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**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...
ORIGINAL APPLICATION NO.060/01150/2014

**Order Reserved on 14.10.2015
Pronounced on 20.10.2015**

...
**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J).
HON'BLE MRS. RAJWANT SANDHU, MEMBER (A)**

...
MES No.372298, Amrik Singh son of Sh. Bakshish Singh, aged 48 years,
working as Junior Engineer, E/M, Office of Garrison Engineer (East),
Jalandhar.

... Applicant

Versus

1. Union of India through the Secretary to the Government of India,
Ministry of Defence, New Delhi.
2. Engineer-in-Chief, Military Engineering Services, Army Headquarters,
Kashmir House, New Delhi.
3. Chief Engineer, Western Command, Chandimandir C/o 56 APO.

... Respondents

Present: Sh. G.S. Sathi, counsel for the applicant.
Sh. Sanjay Goyal, counsel for the respondents.

ORDER

BY HON'BLE MRS. RAJWANT SANDHU, MEMBER (A)



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

"8(1) Quash the order dated 18.05.2013 (Annexure A-1) to the extent that the applicant has been promoted as Junior Engineer (E&M) forthwith and the date from which he actually joined his post instead of from April 2009 itself, when juniors to him had been so promoted and despite fact that his promotion has taken place by virtue of a review DPC meeting

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pursuant to which incumbents were promoted vide order dated 15.04.2009 and once the name of the applicant has been included in that promotion the same cannot be made effective from 2014.

- (ii) Issue direction to the respondents to grant actual benefit of pay and allowances and date of promotion as has been given to individuals in promotion order dated 15.04.2009 as he has been promoted from that very date but while issuing actual promotion order it has been made effective prospectively with all the consequential benefits including arrears of pay and allowances with interest thereon @ 18% per annum from the date of amount became due to the actual date of payment."

2. In the grounds for relief it has been stated that impugned order Annexure A-1 and action of the respondents in not promoting the applicant from due date is without logic or reason and thus is illegal, arbitrary, discriminatory, void ab-initio, harsh, colourable exercise of power and violative of articles 14 and 16 of the Constitution of India and as such are liable to be quashed and set aside because:

- i. The sequence of events shows that it is due to administrative lapse that the DPC firstly met on 2009 but did not consider the case of the applicant. Realizing its mistake the department undertook to review the issue and gave in writing in this Tribunal upon which case of the applicant was reviewed and his claim for promotion was accepted from 2009 itself by inclusion of his name in the panel of 2009 and promotion order of 2009. However, it is only while issuing actual promotion order/posting order that his promotion has been made effective forthwith instead of from 2009 and taking advantage of same, the benefit flowing from inclusion of name of the applicant from 2009 panel is being denied which is illegal and arbitrary.
- ii. Para No.5 of the impugned order is antithesis of main empanelment/promotion orders and as such is without jurisdiction and cannot be sustained in the eyes of law.

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iii. In *Nirmal Ch. Bhattacharjee and Ors. Vs. Union of India and Ors.*, 1991 Supp (2) SCC 363, the applicants therein were denied the chances of becoming Ticket Collectors on account of administrative lapse. It was held that "The mistake or delay on the part of the department therefore should not be permitted to recoil on the appellants." Therefore, the delay in convening the DPC at the appropriate time and approving the selection by the competent authority should not stand in the way of the applicant for getting promotion as Deputy Director General (Geology).

iv. In *A.C. Mitra Vs. State of Orissa*, AIR 1970 Orissa 19 wherein it was held that non-consideration of a claim of an employee, otherwise qualified for consideration, vitiated the exercise of jurisdiction in the matter and subject the action of the appropriate authority in the matter of grant of promotion, to the scrutiny of the Court. Once the Court is satisfied the employee was entitled to consideration has been left out, a case is made out for interference for breach of the guarantee conferred under Article 16 of the Constitution of India. This statement of the Apex Court would show that the conferment of power to convene necessary DPC meeting for consideration of an employee for promotion "is the duty" and it should be exercised well in time so that an eligible employee who would be found suitable will get promotion in time. If the DPC is not convened in time, it amounts to arbitrariness and this is not permissible under Article 14 of the Constitution of India. It is only for the purpose of coming to the conclusion that non-convening of a DPC meeting at the relevant point of time when an employee is to be considered, the decision is relied. Thus, non-convening of the DPC in time would mean that the authorities have failed in discharging their duties and non-convening of the DPC in time must be taken to mean as arbitrary action on the part of the concerned authorities.

3. In the written statement filed on behalf of the respondents it has been stated that regarding relief for quashing of Para 5 of Annexure A-1 i.e. posting cum promotion order dated 18.05.2013 issued by EIC(1) Section and payment of consequential benefits given to individuals promoted vide order dated 15.04.2009 (SRO) is concerned, EIC (1) Section has issued amendment to its order

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dated 24.06.2013 (Annexure R-1). As regards seniority, the copy of SRO nO.03/S/2013 dated 01.05.2013 vide which applicant was promoted as JE (E/M) alongwith service particulars has been duly forwarded to E-in C's Branch vide letter dated 07.08.2014 (Annexure R-2) as seniority as JE is to be assigned by them. It is further stated that regarding release of pay or allowances for the period prior to physically joining on post, the relief sought is not to be granted keeping in view the facts and circumstances of the case.

4. In the rejoinder filed on behalf of the applicant it has been stated that the applicant approached this Tribunal by filing O.A. No.1170/PB/2012 claiming inclusion of his name in the panel of 2009. The respondents filed a reply stating that the competent authority was considering the case of the applicant for treating him as Skilled Trademan from the date of his initial appointment as Valveman and that the applicant is being considered for promotion to the post of J.E. and his case will be considered in the meeting of the DPC. Thereafter, if the DPC finds the applicant to be fit for promotion then the relief asked for by him will be granted to him and a period of four months in that regard was prayed for. This Tribunal disposed of the O.A. on 22.01.2013 with direction to the respondents to consider the applicant's case for grant of the relief asked for by him within four months. The relief claimed by the applicant was for promotion as Junior Engineer from 2009 itself. The respondents

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considered the case of the applicant for promotion by convening a review DPC on 27.04.2013 of original DPC of 2009 and amended the SRO 12/S/2009 dated 04.03.2009 and placed the applicant's name at Sr. No.09A i.e. below Sr. No.09 MES No.373826 Sh. Harinder Singh, Elect (SK) and above Sr. No.10 MES No.373409 Sh. Manjit Singh, Elect. (SK) vide order dated 01.05.2013 (Annexure A-4). Hence the applicant stood promoted w.e.f. 2009 itself keeping in view the relief prayed for by him in the O.A. and accepted by the respondents in their short reply upon which the OA was disposed of by the Tribunal.

5. When the matter came up for consideration today, learned counsel for the respondents stated that vide letter dated 24.06.2013 (Annexure R-1), the paras 3 to 9 had been deleted from the promotion order of the applicant dated 18.05.2013 and the promotion had been allowed w.e.f. April 2009 itself. Matter regarding revising seniority had also been referred to E-in C Branch, Army Headquarters, for action and the consequential benefits of the order dated 18.05.2013 and 24.06.2013 would be released to the applicant.

6. Sh. G.S. Sathi, learned counsel for the applicant stated that although reference had been made to E-in-C Branch more than one year ago, no action had been taken regarding assigning of correct seniority to the applicant. Moreover, arrears of pay on account of

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applicant having been promoted w.e.f. April 2009 had also not been released to him.

7. We have given our careful consideration to the matter. The contention of the respondents as per their written statement that payment of pay and allowances is to be made for the period that an individual works on the post and not for the period prior to physically joining on the post, is not acceptable in the case of the applicant. The promotion of the applicant as JE was held up for no fault of the applicant and he was legitimately entitled for promotion from April 2009 as has been conceded by the department as per orders dated 18.05.2013 and 24.06.2013. Hence the applicant is entitled to release of arrears of pay w.e.f. April 2009. His pay as JE may be fixed on the date from which he has been promoted. Arrears due may be computed thereafter and released to the applicant within six weeks from the date of a certified copy of this order being served upon the respondents. Issue of seniority of the applicant may also be settled within this period.

8. The O.A. is disposed of with the above directions. No costs.

(RAJWANT SANDHU)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Place: Chandigarh.

Dated: 20.10.2015

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अनुभाग अधिकारी

27/10/15
जुज (Judl.)
अधिकार
Centre for Judicial Bench
चण्डीगढ़ / Chandigarh

True Copy
[Signature]

27/10/15