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* IN THE HIGH COURT OF DELHI AT NEW DELHI

DECIDED ON: 10.05.2012

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LPA 362/2007

H.C.SHARMA

..... Appellant

Through: Mr. Subhiksh Vasudev, Advocate.

versus

D.D.A.

..... Respondent

Through: Mr. Chetan R. Anand, Advocate
for DDA.

CORAM:

MR. JUSTICE S. RAVINDRA BHAT

MR. JUSTICE S.P. GARG

MR. JUSTICE S.RAVINDRA BHAT (OPEN COURT)

%1. The present Appeal is directed against a judgment and order of the learned Single Judge dated 1.5.2007 in WP (C) 3209/2007.

2. The Appellant had approached the Court on a number of occasions. On previous occasions, he mainly questioned disciplinary proceedings which had been instituted against him. In the last of these proceedings, i.e. WP (C) 3064/1996, four chargesheets issued against him were challenged. He also sought certain other orders in the form of directions to the Delhi Development Authority (DDA), his

employer, for appropriate consequential action to promote him from the time that he claimed he was entitled to be promoted to the post of Chief Engineer. It is not in dispute that the Appellant was in fact given the selection grade on 1.3.1994 for the post of Superintending Engineer w.e.f. 1.3.1994.

3. The facts necessary for the purpose of deciding this case are that the Appellant was transferred to the DDA on permanent basis on 01.03.1968; he was subsequently promoted temporarily to the post of Executive Engineer w.e.f. 01.03.1977 on 10.08.1979. It is alleged that a list of Executive Engineers borne in the employment of DDA was finalized on 23.06.1983. The Appellant alleges that one Shri Om Prakash (who too had been transferred from the CPWD to the DDA) was absorbed as Executive Engineer; w.e.f. 02.05.1983. Later, Shri Om Prakash and the Appellant were promoted on the same date i.e. 04.07.1983 as Executive Engineers. Subsequent to this date, the Appellant was made permanent as Executive Engineer. Thereafter, the DDA appears to have made an order on 5.8.1988 permanently absorbing Shri Om Prakash w.e.f. 04.06.1984. Acting pursuant to a Circular inviting objections regarding the tentative seniority drawn by the DDA, the Appellant had lodged his protest to the ranking assigned to Shri Om Prakash by his representation dated 15.07.1988. In this background, a Departmental Promotion Committee (DPC) was constituted to recommend names for promotion to the post of Chief Engineer. This was convened on 11.08.1988 and Shri Om Prakash was selected and recommended for promotion to the post of Chief Engineer on 19.08.1988. One of the Appellant's grievance is that

without determining the issue of *inter se* seniority between himself and Om Prakash, the latter's promotion was not justified.

4. To continue the narrative, the Appellant was issued with several chargesheets. In the first round of litigation of the earliest proceedings preferred by him under Article-226 of the Constitution of India, CWP-4765/1993, a Bench of this Court concluded that the action was unjustified and that the Vice-Chairman of DDA was not competent to issue the chargesheet and initiate proceedings. Subsequently, four chargesheets were issued apparently on the same allegations. These were, in turn, questioned in CWP-3064/1996. In that Writ Petition, the Appellant sought certain other reliefs since by that time, subsequent developments in regard to promotion of his juniors had taken place and furthermore his claim for the post of Chief Engineer had been overlooked. During the pendency of that writ petition, the DDA withdrew the chargesheet and dropped the disciplinary proceedings. The writ petition No.3064/1996 was disposed of on 11.12.2003. The Single Judge of this Court directed a review of the promotions which had taken place. The Appellant sought review of that order; by an order dated 25.05.2004, the Review Petition was rejected. In the course of that order, the learned Single Judge observed that the Review petition had made a grievance with regard to the down grading of his ACRs. The petitioner was left to seek his remedies.

5. In the meanwhile, on 16.02.2004, the DDA issued a letter,

which is relevant for the purpose of the present proceedings. It reads as follows: -

“To,

No.F.10(5)93/CC/431

February 16, 2004

Shri H.C. Sharma
Supdg. Engineer (Retired)
R/o D-113, Mahendru Enclave,
G.T. Karnal Road, Delhi - 110 009.

Sir,

In the course of implementation of judgment dated 11.12.2003 pronounced by High Court, Delhi in case titled Shri H.C. Sharma Vs. DDA - CWP No.3064/1996, the matter has been examined in respect of holding review DPC and the following position emerges:

- (i) *Shri H.C. Sharma was duly considered by the DPCs held in the year 1991, 1992 and 1993. The recommendations of DPC were kept in seal cover in view of pendency of vigilance cases against Shri Sharma. The seal covers were opened in due course in the light of acquittal of the official. However, since the DPC had recommended him “Unfit”, he was not promoted.*
- (ii) *Thereafter, during the period 1994 to June, 1996, no regular DPCs were held for promotion to the post of Chief Engineer except one DPC which was held on 19.3.1996 to consider regularization of CEs namely Shri R.K. Bhandari and Shri C. Banerjee who were earlier given the current duty charge in 1985 and 1986 respectively. Both the above officers were senior to Shri H.C. Sharma and hence, had prior claim for any regular appointment to the post of Chief Engineer.*

Other than above, no DPC for promotion to the post of Chief Engineer was held.

Thus, no junior to Shri H.C. Sharma was ever empanelled or considered for empanelment after 1993 till the date of retirement of Shri H.C. Sharma i.e. 31.7.1996.

- (vi) *So far as case of selection grade to Sh. H.C. Sharma is concerned, he has already been granted the same w.e.f. 1st March, 1994, on having been found fit for the same.*

In view of the above, claim for holding review DPC in favour of Sh. H.C. Sharma, for consideration of promotion to the post of Chief Engineer (Civil) is not tenable.

This is for information of Sh. H.C. Sharma in compliance of the judgment of High Court dated 11.12.2003 in CWP No.3064 of 1996.

Sd/- 16.2.2004
(Sunil Sharma)
Commissioner (Personnel)''

6. The petitioner had represented against the communication and sought for particulars. The representation was rejected on 30.06.2006 on the following terms:

“DELHI DEVELOPMENT AUTHORITY
(Confidential Branch)

No: F.10 (5)93/CC/2091

Date: 30.6.06

This refers to the representation dtd.20.4.2006 and similar other representations for release of benefits after fixing of pay in the grade of Chief Engineer and also for revising the date of selection grade as per the date of his juniors. Earlier the replies were sent vide letter dtd.16.2.2004 and 17.3.2004 which explain the position.

However, Shri H.C. Sharma, SE (retired) is further informed that in the year 1996 an office order was issued vide no.F.2(491)68/PB.1/part/1543 dtd.21.8.96 as per which the post of C.Es. which fell vacant, stood re-designated as SEs (selection grade). Therefore, it will not be in order to hold DPC to consider his case for promotion to the post of CE on notional basis against the vacancy which arose on 15.2.96 as the same stood re-designated as SE Selection Grade.

As regards his claim for promotion to the post of C.E. before Shri Om Prakash who was promoted on ad hoc basis in 1988 by virtue of higher seniority position, it is intimated that at the material point of time in 1988, one vacancy of SE was filled up on ad hoc basis and at that time the DPC was aware of the fact that the seniority in the grade of EE (C) had not been finalized yet however considering the urgency the DPC decided to give ad hoc promotion to Shri Om Prakash as SE (C). The file which might had dealt with the earlier representation of Shri Sharma at the material point of time is not traceable. In the absence of the same it would not be possible to reexamine the seniority issue as well as ad hoc promotion given in 1988 at this belated stage.

As regards the date of grant of selection grade, it is intimated that his case for grant of selection grade with effect from 1.3.91, 1.3.92 and 1.3.93 was considered by different DPCs but he was assessed unfit. Later on the DPC held in 1996 assessed him fit for selection grade with effect from 1.3.94 and accordingly the selection grade was given to him w.e.f. 1.3.94. Since Shri Sharma was found unfit for grant of selection grade w.e.f. 1.3.91, 1.3.92 & 1.3.93, he can be granted this benefit only w.e.f. 1.3.94.

This issues with the approval of competent authority.

(M.C. Singal)
Dy. Director (CR)

*Shri H.C. Sharma, SE (retired)
D-113, Mahendru Enclave
GT Karnal Road, Delhi - 09.”*

The second letter by DDA reads as follows: -

*“DELHI DEVELOPMENT AUTHORITY
(Confidential Branch)*

No: F.10 (5)93/CC/3334

Date: 27.9.06

This refers to the representation dtd.28.7.2006 addressed to VC, DDA submitted by Shri H.C. Sharma, SE (C) retired. I am directed to inform that the representation has been examined and the same has been rejected by the competent authority.

*Sd/-
(Pramila H. Bhargava)
Commissioner (Personnel)*

*Shri H.C. Sharma, SE (retired)
D-113, Mahendru Enclave
GT Karnal Road, Delhi -110 009.”*

7. In these circumstances, the Appellant approached this Court yet again and sought for appropriate directions. The learned Single Judge by her impugned judgment summarily rejected the claims reasoning that the writ petitioner was aware about the grading at least from 16.02.2004.

8. It is contended that the learned Single Judge fell into error in not appreciating that the letter of 16.02.2004 does not reveal the extent of down grading or furnish the relevant particulars as to the years in which the service records of the Appellant had declined or disentitled him for consideration to the post of Chief Engineer. Learned counsel emphasized that at least from the year 1991-92 when the claim of one Shri R.G. Bhatnagar was considered, his name too should have been

appropriately considered on an application of the “next below rule”. Counsel reiterated the submissions that without fixation of *inter se* seniority of Shri Om Prakash and the Appellant, the latter’s claim for promotion on the date of the other’s promotion could not have been granted.

9. The second submission on behalf of the Appellant was premised upon the chart set out in the writ petition containing the gradings awarded to the Appellant at the relevant time. It reads as follows: -

Year	Grading given by reporting officer as reliability learnt	Grading given by reviewing officer as reliability learnt	Grading given by the counter signing officer reliability learnt
1983-84	Outstanding	Outstanding	Very good
1984-85	Outstanding	Outstanding	Very good
1985-86	Outstanding	Outstanding	Very good
1986-87	Outstanding	Outstanding	Fair
1987-88	Outstanding	Outstanding	Fair
1988-89	Outstanding	Outstanding	Average
7.89-12.89	Outstanding	Outstanding	Very good
1989-90	Outstanding	Outstanding	Very good
1.4.1990 to 9.1.90	Outstanding	Outstanding	Good
10.10.91 to 31.3.90	Outstanding	Outstanding	Very good
1991-92	Very Good	Very good	Good
1992-93	Outstanding	Very good	Good
1993-94	Outstanding	Very good	Very good
1994-95	Outstanding	Very good	Very good
1995-96	Outstanding	Very good	Good
1.4.94 to 31.7.96	Outstanding	Outstanding	Not known

10. It is contended that the DDA has not denied these averments in the counter affidavit filed in the Court. It is submitted that having regard to these, the Court has to proceed on the fact that for the relevant period, i.e., 1991-92, 1992-93 and 1993-94, the gradings on the records of DDA are as stated and averred in these proceedings. Taking the matter further, it was submitted that the Accepting Authority could not have exercised its powers to down grade the observations of the Reporting or Reviewing Authority. Learned counsel sought to rely upon Circulars issued by the DoPT and DG, P&T and also certain answers to the queries made in this regard.

11. Counsel for the DDA submitted that so far as the claim for promotion with effect from the date that Shri Om Prakash was actually appointed to the post of Chief Engineer is concerned, the proceedings are belated. It was emphasized here that Shri Om Prakash was promoted in 1988 whereas the earliest point of time when the Appellant approached the Court for any kind of relief was in 1993 when he questioned the first set of chargesheets. Therefore, the Court ought not to entertain his challenge to the promotion of Shri Om Prakash. So far as the other questions regarding the Appellant's consideration to the post of Chief Engineer w.e.f. the date when Shri R.G. Bhatnagar was promoted are concerned, it is urged that reasoning of the learned Single Judge cannot be faulted with. The Appellant was apprised about his being unfit for consideration on 6.2.2004 and the conclusion of the Single Judge, therefore, was perfectly justified.

12. We have carefully considered the submissions of the parties and perused the records.

13. It is evident that so far as the claim for promotion to the post of Chief Engineer w.e.f. 19.08.1988 i.e. the date when Shri Om Prakash was promoted to that post is concerned, the DDA's contention is sound and requires to be upheld. The Appellant was in the know at least in 1988 that Shri Om Prakash had been promoted; even if his grievance was that he was unjustifiably overlooked, he should have approached the Court without any delay. He did not do so. In these circumstances, after this length of time i.e. nearly 25 years, it will be imprudent for the Court to review and decide whether the promotion order to the extent that it overlooked the Appellant's claim was in conformity with the rules.

14. As regards the second question, there is no doubt that the Appellant was not made aware of the down grading. The letter dated 16.02.2004 does not spell out the actual gradings awarded to the Appellant at the relevant time during 1991-92 and 1993-94. Even the letters and replies of the DDA in response to the Appellant's representation declining the upgradation do not spell out what the records in fact were. This Court is left to grope with the facts as set out in the averments which indicate that at the relevant time even though for two years, the Appellant's gradings were outstanding by the Reporting Authority, the Reviewing Authority indicated the remark "Very Good" for two years and the Accepting Authority brought it down and concluded that he deserved the grading "Good". Here, so far as the submission on behalf of the Appellant as to the lack of competence or accepting or counter signing authority to down grade or bring down the grading of other two authority is concerned, though

there are some remarks contained in the Circulars produced before the Court, it would be inappropriate for the Court to accept them. This is for the reason that the accepting or counter signing authority in almost all instances is superior in hierarchy to the reporting and reviewing authority. To assume that ultimately such superior authority (in many cases who would have been the Head of the Department or might in some instances be Minister) is constrained in the exercise of his power, there should be something more for the Court to reach such a conclusion. Thus, in the Court's opinion, the mere description of the authority as "accepting authority" is not decisive; there should be positive injunction in the form of the prohibition in the rules preventing such authority from freely exercising what are powers of the widest amplitude in the manner of apprising the employee's performance.

15. In view of the present state of the records, all that this Court can do is to direct the DDA to consider the relevant records of the Appellant and as well as that of his immediate junior who was promoted during the relevant time i.e. 1991-92, and if satisfied that the Appellant's gradings is similar to that of his junior, pass the necessary consequential orders for promoting him. In the event that the grading of both are not similar, no such relief would be admissible. It is further clarified that in the event of the Appellant being granted any benefit of promotion that would not, in any manner, disturb the existing promotions made and enjoyed by other beneficiaries. The Appellant would be entitled only to the monetary reliefs. The reconsideration process shall be completed at the earliest and in any

event within twelve weeks.

16. The Appeal - LPA 362/2007 is disposed of in the above terms.

**S. RAVINDRA BHAT
(JUDGE)**

**S.P. GARG
(JUDGE)**

MAY 10, 2012
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