

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

OA-2810/2013

Reserved on : 05.05.2017.

Pronounced on :15.05.2017.

Hon'ble Mr. Shekhar Agarwal, Member (A)

Hon'ble Mr. Raj Vir Sharma, Member (J)

Sh. Uday Vir Singh,
S/o late Sh. Mewa Ram,
R/o P-138/4, SV Colony,
Morar, Gwalior.

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Applicant

(through Sh. M.K. Bhardwaj, Advocate)

Versus

1. Union of India through
Secretary (Defence),
Ministry of Defence,
South Block, New Delhi.
2. Engineer-in-Chief,
E-In-C's Branch,
Kashmir House,
DHQ PO, New Delhi.
3. Director General (Pers),
E-In-C's Branch,
Kashmir House,
DHQ PO, New Delhi.
4. Union Public Service Commission,
Dholpur House, Shahjahan Road,
New Delhi through its Chairman.
5. S.K. Tiwari,
Director (Pers),
E-In-C's Branch,
Kashmir House,
DHQ PO, New Delhi.

..... Respondents

(through Dr. Ch. Shamsuddin Khan, Advocate)

O R D E R

Mr. Shekhar Agarwal, Member (A)

The applicant joined MES in 1988 and was promoted as AE on 04.08.2003 against vacancies of the year 2001-2002. On 31.12.2012, the respondents were considering promotion to the post of EE and called for vigilance clearance of those in the zone of consideration. The applicant shockingly did not find his name in the list of persons whose clearance had been sought. He, therefore, approached his senior officer on 03.01.2013 and brought this omission to his notice. He also submitted a detailed representation on 11.01.2013. However, no action was taken by the respondents. As the DPC was scheduled for March, 2013, the applicant approached this Tribunal by filing OA-145/2013. This was decided on 19.02.2013 with a direction to the respondents to consider the representation of the applicant and pass necessary order within a month. In compliance thereof, the respondents passed the impugned order dated 20.03.2013 in which they stated that the applicant's name got inadvertently omitted due to the fact that passing of MES procedure exam was not reflected against his name. This affected his position in the seniority list of Superintendent Grade-II and Grade-I as well as in the AE list. However, information has since then been received from Command that he had passed the procedure exam in 1995. Consequently, All India seniority list issued on 04.07.2011 will be amended and the applicant's name will be reflected in the revised

seniority list. Thereafter, a review DPC for the year 2011-2012 for promotion to the post of EE will be progressed.

2. In spite of the aforesaid order and a detailed representation made thereafter by the applicant on 22.04.2013, the respondents did not take any action to promote the applicant to the post of EE while his juniors and some other similarly placed persons were promoted. Hence, he has filed this O.A. seeking the following relief:-

- “(i) Call for the records of the case.
- (ii) To declare the action of respondents in not promoting the applicant to the post/grade of Executive Engineer against the vacancy for the year 2011-12 as illegal, arbitrary and unjustified.
- (iii) Direct the respondents to promote the applicant to the grade of Executive Engineer with effect from the date of promotion of his juniors promoted vide order dated 18.06.2013 with all consequential benefits including arrears of pay.
- (iv) To direct the respondents to initiate disciplinary action against R-5 for committing irregularities to deprive the applicant from promotion.
- (v) To allow the OA with exemplary cost.
- (vi) Any other relief which the Hon'ble Tribunal deem fit and proper may also be granted to the applicant.”

3. The respondents have filed several affidavits in this case. The first one was filed on 25.03.2014. Thereafter, an additional affidavit was filed on 10.10.2014 and again on 01.03.2017. The respondents have stated that action for conducting review DPC for applicant's promotion to the post of EE had been initiated and integrity certificate and vigilance clearance had been called for. In the

meanwhile, OA-1034/2013 was filed by one Sh. Bhagwan Das before this Tribunal seeking stay of the DPC for the year 2011-2012. This Tribunal vide its order dated 22.03.2013 granted stay on conducting DPC for promotion from AE to EE. Separately, one Sh. Rakesh Kumar Jindal filed OA-1009/Pb/2012 before Chandigarh Bench of this Tribunal for conducting DPC early. On 19.11.2012, directions were given by the Chandigarh Bench of the Tribunal to forward proposal to UPSC and conclude the DPC deliberation within a period of 1 ½ months. Confronted with these two contradictory orders, the respondents conducted the DPC and passed promotion order on 18.06.2013. Subsequently, CP-349/2013 in OA-1034/2013 was filed in which this Tribunal ordered personal presence of Engineer-in-Chief on 18.06.2013. In order to avoid personal appearance of the Engineer-in-Chief, the order dated 18.06.2013 was withdrawn. The respondents have further stated that DPC for reviewing promotion of the applicant shall be held after decision in OA-1034/2013 filed by Sh. Bhagwan Das.

4. In their reply filed on 10.10.2014, the respondents have further stated that in compliance of orders of Hon'ble High Court of Punjab & Haryana at Chandigarh dated 05.09.2009, revised seniority list has been issued on 14.02.2014. Eligibility list for promotion to EE prepared on the basis of this seniority list does not contain the name of the applicant. Proposal to hold DPC was forwarded to UPSC on

15.04.2014. On the basis of the aforesaid proposal, promotion order has been issued on 03.06.2014. The respondents' contention is that the applicant is seeking promotion for the vacancy year 2011-2012 on the basis of the seniority list issued on 09.04.2009. This seniority list is no longer in existence as under orders of Hon'ble High Court of Punjab & Haryana new seniority list of AEs had been prepared in which the applicant's name does not figure in the list of eligible candidates.

5. We have heard both sides and have perused the material placed on record. It is not disputed that the applicant was promoted as AE on 04.08.2003 against the vacancies of the year 2001-2002. This promotion of the applicant has not been changed. On the basis of this, the applicant had become eligible for promotion to EE after completing 08 years of service in the year 2011-2012. It is also an admitted fact that when DPC for promotion to the post of EE for vacancies of the year 2011-2012 was held in March, 2013, the applicant's name got inadvertently omitted as passing of MES procedure exam in the year 1995 was not reflected against his name. It is also an admitted fact that the aforesaid DPC was held on the basis of 2009 seniority list, which was in operation at that time. Had an inadvertent omission not occurred at that time, the applicant's name would have figured in the seniority list and he would have been in the eligibility zone for consideration for promotion to the post of EE. Moreover, the seniority list in operation

at that time was the 2009 seniority list as the 2014 seniority list had not come into existence by that time. The applicant is now only seeking review of the DPC held in the year 2013 in which his name could not be considered due to an inadvertent omission on the part of the respondents. The respondents have expressed their inability to conduct a review DPC on the ground that now 2014 seniority list was in operation in which the applicant does not fall within the zone of consideration for promotion.

5.1 However, we are unable to accept this argument of the respondents. A review DPC has to be conducted on the basis of the same seniority list, on the basis of which original DPC was held. This can be inferred from the Instructions issued by DoP&T as contained in Swamy's Compilation on Seniority and Promotion in Central Government Service, Sixteenth Edition under the caption Scope and procedure of review DPC, which read as follows:-

"18.2 A Review DPC should consider only those persons who were eligible as on the date of meeting of original DPC. That is, persons who became eligible on a subsequent date should not be considered. Such cases will, of course, come up for consideration by a subsequent regular DPC. Further, the review DPC should restrict its scrutiny to the CRs for the period relevant to the first DPC. The CRs written for subsequent periods should not be considered. If any adverse remarks relating to the relevant period were toned down or expunged, the modified CRs should be considered as if the original adverse remarks did not exist at all.

18.3 A Review DPC is required to consider the case again only with reference to the technical or factual mistakes that took place earlier and it should neither change the grading of an officer without any valid reason (which should be recorded) nor

change the zone of consideration nor take into account any increase in the number of vacancies which might have occurred subsequently."

5.2 Even though the seniority list of 2009 is no longer in operation the respondents should conduct a review DPC on the basis of this list. This would bring the applicant at par with his juniors and other similarly placed persons. Thereafter, if it becomes necessary to revert them on the basis of revised seniority list, the applicant can also be reverted along with other similarly placed persons.

6. Accordingly, we allow this O.A. and direct the respondents to conduct a review of DPC held in 2013 to review the promotion of the applicant to the post of EE on the basis of vacancies for the year 2011-2012. This review DPC be conducted on the basis of 2009 seniority list. In case, the applicant is found fit, he shall be promoted from the date on which his immediate junior was so promoted. He shall also be entitled to consequential benefits of pay fixation and seniority. This will be subject to the condition that in case reversion of the applicant or other similarly placed officer becomes necessary due to revision in the seniority list, the applicant will be so reverted. The aforesaid benefit may be extended to the applicant within a period of 08 weeks from the date of receipt of a certified copy of this order. No costs.

(Raj Vir Sharma)
Member (J)

(Shekhar Agarwal)
Member (A)

/Vinita/