

(Reserved on 20.02.2019)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
(Circuit Bench at Nainital)

Original Application No. 331/00951/2017

Dated: This the 26th day of March 2019.

PRESENT:

HON'BLE MS. AJANTA DAYALAN, MEMBER (A)
HON'BLE MR. RAKESH SAGAR JAIN, MEMBER (J)

Kundan Lal Kararha, S/o Late Shri Jagat Ram Kararha, Aged 76 years,
House No. 27, Street No. 4, Ashirwad Enclave, Dehra Dun - 284001.

. . . Applicant

By Adv: In person

V E R S U S

1. Union of India through the Secretary, Department of Science and Technology, Ministry of Science and Technology, Technology Bhawan, New Mehrauli Raod, New Delhi - 110016.
2. The Surveyor General of India, Survey of India, Hathibarkala Estate, Dehra Dun - 248001.
3. Deputy Surveyor General of India, Hathibarkala Estate, Dehra Dun - 248001.

. . . Respondents

By Adv: Shri P.K. Rai

ORDER

Delivered by Hon'ble Ms. Ajanta Dayalan, Member (A)

The present OA has been filed by the applicant Kundan Lal Kararha seeking quashing of DPC proceedings of 27-28.06.2001 for placement of Superintending Surveyors to non-functional scale of Rs. 12000-16500 as well as DPC proceedings convened thereafter. He has also sought preparation of correct seniority list and release of arrears of pay and pension after placing him in higher pay scale with effect from 01.08.2001. He has also prayed for recovery of cost of Rs. 50,000/- from respondent no. 2 as he denied the promotion to the applicant by passing false information to higher formations.

2. The facts of the case, according to the applicant, are that he initially joined Survey of India on 01.07.1961 as a Group 'C' employee and was promoted to Group 'B' in 1981. Later, in 1983, he appeared in the competitive exam held by Union Public Service Commission (UPSC) for the post of Deputy Superintending Surveyor, which is a Group 'A' post and after qualifying written exam as well as interview, was selected and was appointed as such on 01.03.1985. Deputy Superintending Surveyor, after successful clearing of probation period of two years and on completion of four years of actual surveyor work as a gazetted officer, gets time scale promotion in the pay scale of Rs. 3000-4500, which has been revised to Rs. 10000-15200 by Vth Central Pay Commission. Since the applicant was a Group 'B' officer from 1981, he was appointed as Superintending Surveyor in this scale on 02.09.1988. He was confirmed on the same date as he was against the permanent post. He resigned from this post on 31.10.2001.

3. In 1989, new Recruitment Rules for Group 'A' officers came into force inter alia containing provisions regarding relative seniority of all direct recruits. The applicant also brought to our notice order dated 23.05.2017 (Annexure -4 to rejoinder) issued by Survey of India with reference to his notice dated 13.05.2017. It is stated therein that the competent authority has examined his case for grant of higher scale of Rs. 14300-18300 and a suitable reply has already been given to him on 02.09.2014 and as such no further consideration of the same issue is required again and again. In this letter, his allegation of caste based discrimination is also denied. The applicant is relying on Office Memorandum dated 20.12.2000 (Annexure A-13) specifically sub para 3 (a) and sub para 3(b). Sub para 3(a) provides that the functional grade of Rs. 14300 - 18300 will be applicable to the post of Superintending Engineer and equivalent . Executive Engineers and equivalent may be

eligible to be considered for promotion to this grade only on completion of nine years of regular service in the grade of Executive Engineer or equivalent including regular service, if any, rendered in the non-functional second grade for the Executive Engineer and equivalent in the pay scale of Rs. 12000-16500. Replacement of personnel in the functional grade of Rs. 14300-18300 was subject to actual availability of vacancies in the grade. Sub para 3(b) provides that it is likely that the functional promotions to the posts of Superintending Engineer and equivalent may be possible in some of the organized Group 'A' Engineering Services before completion of the eligibility service prescribed in sub para 3(a) because of the cadre structure of individual services. However, members of services so promoted were to continue to remain in the lower scale till they become eligible for the higher scale in terms of sub para 3(a). They were, however, entitled for benefit of pay fixation under FR 22 (I)(a)(i) on promotion. This benefit would not be available again on their placement in the higher scale. The applicant, therefore, pleaded that as per sub para 3(b), eligibility condition for service in sub para 3(a) could be relaxed and members of services could be promoted before completion of such mandatory service. Accordingly, even if it was taken that he has not completed four years of mandatory service, he could still be promoted in higher scale in terms of sub para 3(b).

4. The case of the applicant, who appeared in person, is that the applicant has been denied his rightful promotion with effect from 01.07.2001 by fixing his seniority incorrectly and by wrong interpretation of the orders by the respondent department. He also stated that he is now at the fag end of his life and has undergone open heart surgery and is also suffering from old age ailments and hence needs enough money for medicine and supportive expenditure. As regards the merits of the case, the applicant stated that as per Ministry of Science and Technology SM

dated 02.09.2014 (Annexure A-1), the applicant was denied promotion in 2001 as he had not completed mandatory service of four years in the pay scale of Rs. 12400-16500 and as such he was not considered eligible for promotion to the pay scale of Rs. 14300-18300 in 2001. According to the applicant, the pay scale of Rs. 12000-16500 has been treated as functional whereas this scale has become non-functional with effect from 01.01.1996 and is not a promotion but only a placement in higher scale.

5. The respondents have contested the claim of the applicant. First of all, they brought to our attention that Office Memorandum dated 20.12.2000 (Annexure A-13) being referred to by the applicant and containing sub para 3(a) and 3(b) being relied upon by him is in fact a clarification / modification to the original OM of the DOPT dated 06.06.2000 which prescribes detailed norms for grant of revised pay scales of Rs. 12000-16500 (non-functional) and Rs. 14300-18300 (functional) to the Executive Engineer and Superintending Engineer (and equivalent in both the grades) respectively in the organized Group 'A' Engineering Services. They further brought out that as such, these instructions are applicable only prospectively and not retrospectively. Accordingly, promotion of the applicant on completion of four years of service, which was undisputedly prior to 2000 is to be governed by the instructions applicable at that time and not by these orders. Accordingly, his first promotion cannot be ante dated now. Once this is the settled position, his second promotion in the scale of Rs. 14,300-18,300, which is after nine years of regular service in the grade of Executive Engineer and equivalent in the pay scale of Rs. 12,000-16,500 can also not be ante dated.

6. The learned counsel for the respondents further brought out that there has been no amendment or change in the Survey of India (Group A) Service Rules, 1989. Accordingly, the scheme of year 2000 cannot be

applied and promotions prior to 2000 will be governed by 1989 Rules only. He further stated that this position has been elaborated in his counter at para 9. He also stated that as given in this para, a few DPCs convened for promotion to the post of non-functional second grade of Superintending Surveyor (the nomenclature of the post as per DOPT OMs dated 06.06.2000 and 20.12.2000) against the vacancies for 2001 to 2005 which were convened by the Department of Science and Technology without association of UPSC were made null and void as per UPSC's observation. DOPT also confirmed UPSC's observation. Further, Ministry of Science and Technology SM dated 10.08.2015 (Annexure-1 to counter affidavit) clearly states that the scheme of Engineering Service cannot be implemented without amendment of Recruitment Rules, and hence there is no legal sanctity of DPCs held for promotion made to the post of Deputy Director for the vacancy years 2001-2005 being contrary to the provisions of Survey of India Rules 1989.

7. In view of the above position of Rules as well as the stand of the Ministry, the learned counsel for the respondents pleaded that no case is made out from the applicant's side for implementation of instructions of year 2000 retrospectively. In fact, he went on to state that even if there are other cases where such benefit has been granted, that benefit will need to be withdrawn in the light the clear position of Rules and instructions of the Ministry; and not that the mistakes can be repeated or aggravated. He, therefore, concluded that the OA does not merit any consideration. Besides, there is an unusual delay in filing of OA which itself should be a ground of dismissal of OA merely on delay and latches.

8. We have heard learned counsels for both sides and have also gone through the pleadings of the case. We have given our thoughtful consideration to the entire matter.

9. We observe that the case of the applicant, as pleaded by him, rests only on the ground that there were mandatory conditions of four years of service in the lower grade and nine years of service in the higher grade for promotion to the post of Superintending Surveyor. According to him, even if he did not fulfil the four years of service condition for eligibility, his service in Group 'B' post in Survey department could be considered in terms of sub clause 3(b) and accordingly, his promotion to this grade could be granted from the date of completion of four years service including his service in Group 'B'. The applicant pleaded that once this promotion is granted after considering his Group 'B' service, his nine years service period would automatically also get completed earlier thereby making him eligible for the post with effect from 2001. He also stated that this be done especially in view of December 2000 circular which contains sub para 3(b) according to which promotions can be granted earlier to completion of eligibility criteria regarding length of service.

10. We observe that instructions prescribing detailed norms for grant of revised pay scale of Rs. 12000-16500 (non-functional) and Rs. 14300 - 18300 (functional) to Executing Engineer and Superintending Engineer respectively are of the year 2000. These, therefore, can be applied only prospectively and not retrospectively. On the other hand, the applicant is seeking relief not for the year 2001 alone but for his earlier promotion as well. 2001 promotion would, in fact, be a consequential promotion in case the earlier promotion is made with effect from earlier date counting his service in Group 'B' to be service rendered in Executive Engineer scale. We are clear that the OMs of 2000 cannot be applied retrospectively. The promotion of the applicant prior to June 2000 would be governed only by the Service Rules of 1989 in which there has been no amendment. As such, provisions of sub para 3(b) are not at all applicable prior to year

2000. Hence, grant of promotion to the applicant can be only as per the provisions of 1989 Rules and his service in Group 'B' cannot be taken in to account towards his service in the Group 'A'. Once this point is clear , it follows that the next promotion will be only after nine years of service in the scale of Rs. 12,000-16,500.

11. Besides, DOPT vide orders dated 10.08.2015 has stated that the scheme of Engineering Service cannot be implemented without amendment in the Rules. DOPT has further gone on to state that there is no legal sanctity of DPCs held for promotion made to the post of Deputy Director for the vacancy years 2001 to 2005 as the same are contrary to the provisions of Survey of India (Group 'A') Service Rules, 1989. DOPT has thus taken a clear stand that 1989 Service Rules are applicable till their amendment and even in case, certain DPCs were held contrary to this position, the same would be not have any legal sanctity. We find this stand justified.

12. We also find that as per order dated 22.05.2017, delay in filing the OA has already been condoned by this Tribunal. Hence, there is no point in taking up this issue at this stage by the respondents.

13. In view of the above and the clear position of Service Rules of 1989 as well as the stand of the DOPT, we do not find any ground for interference by this Tribunal in the matter. Accordingly, the OA is dismissed. No order as to costs.

(Rakesh Sagar Jain)
Member (J)

(Ajanta Dayalan)
Member (A)

Anand...