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**(2007) 02 DEL CK 0078**

**In the Delhi High Court**

**Case No : Writ Petition (C) No. 7539 of 2000**

Shri A. Chaudhary

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

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**Date of Decision : 02-02-2007**

**Acts Referred:**

**Citation : (2007) 137 DLT 602**

**Hon'ble Judges : Vipin Sanghi, J; Manmohan Sarin, J**

**Bench : Division Bench**

**Advocate : R.P. Kapur, for the Appellant; Rekha Palli, Neha Chaturvedi for respondent Nos. 1 and 2, B. Rana and Amaya Singh, for the Respondent**

**Final Decision : Dismissed**

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## **Judgement**

Vipin Sanghi, J.—Petitioner assails the judgment and final order dated 6.9.2000 in O. A. No. 2065/97 and the order dated 13.11.2000 in

R.A. No. 333/2000 passed by the Central Administrative Tribunal, Principal Bench, New Delhi dismissing the said Original Application and the

Review Application preferred by the petitioner herein. The petitioner has also sought quashing of Office Order dated 25.11.1994 circulating the

revised seniority list (provisional) and Office Order dated 5.2.1997 confirming the said provisional seniority list. He has further sought quashing of

the DPC proceedings held in 1994 for considering promotions to the post of Superintending Engineer (Electrical) and has prayed for constitution

of fresh DPC for filling up of the vacancies in the post of Superintending Engineer (Electrical) on a regular basis for the years 1983 to 1987. He

also seeks placement in the seniority list of Superintendent Engineer (Electrical) above respondent No. 4 and all other consequential reliefs.

2. Petitioner had joined CPWD as Assistant Executive Engineer (Electrical) on 28.2.1970. The Applicant was promoted to the post of Executive Engineer (Electrical) on 30.3.1974 and as Superintending Engineer on 10.5.1985 on an adhoc basis.

3. A seniority list of Executive Engineers (Electrical) was circulated on 12th January, 1994, wherein the petitioner was shown at Sl. No. 75

whereas Respondent No. 4 Shri S.C.Khurana was shown at Sl. No. 76. Owing to continuous litigations promotions to the grade of Superintending

Engineer were being made only an adhoc basis. On 9.6.1994, the Tribunal passed an order in various applications filed in OA No. 1765/92 "Sh.

B.P.Bindal and Ors. v. UOI and Ors.", interalia, directing the UPSC to complete the process of regular promotions to the cadre of Superintending

Engineer (Electrical) and to publish the finalised list on or before 30.11.1994. Thereafter, the DPC meeting was convened and held on 30.9.94

and 11.10.94 and regular promotions to the cadre of Superintending Engineer (Electrical) were considered for the years 1983, 1984, 1985, 1986,

1987 and thereafter. The bench mark for promotion was "very good". The petitioners case was also considered by the DPC for these years.

However, the petitioner did not make the said grade from 1983-1986. He made the grade only in 1987 and was Therefore placed at the first

position in the select panel for 1987. In this process various persons junior to the petitioner in the cadre of Executive Engineer (Electrical) came to

be promoted before him in the years 1984, 1985 and 1986. Petitioner was in fact superseded by 16 persons who were junior to him in the cadre

of Executive Engineer (Electrical) including by Respondent No. 4. 4. On 25.11.1994, a provisional seniority list of the Superintending Engineer

(Electrical) was circulated wherein the petitioner was shown at Serial No. 21 and Respondent No. 4 herein, was placed at Serial No. 4. It was this

seniority list which was assailed by the petitioner before the Central Administrative Tribunal in the O.A. No. 2065/97. Before the Tribunal the

contentions raised by the petitioner, which he reiterates before us as well were the following:

(i)Seniority lists of 18.9.1989 and 12.1.1994 (in the cadre of Executive Engineer (Electrical) had shown the petitioner as senior to respondent No.

4 herein,

(ii) Respondents wrongly adopted the criterion of considering 7 year's confidential reports for promotion to the grade of Superintending Engineer

(in terms of the CPWD manual, Volume II) in spite of OMs dated 22.5.1979 and 18.3.1988 of DOP and T according to which the Confidential

Reports of only 5 years should have been considered. Even the Recruitment Rules which were notified on 28.10.1996 fixed the qualifying period

as 5 years and not 7 years.

(iii) The DPC held on 11.10.1994 graded approximately 457 ACRs in a single day which was not humanly possible and thus it was done in a hurry

and there was non-application of mind by the DPC.

(iv) The DPC having not been conducted annually, vacancies were also not reckoned correctly year-wise and neither was the choice of feeder

cadre properly worked out. Thus, the proceedings of DPC were liable to be quashed and so was the seniority list circulated for the cadre of

Superintending Engineer (Executive). 5. Before us, the petitioner further submits that the confidential reports (CRs for short) were being written by

CPWD according to financial year beginning on 1st April and ending on 31st March of the next calendar year. However, the Tribunal has referred

to the CRs as if they have been written according to calendar year. He submits that from this it appears that the CRs had not been put up before

the DPC constituted for selection. He also submitted that the CRs grading the officers as "outstanding", "very good", "good" etc. run contrary to

the instructions contained in the form in which the reports are to be prepared. He referred to instruction No. 5 in the form which reads as follows:

Every answer shall be given in a narrative form. The space provided indicates the desired length of the answer Words and phrases should be

chosen carefully and should accurately reflect the intention of the authority recording the answer. Please use unambiguous and simple language.

Please do not use omnibus expressions like "outstanding", "very good", "good", "average", "below average", while giving your comments against

any of attributes.

6. He has also claimed in his synopsis that various officers, with less than seven years of regular service were considered and promoted since they

had five years of qualifying service. Lastly he submitted that his ACRs for earlier years were adverse to his interest and since they were not U.P.

Jal Nigam and others Vs. Prabhat Chandra Jain and others, , they could not have been considered for his assessment by the DPC.

7. The Tribunal rejected the Original Application with costs of Rs.3000/- imposed upon the petitioner.

8. A perusal of the judgment of the Tribunal reveals that it called for and examined the original records to satisfy itself about the legality of the procedure adopted by the respondents to effectuate promotions to the post of Superintending Engineer (Electrical) in CPWD.

9 Having considered the matter, we see no reason to interfere with the well reasoned order of the Tribunal. The main thrust of petitioner"s

argument is that the respondents should have adopted the criteria of 5 years qualifying service as laid down in the Recruitment Rules and till the

rules were framed, the promotions should have been continued as adhoc and the Recruitment Rules should have been given retrospective effect.

10. This submission of the petitioner has no merit. The CPWD Manual, contains executive instructions which in the absence of statutory

recruitment rules held the field from 1961 onwards and upto 1981. Moreover, the Recruitment Rules relied upon by the petitioner admittedly came

into force only in the year 1996. They were not given retrospective operation. It is well settled that in the absence of any statutory rules, the

government is free to regulate the service conditions of the employees by administrative instructions and even where draft rules have been framed,

they cannot legally exclude the operation of any existing executive or administrative instruction on the subject unless there is a clear intention to do

so. See Vimal Kumari Vs. The State of Haryana and Others, , also see Union of India and another Vs. Amrik Singh and others, . It is well settled

that promotions are governed by the rules which are in force at the time when they became due, and not the rules that may be in force when

promotions are actually made. (Kindly see Vice Chancellor, University of Allahabad v. Anand Prakash Mishra (Dr.) (1997)10 SCC 274.

11. Reliance placed by the petitioner upon OM dated 22.5.1979 and 18.3.1988 is misplaced, since these are mere guidelines issued for the

purpose of enabling the framing of Recruitment Rules in relation to the qualifying service for promotion. From the post carrying the then prevailing

pay scale of Rs. 1100-1600 to the post carrying pay scale of Rs. 1500-2000, the qualifying service recommended in these guidelines was 5 years.

That, in our opinion, does not have the effect of substituting the CPWD Manual, which were specific executive instructions issued in respect of the

employees of CPWD. The relevant extract of the CPWD Manual, Volume 1992 Edition placed on record states that the eligibility criteria for

promotion to Group "A" and Group "B" post in the Gazetted Engineering establishment, both civil and electrical sides, shall be as laid down

therein. For the post of Superintending Engineer, the eligibility criteria is service as an executive engineer with 7 years regular service in the grade.

The petitioner cannot have any grievance on account of consideration of confidential reports for 7 years as opposed to 5 years as claimed by him.

We may also state that the same yardstick of 7 years of qualifying service has been uniformly applied by the respondents in respect of all the

candidates and there is no discrimination against the petitioner on this count.

12. The contention of the petitioner that the DPC did not follow correct procedure, inasmuch as, year wise panels were not drawn has been found

to be incorrect by the Tribunal. The Tribunal called for the original records and examined the same. The Tribunal has given a factual finding that in

the DPC meetings held for the purpose, all the instructions at the time regarding vacancies, consideration zones, select list were followed. Though

in the meetings, the exercise of filling up of all the vacancies was taken up together, the vacancies were reckoned separately on year to year basis

from 1982 to 1994 after taking into account the performance of the eligible officers for the period of previous seven years relatable to the years in

which the vacancies occurred. Vacancies from 1983 to 1993-94 have been separately shown and the field of choice has been correctly worked

out.

13. After going through the ACRs of the officers they have been categorised as "very good", "good" and "average". For each year only those

persons, who have been graded as "very good" were placed on the select panel. In relation to the petitioner, he was first considered for the year

1983 in accordance with his position in the seniority list in the feeder cadre and he was graded as "good". Three persons, all of whom were senior

to him were graded as "very good" and were placed on the select panel and were promoted in that year. For the next year i.e. 1984, 10 persons

were considered. The applicant was graded as "good" while 6 persons below him

were graded "very good". First three of them including respondent No. 4 Sh. S.C.Khurana were placed in the select list and were promoted for that year. For the year 1985, 10 persons including one senior and 9 juniors, who were graded "very good" made the selection and the applicant was only graded as "good". Same was the position for 1986 when the applicant continued to be graded as "good" while four of his juniors were assessed as "very good" who made the selection for the four vacancies of 1986. For the year 1987 the petitioner was for the first time graded as "very good" and accordingly he was placed first on the select list ahead of three others who were also graded "very good" but were junior to him. This pattern was followed up to 1993-94 and only those who made the bench mark "very good" were placed on the select list keeping in view the vacancies of every year and in the order of their seniority in the feeder cadre.

14. The Tribunal has gone through the record and given its finding based there on, we are not inclined to review the same in these proceedings, particularly when the petitioner has not been able to point out any infirmity therein.

15. The submission of the petitioner that he was placed higher to respondent No. 4 in the seniority list of 18.9.1989 and 12.1.1994 and,

Therefore, he could not be placed at Sl. No. 21 as opposed to Sl. No. 4 accorded to respondent No. 4 in the seniority list of 25.11.1994 appears

to be misconceived. The two lists referred to by the petitioner of 18.9.1989 and 12.1.1994 were in respect of the seniority in the cadre of

Executive Engineer (Electrical), whereas the impugned seniority list of 25.11.1994 was the provisional seniority list in the cadre of Superintending

Engineer (Electrical) after holding of the DPC meetings to consider promotions to that grade. As aforesaid, the petitioner had been superseded by

some of his juniors including Respondent No.

4. Obviously he could not be placed higher on the seniority list of Superintending Engineers (Electrical) since he was regularly promoted w.e.f

1987 as opposed to some of his juniors including Respondent No. 4, who were promoted w.e.f 1984 onwards.

16. We find no merit in the submissions of the petitioner that the DPC had not applied its mind since it had considered approximately 457 ACRs in

a single day which was, according to him, humanly impossible. Firstly as found by the Tribunal there does not appear to be any irregularity in the

DPC proceedings. The submission of the petitioner appears to proceed on the assumption that to fill up every post of Superintending Engineer

(Electrical) which were about 51 in number, the confidential report of each and every officer has to be considered. As noticed by the Tribunal the

consideration before the DPC had taken place on two days and not on one day as claimed by the petitioner. In any event, we are not in a position

to comment on the time that the DPC should have taken for consideration of all the cases for promotion. Since there is nothing otherwise on record

to indicate non-application of mind by the DPC, we cannot accept the submission of the petitioner that there might have been non application of

mind merely because DPC had a large number of cases to consider before it. We may also notice that there was no tearing hurry for the DPC to

rush through its proceedings and wind it up on 11.10.1994. The DPC had time up to the end of November 1994, even assuming that it was under

imminent threat of facing action for contempt of the orders of the Tribunal.

17. The submission that there were adverse ACRs which were not communicated, and could Therefore not be taken into consideration by the

DPC is also meritless. It is seen that the petitioner had either "Good" or "Fair" gradings in his ACRs from 1975 onwards and there was

improvement to "Very Good" and "Outstanding" in the later years. We do not notice a sudden downgrading or fall in the assessment of the

petitioner. The ratio of UP Jal Nigam (Supra) has no application to the facts of this case.

18. Petitioner's reference to the appraisal form to state that the officers had to be graded as "A", "B", "C", "D" etc. and not as "outstanding",

"very good", "average" and "below average" etc. in respect of their attributes appears to be misplaced. The use of the grading "A", "B", "C" and

"D" etc. is merely a substitute for grading the officer as "outstanding", "very good", "good" etc. This is evident from page 7 of the appraisal form

filed by him with his synopsis. The alphabets are mere abbreviations of the gradings they denote.

19. The submission of the petitioner that the ACRs were written according to the financial year i.e. 1st April of the year to 31st March of the next

year is also without any merit. It is recorded by the Tribunal which had perused the original records that during the period 1980-89 ACRs were

written on calendar year basis and, Therefore, there could not have been the reporting period 1986-87.

20. The submission that other officers were promoted to the post of Superintendent Engineer (Electrical) with less than seven years qualifying

service can not be gone into by us at this stage since these are matters of fact, for which the respondents have not had any opportunity to have their

say. Assuming the contention of the petitioner to be correct, stray incidents which are aberrations would not given a cause for grievance to the

petitioner. It is not his case that the promotion of these officers had caused any prejudice to him.

21. In view of the aforesaid, we find no merit in this petition and dismiss the same.