

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

OA No. 060/00346/2014

Date of decision: 27.7.2015

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**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)
HON'BLE MR. UDAY KUMAR VARMA, MEMBER (A)**

S.K. Aggarwal, aged 66 years S/o Late Sh. Mela Ram, Retired Sub Divisional Engineer (Public Health), Engineering Department, Union Territory, Chandigarh Administration, Chandigarh, Resident of H. No.1234, Universal Enclave, Sector 48-B, Chandigarh (U.T.).

.....Applicant

(By Advocate Shri N.P. Mital)

Versus

1. Union Territory, Chandigarh Administration, through its Advisor, Union Territory, Chandigarh Administration, U.T. Civil Secretariat, Sector 9-D, Chandigarh.
2. Secretary Engineering, Engineering Department, Chandigarh Administration, U.T. Civil Secretariat, Deluxe Building, Sector 9-D, Chandigarh.
3. Chief Engineer, Union Territory, Chandigarh, U.T. Civil Secretariat, Deluxe Building, Sector 9-D, Chandigarh.

.....Respondents

(By Advocate Shri Aseem Rai)

ORDER

HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J):-

Challenge in this Original Application is to an order dated 23.01.2004, whereby the representation of the applicant in pursuance to an order of this Court in earlier OA no.341/CH/2000, decided on 29.05.2002, was rejected, holding that he is not entitled for grant of seniority and other benefits w.e.f. 21.02.1989 and that his seniority will be counted from 05.05.1999 – the date from which the post of SDE under AMIE quota fell vacant and he was actually promoted. He has also sought a direction from this Tribunal to set aside the impugned order and grant him seniority from 21.02.1989 with all consequential benefits.

2. The moot question for our consideration is whether or not an employee, who was promoted on ad hoc basis against the reserved point of other category than the category to whom he belongs, can claim benefit of the ad hoc service rendered on the promotional post on ad hoc basis for the purpose of seniority and other consequential benefits?

3. The facts, which led to the filing of the present Original Application, are that the applicant entered into the service with the respondents as a Sectional Officer (Public Health) on 13.05.1970. After acquiring diploma in civil engineering from Central Polytechnic, Chandigarh, he was taken on the strength of the post of Section Officer w.e.f. 13.08.1971. During his service career he acquired qualification of AMIE Civil Engineering from the Institute of Engineers, Calcutta on 16.11.1987. The next promotional post in the hierarchy is the post of Sub Divisional Engineer governed by

the rules known as 'Punjab Service of Engineers (Class II) P.W.D. (Building and Roads Branch), Rules, 1965' (hereinafter referred to as '1965 Rules'). Rule 6 of the 1965 Rules deals with the method of recruitment. Sub rule (3) to Rule-6 deals with a situation where in public interest as a stop gap arrangement if a person is to be appointed other than the source to whom he belongs then he will not be entitled for the service rendered by him for the purpose of seniority. The post of Sub Divisional Engineer (Public Health) is in the cycle of 10 vacancies and there are 10 vacancies operating quota-wise. Vide an office order dated 21.02.1989 the applicant was considered for ad hoc promotion purely as a stop gap arrangement against the vacancy reserved for other category than that of applicant. He approached this Tribunal by filing OA no.341/CH/2000 wherein he sought similar prayer as made in the present OA for grant of seniority from the date he was promoted on ad hoc basis. The said OA was disposed of 29.05.2002 with a direction to the respondents to finalize the seniority list. In pursuance of the above direction of this Court the respondents passed an order on 23.01.2004, whereby rejecting his claim, which led to the filing of another OA no.235/CH/2004. The said OA was dismissed on 06.04.2005, which was subject matter before the Hon'ble High Court in judicial review at the hands of the applicant by filing CWP no.13087/CAT/2005, which was disposed of on 24.03.2014 and the applicant was given liberty, if so advised, to file a fresh petition before this Tribunal. Hence the present Original Application.

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4. Shri N.P. Mittal, learned counsel appearing for the applicant submitted that the view taken by the respondents is totally against the Rules. Once the 4th vacancy was available in the 4th cycle of 10 vacancies meant for Sectional Officers having AMIE qualification then the applicant is to be given seniority from the date he was promoted whether it is on ad hoc basis and against the vacancy meant for other category. He submitted that the respondents in an arbitrary manner have granted applicant the benefit from 5.5.1999 instead of 21.02.1989, when he was promoted on ad hoc basis, therefore the impugned order is liable to be set aside and a direction be issued to the respondents to grant him all consequential benefits.

5. Pursuant to the notice the respondents filed short written statement wherein they demolished the case of the applicant by submitting that he was considered and promoted on ad hoc basis in public interest in the exigency of service against the vacancy of direct recruitment vide order dated 21.02.1989. However, when the vacancy became available in his quota, he was regularly promoted on 05.05.1999 and was assigned seniority from that date. It is submitted that 1965 Rules were further amended by the Amended Rules of 1981 notified on 10.03.1988 where against the 10th point roster each vacancy has been indicated as reserved for particular quota. For AMIE quota 4th vacancy is reserved in each cycle. In para 4 (ii) the respondents have submitted that all the three vacancies were already occupied by persons senior to applicant in their respective quota, therefore the claim of the applicant cannot be accepted.

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6. Shri Aseem Rai, learned counsel appearing on behalf of the respondents submitted that since the applicant was promoted on 05.08.1999, therefore he was rightly given seniority from that date.

7. We have given our thoughtful consideration to the entire matter and perused the pleadings available on record with the able assistance of the learned counsel appearing for the parties.

8. As indicated above, we have to adjudicate whether the applicant is entitled to seniority from the date when he was promoted on ad hoc basis in public interest against the vacancy under the roster point meant for other source?

9. Conjunctive perusal of the pleadings makes it clear that the applicant was given ad hoc promotion in public interest against a vacancy meant for direct recruitment and not of his own quota, i.e., AMIE quota. He continued to work there till he was regularly promoted on the post which was available in the 4th cycle. We have perused the roster maintained by the department, which is of 10 vacancies in which the vacancies have been distributed amongst different sources. All the three cycles where point no.4 is given to AMIE were already manned by the candidates of that very category. The same reads as under:

(A) **1ST CYCLE OF TEN VACANCIES**

Sr. No.	Category / source to whom the point goes as per Rules	Vacancy occupied by	Date
1.	Direct / Deputation	Sh. D.S. Cheema	27.11.1981

2.	S.O. Promotee	Sh. Shyam Singh	20.12.1985
3.	Direct / Deputation	Sh. K.N. Gupta	12.03.1986
4.	AMIE Promotee S.O.-	Sh. R.C. Raina	17.08.1987
5.	Direct / Deputation	Sh. G.B.S. Chopra	12.08.1986
6.	Direct / Deputation	Sh. Ajay Khosla	01.02.1987
7.	Direct / Deputation	Sh. R.P. Misra	17.02.1987
8.	S.O. Promotee	Sh. Yash Pall Chhabra	06.02.1981
9.	Direct / Deputation	Sh. D.K. Bhasin	13.04.1987
10.	Draftsman quota	Sh. Satnam Singh	03.10.1990

(B) **2ND CYCLE OF TEN VACANCIES**

Sr. No.	Category / source to whom the point goes as per Rules	Vacancy occupied by	Date
1.	Direct / Deputation	Sh. P.R. Sharma	14.09.1987
2.	S.O. Promotee	Sh. Rajiv Suman	20.03.1986
3.	Direct / Deputation	Sh. R.C. Dewan	04.07.1988
4.	AMIE Promotee S.O.-	Sh. Chatter Singh	20.03.1986
5.	Direct / Deputation	Sh. N.K. Choudhry	02.09.1988
6.	Direct / Deputation	Sh. M.L. Gulati	12.04.1990
7.	Direct / Deputation	Sh. Ashok Kumar	26.09.1990
8.	S.O. Promotee	Sh. B.M. Verma	20.03.1986
9.	Direct	Sh. Rajinder Singh	06.08.1990
10.	Direct	Sh. Amin Chand	05.09.1990

(B) **3RD CYCLE OF TEN VACANCIES**

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Sr. No.	Category / source to whom the point goes as per Rules	Vacancy occupied by	Date
1.	Direct / Deputation	Vacant	
2.	S.O. Promotee	Sh. V.D. Shahi	21.06.1986
3.	Direct / Deputation	Vacant	
4.	AMIE Promotee S.O.-	Sh. Tarlochan Singh	09.06.1987
5.	Direct / Deputation	Vacant	
6.	Direct / Deputation	Vacant	
7.	Direct / Deputation	Vacant	
8.	S.O. Promotee	Sh. Krishan Kumar	09.06.1987
9.	Direct / Deputation	Vacant	
10.	Direct / Deputation	Vacant	

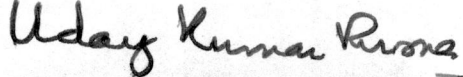
10. There is no denial by the applicant that he was given ad hoc promotion against the post of direct recruitment as there was no post lying vacancy in his quota, which was in terms of Rule 6 (3) of the 1965 Rules and was regularly promoted when the vacancy became available in his quota of AMIE. Therefore, rightly he was given seniority from the date of his actual promotion. Even otherwise, instructions have been issued by the Chandigarh Administration to the effect that if a person is having current duty charge then the period when he was having the current duty charge will not be counted for the purpose of seniority. We can term his ad hoc promotion in public interest not more than current duty charge.

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Therefore, we find no illegality to interfere with the impugned order. The OA is devoid of merit and is accordingly dismissed.

11. No order as to costs.


(SANJEEV KAUSHIK)
MEMBER (J)


(UDAY KUMAR VARMA)
MEMBER(A)

Place: Chandigarh

Dated: 27.7.2015

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