

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

O.A. No.143/2016

Reserved On: 10.12.2018

Pronounced on: 08.01.2019

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

Shri Gopal Saran,
Since deceased
Through his LRs

1. Smt. Saroj Bala, W/o Shri Gopal Saran
2. Mr. Sharad Aggarwal, S/o Shri Gopal Saran
3. Mr. Govind Aggarwal, S/o Shri Gopal Saran
4. Mr. Narayan Aggarwal, S/o Shri Gopal Saran

All residents of H.No.177, Pappar Walli Gali,
Khirki Bazar Hapur District, Ghaziabad (UP).

5. Smt. Renu Garg,
D/o Shri Gopal Saran
R/o Bhagat Mishthan Bhandaar,
Hapur.

6. Smt. Neeru Bansal
D/o Shri Gopal Saran
R/o X-1/17, Phase-1,
Budh Vihar, Delhi-110086.

7. Smt. Amita Singhal
D/o Shri Gopal Saran
R/o K-403, Prateek Loriyal
Sector-120, Noida.

.....Applicants

(By Advocate: Dr. Ashwani Bhardwaj)

Versus

The Director General (Works),
Directorate General of Works,
Central Public Works Department,
Nirman Bhawan,
New Delhi.

..Respondent

(By Advocate: Shri Piyush Gaur)

ORDER

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

The applicant, a retired Junior Engineer, filed the OA seeking the following reliefs:-

“(a) Direct the respondent to award ad hoc promotion to the applicant, w.e.f. 23.04.1998, with all consequential benefits of pay allowances, with all arrears, w.e.f. the date, when the same was granted to Shri H.P. Garg, the junior of the applicant, and

(b) Direct the respondent to pay an interest @ 18% on all the payments of pensionary benefits made by them, from the date, they became due till the actual date of payment, and

(c) Pass any other or further order(s) in favour of the applicant, which this Hon'ble Tribunal may deem fit, just and proper in the above mentioned facts and circumstances”.

2. After the OA is filed, the applicant died and thereafter the legal heirs of the applicant were brought on record in his place.

3. Heard Dr. Ashwani Bhardwaj, the learned counsel for the applicants and Shri Piyush Gaur, the learned counsel for the respondents and perused the pleadings on record.

4. Shorn of the unnecessary details, the instant OA can be disposed of by noting a finding given by this Tribunal in the earlier round of litigation pertaining to applicant himself and to the issue involved in the instant OA, i.e., the prayer for granting of adhoc promotion as Executive Engineer, w.e.f. 23.04.1998.

5. In C.P. No.144/2004 in OA No. 3102/2003 dated 16.05.2014, this Tribunal while dismissing the CP of the applicant, in respect of the subject matter of the instant OA, observed as under:-

“21. Further, after having gone through the documents and pleadings filed before this Tribunal, we have noted that the meeting which had taken place on 30.03.1998 was a meeting of Departmental Screening Committee, held to consider ad-hoc promotions to the grade of Executive Engineer from the grade of Assistant Engineer (Civil). It was not a DPC for substantive promotions of Assistant Engineer (Civil) to the posts in the grade of Executive Engineer. That day on 30.03.1998, the petitioner was under a cloud and as per Annexure A-I of the Minutes of the Departmental Screening Committee (page-148 of the paper-book), it is seen that his case not having been cleared by Vigilance, the petitioner had been found to be ‘unfit’ for such *ad-hoc* promotion. Since this Screening Committee was not a DPC, it was not required to follow the sealed cover procedure, and the Annexure-I of the Minutes of the Screening Committee as produced, shows that no sealed cover procedure was followed in the case of any of the incumbents who were considered ‘unfit’ for such *ad-hoc* promotions that day, and even Shri Nirmal Singh, above the applicant, who had been charge-sheeted, was also clearly declared to be ‘unfit’ for such *ad-hoc* promotion, and among the SC/ST candidates, Shri R.K. Nafaria, who had also been charge-sheeted, had also been declared to be ‘unfit’ for such *ad-hoc* promotion by the Departmental Screening Committee.

22. It is trite law, as held by the Hon’ble Apex Court in the case of **Union of India, Etc. Etc. vs. K.V. Jankiraman Etc. Etc. (1991) 4 SCC 109**, that sealed cover procedure has to be adopted by the DPC. The law as laid down by the ratio of that case does not apply to a Departmental Screening Committee convened for granting only *ad-hoc* promotions, which is not a DPC. Therefore, when through orders dated 23.04.1998, orders had been passed to appoint some Assistant Engineer (Civil) to officiate as Executive Engineer (Civil) in the Central Engineering Service Group ‘A’ temporarily, on *ad-hoc* basis, in the pay scale of Rs.10,000-15300 from the date they assume the charge of the post of Executive Engineer (Civil), for a period of 6 months, or till further orders, whichever is earlier, such orders of *ad-hoc* promotion cannot be claimed to be orders of substantive promotion, since the *ad-hoc* promotions were specifically ordered to be on a temporary basis, for a period of maximum six months, or till further orders, whichever is earlier. Therefore, the petitioner cannot be allowed to claim that these orders were passed after consideration of the cases of him & his compatriots by a DPC for according substantive promotions”.

6. W.P. (C) No.3777/2015 filed by the applicant against the said order was dismissed as withdrawn, by the Hon'ble High Court of Delhi, by order dated 17.04.2015, as under:-

“After some arguments, counsel for the petitioner seeks leave to withdraw the present petition. Counsel, however, seeks liberty to file a fresh application before the learned Tribunal to claim ad hoc promotion for petitioner from the year 1998 and also interest on the delayed payment.

The writ petition is accordingly dismissed as withdrawn, reserving liberty to the petitioner, as prayed for. However, the liberty which has been granted to the petitioner will be subject to the rights/remedies as are available to him”.

7. The legal heirs of the applicant filed the instant OA seeking a direction to the respondents to award ad hoc promotion to the applicant with effect from 23.04.1998 and the said issue was already considered by this Tribunal in the above referred order and by giving certain reasons, this Tribunal rejected the said claim. It is true that the said order was passed in a contempt case. But once a finding has been given against the interest of the applicant, it is for him to take appropriate steps for setting aside, that part of the said order. Though the applicant filed the writ petition against the said order, but for the reasons known to him, withdrawn the same by obtaining liberty to file a fresh OA with regard to the same claim. Though the Hon'ble High Court granted liberty, as requested by the applicant, but specifically observed that the said liberty would be subject to his rights/remedies as are available to him in law. The Hon'ble High Court while granting the said liberty has neither gone into the issue of the claim of the applicant for ad hoc promotion or

given any findings or/any observation with regard to the said issue. Hence, it cannot be said that by virtue of the said liberty, the finding given by this Tribunal was set aside.

8. Even otherwise, we agree with the said view expressed by this Tribunal, and the instant OA is liable to be dismissed for the same reasons.

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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