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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

O.A. NO. 1533/2003

New Delhi, this the 16<sup>th</sup> day of July, 2004

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN  
HON'BLE SHRI S.A.SINGH, MEMBER (A)

R.V.V.N. Jagapathi Raju  
r/o Sector-B, Pocket 10  
Flat No. 7321, Vasant Kunj  
New Delhi - 110 070. .... Applicant

(By Advocate: None)

Versus

Union of India through

1. The Secretary  
Ministry of Defence  
South Block  
New Delhi - 110 011.

2. Engineer-in-Chief's Branch  
Army Hqrs., Kashmir House  
DHQ P.O., Rajaji Marg  
New Delhi - 110 011.

3. The Director General  
Naval Project  
Naval Base P.O.  
Visakhapatnam  
Andhra Pradesh - 530 014.

.. Respondents

(By Advocate: Sh. Ravinder Sharma proxy for Sh. R.P.  
Aggarwal)

O R D E R

Justice V.S. Aggarwal:-

Applicant by virtue of the present application  
seeks quashing of the order dated 7.1.2003. The said  
order reads:

"1. In compliance with the order  
dated 02 Sep 2002 passed by Hon'ble CAT  
Principal Bench New Delhi in  
O.A.No.2276/2002 MA No.1888/2002. Your  
representation dated 27 Feb 2002 has been  
considered carefully by the competent  
authority. Accordingly you are intimated  
as under:-

(a) As per Hon'ble CAT Hyderabad  
judgement in O.A.No.481/91 you were  
promoted as ASW by a R-DPC held on  
20.1.95 and panel issued vide  
No.A/41032/Review/94/EIR (O) dated  
28.2.95 and as SW by a R-DPC held on

*MS Ag*

29.3.95 vide panel No.A/41032/Review/JS/95/EIR(O) dated 24.4.95. This was already admitted by you vide your subsequent representation dated 27 Sep 2002.

(b) In compliance with the Hon'ble Central Administrative Tribunal, Principal Bench, New Delhi Judgement dated 14 Jul 99 in O.A.No.3126/91, 448/93, 1042/93, 1954/93, 3164/92, 1712/94, 2698/93, Judgement dated 27 Jul 99 in O.A.No. 658/94 and Judgement dated 04 Jan 2002 in O.A.No.1099/96 a Review DPC was held on 24 Aug 2001 at UPSC for promotion from SW to the grade of SSW against the vacancies of 1995-96 and accordingly a panel No.A/41031/95-96/EIR(O) dated 28 Sep 2001 was issued.

(c) The Officers included in the above panel No.A/41031/95-96/EIR(O) dated 28 Sep 2001 were in service on 01 Oct 95 and therefore they were considered for the vacancies of 95-96.

(d) Since you have retired from service on 31 Oct 94 your name has not been considered in the R-DPC held for the vacancies of 95-96.

2. In view of the above no injustice has been done to you.

3. This speaking order is issued in compliance with order dated 02 Sep 2002, passed by Hon'ble Central Administrative Tribunal, Principal Bench, New Delhi in O.A.No.2276/2002 and M.A. No.1888/2002."

2. The applicant further seeks that a direction should be issued to allot him his original seniority in the grade of Surveyor of Works for the year 1987 based on the revised seniority as fixed by the order of 29.3.1995 and to hold a review DPC to consider his claim and to promote him to the post of SSW.

3. The applicant contends that he was eligible for consideration for promotion against the vacancies which occurred in the years 1992, 1993 and 1994. Persons junior to him as Surveyor of Works had been considered and promoted against these vacancies.

*Ms Ag*

According to the applicant, the DPC had taken place some time during the first half of the year 1994 for considering the vacancies which arose for the years 1992, 1993 and 1994. In fact, in the panel for the year 1994-95 a person junior to the applicant, namely, Shri K.C.Shankar had been considered and promoted vide order dated 31.5.1995 and as such a review DPC was also called for the year 1994-95 pursuant to the retrospective promotion of the applicant. Applicant contends that even in the vacancies of 1994, five persons juniors to him were promoted. His precise grievance is against omission of his name from the revised seniority of Surveyor of Works by the respondents.

4. Some of the other facts can also precipitate the question in controversy. The applicant had entered the Central Government service as Sub-Overseer in the year 1956. He had earned his due promotions and in 1991, he was promoted to the post of Surveyor of Works. The applicant had filed OA 481/1991 which was decided by the Hyderabad Bench of this Tribunal on 1.8.1994. The Hyderabad Bench had directed:

"i) The applicant's seniority in S.A. Gr.I should be based on his total length of his continuous service as SA Gr.I/Suptd. B/R Grade I for the purpose of his promotion as Assistant Surveyor of Works.

ii) The applicant's induction in the Surveyor Wing should be deemed to have taken place in 1978 and he should be deemed to have been regularly promoted as Assistant Surveyor of Works on the basis of his position in the panel prepared and circulated vide Engineer-in-Chief's letter dated 19-4-1982 with effect from the date on which his immediate junior/juniors have been promoted.

*Ms Aey*

iii) He should also be considered for further promotion as Surveyor of Works on the basis of his seniority and regular qualifying service as Assistant Surveyor of Works commencing from 28-6-1982 and if found fit, given notional promotion from the date he attained eligibility or the date on which his immediate junior was promoted whichever is later with all consequential benefits of seniority without, however, arrears of pay.

iv) Action on the above lines should be completed within a period of three months from the date of the receipt of copy of this order."

5. By the time the respondents are asserted to have implemented the decision of the Hyderabad Bench of this Tribunal, the applicant superannuated on 31.10.1994. It is on these broad facts that he claims the reliefs to which we have already referred to above.

6. The application has been contested and the respondents in their reply state that the applicant was promoted as Assistant Surveyor of Works (for short 'ASW') by a review DPC held on 20.1.1995 against the vacancy year 1979. He was subsequently promoted as Surveyor of Works by a review DPC held on 29.3.1995 against the vacancy year 1987. The applicant was placed below Shri Gyan Prakash Manglik and above Shri K.C. Shankar in the seniority list of ASW.

7. Three DPCs were held for promotion from Surveyor of Works to SSW. The first DPC was held on 24.11.1991 for the vacancy year 1991-92. There were nine vacancies at that time. The second DPC was held on 29.11.1993 against the vacancy year 1992-93. There were three vacancies at that time. For the vacancy year 1993-94, a DPC was held on 26.2.1994. At that

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time there were only six vacancies. In this DPC, only those eligible persons who were promoted as Surveyor of Works upto 22.2.1985, were promoted to SSW. The DPC for the vacancy year 1994-95 was held on 4.5.1995. On that date, the applicant had already retired. Shri K.C.Shankar, who was junior to the applicant, was promoted. Thus, it is claimed that the applicant's grievance has no basis.

8. We have heard the parties' counsel. Perusal of the above said facts, clearly show that after the decision of the Hyderabad Bench, the seniority had been redrawn and as is apparent from the order of 28.2.1995, applicant was placed above Shri K.C.Shankar.

9. The grievance of the applicant is that in the DPC for the year 1994-95, Shri K.C.Shankar was promoted. When DPC was held in the year 1995 after the applicant had superannuated, keeping in view the fact that he was in service upto 31.10.1994, his case should have been considered and due benefit accorded.

10. We do not dispute the proposition that if a person junior to the applicant had been promoted from a date when the applicant was in service, applicant necessarily must be given his due benefit and even if he had superannuated, he can be given the notional benefit. But if Shri K.C.Shankar who was immediately junior to the applicant in fact was promoted after the applicant was superannuated, in that event, the applicant has little claim. This is

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obvious conclusion from the admitted facts. Therefore, we dispose of the present application directing:

a) The claim of the applicant should have been considered for the year 1994-95. If any person junior to the applicant has earned promotion before 31.10.1994, the notional benefit must be granted to the applicant.

b) In case the junior to the applicant in fact has only been promoted after superannuation of the applicant and no benefit of any kind has been accorded to the said junior for the period while applicant was in service, in that event, the applicant cannot earn the notional benefit.

  
(S.A. Singh)  
Member (A)

  
(V.S. Aggarwal)  
Chairman

/NSN/