

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

OA No.1922/2017

Dr. Prabhakar Singh
Versus
Union of India & others

For Applicant: Ms. Tamali Wad, Advocate

For respondents: Mr. Gyandndra Singh for respondents 1-3

Mr. Dinkar Singh for respondent No.4

02.06.2017

Prayer for interim relief is being disposed of by this order. The facts essential for purposes of the interim relief are being noticed.

2. Central Public Works Department (CPWD) has three separate wings - (i) Central Electrical and Mechanical Engineering; (ii) Central Engineering (Civil); and (iii) Central Engineering (Architect) at the level of Group 'A' services. Separate recruitment rules have been framed for all the three branches. For purposes of the present controversy, we are concerned only with the Electrical & Mechanical (E&M) wing and the Civil wing. The Central Electrical and Mechanical Engineering Service Group 'A' is governed and regulated by the recruitment rules, namely, Ministry of Urban Development Central Electrical and Mechanical Engineering Service Group 'A' Service Rules, 2012 notified vide GSR 766(E) dated

17.10.2012 (Annexure A-6), whereas the Civil Engineering service is governed and regulated by separate set of rules, namely, Ministry of Urban Development Central Engineering (Civil) Group 'A' Service Rules, 2012, notified vide GSR765(E) dated 17.10.2012.

3. The applicant was working as Additional Director General (E&M) [ADG (E&M)], whereas the respondent No.4, Balraj Chadha, was working as Additional Director General (Civil) [ADG Civil)]. The applicant was ordered to be promoted from the present grade of ADG (E&M) to that of Special Director General (E&M) [SDG (E&M)] in the HAG+ scale of Rs.75,000-80,000/- (pre-revised) in CPWD on regular basis with effect from the date of assumption of charge of the post of SDG (DR) on or after 01.06.2017, vide order dated 25.04.2017, whereas the respondent No.4 has been ordered to be promoted from the present grade of ADG (Civil) to the grade of SDG (Civil) in CPWD in the pay scale of Rs.75,500-80,000/- (pre-revised) with effect from the date of assumption of charge of the post on or after 30.05.2017, whichever is later, vide impugned office order dated 25.05.2017. Both the officers have been promoted against the panel year 2017-2018.

4. Challenge in the present OA is to the order of promotion of respondent No.4 dated 25.05.2017. The applicant has also sought interim relief for staying the operation of the aforesaid promotion order.

5. The admitted factual position is that the applicant and the respondent No.4 belong to different wings of the engineering service governed by separate recruitment rules and separate seniority. After Special Director General, the next promotion is to the post of Director General of Works, which is governed by separate recruitment rules, namely, Central Public Works Department (Director General of Works) Recruitment Rules, 2004. It is admitted position of the parties that both the officers fall under the feeding channel for promotion to the post of Director General (Works). The case of the applicant is that he was ordered to be promoted to the post of SDG (E&M) vide order dated 25.04.2017 and was to take the charge of the promotional post w.e.f. 01.06.2017 or thereafter. It is also admitted position that the vacancy of SDG (E&M) would become available on retirement of one Shri P. K. Garg. In case of respondent No.4, he has been promoted as SDG (Civil) with effect from the date of assumption of charge on or after 30.05.2017. It is also not in dispute that under the recruitment rules of both services, i.e., E&M as also Civil, the minimum residency period required for promotion to the post of SDG is one year as ADG. For the panel year 2017-2018, the effective/crucial date for consideration of the eligibility of the officers is 01.04.2017. The applicant was promoted from the grade of Chief Engineer (E&M) to the grade of ADG (E&M) vide order dated 01.04.2016 against the available vacancy, and he assumed the charge on the same date, and

thus he acquired the eligibility as on 01.04.2017 for his consideration for promotion against the panel year 2017-18. Being fully eligible, he was promoted to the grade of SDG vide order dated 25.04.2017 with the approval of the Appointments Committee of the Cabinet (ACC) granted on 28.03.2017. However, on account of non-availability of vacancy prior to 01.06.2017 his promotion was to take effect w.e.f. 01.06.2017. Insofar as respondent No.4 is concerned, he was promoted from the post of Chief Engineer (Civil) to the grade of ADG (Civil) vide order dated 27.05.2016 and thus he was ineligible for promotion to the post of SDG (Civil) on two counts - (i) for promotion against the panel of 2017-2018 the crucial date is 01.04.2017 and by that time, the respondent No.4 had not completed the requisite residency as ADG and thus could not have been considered against the panel year 2017-2018; and (ii) his minimum residency of one year as ADG is completed only on 26/27.05.2017, although a vacancy at the level of SDG became available on 01.05.2017.

6. Ms. Tamali Wad, learned counsel appearing for the applicant has challenged the validity of the order of promotion of respondent No.4 primarily on the ground that the said respondent was ineligible for promotion to the post of SDG on both counts, i.e., he was not eligible on 01.04.2017, and secondly, he had not completed one year residency. The learned counsel has also pleaded

on the first date of hearing that the ACC had not accorded approval to the appointment of respondent No.4. However, during the course of hearing, she conceded that the promotion of respondent No.4 has been duly approved by the ACC. The grievance of the applicant is that despite ineligibility of the said respondent, he has been ordered to be promoted to the post of SDG (Civil) and has been asked to assume charge on 30.05.2017, i.e., two days earlier than the date the applicant was to assume charge of his post, with the sole objective of granting undue benefit to the respondent No.4 to acquire seniority as SDG over and above the applicant, and to further grant him promotional benefit to the next higher post of DG (Works). The learned counsel has vehemently argued that the entire exercise of granting promotion to respondent No.4 is actuated by *mala fides* and bias by the authorities concerned. With a view to project her submission, the learned counsel has referred to the notings on the file whereby relaxation in eligibility has been granted to respondent No.4. Referring from the notings on the file produced by the respondents and a set of notings also produced by the applicant, it has been pointed out that respondent No.4 was not eligible and the Ministry of Urban Development, Works Division initiated the process for relaxation in eligibility for his consideration for promotion as SDG (Civil) as on 01.04.2017. The relaxation was sought for one month and 29 days for his consideration against the panel of 2017-2018, and

further relaxation of 29 days in the residency period. Relevant paragraphs of the notings read as under:

“5. It may be observed from the above that the available ADGs are not fulfilling the eligibility criteria mentioned in the Recruitment Rules. Hence, relaxation from DoP&T in eligibility period is required for the said Additional Director General (Civil) for their promotion to the post of Special Director General (Civil) for the vacancy year 2017-18. The crucial date of eligibility is 01.04.2017, relaxation is required as per details mentioned below:

SI. No.	Name (S/Shri(/Date of Birth	Date of appointment as ADG(C) as per TR-1 Form	Date of completion of 01 year regular service in the grade of ADG (Civil)	Relaxation required in eligibility period for considering promotion as Spl. DG (Civil) as on 01.04.2017
1.	Balraj Chadha/ 01.10.1958	30.05.2016	29.05.2007	01 Month 29 days
2.	S.K. Rastogi/ 04.09.1957	13.06.2016	12.06.2017	02 Months 12 days
3.	Deepak Gupta/ 16.04.1957	15.07.2016	14.07.2017	03 Months 14 days
4.	V.K. Malik/ 07.01.1958	08.06.2016 (AN)	07.06.2017	02 Months 08 days

6. CPWD has submitted that relaxation of the eligibility period is absolutely essential to effectively implement the cadre review in the true spirit i.e. providing leadership position at the regional level and decentralize decision making. If these important posts of Spl. DG remain vacant; the very purpose of cadre review shall be defeated as in the post cadre review scenario.

7. CPWD has also submitted that the residency period of one year on the post of ADG (Civil) of individual officer will be completed on the date indicated against their name in column 4 of the table. First vacancy of the post of SDG (Civil) will occur on 01.05.2017 due to retirement of Shri Upendra Malik, SDG (Civil) on 30.04.2017. Shri Balraj Chadha, ADG

(Civil), the first candidate in the table will be completing the residency period of one year on the post of ADG (Civil) on 28.05.2017 whereas the 1st vacancy in the post of SDG (Civil) will occur on 01.05.2017. Hence, to fill up the vacancy in the grade of SDG on the date of occurrence of vacancy, relaxation of 29 days in residency period is also required from DoP&T in respect of Shri Balraj Chadha to fill up the 1st vacancy of SDG (Civil) as on 01.05.2017.

8. In view of the above, the file may be referred to DoPT for:

- i) Seeking relaxation in eligibility criteria in respect of officers mentioned in Para 5 above.
- ii) Seeking relaxation of 29 days in residency period from DoP&T in respect of Shri Balraj Chadha mentioned in para 7 above to fill up the 1st vacancy of SDG (Civil) as on 01.05.2017.”

7. Referring to the above notings, it is stated that DoP&T though granted relaxation for one month and 29 days to confer eligibility upon respondent No.4 for his consideration against the panel of 2017-2018, however, it declined relaxation of 29 days in the residency period. It is further argued that the power to relax is available under rule 16 of the recruitment rules and under the said power, consultation with UPSC is essential. It is further contended that UPSC seems to have accorded consultation during the proceedings of the DPC. The DPC proceedings have been placed with the counter-affidavit of respondents 1 to 3. Relevant observations of UPSC are noticed hereunder:

“UNION PUBLIC SERVICE COMMISSION FILE
NO. F.1/11(1)/2017-AP-2

**MINISTRY OF URBAN DEVELOPMENT REF.
NO.30/17/2016-EC.I(A)/EW.I**

8. The Committee were also informed that in accordance with the eligibility condition laid down in the Recruitment Rules, all the four seniormost officers were short of the requisite qualifying service by periods ranging from 01 months and 29 days to 03 months and 13 days as on the crucial date of eligibility for the vacancy year 2017-18, i.e. 01.04.2017. The Ministry, therefore, sought relaxation in the qualifying service in respect of all the four officers, from DOP&T. The DOP&T granted approval for relaxation in the residency period in respect of the four officers namely S/Shri Balraj Chadha, S.K. Rustagi, Deepak Gupta and V.K. Malik, subject to the condition that the actual promotion will be effected after completion of residency period as per Recruitment Rules. The Commission also granted relaxation in the qualifying service involved in respect of above mentioned four officers, subject to the stipulation regarding actual promotion to be effected after completion of the residency period prescribed in the relevant Recruitment Rules."

8. Referring to the aforesaid position, it is argued that the entire exercise of the official respondents has been carried out in a hurry with the purpose of granting undue advantage to respondent No.4 to promote him to the post of SDG (Civil) earlier than the applicant and then to further bring him at a higher pedestal than the applicant for the ultimate promotion to the post of Director General (Works).

9. It has also been urged that at the level Chief Engineer, ADG and SDG, all posts are brought in the common pool irrespective of the discipline to which an officer belongs.

10. The contention of the applicant is, however, seriously opposed and refuted by Mr. Gyanendra Singh, learned counsel appearing for the official respondents, and Mr. Dinkar Singh, learned counsel appearing for respondent No.4. Their common contention is that the applicant and respondent No.4 belong to two different engineering wings governed by separate rules, having separate seniority and separate promotional avenues. An officer belonging to E&M wing is not entitled to be promoted against Civil/Architect wing. Similarly, an officer belonging to Civil wing cannot be promoted against the vacancy in the E&M/Architect wing. Thus the applicant cannot have any grievance in respect to the promotion of respondent No.4. It is further contended that respondent No.4 has been promoted against the vacancy available in his own branch, i.e., Civil, whereas the applicant has been promoted in his own branch of E&M. In case of the applicant, there is only one vacancy of SDG (E&M) which was occupied up to 31.05.2017 by Shri P. K. Garg, and thus under these circumstances, promotion of the applicant was though ordered on 25.04.2017, but he could assume charge only on 01.06.2017 when the vacancy becomes available in his cadre, whereas in case of respondent No.4 there are four posts of SDG (Civil), and one vacancy became available on 01.05.2017 against which respondent No.4 has been ordered to be promoted. It is, however, conceded that respondent No.4 was ineligible, but for the relaxation

granted by the Government for his consideration against the panel year 2017-2018. Insofar as the residency period is concerned, respondent No.4 completed his residency period on 29.05.2017 and thus he has been ordered to be promoted w.e.f. 30.05.2017. It is contended that the power to relax is available under rule 16 of the recruitment rules for Civil wing and the Government has the power to relax the rules. It is further contended that the rules have been relaxed in accordance with the mandate contained therein and thus there is no infirmity in the order of promotion of respondent No.4.

11. We have heard the learned counsel for parties at length. The facts noticed by us hereinabove are not in dispute. Learned counsel for the applicant has vehemently argued that the relaxation granted to respondent No.4 is with the sole objective of granting undue benefit to him. She has relied upon a judgment of the Apex Court reported as *N. K. Durga Devi v Commissioner of Commercial Taxes, Hyderabad & others* [(1997) 11 SCC 91]. In the said case it is held that where relaxation is to be given by the Government, the affected person should be given notice and opportunity of hearing. By granting relaxation, seniority of the appellant before the Apex Court was adversely affected. Another judgment relied upon by the learned counsel is *K. S. Mathew v Government of NCT of Delhi & others*, passed by the Hon'ble High Court of Delhi, reported as 2001 (7) Service Law Reported 56. In this case it is held that the

Government cannot relax the recruitment qualification laid down in the recruitment rules particularly when qualified candidates are available. Referring to these judgments, it is contended that while granting relaxation to respondent No.4 in his eligibility the applicant was required to be put to notice and afforded an opportunity of being heard and also when the qualified candidate in the applicant was available, there was no occasion for the official respondents to have granted relaxation in eligibility to respondent No.4. This contention of the learned counsel deserves to be rejected for the reason that respondent No.4 and the applicant belong to different cadres and branches. They have their separate seniority lists, separate promotional posts and governed by separate recruitment rules. The applicant cannot occupy the vacancy in the Civil wing and so is the case with respondent No.4 who is not entitled to occupy the vacancy in the E&M wing. They have to be promoted against vacancies in their own respective cadres as and when available. The vacancy in case of the applicant could only become available on 01.06.2017 and in case of respondent No.4 on 01.05.2017. The applicant cannot be said to be available for promotion in the Civil wing and thus cannot be said to be adversely affected by the grant of relaxation in the eligibility to respondent No.4. It is admitted case that the relaxation has been given not only to respondent No.4 but to three other officers as well, as no eligible candidate for promotion to the post of SDG was

available in the Civil wing. To grant relaxation or not is prerogative of the employer depending upon the need and requirement of the particular service. In any case, the applicant has not assailed the order granting relaxation to respondent No.4. The contention of the learned counsel appearing for the applicant is as to why respondent No.4 has been ordered to be promoted w.e.f. 30.05.2017, and immediately after joining he has been granted leave for two months, and thereafter ordered to be posted against another post which would become available on 01.08.2017. In the event both the officers would have been in the same cadre of service, perhaps the argument of the learned counsel for the applicant would have much more weight. However, in the present scenario both of them belong to different wings and hence this argument has no relevance. Both are to be promoted in their respective cadres against the available vacancies. It is a *fait accompli* that the vacancy in the case of the applicant could only be available on 01.06.2017, whereas in the case of respondent No.4 such vacancy became available on 01.05.2017. Admittedly, no eligible candidates were available in the Civil wing and respondent No.4 is the senior-most ADG in that cadre. The applicant cannot have a grievance in respect to the promotion of respondent No.4.

12. In view of the above scenario, no relief can be granted to the applicant at this stage.

13. Vide *ad interim* order dated 29.05.2017 we had directed maintenance of status quo with regard to the respective promotions of the applicant and respondent No.4 to the post of SDG. The said order of status quo shall stand vacated. Since on account of the status quo order, respondent No.4 could not assume charge on 30.05.2017 though he is available to assume charge, the said respondent is deemed to have assumed charge on 30.05.2017 in accordance with his promotion order dated 25.05.2017.

14. We make it clear that any observation made hereinabove is tentative for purposes of consideration of the interim relief and will have no impact on the final outcome of the OA. This order shall remain subject to final outcome of the OA.

(K. N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

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