

**Central Administrative Tribunal
Principal Bench**

OA No.522/2019

New Delhi, this the 5th day of July, 2019

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Mohd. Jamshed, Member (A)**

Shri Mahendra Ram (Aged 59 Year),
Executive Engineer (C),
S/o Shri Ram Khelawan,
R/o A-8, Gali No. 3, Hindon Vihar,
Sector – 49, Noida – 201304,
O/o Superintending Engineer,
Delhi Central Circle –XI,
CPWD Pushpa Bhawan,
New Delhi – 110062.

... Applicant

(By Advocate: Ms. Sonia A. Menon)

Vs.

1. Secretary,
Government of India,
Ministry of Housing and Urban Affairs,
Nirman Bhawan,
New Delhi – 110011.

2. Central Public Works Department,
Through its,
Director General,
Nirman Bhawan,
New Delhi – 110011.

... Respondents

(By Advocate : Mr. Deepak Bharadwaj)

: O R D E R (ORAL) :

Justice L. Narasimha Reddy, Chairman :

The applicant is working as Executive Engineer in the Central Public Works Department (for short, CPWD). Disciplinary proceedings were initiated against him by

issuing a major penalty charge sheet on 25.04.2017. The respondents have promoted several Executive Engineers (EEs) to the post of Superintendent Engineer (SE) on ad-hoc basis on 28.12.2018. Through an order dated 16.10.2018 the period for concluding the inquiry against the applicant was extended by six months. This OA is filed challenging the charge sheet dated 25.04.2017 and the order dated 16.10.2018 and with a prayer that respondents be directed to consider his case for ad-hoc promotion with effect from the date on which his juniors have been promoted.

2. The applicant contends that though the disciplinary proceedings have been initiated in the year 2017, they have been kept pending without any basis and he has been denied the benefit of ad-hoc promotion. It is also stated that according to the O.M. dated 23.02.1999, the sealed cover procedure needs to be followed even in respect of ad-hoc promotions and in the instant case, the same was not followed.

3. Respondents filed counter affidavit opposing the OA. It is stated that the Screening Committee met on 18.12.2018 for selecting candidates for ad-hoc promotion to the post of SE and the cases of such of EEs against whom disciplinary proceedings are pending, were also considered and were

declared as unfit. It is stated that the applicant was found unfit due to pendency of major penalty proceedings against him. The respondents further stated that the sealed cover procedure was not followed as it was ad-hoc promotion and that there is no practice of promoting the incumbent with retrospective effect on ad-hoc basis. Other contentions urged by the applicant are denied.

4. We heard Ms. Sonia A. Menon, learned counsel for the applicant and Mr. Deepak Bharadwaj, learned counsel for the respondents.

5. The relief claimed in the OA is two fold. The first is in the form of challenge to the charge sheet dated 25.04.2017 and ancillary proceedings and the second is as regards consideration of his candidature for promotion to the post of SE on ad-hoc basis.

6. So far as the challenge to the charge sheet is concerned, we find it difficult to interfere with the same. The inquiry was conducted and the Inquiry Officer submitted his report in 13.06.2019. At this stage, we find it not proper to interfere with the charge sheet whatever be the grounds. It is not even pleaded before us that the charge sheet was issued by the authority not vested with the power. The order dated 16.10.2018, through which the

period for conclusion of the enquiry was extended, virtually becomes redundant once the Inquiry Officer submitted the report.

7. Coming to the claim of the applicant for ad-hoc promotion, the respondents have clearly stated that the case of such of the EEs against whom the vigilance case was pending were considered but declared as unfit. Para 2 and 3.0 of the counter affidavit read as under:-

“2. *Further, it is also submitted that Sh. Mahendra Ram, Executive Engineer (Civil) is among those officers who were considered for the promotion by the aforesaid Screening Committee but not granted promotion due to vigilance case pending against them. Shri Mahendra Ram was declared “UNFIT” due to the charge sheet for major penalty has been issued to him on 25-04-2017. (Vigilance status dated 28.11.2018 is attached as (Annexure-R1))*

3.0 *A major penalty charge sheet under Rule 14 of CCS (CCA) Rules, 1965 has been issued to Shri Mahendra Ram, Executive Engineer (Civil) vide Ministry of Housing and Urban Affairs Memorandum No. 10/V-24/A-79/ 2016-VS.1/AV.III dated 25.04.2017 (Annexure – R2) with a direction to submit the written statement of defence within 10 days of receipt of the charge Memorandum. Shri Mahendra Ram, Executive Engineer (Civil) (Charged Officer, CO) submitted his written defence statement dated 12.05.2017, received in the office of CVO, CPWD on 16/05/2017, denying therein the charges leveled against him”.*

8. The pendency of the disciplinary proceedings is in fact treated as a bar for considering the case of the employee for regular promotion also. In such cases sealed cover procedure is adopted. The reason is that in the event, the disciplinary proceedings ending in favour of the employee, the consideration of his case should not be delayed. The record of the employee is verified by the DPC along with

other candidates and its findings are kept in sealed cover. The situation as regards ad-hoc promotion is substantially different. It is almost an arrangement in the department and it does not confer any substantial rights upon the employees. To be objective and transparent, the respondents have promoted on ad-hoc basis only such group of EEs as regards whom vigilance angle is clear.

9. It is no doubt true that in O.M. dated 23.02.1999, the DOP&T indicated that sealed cover procedure needs to be followed in respect of ad-hoc promotions also. It is not a requirement under the statute/rules and it is directory than mandatory. As mentioned earlier, the adoption of sealed cover procedure would help the employee in case he is exonerated of the charges. In such cases, the employee would be promoted with effect from the date on which his immediate juniors were promoted, provided DPC found him fit.

10. The facility of the retrospective promotion on ad-hoc basis does not exist. It is neither a substantive appointment nor a regular promotion. Therefore, the failure to follow the sealed cover procedure in respect of the applicant cannot be said to have resulted in any detriment to the applicant. It is needless to mention that if he is exonerated of the charges, he can straightaway be

promoted on ad-hoc basis. In the event regular promotions being taken up, he can be considered duly protecting his seniority. Though, it is represented that the applicant is due to retire on 31.07.2019, we find it difficult to require the respondents to conclude the disciplinary proceedings before that date.

11. As the things stand now, we do not find any basis to interfere with the orders through which the ad-hoc promotions were made. However, respondents need to conclude the disciplinary proceedings in as much as the Inquiry Officer has also submitted the report.

12. We, therefore, dispose of the OA directing the Disciplinary Authority to conclude the proceedings as early as possible and not later than three months from the date of receipt of certified copy of this order. There shall be no order as to costs.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

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