of the guidelines circulated by the DOP&T vide OM No. 22011/5/86-Estt.(D) dated 10.04.1989 (Annexure R-4/1). Having carefully examined the ACRs, the DPC assessed his ACRs for 1991-92 and 1992-93 as "Good" which is below the prescribed benchmark. As only three ACRs out of five ACRs considered by the DPC were meeting the required bench mark assessment i.e. "Very Good", the DPC assessed him "Unfit" for vacancy year 2003-04. The DOP&T guidelines dated 10.04.1989 provide as under:-

"Para 5:- Each DPC should decide its own method and procedure for objective assessment of the suitability of the candidates....."

"Para 6.1.2:- DPCs enjoy full discretion to devise their own methods and procedures for objective assessment of the suitability of candidates who are to be considered by them."

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“Para 6.2.1 (e):- The DPC should not be guided merely by the overall grading, if, any, that may be recorded in the CRs but should make its own assessment on the basis of entries in the CRs, because it has been noticed that sometimes the overall grading in a CR may be inconsistent with the grading under various parameters or attributes.”

It is further stated that as ACRs of 1997-98 to 2001-02 of the applicant were not available, in the absence of ACRs in the relevant feeder category i.e. ‘Superintending Engineer’, the DPC held on 19.05.2004 assessed the ACRs of the applicant for the years 1990-91 to 1994-95 based on his performance in the category lower to the feeder post, i.e. Executive Engineer. The DPC held in the Commission on 11.08.1995 wherein his ACRs for 1991-92 and 1992-93 were assessed as “Very Good” and “Good+” respectively was for the promotion from the post of “Executive Engineer” to the post of “Superintending Engineer”, whereas, the DPC held on 19.05.2004 wherein his ACRs for 1991-92 and 1992-93 were assessed as “Good” was for the promotion to the upper post i.e. from Superintending Engineer to the post of Chief Engineer which carries higher responsibilities and duties. The independent assessment made by two separate DPCs held for promotion to two different posts in the hierarchy are thus not comparable and the contention of the applicant in this regard is not tenable.

7. The written statement filed on behalf of respondents No. 1-3 is merely a narration of the history of the case and the respondents have taken a stand similar to that of respondent No. 4, UPSC regarding the role of DPC in assessing the record of an officer being considered for promotion to a higher post.

8. In the rejoinder filed on behalf of the applicant, it has been pressed that the respondents have not followed the instructions in as much

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as they have graded applicant without any application of mind which vitiates his non-selection. ACR of the applicant for the period 1992-93 has been graded "Good" i.e. below the bench mark which has never been conveyed to the applicant and according to settled law by the Courts and the judgement of the Principal Bench in the case of Rohit Kumar Parmar Vs. UOI, this ACR is to be ignored and in order to complete five ACRs for consideration, the ACR for the period 1989-90 is to be taken into consideration which is "outstanding". The UPSC while considering the case of the applicant for the post of Superintending Engineer has upgraded this ACR of 1989-90 as "Outstanding" as would be clear from Annexure A-13.

9. Arguments advanced by learned counsel for the parties were heard when learned counsel for the applicant narrated the background of the matter. He mainly stressed that the overall grading of the applicant in the ACR for 1991-92 was "Very Good" and this was taken as "Very Good" when the applicant was assessed by the DPC for promotion as Superintending Engineer. The DPC that met in 2004 for consideration of eligible Superintending Engineers for promotion as Chief Engineer could not, without stating the reasons for doing so, downgrade this ACR to "Good". If the ACR for 1991-92 was treated as "Very Good", the applicant would have four out of five ACRs as "Very Good" and hence would be eligible for promotion as Chief Engineer. In any case, the ACRs that had been treated as "Good", had not been conveyed to the applicant and keeping in view the guidance of the Supreme Court in Dev Dutt (supra), these ACRs should have been ignored from consideration. Going further back into the service record of the applicant, the ACR for 1989-90 would then have been considered and the grading for this year was "Outstanding". Hence, on all counts, the applicant was entitled to be considered as "fit" for

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promotion as Chief Engineer and he was entitled to be promoted as such from the date when his junior was promoted.

10. Sh. B.B. Sharma, learned counsel for the respondent No. 4, UPSC, drew attention to OM dated 10.4.1989 regarding Departmental Promotion Committee and related matters – Consolidated instructions on (Annexure R-4/1) and referred to para 6.2.1 therein. He stated that the DPC was not to be guided merely by the overall grading, but would make its own assessment on the basis of the entries in the ACRs. He also stated that when the ACRs for 1991-92 and 1992-93 were assessed on 11.8.1995, the applicant was being considered for promotion from the post of Executive Engineer to the post of Superintending Engineer whereas the DPC held on 19.5.2004 was for promotion to the post of next higher post of Chief Engineer and both ACRs for 1991-92 and 1992-93 were assessed as "Good".

11. Sh. Aseem Rai, learned counsel for the respondents made his submissions similar to those by Sh. B.B. Sharma.

12. We have given our careful consideration to the matter and also perused the judgements cited by learned counsel for the applicant. We are unable to agree with the contention of the learned counsel for the applicant that since the ACRs of 1992-93 in which the grading of the applicant was "Good", had not been conveyed to the applicant, this ACR should not have been taken into account for reckoning while assessing fitness of the applicant for promotion to the post of Chief Engineer. The applicant has retired from service in 2007 and the officers under whom he worked and who recorded ACRs for 1991-92 and 1992-93 would also have retired long back. It would not be feasible at this stage to issue any direction that the ACRs of these years should be conveyed to the applicant to enable him to file representation against the grading and for the respondents to decide

such representation. The judgement in Dev Dutt (supra) was delivered in 2008. Prior to this, there were no administrative instructions regarding conveying the content of the ACRs that were not adverse. Although it is true that in 1995, the DPC assessed the applicant as "Very Good" for 1991-92, the guidelines issued by the DOPT do not bind a DPC that an assessment made at one time regarding a particular assessment year has to be replicated at a later stage. It is true that in 1995, the applicant was being assessed for his fitness for promotion as Superintending Engineer while in 2004, he was being assessed for the post of Chief Engineer. Due to non-availability of ACRs of the years immediately prior to this period, as the applicant was under suspension, the DPC had to take into account the ACRs of the period when the applicant was in service and the ACRs taken into account for consideration by the DPC in 2004 relate to the period when the applicant was working as Executive Engineer for the most part. The DPC was entitled to assess the applicant more strictly since consideration was for the higher post of Chief Engineer. Hence, the assessment made for 1991-92 (when the applicant was an Executive Engineer) differently in 2004 from that made in 1995 cannot be faulted.

13. In view of the discussion above, we conclude that there is no merit in this OA and the same is rejected.

**(RAJWANT SANDHU)
MEMBER(A)**

**(JUSTICE L.N. MITTAL)
MEMBER(J)**

Dated: 23.8.2016
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