

CENTRAL ADMINISTRATIVE TRIBUNAL**CHANDIGARH BENCH****OA No. 060/00433/2016**

Pronounced on : 07.01.2019
Reserved on : 18.12.2018

CORAM: HON'BLE MR.SANJEEV KAUSHIK, MEMBER(J)
HON'BLE MRS. P. GOPINATH, MEMBER(A)

Sh. Prem Nath Bhola son of Sh. Ram Bhaj Bhola aged 58 years approximately, resident of House No. 1063-A, Sector 28 B, Chandigarh.

.....Applicant

BY ADVOCATE: **None**

VERSUS

1. Chandigarh Administration, Department of Electricity, Sector 9, Chandigarh through its Secretary.
2. Superintendent Engineer, Electricity Operational Circle, Room No. 511, 5th Floor, Deluxe Building, Sector 9 D, Chandigarh.
3. Departmental Promotional Committee (Class III), Care of Electricity/Engineering Department, Union Territory, Deluxe Building, Sector 9-D, Chandigarh through its Chairman.
4. Sh. Surjit Singh son of Sh. Gurdev Singh C/o Superintending Engineer, Electricity OP Circle, Sector 9, Chandigarh. (Ex parte vide order dated 10.08.2016)

.....Respondents

BY ADVOCATE: **Sh. Aseem Rai**

ORDER

BY MRS. P. GOPINATH, MEMBER(A):-

1. The applicant started his career as a Sub Station Attendant on 30.10.1981. Applicant possessed the qualification of ITI and as per Engineering Department (Group C) Recruitment Rules, 2004, the further promotion was to the post of Junior Engineer II (Electrical). The post of Junior Engineer (Electrical) is to be filled 45%

by direct recruitment and 55% by promotion failing which by direct recruitment. For promotion, quotas have been fixed among various feeder cadres of which the Sub-Station Attendant quota with ITI Certificate is 4.17%. Applicant was considered for the post of Junior Engineer (Electrical) in the DPC of year 2012 when five posts were available with SSA with ITI certificate under the 4.17% quota. The criteria for promotion was seniority-cum-merit. The applicant was not promoted on the ground of not having the benchmark of "Good". Five other persons were promoted in the said DPC.

2. In the year 2013, DPC was held to fill five posts of Junior Engineer under Category SSA with ITI certificate. Applicant was considered alongwith others and not promoted as he did not have the benchmark of "Good". Next DPC took place in the year 2015 wherein the seven posts of JEs were to be filled up by promotion in the SSA under the ITI Certificate quota, and the applicant was again not considered on the ground of not having the required benchmark.

3. The applicant contends that he was the senior-most person in the SSA category and, juniors to the applicant were promoted in the above three promotions. Applicant joined as an SSA and worked in the post for 35 years till his retirement without any promotion. Applicant argues that only in three ACRs he has not attained the benchmark and the same have never been communicated to him. Hence, these should have been ignored when his case for promotion was taken up.

4. The applicant places reliance on Punjab and Haryana High Court judgement in **Gopal Das, Vs. State of Punjab, 2016 (1) SCT 17, Saroj Bala Vs. State of Haryana, 2002(1) SLR 318** and **Dev Dutt Vs. UOI, 2008 (3) SCT 429**. The prayer of the applicant is for promotion to the post of Junior Engineer to be granted to him by DPC of 14.12.2015 and to set aside the promotion granted to private respondents junior to him.

5. On going through OA, we find that the cause of action i.e. non-promotion of applicant arose from the year 2012 onwards and should have been addressed by filing a delay petition which the applicant has failed to place on record. The applicant appears to have challenged the 2015 DPC, maybe on the ground that, that would be shortest period to avert the challenge to delay. The benchmark for promotion to the post of Junior Engineer was “Good”. The DPC held on 09.11.2012 did not find the applicant fit for promotion as he did not have the “Good” benchmark. DPC held on 23.01.2013 to fill up nine posts also found the applicant unfit for promotion as he did not have “Good” benchmark. The applicant has not challenged the 2012 and 2013 DPC wherein he was not promoted, but challenged the DPC of 14.12.2015 wherein seven posts of Junior Engineer were filled. The applicant was considered and not promoted for the same cause of not having the requisite benchmark of “Good”.

6. The Chandigarh Administration vide letter No. 9380 dated 12.05.2009 had laid down that while considering promotion to Group

'B' posts, the minimum benchmark will be "Good" and promotions would be made on seniority cum merit. Whereas the applicant qualified on the ground of seniority, he failed under the merit criteria as he did not possess the required benchmark of "Good". While deciding cases of promotion, the ACRs of last five years were taken into consideration by the DPC wherein the prescribed benchmark is "Good". In three consequent DPCs of 2012, 2013 and 2015, the applicant could not be promoted as he did not meet the said benchmark.

7. Applicant is challenging his promotion to have been considered and made in the year 2015. This is not a case where the applicant was not aware of his below bench mark gradings as he had been ignored on that count in the years 2012 and 2013. The applicant also did not raise a grievance when his juniors were promoted in the year 2012 and 2013. The cause of action for the applicant has arisen as early as 2012 when the first DPC failed to promote him. Subsequent DPCs would not enlarge the scope of limitation.

8. Whereas ACRs have not been communicated to the applicant, the applicant was also not alert and did not challenge the recording of below benchmark ACRs and non-communication of the said ACRs which knowledge he had as early as the year 2012 when his juniors were promoted. Though the non-communication could have gone in favour of the applicant, the fact is that the applicant was made aware of his below bench mark ACR when he was not

promoted in the years 2012 and 2013. The applicant could have represented in 2012 and 2013 and sought the reasons why he was not promoted, but he failed to do so, maybe on the ground that he was aware of his grading. So, this is not a case where applicant was unaware of his grading, though he had not been formally informed of his below bench mark grading. The cause of action arose as early as 2012 when the applicant was not promoted. Applicant was alerted against in 2013 when he was not promoted second time. But he made no attempt to represent or raise a grievance as no such record has been placed on record with the OA and the applicant now raises his grievance directly with the Tribunal without activating any of the departmental remedies available with him.

9. During three years i.e. 2012, 2013 and 2015, when the cause of action had arisen, the applicant was not alert to his rights and he appears to have slept over the matter of raising a representation regarding his non-promotion for two successive years. It is a settled principle that an un-communicated ACR should not form the foundation to deny benefits to a Government servant when similar benefits are extended to his juniors. But, as held by us above, it cannot be strictly said in this matter that the applicant was unaware of his below benchmark ACR as he is challenging the 2015 promotion. He had already been overlooked in the 2012 and 2013 promotion. He was aware that the promotion being one of seniority cum merit, and whereas seniority went in his favour, it was merit which let him down. Therefore, the applicant was already alerted to the uncommunicated

below bench mark ACR. Whereas on the basis of the Apex Court judgement, sharing of APAR information has been made mandatory by the Government for all its employees, in the matter before us, the non-communication does not throw itself up as an issue in the matter as applicant was made aware of the same in two DPCs on account of his non-promotion and he neither raised a representation with the respondents nor was before us.

10. For the foregoing reasons, this OA is dismissed, both on the ground of delay as well as merit. However, there shall be no order as to costs.



**(P. GOPINATH)
MEMBER (A)**

**(SANJEEV KAUSHIK)
MEMBER (J)**

Dated:
ND*