

**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A. No.1360/2013

Thursday, this the 11th day of February 2016

**Hon'ble Mr. A.K. Bhardwaj, Member (J)
Hon'ble Mr. V.N. Gaur, Member (A)**

N C Jedia
SE Electrical, DDA
r/o 176A/ A-2
Lawrence Road, Delhi

..Applicant
(Mrs. Jyoti Singh, Senior Advocate (Mr. Padma Kumar S, Mr. R A Sharma, Ms. Tinu Bajwa and Mr. Krishan Kumar, Advocates with her)

Versus

Delhi Development Authority
Through its Vice Chairman
Vikas Sadan, INA, New Delhi

..Respondent
(Mrs. P.K. Gupta, Advocate)

O R D E R (ORAL)

Mr. A.K. Bhardwaj:

Certain Junior Engineers of Delhi Development Authority (DDA) approached Hon'ble High Court of Delhi by way of catena of Writ Petitions, including C.W. No.1037/1989. Their grievance in the Writ Petition was that when the vacancies of Assistant Engineers were available from 1984 onwards and they had also acquired eligibility for promotion to the post of Assistant Engineer (Electrical), the Departmental Promotion Committee (DPC) could not take place and the vacancies remained unfilled. Their plea before the Hon'ble High Court was that their promotion should have been made from retrospective effect, i.e., instead of December 1990, the same should be from 09.02.1984. They remained unsuccessful before the Single

Judge of Hon'ble High Court but the Division Bench could take a view that in terms of O.M. dated 24.12.1980 year-wise panel should have been prepared. In implementation of the Order passed by the Division Bench, the Junior Engineers, who were appellants before the Hon'ble High Court, could get antedated promotions. As a ramification, they became senior to the applicants as Assistant Engineer. When such was the situation and in view of the changed seniority list issued in the year 2010, i.e., on 18.03.2010, it could be found that the seniors of the applicant herein were working on a lower post, he was sought to be reverted, thus he approached this Tribunal by filing O.A. No.2715/2011, which came to be disposed of in terms of Order dated 07.03.2012. In the said Order, this Tribunal could take a view that once the applicant was not ineligible for promotion and the principle of natural justice had not been followed, the O.A. deserved to be allowed. Relevant excerpt of the Order reads thus:-

“2. Pursuant to directions given in the last order, the respondents have filed an additional affidavit. Even though, it is the case of the applicant that no DPC has been held even for the post of Executive Engineer, which plea we have recorded in our order dated 21.09.2011, but we will still go by the contents of the additional affidavit filed on behalf of the respondents. Order dated 21.09.2011 reads as follows:

“MA 2505/2011

This order be read in continuation of earlier order dated 03.08.2011 where questions involved in OA have been mentioned. After notice, when the matter came up for hearing on 13.9.2011, respondents sought time to file their reply. The matter now stands posted for hearing on 25.10.2011. Meanwhile, Misc. Application has been filed by applicant seeking stay of operation of the impugned order dated 20.07.2011.

It is the case of the applicant in the Miscellaneous Application that the impugned order contains wrong facts that DPC has been held for the post of Assistant Engineer. The applicant is stated to have made an application seeking supply of information/documents under Right to Information Act,

which was replied by the respondents vide their letter dated 27.07.2011, the relevant part whereof reads as follows:-

“In this context, it is intimated the matter regarding finalization of the seniority of AE(E/M) is purely an administrative matter dealt with by the Personnel Branch-I. C.R. Cell deals with the promotion cases only. No such DPC for revising/reviewing the seniority list of AE(E/M)/EE(E/M) was ever held. Hence, providing the copies of agenda & minutes of DPC meeting does not arise.”

Issue notice to the respondents, returnable on 25.10.2011. In the meanwhile, status quo as regards applicants present status shall be maintained. We clarify that if applicant has not been relieved of the post from which he was reverted, he would be allowed to continue on the post.

Process DASTI.”

The contents of paras 1 to 9 of the additional affidavit reveal that the respondents have held DPC for promotion to the post of Executive Engineer from time to time mentioned therein. From the contents of para 10, it would be clear that there has been no DPC for the post of Superintending Engineer, and the plea raised by the respondents is that be it the applicant or his seniors, no one is, under rules, so far eligible to be promoted to the post of Superintending Engineer. It may be recalled that the impugned orders have been passed pursuant to the directions given by the Hon’ble High Court, already adverted to above. If the case of the respondents was to be that the applicant and his seniors were eligible, then in that case, there ought to have been DPC before the applicant could be reverted from the post of Superintending Engineer. The concerned DPC would naturally consider the service credentials of every one, and, as mentioned earlier, it would have been possible that some of the seniors of the applicant would not have been promoted as per their service credentials. Reversion of the applicant would have been dependent upon his service records and that of his seniors. However, this has not happened, and if that be so, reversion of the applicant cannot be, by any stretch of imagination, in consequence of the compliance of the directions given by the Hon’ble High Court, and, therefore, the impugned order would not record the reason for reversion of the applicant. Admittedly, there is no mention at all in the impugned order that the applicant has been reverted because he is not eligible for promotion to the post of Superintending Engineer. We would not like to go into this question as surely, if the reasons for his reversion are entirely different than the one mentioned in the impugned order, the same has to be set aside, and surely and admittedly, the applicant before the order of reversion against him came to be passed, was not heard in the matter. The applicant was promoted on the post of Superintending Engineer (Elec.) based on the recommendations of the duly constituted DPC, way back on 09.07.2008, as mentioned in

para 1 of the Original Application. He had thus been occupying the post of Superintending Engineer for a long time before the order of reversion came to be passed. One could understand if the order of reversion was to be pursuant to the directions of the Hon'ble High Court, and could be issued without putting the applicant to notice, even though he may not be a party in the proceedings before the High Court, but surely, if the reasons are entirely different, the principles of natural justice required that he is heard in the matter.

3. For the reasons, as mentioned above, this Original Application deserves to be allowed. The part of the impugned order dated 20.07.2011 withdrawing the promotion of the applicant is quashed and set aside, of course with liberty to, proceed against the applicant and revert him, if the circumstances may so warrant, after putting him to notice, hearing him and then passing a speaking order. If the applicant is not being allowed to do duty on the post of Superintending Engineer, as we are told during the course of hearing, he shall be allowed to do so immediately, till such time the order, if at all, withdrawing his promotion, following the proper procedure, is passed. There shall, however, be no order as to costs.

4. Contempt petition is closed."

2. After the said Order, the respondent passed the impugned order with due regard to the principal of natural justice, thus the applicant filed the present O.A. praying therein:

"(a) This Hon'ble Tribunal may be pleased to quash and set aside the Order dated 16.4.2013 (Annexure A-1) with all consequential benefits.

(b) Any other relief which this Hon'ble Tribunal may be pleased to pass under the facts and circumstances of the case."

3. The plea of the applicant in the O.A. is that once the post of Superintending Engineer is selection post and no DPC as per revised seniority list of Executive Engineer dated 18.03.2010 has been held, it cannot be viewed that the applicant is not entitled to promotion. Learned senior counsel for applicant submitted that by now the applicant has retired, thus the view taken by the respondent that his continuance on the

post of Superintending Engineer would be causing heartburning for the senior has become otiose.

4. On the other hand, Mrs. P.K. Gupta, learned counsel for respondent espoused that once the Assistant Engineers, who have turned senior to the applicant, are working as Executive Engineer, the applicant has to be reverted from the post of Superintending Engineer.

5. We heard the learned counsels for the parties and perused the record.

6. As has been ruled by the Hon'ble Supreme Court in number of judgments, including **State of Uttaranchal & another v. Dinesh Kumar Sharma**, 2006 (13) SCALE 246 and **Baij Nath Sharma v. Hon'ble Rajasthan High Court at Jodhpur & another**, 1998 SCC (L&S) 1754, the promotion becomes effective either from the date of assuming the charge of the post or the date of DPC, whichever is later, thus no retrospective promotion can be made. Relevant excerpt in **Dinesh Kumar Sharma's** case reads thus:-

“18. With regard to the issue as to whether the respondent has the right to claim promotion and seniority from 1995-96 when the vacancy arose or whether seniority will be reckoned from the date of substantive appointment which is 1999, it can be observed that an employee will be considered member of a cadre from the date of his/her substantive appointment in the cadre after selection. Substantive appointment is defined under Rule 3 (k) of the Uttar Pradesh Agriculture Group "B" Service Rules, 1995 where:

Substantive appointment" means the appointment not being an ad-hoc appointment, on a post in the cadre of the service, made after selection in accordance with the rules and if there are no rules, in accordance with the procedure prescribed for the time being by executive instructions issued by the Government.

Therefore it is clear that unless a selection is made in accordance with the rules and in the absence of rules, in accordance with the procedure prescribed for the time being by executive instructions

issued by the Government and there can be no automatic promotion or appointment to any post on the recommendation of the Public Service Commission, unless the government sanctions such promotion and appointment.

xxx xxx xxx xxx

23. Another issue that deserves consideration is whether the year in which the vacancy accrues can have any relevance for the purpose of determining the seniority irrespective of the fact when the persons are recruited. Here the respondent's contention is that since the vacancy arose in 1995-96 he should be given promotion and seniority from that year and not from 1999, when his actual appointment letter was issued by the appellant. This cannot be allowed as no retrospective effect can be given to the order of appointment order under the Rules nor is such contention reasonable to normal parlance. This was the view taken by this Court in the case of Jagdish Ch. Patnaik and Ors. v. :State of Orissa and Ors. [1998] 2 SCR676 .

24. Coming to the question of whether the High Court was justified in overlooking and ignoring the provisions of the U.P. Government Servants Seniority Rule s, 1991 and grant a relief in favour of the respondents, it will be helpful to reproduce the High Court's order:

From the perusal of the aforesaid order, it is clear that the authority has not applied its mind on the facts of the case as stated by the petitioner, in the representation, and has rejected the representation on the ground that since the appointment letter was issued to the petitioner on 19.11.1999, therefore he is entitled to his seniority from that date. Even if the recruitment year is changed the order of appointment cannot be made with retrospective effect. The authority has failed to appreciate that if the fact of vacancy being accrued in the recruitment year 1995-96 i.e. on 1st May, 1996 and second vacancy on 1st June 1996 had come to the knowledge of the Commission the Commission could have given the promotion to the petitioner w.e.f. these dates, as the petitioner was entitled for the same and the Commission has found him suitable, which is evident from the promotion order dated 19.11.1999. Therefore, this could have consequently affected the consequential benefits available to the petitioner had his promotion being made w.e.f. the date of promotion of falling of vacancy. Therefore, the order dated 1st October, 2002 suffers from non application of mind and is hereby liable to be ignored.

The fact that the vacancy had fallen on 1st May, 1996 and 1st June, 1996 in the recruitment year 1995-96 are not disputed by the respondents. The petitioner cannot be made to suffer on account of delay in recommendation by the Director of Agriculture for promotion of the petitioner. The petitioner cannot be held responsible and cannot be made to suffer as such became entitled to be considered for promotion on 1st May, 1996. Therefore, the government is directed to re-

consider the matter and send it back to the Commission for appropriate orders suitable in the facts and circumstances of the case. Subject to the above, the writ petition is disposed off finally.

This observation of the High Court in our view is erroneous. The High Court while observing that, "the appellants rejected the representation of the respondents on the ground that since the appointment letter was issued to the respondent on 19.11.1999, he is entitled to his seniority from that date. The authority has failed to appreciate that if the fact of vacancy being accrued in the recruitment year 1995-96 i.e. on 1st May, 1996 and second vacancy on 1st June 1996 had come to the knowledge of the Commission the Commission could have given the promotion to the petitioner w.e.f. these dates, as the petitioner was entitled for the same and the Commission has found him suitable, which is evident from the promotion order dated 19.11.1999", has committed an error in understanding and appreciating Rule 17 and 21 of the Uttar Pradesh Agriculture Group "B" Service Rules, 1995 and Rule 8 of the U.P. Government Servants Seniority Rules, 1991, which categorically states that the date of 'substantive appointment' will be the date that shall be taken for determining promotion, seniority and other benefits."

7. Only exception to the proposition can be the promotion of junior. In the present case, maybe because the applicant, who was a direct recruit Assistant Engineer, had been granted promotion, the promotee Assistant Engineers on becoming senior to him may claim their promotion ahead of him, thus, in the Order of Division Bench of Hon'ble High Court, it could be ruled that the year-wise panel in terms of the relevant O.M. should be prepared.

8. It is apparent from the O.M. that it does not provide for retrospective promotion but provide for preparation of year-wise panel. When the panel for different years is prepared, the ramification is not that the individuals included in the panel of previous years become entitled to promotion against the vacancies of those years but the only ramification is that the individuals included in the panel of subsequent years cannot be placed above those who are included in the panel of previous years. Nevertheless,

at this stage since the parties are *ad idem* that no review DPC for promotion from Executive Engineer to Superintending Engineer has taken place till 16.04.2013 when the impugned order was passed and it is also not clear whether the applicant could be in the eligible zone of consideration for promotion or not, we are of the view that before convening the review DPC and the arriving at determination that whether the applicant was entitled to be promoted to the post of Superintending Engineer or not, the respondent should not have issued the reversion order. For this reason alone, the impugned order is quashed.

9. Original Application stands disposed of. No costs.

(V.N. Gaur)
Member (A)

(A.K. Bhardwaj)
Member (J)

February 11, 2016
/sunil/