

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Reserved on: August 14, 2013*
Judgment Pronounced on: August 22, 2013

+ **W.P.(C) 6900/2001**

JAI PRAKASH Petitioner
Represented by: Mr.M.K.Bhardwaj, Advocate

versus

UOI & ORS. Respondents
Represented by: Mr.Ankur Chhibber, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR.JUSTICE V.KAMESWAR RAO

PRADEEP NANDRAJOG, J.

1. Jai Prakash, the petitioner, challenges the judgment and order dated September 11, 2001 dismissing OA No.64/2001 filed by him. His claim in the Original Application was to be treated at par with one Sh.R.C.Gupta and Sh.B.N.Laha and thus be granted promotion as on September 04, 1995 with all consequential benefits to the post of Superintending Engineer (Civil). He also prayed that the seniority list of Superintending Engineers circulated on September 25, 1998 be modified accordingly.

2. The factual backdrop in which claim of Jai Prakash needed to be considered, and as a matter of fact was considered by the Tribunal, was that a DPC was convened in October, 1994 to empanel eligible Executive Engineers (Civil) to be promoted as Superintending Engineers for the vacancy years 1992-93 and 1993-94. The proceedings of the DPC were

concluded on October 10, 1994 and for reason unknown the DPC not only prepared a select panel of 20 officers against the vacancies of the year 1992-93 and a select panel of 19 officers for the vacancies of the year 1993-94 but additionally 33 more officers; and it appears that these were for vacancies beyond the two vacancy years i.e. 1992-93 and 1993-94.

3. The problem with the approach of the DPC was that officers beyond the zone of consideration, which included the petitioner Jai Prakash and a few others, came to be considered. Based on the panel prepared promotions were effected. R.C.Gupta and B.N.Laha were promoted against the vacancies for the year 1992-93. The 33 officers empanelled, which included the petitioner and 32 others, were also promoted but pertaining to the vacancies for the year 1994-95, 1995-96 and onwards.

4. One Sh.Surender Kumar was aggrieved by the DPC drawing up a select panel of 33 officers, which obviously was in excess of the 20 and the 19 vacancies notified to the DPC for being filled up and for which only two select panels had to be prepared. He questioned the select panel of the 33 officers and we find that that rather than segregating the empanelment of 20 and 19 officers for the notified vacancy years 1992-93 and 1993-94, the Tribunal disposed of OA No.1865/1995 filed by Surender Kumar with a direction that review DPC be held for all vacancies by considering the vacancies year wise and thereby restricting the number of eligible candidates as per the zone of consideration envisaged by the Rules. Allowing OA No.1865/1995 vide order dated August 01, 1996 the Tribunal issued five directions which read as under:-

“i) While the appointment of respondents 3 to 35 who were placed in the panel by the duly constituted DPC for

appointment to the 33 identified posts of Superintending Engineers existing in 1994 is held to be valid, the action of the respondents 1 and 2 in posting some to them on the vacancies which were created subsequent to 1994 is declared irregular and unjustified.

ii) The respondents 1 and 2 are directed to have a DPC constituted for preparation of a panel of Executive Engineers, considering all those who would come within the zone of consideration towards appointment to the 37 vacancies in the grade of Superintending Engineers which arose in the year 1995 and to give effect to the panel which would be so prepared as expeditiously as possible and at any rate not later than 4 months from the date of receipt of this order.

iii) As the respondents 3 to 35 have been validly placed on the panel for appointment as Superintending Engineers, we direct that they shall not be reverted from the posts till the recommendations of the DPC as mentioned in para (ii) are empanelled.

iv) For accommodating the respondents 3 to 35 the respondents 1 and 2 shall make necessary adjustments so that they are appointed towards the vacancies for which they were placed on the panel.

v) If there are vacancies in the grade of Superintending Engineers, the respondents 1 and 2 shall consider making ad hoc appointments towards those vacancies pending regular appointments in accordance with law considering those who are eligible including the applicants.”

5. To give effect to the directions issued by the Tribunal the department re-worked out the year wise vacancies and we find that as against 20 vacancies which were earlier on worked out for the vacancy year 1992-93 the department calculated only 12 vacancies required to be filled up. For the vacancy year 1993-94, upon re-working the vacancies the department opined the same number as earlier requiring to be filled up

i.e. 19. The department found 6 vacancies were required to be filled up for the vacancy year 1994-95 and 32 for the year 1995-96.

6. But the DPC which met to give effect to the directions issued by the Tribunal committed a fundamental mistake. As against the benchmark 'Good' adopted by the DPC which met in October, 1994 and concluded its appraisal by October 10, 1994, the review DPC, while retaining the benchmark 'Good' en-block placed those who were 'Very Good' above the ones who were graded 'Good' and in this manner upset the seniority. At this DPC said Sh.R.C.Gupta and Sh.B.N.Laha did not find a placement in the select panel. It be noted here that at the DPC which met in October, 1994 the two were placed at serial No.4 and 14 respectively, and as noted above were promoted for the vacancies available for the year 1992-93.

7. The said two persons i.e. R.C.Gupta and B.N.Laha filed OA No.882/1997 and OA No.1808/1998 respectively challenging their non-empanelment on the ground that the review DPC could not change the criteria. The said Original Applications were allowed by the Tribunal on June 30, 1997 and May 17, 1999 respectively holding that the review DPC could not adopt a different benchmark.

8. Rather than directing a yet another review DPC to be held, since R.C.Gupta and B.N.Laha had already been promoted a Superintending Engineer (Civil) pursuant to the DPC which met on October, 1994 and further for the reason both of them were promoted against the vacancies against the year 1992-93, the Tribunal concluded its opinion by holding that the two would be entitled to the benefit of the promotion order dated September 04, 1995, which promotion order gave effect to the recommendations of the DPC which concluded its proceedings on October 10, 1994.

9. Petitioner Jai Prakash went rushing back to the Tribunal. OA No.64/2001 was filed by him praying that the same benefit which was granted to R.C.Gupta and B.N.Laha should also be granted to him i.e. even he be granted promotion with all consequential benefits by directing implementation qua him of the promotion order dated September 04, 1995.

10. Relief has been declined to him by the Tribunal. The reasoning by the Tribunal is, if we may use the expression is perfunctory. The Tribunal has held that R.C.Gupta and B.N.Laha were granted relief on account of the reason that the review DPC which met after Surender Kumar's Original Application was allowed adopted a different benchmark.

11. Now, the reasoning of the Tribunal may not be good reason, but Jai Prakash cannot be granted any relief for the simple reason, R.C.Gupta and B.N.Laha were promoted against the vacancies for the year 1992-93. When the Tribunal disposed of the Original Application filed by Surender Kumar, the Tribunal ought to have restricted the relief with reference to the taint in the promotion order dated September 04, 1995 which gave promotion to 33 officers who were promoted against the ensuing vacancies for the years 1994-95 and onwards by clubbing all vacancies. We need to put a clarification here. Pertaining to the years 1992-93 and 1993-94 year wise panel were drawn without clubbing the vacancies. Thus, at that stage itself, R.C.Gupta and B.N.Laha should have remained untouched. It may be true that upon re-working the department found that only 12 vacancies had to be filled up in the year 1992-93 and not 20. Thus, even said fact which was not noted earlier, upon being noted, could at best require a review DPC to be held with year wise vacancy as a focus of its consideration and not a changed merit criteria. Thus, when R.C.Gupta and B.N.Laha re-visited the Tribunal by filing OA

No.882/1997 and OA No.1808/1998 the Tribunal rightly opined that the two could not be denied promotion on account of the review DPC applying a different criteria.

12. The position as regards the petitioner would be that his name came to be considered against the vacancy for the year 1994-95 but he could not earn a promotion because though he came within the zone of consideration there were others who were not only senior to him but achieved the benchmark. The petitioner was ultimately promoted against the vacancy for the year 1995-96.

13. Thus, looked at from any angle the petitioner cannot claim parity with Sh.R.C.Gupta and Sh.B.N.Laha who were promoted against the vacancies for the year 1992-93.

14. The writ petition is dismissed but without any orders as to costs.

(PRADEEP NANDRAJOG)
JUDGE

(V.KAMESWAR RAO)
JUDGE

AUGUST 22, 2013

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