

(2019) 10 CAT CK 0089

In the Central Administrative Tribunal

Case No : Original Application No. 1347 Of 2014

Pradip Kumar Basu

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 31-10-2019

Acts Referred:

Citation : (2019) 10 CAT CK 0089

Hon'ble Judges : S.N. Terdal, J;A.K. Bishnoi, Member (A)

Bench : Division Bench

Advocate : Yogesh Sharma, Avinash Kaur

Final Decision : Allowed

Judgement

S.N. Terdal, J

1. We have heard Mr. Yogesh Sharma, counsel for applicant and Ms. Avinash Kaur, counsel for respondents, perused the pleadings and all documents produced by both the parties.

2. In this OA, the applicant has prayed for the following reliefs:

"(i). That the Hon'ble Tribunal may graciously be pleased to pass an order of quashing the impugned seniority list dated 25.11.2013 (A/1) declaring to the effect that the same is illegal, arbitrary and discriminatory and consequently pass an order directing the respondents to prepare fresh seniority list on the basis of rotation of vacancies of both feeder cadre posts in the ratio of 1:1 with all the consequential benefits.

(ii) That the Hon'ble Tribunal may graciously be pleased to pass an order directing the respondents to fix the seniority of the applicant by taking into account his date of promotion as Executive Engineer (Elect.) w.e.f. 24.12.2004 with all consequential benefits including promotion from due date.

(iii) That the Hon'ble Tribunal may graciously be pleased to pass an order

directing the respondents to treat the regular date of promotion of the applicant to the post of Executives Engineer (Elect.) as 24.12.2004 for all the purposes including for the purpose of promotion and seniority with all the consequential benefits.

(iv) Any other relief which the Hon'ble Tribunal deem fit and proper may also be granted to the applicant along with the costs of litigation."

3. The relevant facts of the case are that the applicant was initially appointed as Technician in the respondent-department on 23.05.1978. He was subsequently appointed to the post of Junior Engineer (Elect) on 09.05.1979. Subsequently he was promoted on regular basis to the post of Assistant Engineer (Electrical) (Gr.B) on 12.03.1993, as such he had completed 8 years of regular service as AE (E) on 12.03.2001. As per the Recruitment Rules (RRs), the next promotion was that of Executive Engineer (Elect) and mode of recruitment was by promotion only and 50% was earmarked to Assistant Engineer (Elect.)/ Assistant Surveyor of Works (Elect.) etc. and 50% was earmarked to Assistant Executive Engineer (Electrical). The relevant portion of the mode of recruitment is extracted below:

"(i) 50% from Asstt. Executive Engineers (Elect) who have completed probation and have rendered not less than 4 years regular service in the grade on the basis of seniority-cum-fitness;

(ii) 50% from Asstt. Engineer (Elect)/Asstt. Surveyor of Works (Elect)/ Engineering Assistant (Elect). Who have completed probation and have rendered not less than 8 years regular service in the grade and possess a degree in engineering or equivalent."

The case of the applicant is that though he had completed 8 years of regular service as on 12.03.2001 and vacancies in the promotional post of Executive Engineer (Elect) were available, yet he was promoted only on ad hoc basis in the year 2004 by constituting a Screening Committee by the respondents. His further case is that in the year 2005, the respondents by holding DPC by the same Screening Committee appointed some Assistant Executive Engineers on regular basis and subsequently in 2008 the applicant was appointed on regular basis by holding a regular DPC. The case of the applicant is that there is no justification for not holding regular DPC and not promoting him on regular basis in 2004, particularly when vacancies were existing and he was eligible as per the above extracted RRs. In support of his contention, the counsel for the applicant relied upon the judgment of Hon'ble High Court of Delhi in the case of Dr.Ramakant Singh Vs. Union of India and Ors (W.P(C) 5802/2015. He specifically brought to our notice para 14, 15 and 16 and requested for a direction to the respondents to hold a review DPC. Para 14, 15 and 16 of the said judgment are extracted below:

"14. Delay in holding DPCs has been a subject matter of various decisions of the Supreme Court of India. In fact, the Office Memorandum dated 08.09.1998 which has been extracted in para 12 foregoing, it has been highlighted that DPC

should be convened at regular annual intervals to draw panels which could be considered for making promotions against vacancies which occur during the course of a particular year. The OM has also highlighted that the concerned appointing authorities must initiate action in advance to fill up anticipated vacancies. Another relevant fact which has been highlighted is that DPCs need not be delayed or postponed on the ground that the Recruitment Rules for a particular post are being reviewed/amended. The Supreme Court in the case of Union of India & Ors (supra) not only laid stress that DPC should be convened every year, even suggested that dates should be fixed, i.e. 1st April or 1st May each year.

15. For the reasons foregoing, we are unable to convince ourselves that the delay in holding the DPC was for any justifiable reasons. Taking into considerations the submissions made and for the reasons stated herein, the writ petition is allowed. The petitioner will be granted notional promotion from the date when the vacancy arose, i.e. in the year 2009-2010.

16. We are informed that during the pendency of this writ petition, a DPC was held in 2015. This Court while issuing notice in the matter, in CM.APPL 13301/2015 directed that any appointment made shall be subject to the outcome in this writ petition. Accordingly, the review DPC will be held within a period of three weeks from today and the petitioner will be considered for promotion in accordance with law and the rules."

To the same effect, he relied upon the order of this Tribunal (Principal Bench) in OA No. 792/2012, titled Dr. C.P.Singh Sengar and Ors Vs. Union of India through Secretary, Ministry of Home Affairs and Others.

4. The counsel for the respondents vehemently and strenuously contended that some of the officers of DoT were deployed in BSNL and MTNL and subsequently an option was given in the process of absorption of the said deputationists in BSNL/MTNL and in the process, it was not clear to the department about the availability of posts in the Department of posts and hence the posts were filled only on ad hoc basis as stop gap arrangement and as the stop gap arrangement could not be carried on for a long time the applicant was promoted on regular basis w.e.f 4.01.2008 after holding a regular DPC and as such there is nothing illegal in regularly appointing the applicant in 2008 only. The relevant portion of the reply given by the respondents is extracted below:-

"The STS grade officers mentioned above have been working in BSNL on deemed deputation prior to completion of absorption process. Since the absorption process was not completed and the status of the above mentioned officers was not clear to the Department, the STS level posts available in Department of Posts have been filled on adhoc basis as a stop gap arrangement. Accordingly, the applicant was promoted by the Department in year 2004 from AE (E) Gr. "B" to EE (E) Gr "A" on adhoc basis as a stop gap arrangement against the STS level (Gr "A") post in the DoP. It was clearly indicated in his adhoc promotion order

that he will not confer any claim for regular appointment, seniority etc. in the grade of EE (E) (Annexure R-2).

The applicant was promoted by the Department in year 2004 from AE (E) Gr. B to EE (E) Gr. A on adhoc basis a stop gap arrangement in DoP. For extension of adhoc appointment beyond one year, approval of DoPT is necessary and DoP&T insisted for making regular appointments as early as possible. Since upto 2008, the absorption process was not completed and the status of the Electrical Wing Officers as mentioned above was not clear to the Department and in view of the fact that the adhoc was not clear to the Department and in view of the fact that the adhoc promotion could not be extended for indefinite period, the applicant was promoted on regular basis w.e.f. 04.01.2008...."

5. In view of the facts and circumstances narrated above, we are unable to accept the contention of the counsel for the respondents. In view of the judgment passed by the Hon'ble High Court extracted above and in view of the Recruitment Rules extracted above, we are of the considered view that the applicant is entitled to be considered on regular basis in 2004.

6. Accordingly, we allow the OA and direct the respondents to hold a review DPC for the year 2004 to consider the applicant for above said promotion, with all consequential benefits within a period of three months from the date of receipt of a certified copy of this order. No order as to costs.