

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA 2657/2012
MA 372/2013

New Delhi this the 16th day of September, 2015

Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Mr. P.K. Basu, Member (A)

S. Ravichandran
Assistant Executive Engineer (M)
Directorate General of Lighthouse and Lightships
Deep Bhawan, Noida
Uttar Pradesh

Resident of B5/3-B, Dhawalgiri Apartment
Sector 34, Noida, Distt. Gautam Budh Nagar,
Uttar Pradesh ... Applicant

(Through Shri Sudarshan Rajan for Shri Amit Anand, Advocate)

Versus

Union of India through:

1. The Secretary
Ministry of Shipping
Transport Bhawan,
Sansad Marg, New Delhi-110001
2. The Directorate General of
Lighthouses and Lightships,
Deep Bhawan, Tulsi Marg,
A-13, Sector-24, Noida
Through its Director General ... Respondents

(Through Shri K.R. Sachdeva, Advocate)

ORDER

Mr. P.K. Basu, Member (A)

The applicant is presently posted as an Assistant Executive Engineer (AEE) (Mechanical) with the respondent no.2. He joined the organization as Assistant Light Keeper (Senior Scale) on 1.11.1982. The next higher post in the hierarchy is Head Light Keeper (Senior Scale) followed by Assistant Engineer, Assistant Executive Engineer, Deputy Director and so on. It is stated that the qualification for holding the post of Head Light Keeper (Senior Scale) is Matric/ SSLC/ ITI but the applicant possessed a higher qualification of Diploma in Mechanical Engineering while joining the services as Assistant Light Keeper.

2. In the year 2002, new Recruitment Rules (RRs) were framed and issued through notification dated 9.10.2002. The rules provided for promotion of Assistant Engineer in the pay scale of Rs.6500-10500/- possessing degree in Engineering in the respective discipline with five years regular service in the grade to the post of AEE. Since the applicant was promoted as Assistant Engineer on 22.08.2000, he became entitled for promotion as AEE with effect from 21.08.2005 on completion of five years of service in the feeder grade. In the meanwhile, the applicant successfully completed Degree in Mechanical Engineering from the Institute of Engineers (India) with due permission of competent authority. Having completed five years in the feeder grade of Assistant Engineer, the applicant was sanguine that he would be promoted as AEE. However, his

grievance is that he was not considered for promotion by the respondents despite there being a vacancy. The applicant filed a representation dated 18.01.2007 to the respondents. He received a reply dated 10.06.2008 stating that 10% promotion quota to the post of AEE was under process and that the applicant's request will be considered accordingly. The applicant sent a further communication dated 11.06.2008 stating that having lost the benefit of promotion to the post of AEE since 2005, he be considered for promotion to the post of Deputy Director on or after August 2008. His request was turned down by the respondents stating that he was not eligible for promotion to the post of Deputy Director as the eligibility for the said promotion was eight years service in the grade of Assistant Engineer on the date of notification of Recruitment Rules (RRs) of 2002 (revised). However it was stated in the letter of the respondents that the applicant's request for promotion to the post of AEE has been forwarded to the competent authority.

3. In the meantime, one Shri P. Yenesu who joined as Assistant Engineer on 21.10.2002 i.e. two years later to the applicant, was promoted as AEE on 24.04.2009 without grant of promotion to the applicant despite the fact that he was senior to him. The applicant brought this fact to the notice of the respondents and finally he was promoted to the post of AEE on 3.02.2010, which according to the applicant, was 4-5 years after the promotion became due to him. It is further alleged by the applicant that during this period as many as 10 direct recruits were appointed to the post of AEE and as a result of delayed

promotion to the applicant, he practically also lost his seniority in the entire grade of AEE and his future promotions and prospects too were affected by his delayed promotion.

4. Vide Office Order dated 18.08.2011, designations of Director (Regional), Director (Civil) and Director (Electronics) were merged and were changed to Director and similarly Deputy Director (Regional), Deputy Director (Civil) and Deputy Director (Electronics) were merged and changed to Deputy Director with effect from 16.07.2011. The applicant again requested the respondents to consider his case for promotion to the post of Deputy Director with effect from 19.05.2011, which was also turned down by the respondents.

5. Being aggrieved by his late promotion, the applicant sought for retrospective promotion as AEE from April 2006 in accordance with the RRs of 2002 (revised) through his communication dated 9.12.2011. This request was also denied by the respondents. The department basically informed the applicant vide letter dated 18.10.2011 that as per the RRs, the mode of recruitment is 90% by direct recruitment and 10% by promotion and since the sanctioned strength of AEE (Mechanical) discipline wise is two posts (quota available for promotion works out to only .2 posts) or say, at present, no post in the grade of AEE (Mechanical) is available for promotion. The applicant, however, points out that vide inter-departmental note dated 19.05.2008, the Department of Personnel & Training (DoP&T) had clarified as follows:

"2. As per the Recruitment Rules for the post of AEE (Electronics)/ (Civil)/ (Mechanical) (Rs.8000-13500/-), the mode of recruitment is 90% by DR and 10% by promotion as per RRs of 2002. Promotion is to be made from the grade of Assistant Engineers in the pay scale of Rs.6500-10500/- possessing degree in Engineering in the respective discipline with five years regular service in the grade.

Sl.No.	Name of the Post	Sanctioned Strength as on date	Quota available for promotion as on date
1.	AEE (Electronics)	18	1.8
2.	AEE (Civil)	7	.7
3.	AEE (Mechanical)	2	.2
	Total	27	2.7

3. Promotion will no doubt be discipline wise. The Recruitment Rules prescribe 10% quota for promotion and the rule is common for all the disciplines. Since the sanctioned strength is very small, it is difficult to work out number of vacancies for promotion. Accordingly, it would be appropriate that the vacancies in the AEE (should be apportioned in the ratio of 1:9 (discipline wise) for promotees and direct recruits respectively. First vacancy should go for promotees and next to vacancies for direct recruits and in that order. They should also be advised to modify heading of Col. No. 11 to indicate "percentage of vacancies" in place of "percentage of posts" in terms of DOPT OM of 19.10.07."

6. Being aggrieved by the denial of promotion from the year 2006 to the post of AEE (Mechanical), the applicant has filed the instant OA with the following prayers:

- "A. Direct the respondents to grant the retrospective promotion to the applicant to the post of Asst. Executive Engineer from April 2006.
- B. Direct that upon predation of the promotion the applicant be accorded consequential benefits including arrears of pay and allowances, grant of consequential promotion to the next higher post etc."

7. The applicant's case is that according to DoP&T OM dated 8.09.1998, the frequency at which DPC should meet, has been laid down and it is provided that the DPC should be convened every year if necessary on a fixed date, for example, 1st April or

May. It is argued that the first vacancy which has arisen in the grade of AEE (Mechanical) as per DoP&T clarification dated 19.05.2008 should have gone to the promotee quota. However, since no promotee was eligible, it went to the direct recruitment quota but the applicant had completed five years of service in the grade of Assistant Engineer on 21.08.2005 and, therefore, from 21.08.2005, he was eligible to be considered for promotion as AEE (Mechanical). The first DPC due after 21.08.2015 was 1.04.2006 and, therefore, he should at least be considered for promotion to the post of AEE (Mechanical) from that date.

8. It is pointed out that in the OM dated 20.03.2012, which is the impugned order, the respondents have shown that the first vacancy became available on 16.08.2004, which was filled up by direct recruitment as no promotee was eligible and the second vacancy had fallen vacant on 30.05.2006 and it should have gone now to the promotion quota as per DoP&T clarification. This vacancy which arose on 30.05.2006 was available upto the time of issuance of OM dated 20.03.2012.

9. The applicant also relied on the judgment of the Hon'ble High Court of Delhi in **Dr. Sahadeva Singh Vs. Union of India and others**, W.P.(C) No.5549/2007 where the Hon'ble High Court directed to treat the petitioner promoted from the back date against one of the two vacancies which had arisen in the year 2004 and carried forward to the vacancy year 2005. The crux of the applicant's argument is that he could not be promoted in time due to administrative delay though he was

eligible and the post was available. It was further argued that no prejudice will be caused to anyone if the prayer made by the applicant is granted.

10. The respondents' case is that in the RRs for the post of AEE (Mechanical) notified on 9.10.2002, for the post of AEE (Mechanical), the mode of recruitment has been shown as 90% direct recruitment and 10% promotion. Since the total number of posts in the category of AEE (Mechanical) is two and 10% of that comes to .2, therefore, practically there is no promotion quota for the post of AEE (Mechanical).

11. The learned counsel for the respondents informed us that in the DoP&T inter-departmental note dated 19.05.2008, quoted above, the OM referred to is actually dated 19.01.2007 and not 19.10.2007 and what it clarifies is that in column 11, the following should be mentioned:

"Method of Recruitment:

Whether by direct recruitment or by promotion or by deputation/ absorption & percentage of the vacancies to be filled by various methods."

12. We have heard the learned counsel for the parties and gone through the pleadings available on record.

13. First of all, in the light of DoP&T clarification dated 19.05.2008 and OM dated 19.01.2007, the respondents' stand that 10% posts are earmarked for promotion and the sanctioned strength of AEE (Mechanical) being two and thus the quota available for promotion works out to only .2 posts or to say that

there is no post available in the grade of AEE (Mechanical) for promotion, is not justified. To claim that as per RRs no vacancy was available, is an incorrect stand. Had the vacancy which arose on 30.05.2006 been taken up on time, even as per 2002 RRs, as clarified vide DoP&T OM dated 19.01.2007 and clarification dated 19.05.2008, the applicant would have been eligible from that date i.e. 30.05.2006 or the next date of the DPC which was due on 1st April, 2007. The applicant's claim of promotion from 21.08.2005 or 1.04.2006 would not arise as there was no vacancy at all on those dates. The vacancy arose on 30.05.2006 for which the earliest date on which the DPC could have been held was 1.04.2007 and not before that. The second question to be answered is whether the applicant has any claim for promotion from the back date, which in this case would be 1.04.2007. In this regard, the applicant has relied on the judgment in the case of Dr. Sahadeva Singh (supra). However, para 17 of the order of the cited case reads as follows:

"17. The case before this Court does not involve any dispute with respect to seniority in the cadre of Deputy Commissioner (Crops). No one has been either promoted or directly appointed as Deputy Commissioner (Crops) between 1.1.2005, when the petitioner became eligible to be considered for promotion, and 26.6.2006, when he was actually promoted. Thus, promotion of the petitioner w.e.f. 1.1.2005 will not adversely affect any other person nor will it disturb the existing seniority. Had someone been appointed or promoted as Deputy Commissioner (Crops) between 1.1.2005 and 26.6.2006, we might have been inclined to protect his seniority, but, that is not the position in this case. We, therefore, see no good reason for not giving benefit of promotion to the petitioner w.e.f. 1.1.2005."

This would make it clear that the facts of the case are different. In the present case, as per the applicant's own submission, others were appointed as direct recruits in the intervening period and, therefore, the judgment of the Hon'ble High Court in Dr. Sahadeva Singh (supra) cannot *ipso facto* be applied in this case.

14. The issue relating to fixation of promotion quota of 10% to the post of AEE (Mechanical) was finally clarified on 19.05.2008 by the DoP&T. In fact, the RRs provide for the ratio of 9:1 for direct recruitment and promotion. The DoP&T in its note dated 19.05.2008 prescribed that promotion will no doubt be discipline wise and further that the RRs prescribe 10% quota for promotion and the rule is common for all disciplines. However, it advised that since the sanctioned strength is very small, it is difficult to work out number of vacancies for promotion. Therefore, the new formula was suggested which stipulates that vacancies in the AEE grade should be apportioned in the ratio of 1:9 (discipline wise) for promotees and direct recruits respectively. In fact, it is only because of this that the applicant could get promotion as AEE and he has not been denied his legal right.

15. Moreover, this is not a case where the respondents have deliberately delayed holding of DPC for promotion quota. As per the RRs as it stood on that date, no vacancy arose for promotees, therefore, even on this count, Dr. Sahadeva Singh (supra) will not apply because there has not been deliberate delay on the part of the respondents.

16. In view of above discussion, we find no merit in this OA and it is, therefore, dismissed. No costs.

(P.K. Basu)
Member (A)

(V. Ajay Kumar)
Member (J)

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