
(2010) 05 UK CK 0054
In the Uttarakhand High Court

Union of India (UOI) and Another

APPELLANT

Vs

Central Administrative Tribunal and Another

RESPONDENT

Date of Decision : 05-05-2010

Acts Referred:

Administrative Tribunals Act, 1985 — Section 21

Citation : (2010) 05 UK CK 0054

Hon'ble Judges : J.S. Khehar, C.J.;Sudhanshu Dhulia, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

J.S. Khehar, C.J.—Respondent No. 2 Jeevan Singh Tomar was inducted into the services of the Surveyor General of India as a Surveyor. He was granted selection grade while in the cadre of Surveyors in 1977. Onward promotion from the post of Surveyor is to the post of Officer Surveyor. Respondent No. 2 was promoted as Officer Surveyor (Group B) from the grade of Officer Surveyor (Group C) in 1985. The next higher post in the hierarchy is that of Superintending Surveyor (Group A). Respondent No. 2 came to be assigned duties of the post of Superintending Surveyor on ad hoc basis in 1993.

2. Consideration for regular promotion to the cadre of Superintending Surveyor was conducted in 1995. The aforesaid consideration pertained to vacancies, which arose in the cadre of Superintending Surveyor, during the years 1992 and 1993. It would be relevant to mention that for promotion to the post of Superintending Surveyor, the principle followed is "Seniority-cum-Merit". Since the post of Superintending Surveyor is a Group-A post, promotion thereto is based on the guidelines contained in Government Order dated 10.4.1989. The aforesaid guidelines to the extent they are applicable to the present controversy are being extracted hereunder:

The list of candidates be the DPC and the overall grading assigned to each candidates, would form the basis for preparation of panel for promotion by the

DPC. The following principles should be observed in the preparation of the panel:

i. Having regard to the levels of post to which promotions are to be made, the nature and importance of duties attached to the post of a bench mark grade would be determined for each categories of posts for which promotions are to be made by selection method. For all Group "C" Group "B" and Group "A" posts upto (and excluding) the level of Rs. 3,700-5,000 excepting promotions to Group "A". All officers whose overall grading is equal to or better than the bench mark should be included in the panel for promotion to the extent of the number of vacancies. They will be arranged in the order of their inter-se-seniority in the lower category without reference to the overall grading obtained by each of them provided that each one of them has an overall grading equal to or better than the bench mark of "Good". When ever promotions are made for induction to Group "A" posts of service from lower groups, the bench mark would continue to be "Good". However, officers graded as "Outstanding" would rank en block senior to those who are graded as "Very Good" and officer graded as "Very Good" would rank en block senior to those who are graded as "Good" and placed in the select panel accordingly upto the number of vacancies. Officers with same grading maintaining their inter-se-seniority.

A perusal of the aforesaid guidelines reveals, that the Departmental Promotion Committee is required to examine the claim of those eligible for promotion in two steps. In the first step, the principle required to be followed is as under:

All officers whose overall grading is equal to or better than the bench mark should be included in the panel for promotion to the extent of the number of vacancies. They will be arranged in the order of their inter-se-seniority in the lower category without reference to the overall grading obtained by each of them provided that each one of them has an overall grading equal to or better than the bench mark of "Good". When ever promotions are made for induction to Group "A" posts of service from lower groups, the bench mark would continue to be "Good".

Having prepared the promotion panel of suitable candidates, the second step envisages the arrangement of the names in the said panel on the basis of their service record. The second step has been incorporated in the Government Order dated 10.4.1989 in the following words:

When ever promotions are made for induction to Group "A" posts of service from lower groups, the bench mark would continue to be "Good". However, officers graded as "Outstanding" would rank en block senior to those who are graded as "Very Good" and officer graded as "Very Good" would rank en block senior to those who are graded as "Good" and placed in the select panel accordingly upto the number of vacancies. Officers with same grading maintaining their inter-se-seniority.

3. While carrying out the promotion exercise for the vacancies, which arose in the year, 1992, wherein there was only one vacancy reserved for promotion of

Scheduled Tribe candidates, a panel of the senior most three Officer Surveyors was included in the zone of consideration. The inter-se seniority of the candidates included in the panel was undisputedly as under:

1. Shri S.D. Semwal
2. Shri J.S. Tomar
3. Sri Somra Tirky

Respondent No. 2 J.S. Tomar did not satisfy the benchmark, inasmuch as, his over all grading was described as "Average". As against the aforesaid, S.D. Semwal and Somra Tirky were found to be fulfilling the benchmark. Whilst S.D. Semwal was graded as "Good", Somra Tirky was graded as "Very Good". In terms of the first step required to be carried out under the Government Order dated 10.4.1989, since S.D. Semwal satisfied the benchmark, he alone should have been placed in the promotion panel on account of the fact that the promotion panel was to be limited to the "...number of vacancies..." available. Since the number of vacancies for Scheduled Tribe candidates in the cadre of Superintending Surveyor for the year, 1992 was limited to only one, S.D. Semwal could only have been included in the promotion panel. Despite the same rather than including Shri S.D. Semwal in the said promotion panel, the petitioner wrongly included Shri Somra Tirky therein. The mistake committed by the petitioners was that rather than following the first step, depicted hereinabove, the petitioners followed the second step to start with.

4. In the same promotion proceeding, while considering promotions for the vacancies for the year, 1993, wherein also only one vacancy in the cadre of Superintending Surveyor was available for Scheduled Tribe candidates. The promotion proceeding considered the claim of only two Officer Surveyors, inasmuch as, only two Officer Surveyors fulfilled the eligibility conditions for promotion. The two Officer Surveyors considered, for vacancies of the year 1993, in the order of seniority were:

- (1) S.D. Semwal
- (2) J.S. Tomar

At the time of consideration for vacancies of the year 1993, both S.D. Semwal and J.S. Tomar were graded as "Good", and as such, S.D. Semwal, being senior, was placed in the promotion panel in terms of the first step envisaged in the Government Order dated 10.4.1989. Yet again, J.S. Tomar was ignored as he could not supersede S.D. Semwal, who was senior to him, and had been equally graded as "Good". Herein again, promotion panel was to comprise of only one individual, i.e. the senior most Officer Surveyor who satisfied the benchmark in terms of the first step, envisaged in the Government Order dated 10.4.1989.

5. It would be pertinent to notice, that the second step envisaged in the Government Order dated 10.4.1989, does not come into play where only one

post from a particular category is to be filled up. This is so because, names in the promotion panel have to be limited to the number of vacancies, and as such, the promotion panel prepared by following the first step, does not require any rearrangement under the second step, as the promotion panel has only one name.

6. Although the promotion of Somra Tirky and S.D. Semwal was made in 1995, respondent No. 2, though aggrieved, did not initiate any proceeding in accordance with law. He continued to make representations in 1996, 1997 and 1998. After 1998, no representation is stated to have been made by respondent No. 2. In his own right and on his own merit, respondent No. 2 was promoted to the post of Superintending Surveyor on regular basis in 2003. Respondent No. 2 having attained promotion in 2003, retired on attaining the age of superannuation on 13.12.2006. Three years before his retirement, he moved Original Application No. 349 of 2003 before the Central Administrative Tribunal (Allahabad Bench). In the instant application, respondent No. 2 did not implead Somra Tirky, although respondent No. 2 was aggrieved by the action of the petitioners in having promoted him as Superintending Surveyor against a vacancy reserved for scheduled tribe candidates, which had occurred in the year, 1992.

7. Original Application No. 349 of 2003 was allowed by the Central Administrative Tribunal (Allahabad Bench) on 21.12.2006. The petitioners thereafter filed Modification Application No. 4413 of 2006, which was disposed of by an order dated 8.2.2007 allowing consequential benefits to respondent No. 2. Through the instant writ petition, the petitioners i.e. Union of India, as also, the Surveyor General of India have assailed the order passed on 21.12.2006 allowing the Original Application No. 349 of 2003, as also the order dated 8.2.2007 disposing of the Modification Application No. 4413 of 2006.

8. The Central Administrative Tribunal through the impugned order, in our view, correctly interpreted the Government Order dated 10.4.1989 and concluded that by the aforesaid Government Order, the promotion panel prepared by the Departmental Promotion Committee has to include all officers, whose overall grading is equal to or better than the benchmark subject to the limitation that the aforesaid promotion panel includes names equal to the number of vacancies available. In formulating the promotion panel, in terms of the Government Order dated 10.4.1989, it is necessary only to arrange all those who have satisfied the benchmark, in the order of their inter-se seniority in the lower cadre. We hereby affirm the interpretation placed by the Central Administrative Tribunal, insofar as the first step of the Government Order dated 10.4.1989 is concerned.

9. Having affirmed the first step, it is apparent that since only one vacancy in the cadre of Superintending Surveyor was available for the year 1992 as also for the year 1993 for Scheduled Tribe candidates only one Officer Surveyor each, could be placed in the promotion panels prepared for the said years. The placement of the Officer Surveyors would depend upon the inter se seniority of the lower

cadre, and the number of candidates who satisfy the benchmark. Based on the aforesaid twin criterion, only S.D. Semwal could have been placed in the said promotion panel for the year 1992. Since there was only one vacancy in the cadre of Superintending Surveyor for the year, 1992, the second step was uncalled for and superfluous. Insofar as, the consideration for the year, 1992 (limited to Scheduled Tribe candidates) is concerned. Rather than promoting S.D. Semwal for the vacancy, which arose in the year, 1992, the petitioners wrongly promoted Somra Tirky, although under the Government Order dated 10.4.1989 Somra Tirky should not even have been included in the promotion panel.

10. We shall attempt to correct the mistake, which was committed in the promotion proceeding for the vacancies, which arose in the year, 1993. Rightfully, respondent No. 2- J.S. Tomar and Somra Tirky, should have been included in the zone of consideration for promotion to the sole post of Superintending Surveyor, reserved for Scheduled Tribe candidates. As S.D. Semwal, in our view, should have been promoted against the vacancy of the year 1992. Had that been done as per their inter se seniority, the two eligible Officer Surveyors would rank as under:

Sl. No. 1. J.S. Tomar Sl. No. 2. Somra Tirky.

The proceedings in the Departmental Promotion Committee, extracted in the impugned order passed by the Tribunal, reveal that respondent No. 2 was graded as "Good". We will proceed with the inference that Somra Tirky, who was graded as "Very Good" (for the year 1992) would have continued to be graded as "Very Good" even for the year, 1993. Thus viewed, it is apparent that both respondent No. 2 and Somra Tirky satisfied the benchmark prescribed for promotion to the post of Superintending Surveyor. The Departmental Promotion Committee thereafter was to adopt the first step envisaged by the Government Order dated 10.4.1989, inasmuch as, all those who satisfied the benchmark were to be included in the promotion panel. The promotion panel, however, was to be limited to the number of vacancies available. The arrangement of the names of those eligible was to be incorporated in the promotion panel in order of their seniority in the lower cadre. Thus viewed, in the promotion panel for the year 1993, respondent No. 2 J.S. Tomar only could be included. Even though Somra Tirky was graded as "Very Good", he could not superseded the claim of respondent No. 2 in terms of the first step envisaged under the Government Order dated 10.4.1989. Had the promotion panel included two names, then as per the second step (envisaged under the Government Order dated 10.4.1989) at the time of effecting promotions, Somra Tirky would have had a preferential right over respondent No. 2. But since the promotion panel had to be limited to the number of vacancies available, neither could Somra Tirky be included in the promotion panel nor could the second step be given effect to. In other words, respondent No. 2 had an exclusive right under the Government Order dated 10.4.1989 for promotion against the post of Superintending Surveyor reserved for Scheduled Tribe candidates, which occurred in the year 1993.

11. In sum and substance, from the conclusions drawn by us hereinabove, S.D. Semwal was entitled to be promoted against the post of Superintending Surveyor which occurred in the year, 1992; and respondent No. 2 was entitled for promotion to the post which occurred in the year, 1993. As against the aforesaid, Somra Tirky was given promotion against the post of Superintending Surveyor which occurred in 1992 and S.D. Semwal was given promotion in the post which occurred in the year, 1993. For the same reasons, as have been recorded by us hereinabove, the Central Administrative Tribunal vide the impugned order dated 21.12.2006 had set aside the promotion proceedings, which were given effect to by an order dated 15.12.1995. By the impugned order, the Central Administrative Tribunal directed the holding of a Review Departmental Promotion Committee so as to promote respondent No. 2 with effect from the date of promotion of his juniors.

12. After the disposal of the Original Application filed by respondent No. 2 (vide order dated 21.12.2006), Modification Application No. 4413 of 2006 was filed by the petitioners seeking modification of the order dated 21.12.2006. The aforesaid modification application was disposed of by the Central Administrative Tribunal (Allahabad Bench) on 8.2.2007. The operative part of the aforesaid order dated 8.2.2007 is being extracted hereunder:

After perusing order datd 21.12.2006 and hearing the learned Counsel for the parties, we find good reason for modifying the order so as to ensure that the Review DPC is held at the earliest, as the applicant has already retired. In so far as the consequential benefits are concerned the same was implied in the order itself. We, therefore, modify our order dated 21.12.2006 so as to provide that Review DPC shall be held within a period of three months from today. To that extent order dated 21.12.2006 stands modified.

13. Having considered the matter in its totality (as has been examined by us in the foregoing paragraph) we are of the view that the consideration of a Review DPC is totally uncalled for, in the facts and circumstances of this case. In the absence of any disputed fact, either on the issue of seniority, or on the issue of grading, we are satisfied that the Government Order dated 10.4.1989 leaves no room for any further consideration, inasmuch as, there is no subjective satisfaction involved in the aforesaid consideration.

14. In recording our conclusion hereinabove, we have found that the determination rendered by the Central Administrative Tribunal for promotion of respondent No. 2 to the post of Superintending Surveyor under the Government Order dated 10.4.1989 was fully justified (although our reasoning is slightly different). We are, therefore, of the view that respondent No. 2 was entitled for promotion to the post of Superintending Surveyor, which occurred in 1993. Despite the conclusion recorded by us in the foregoing paragraph, there are two issues, which stare in the face of respondent No. 2. Firstly, that although the promotion of Somra Tirky and S.D. Semwal was ordered on 15.12.1995, respondent No. 2 approached the Central Administrative Tribunal only in the

year, 2003. Even prior to his approaching the Central Administrative Tribunal, he had already been promoted as Superintending Surveyor on regular basis. Secondly, after the promotion proceeding whereupon Somra Tirky and S.D. Semwal were promoted as Superintending Surveyors vide an order dated 15.12.1995, respondent No. 2 did not implead the promoted officers in the Original Application filed by him before the Central Administrative Tribunal, wherein he sought the slot which was granted to them.

15. Insofar as the first issue is concerned, the Central Administrative Tribunal in exercise of the powers vested in it, u/s 21(3) of the Administrative Tribunal Act, 1985, considered it just and appropriate to over look the delay at the hands of respondent No. 2 in approaching the Central Administrative Tribunal. The Central Administrative Tribunal was also swayed by the fact that the claim raised by respondent No. 2 being fully made out in law ought to be given effect to. Insofar as the issue of non impleadment of the promoted officers, specially Somra Tirky is concerned, we are of the view, that the same should not be allowed to deprive respondent No. 2 of the fruits of his rights for two reasons. Firstly, because respondent No. 2 had already been promoted as Superintending Surveyor when he approached the Central Administrative Tribunal (Allahabad Bench) and as such his claim was only limited to giving effect to his promotion from a back date. And secondly, the learned Counsel for respondent No. 2, has made a statement to the effect, that he be allowed notional promotion without any monetary benefits till the filing of the Original Application before the Central Administrative Tribunal. We are satisfied that the aforesaid two reasons are sufficient to over look the instant technical objection as well, specially when on merits, we have concurred with the determination rendered by the Tribunal that respondent No. 2 was entitled to promotion against the post of Superintending Surveyor reserved for Scheduled Tribe candidates.

16. In view of the above, while dismissing the instant writ petition, we direct the petitioners to promote respondent No. 2 to the post of Superintending Surveyor reserved for Scheduled Tribe candidates, which occurred in the year, 1993, notionally. The fixation of pay, as well as, pensionary benefits shall be based on the aforesaid notional promotion. However, respondent No. 2 shall not be entitled to any monetary benefits prior to the date when he approached the Central Administrative Tribunal by filing Original Application No. 349 of 2003. The instant determination of ours would not result in any adverse effect either to Somra Tirky or S.D. Semwal.

17. The instant writ petition is disposed of in the aforesaid terms.