

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No.474/2013

Order reserved on:10.07.2018

Order pronounced on:03.08.2018

**HON'BLE MR. V. AJAY KUMAR, MEMBER (J)
HON'BLE MR. A.K. BISHNOI, MEMBER (A)**

Vinod Chander Mathur

S/o Late B.C. Mathur

R/o 50/1, Paryavaran Complex, IGNOU Road,
New Delhi-110030.

.-Applicant

(By Advocate: Ms. Tanya Ambreen)

Versus

1. Delhi Development Authority,
Through its Vice Chairman,
Vikas Sadan, INA Market, New Delhi.
 2. Vice Chairman,
Delhi Development Authority,
Vikas Sadan, INA Market, New Delhi.
 3. Chandan Sengupta,
Dy. Director (CR),
Delhi Development Authority,
Confidential Branch,
Vikas Sadan, INA Market,
New Delhi.
-Respondents

(By Advocate: Ms. Anju Bhushan Gupta & Ms. Apporva Gulati)

ORDER

By Hon'ble Mr. V. Ajay Kumar, Member (A)

The applicant, a retired Assistant Engineer (Civil), filed the OA seeking to quash the Annexure A-1 impugned order dated

12.07.2011 whereunder his request for promotion to the post of Executive Engineer (Civil) was rejected.

2. While the applicant was working as Assistant Engineer (Civil), a charge sheet was issued to him on 26.10.2007 in connection with unauthorised constructions in DDA Flat No.346 and 350 Pkt. Mayur Vihar, Phase-I, Delhi. The respondents considering his written statement dated 17.12.2007, as his admission of the charges, dispensed with the disciplinary enquiry and accordingly, a penalty of 5% pension cut for one year was imposed on the applicant vide order dated 29.01.2008, as the applicant has retired on attaining the age of superannuation with effect from 31.10.2007 itself. The applicant's appeal against the said penalty order was also rejected vide appellate order dated 17.06.2009.

3. However, the applicant filed OA No.3349/2009 questioning the said penalty and appellate orders and this Tribunal by its judgment dated 21.10.2010, allowed the said OA by quashing the said penalty and appellate orders. The respondents vide order dated 28.02.2011 accepted the said judgment and closed the disciplinary case against the applicant.

4. The applicant submits that as the disciplinary proceedings initiated against him vide the charge memorandum dated 26.10.2007 were ended in complete exoneration, as the respondents have dropped the charges against the applicant, in

pursuance of the orders of this Tribunal, he requested the respondents for granting him promotion to the post of Executive Engineer but the same was rejected vide the impugned order dated 12.07.2011. Hence, the OA.

4. Heard Ms. Tanya Ambreen, the learned counsel for the applicant and Ms. Anju Bhushan Gupta & Ms. Apporva Gulati, learned counsel for the respondents and perused the pleadings on record.

5. The respondents vide the impugned order and also vide their counter filed in the OA, submits that the DOP&T guidelines provides that in case a Government servant is completely exonerated, the due date of promotion will be determined with reference to the position assigned to him in the findings kept in the “sealed cover” and with reference to the date of promotion of his next junior and on the basis of such position, the Government servant would be promoted notionally with reference to the date of promotion of his junior. It is further submitted that the junior of the applicant, namely, Shri Narinder Kumar Kasturia was promoted to the post of Executive Engineer (Civil) on 16.11.2007, but by that date, the applicant had already been retired from the service on attaining the age of superannuation w.e.f. 31.10.2007 and hence he is not eligible for promotion. The respondents placed reliance on the DOP&T’s OM dated 14.09.1992 in support of the said submissions.

6. The respondents further stated that the applicant's case for promotion to the post of Executive Engineer (Civil) was considered by the DPC held on 15.06.2007, however, before a vacancy of Executive Engineer (Civil) arose and that the applicant was promoted to the said post of Executive Engineer (Civil), a charge sheet was issued to him on 26.10.2007. Though thereafter, on 06.11.2007 four short term vacancies (two under suspension vacancies and two deputation vacancies) were reported, but no regular vacancy was available. Finally on 16.11.2007, junior to the applicant, namely, Shri Narinder Kumar Kasturia was promoted, but by that time applicant was retired from service.

7. The learned counsel for the applicant submits that the DPC was held on 15.06.2007 wherein the name of the applicant was considered along with others and as on the said date as no disciplinary proceedings were pending against the applicant, he is entitled for promotion to the post of Executive Engineer. It is further submitted that the charge sheet was issued only on 26.10.2007, i.e., much after the date of DPC and hence it cannot be said that any departmental proceedings were pending against the applicant as on the date of DPC. In view of the decision of the Hon'ble Apex Court in **Union of India Etc. Vs. K.V. Jankiraman, 1991 AIR 2010**, the applicant is entitled for promotion. Even otherwise, the departmental proceedings were quashed by this

Tribunal in OA No. 3349/2009 dated 21.10.201. Hence, the applicant is entitled for promotion.

8. It was not disputed that as on the date of DPC, no charge sheet was issued against the applicant. Hence on that score he is entitled for promotion and accordingly, the DPC considered his case but it is the specific case of the respondents that no regular vacancy was available before the date of retirement of the applicant and that the junior to the applicant, namely, Shri Narinder Kumar Kasturia was promoted to the post of Executive Engineer (Civil) only on 06.11.2007 and whereas the applicant retired from service on 31.10.2007 itself. The applicant has not denied the fact of non-availability of the vacancy of Executive Engineer (Civil) before 31.10.2007, i.e., the date of his retirement and promotion of his junior on 16.11.2007, that also after the date of retirement of the applicant. Right to be considered for promotion is a fundamental right, as held in **Ajit Singh Vs. State of Punjab, AIR 1999 SC 3471**. The applicant was not deprived from his right to be considered for promotion, on the ground of initiation or pendency of disciplinary proceedings. He was duly considered and found fit. However, since no regular vacancy was available before his retirement and since his junior was promoted only after the retirement of the applicant, we do not find any illegality in the action of the respondents.

9. In the circumstances and for the aforesaid reasons, we do not find any merit in the OA and accordingly the same is dismissed. No costs.

(A.K. BISHNOI)
MEMBER (A)

(V. AJAY KUMAR)
MEMBER (J)

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