

HIGH COURT OF DELHI**Bench: Hon'ble Mr. Justice V. Kameswar Rao and Hon'ble Ms. Justice Manmeet Pritam Singh Arora****Date of Decision: November 20, 2023**

W.P.(C) 4017/2023, CM APPLs. 15631/2023 & 17512/2023

B.N. SINGH AND ANR. Petitioners**versus****UNION OF INDIA AND ORS. .. Respondents****Legislation:**

Military Engineering Services (Surveyor of Works Cadre) Recruitment Rules, 1985

Military Engineering Services (Quantity, Surveying and Contract Cadre) Group-A Post Recruitment Rules, 2005

Article 16 of the Constitution of India

Subject : Challenge against the Central Administrative Tribunal's order which directed a review Departmental Promotion Committee (DPC) for retrospective promotion of respondent No.4. The case involves issues of seniority and eligibility for promotion within the Military Engineering Services, specifically the equivalence of a degree in Civil Engineering with the final examination of the Institution of Surveyors (India) for promotion purposes.

Headnotes:

Challenge to Tribunal's Order – Petition against Central Administrative Tribunal's order directing review DPC for promotion of respondent No.4 retrospectively – Petitioners claim their seniority affected due to Tribunal's decision without their participation in the original application – Tribunal's order based on Supreme Court's interpretation of equivalence in qualifications for promotion. [Para 1-2]

Seniority and Promotion Dispute – Dispute over promotion criteria from Assistant Surveyor of Works (ASW) to Surveyor of Works (SW) – Criteria set in Military Engineering Services Recruitment Rules, 1985, and subsequent changes in 2005 – Respondent No.4's promotion denied previously due to qualification criteria, now considered equivalent by Supreme Court. [Para 3-6]

Judicial History – Respondent No.4's initial application for seniority correction based on equivalence of degree in Civil Engineering with Institution of Surveyors (India) examination – Supreme Court ruling in favor of equivalence – Impact on respondent No.4's promotion and subsequent Tribunal applications. [Para 6-9]

Petitioners' Arguments and Tribunal's Decision – Petitioners' contention on delay and non-inclusion in Tribunal application – Tribunal ordered review DPC for respondent No.4, considering him fit and eligible for promotion –

Challenge to Tribunal's decision on grounds of delay and procedural issues.
[Para 10-11]

Respondent No.4's Position and Tribunal's Rationale – Respondent No.4 justified in seeking promotion based on Supreme Court's decision and equivalence in qualifications – Tribunal's order aimed at rectifying missed promotion opportunity for respondent No.4. [Para 11-13]

Court's Analysis and Conclusion – High Court finds no merit in petitioners' arguments regarding delay and procedural lapses – Emphasizes the importance of implementing Tribunal's order in the spirit of the Supreme Court's decision on qualification equivalence – Petition dismissed, upholding Tribunal's direction for review DPC. [Para 14-17]

Applications Dismissed – Associated applications dismissed as infructuous following the main petition's dismissal. [CM APPLs. 15631/2023 & 17512/2023]

Referred Cases:

- **Delhi Jal Board vs. Mahinder Singh, SLP (Civil) No. 11726/2000, Supreme Court judgment dated 01.09.2000.**
- **Badrinath Vs. Govt. Of Tamil Nadu and Ors., AIR 2000 SC 3243, 2000 (6) SCALE 618, (2000) 8 SCC 395, 2000 Supp 3 SCR 573.**
- **Pankaj Kumar Pathak v. Union of India & Ors., WP (C) No. 295 of 2017.**
- **Atul Kumar Pandey v. MES, OA 100/2021, Guwahati Bench of the Tribunal.**

Representing Advocates

Petitioners: Mr. Nikunj Arora and Mr. Binny Chopra, Advocates

Respondents:

Mr. Akshay Amritanshu, SPC with Mr. Ashutosh Jain and Mr. Samyak Jain, Advocates for Respondents 1 to 3

Dr. S.S. Hooda and Ms. Rashmi Rawat, Advocates for Respondent 4

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

V. KAMESWAR RAO, J

1. This petition lays a challenge to an order dated January 13, 2023 passed by the Central Administrative Tribunal, Principal Bench, New Delhi ('Tribunal', for short) in OA 3589/2022, whereby the Tribunal has allowed the OA filed by the respondent No.4 herein by stating in paragraphs 8 & 9 as under:

“8. In view of the facts and circumstances of the case and after appreciating legal position in the matter of Delhi Jal Board vs. Mahinder Singh rendered in SLP (Civil) No. 11726/2000, the Hon’ble Supreme Court on 01.09.2000 has held as under:-

“The right to be considered by the Departmental Promotion Committee is a fundamental right guaranteed under Article 16 of the Constitution of India, provided a person is eligible and is in the zone of consideration.”

Meaning, the right of the employees for consideration for promotion does exist and the DoP&T has issued OMs time and again that DPC should be convened every year. A similar view was also taken in the matter of Badrinath Vs. Govt. of Tamil Nadu and Ors. rendered in AIR 2000 SC 3243, 2000 (6) SCALE 618, (2000) 8 SCC 395, 2000 Supp 3 SCR 573.

9. In view of the aforesaid discussion, we are of the firm opinion that the respondents shall convene review DPC for promotion of the applicant to the post of SW & SE (QS & C) retrospectively, if he is otherwise fit and eligible for the said posts, within a period of 60 days from the date of receipt of a certified copy of this Order.”

2. At the outset, it may be stated here that the petitioners herein were not party in the OA 3589/2022 and they have filed the present petition on the ground that because of the impugned judgment of the Tribunal their seniority has been affected and the same could not have been done without making them party in the OA as it is a settled law that a civil right cannot be affected without granting hearing.
3. The facts that are noted from the record are, in the year 1985, the criteria of promotion from the post of Assistant Surveyor of Works (‘ASW’, for short) to Surveyor of Works (‘SW’, for short) has been prescribed in the Military Engineering Services (Surveyor of Works Cadre) Recruitment Rules, 1985 to mean ASW with four years regular service in the grade and has passed the final examination of the Institution of Surveyors (India) or equivalent.
4. On April 4, 1988, it was clarified by the respondent No.2 that it is essential to pass the final examination of Institution of Surveyors (India) for promotion to the post of SW and a Degree in Civil Engineering is not a qualification equivalent.
5. In 2005, the 1985 Rules were superseded and the Military Engineering Services (Quantity, Surveying and Contract Cadre) Group A Post Recruitment Rules, 2005.
6. On October 30, 2003, respondent No.4 filed an Original Application being OA 96/2002 before the Central Administrative Tribunal, Jabalpur Bench, Jabalpur (‘Jabalpur Bench’, for short) for correction of his seniority in the Grade of SW on the ground that a degree in Civil Engineering is equivalent to final

examination of Institution of Surveyors (India). The Jabalpur Bench disposed of the OA vide order dated October 30, 2003 directing that the dictum of the Supreme Court in SLP (Civil) NO. 6471/2003, wherein the issue of equivalence of degree in Civil Engineering to a final examination of Institution of Surveyors (India) is pending consideration shall apply to respondent No.4. Suffice to state that on August 4, 2015, the Supreme Court disposed of the SLP holding that a Degree in Civil Engineering is equivalent to final examination of Institution of Surveyors (India).

7. It may be stated here that petitioner No.1 namely B.N. Singh was a respondent in the OA 96/2002 filed by the respondent No.4 before the Jabalpur Bench. Concedingly, he has not challenged the judgment of the Jabalpur Bench before a higher forum. Though petitioner No.2 was not made a party to the OA 96/2002, if he was aggrieved by the order passed by the Tribunal, he should have had challenged the order, but he has not done the same. The consequence of the Supreme Court deciding the issue in favour of the respondent No.4 is that he shall be entitled to the benefit of promotion to SW from the year 1995.
8. The respondent No.4 approached the Principal Bench of the Tribunal, seeking a direction to the respondent Nos. 1 to 3 to conduct a review DPC but the same was disposed of by the Principal Bench of the Tribunal on July 22, 2022, with a direction to the respondent Nos. 1 to 3 to pass a speaking order. On September 28, 2022, respondent Nos. 1 to 3 passed a speaking order rejecting the representation of the respondent No.4 on the ground that they are restrained from conducting a review DPC by an interim order dated March 29, 2021 passed by the Guwahati Bench of the Tribunal.
9. We have been informed that the stay order passed by the Guwahati Bench of the Tribunal continues to be in operation as of today. On receipt of the order dated September 28, 2022 from respondent Nos. 1 to 3, the respondent No.4 initiated fresh proceedings before the Principal Bench of the Tribunal in OA 3589/2022, wherein the impugned order has been passed seeking similar relief as was sought in the earlier round of litigation for a direction to the respondent Nos. 1 to 3 to convene a review DPC. It is this prayer which has been allowed by the Tribunal in the impugned order.
10. The submission of Mr. Nikunj Arora, learned counsel appearing for the petitioner is that the respondent No.4 had approached the Jabalpur Bench in the year 2002 and got an order in his favour wherein the Jabalpur Bench has stated that the dictum of the Supreme Court in SLP (Civil) No. 6471/2003 shall apply to the respondent No.4. But the respondent No.4 having

approached the Tribunal only in the year 2012, the OA was badly barred by time. He also submitted that in fact in the earlier OA filed by respondent No.4 being 1896/2022, the petitioners herein were made party but in the second OA being 3589/2022, wherein the impugned order has been passed, respondent No.4 for the reasons best known to him, has not impleaded the petitioners herein as party respondents. He states, delay being of 7 years is fatal and the Tribunal should have rejected the petition at the threshold rather than entertaining the same and giving directions in the manner it has done in the impugned order. He also states, the case of ***Pankaj Kumar Pathak v. Union of India & Ors., WP (C) No. 295 of 2017*** is squarely applicable to the facts of this case as in the said case the petitioner Pankaj Kumar Pathak has challenged the order of the Principal Bench of the Tribunal in OA 240/2016 and 2176/2013 and this Court had dismissed the same on the ground of inordinate delay and laches and acquiescence and the fate of this petition should also be the same inasmuch as this Court necessarily need to allow the writ petition and dismiss the OA filed by the respondent No.4.

11. On the other hand, Dr. S.S. Hooda, learned counsel appearing for the respondent No.4 would contest the writ petition by stating that the Tribunal has rightly allowed the OA 3589/2022 filed by the respondent No.4 by directing in paragraph 9 to respondent Nos. 1 to 3 to convene a review DPC for promotion of respondent No.4 to the post of SW retrospectively if he is otherwise fit and eligible for the said post. According to him, the present OA is nothing but continuation of the OA filed by the respondent No. 4 before the Jabalpur Bench of the Tribunal wherein the said Bench has disposed of the OA with a direction that the decision of the Supreme Court in SLP (Civil) No. 6471/2003 would apply.
12. According to him, in the year 1995-1996, the petitioners herein were promoted as SW but the respondent No.4 was not considered for promotion by the DPC on the ground that he had not passed the said exam which was pre-requisite for promotion. According to him, it necessarily follows that the Supreme Court vide its Judgment dated August 4, 2015 having decided the Civil Appeal No. 5944/2015 by holding that the BE (Civil) is equivalent to final examination of Institution of Surveyors and pursuant thereto, the respondent Nos. 1 to 3 have been promoting persons who were similarly placed and those who are also senior / junior to the petitioners were promoted, the Tribunal has rightly granted the prayer. According to him, the petitioner No.1, though a party before the Jabalpur Bench, having not challenged the judgment of the Jabalpur Bench dated October 30, 2003, the challenge to the impugned order of the Tribunal dated January 13, 2013 is otiose. In other

words it is his submission if the impugned order of the Tribunal dated January 13, 2023 is set aside at the behest of the petitioner No.1 it shall have a bearing on the judgment of the Jabalpur Bench dated October 30, 2003, which has attained finality. That apart, it is his submission that even the petitioner No. 2 who is junior to petitioner No.1, though not a party has not challenged the judgment dated October 30, 2003 of the Jabalpur Bench, cannot now challenge the order dated January 13, 2023 only on the ground that the

OA filed by respondent No.4 was barred by time. In fact Dr. Hooda's endeavour is to justify the filing of the OA in the year 2022 as the respondent Nos.1 to 3 were representing that there is a stay by the Guwahati Bench of the Tribunal from making any promotion to the post of SW and that apart the respondent Nos. 1 to 3 after the judgment of the Supreme Court considering the similarly placed persons like the petitioner were giving periodical promotions to them as SW, and as such the petitioner was under *bona fide* belief that he shall also get the promotion. Mr. Hooda's submits even the representation of the respondent No. 4 was rejected only on the ground of stay granted by the Guwahati Bench of the Tribunal and not otherwise.

13. Learned counsel appearing for respondent Nos. 1 to 3 submits that their case is also similar to the one which has been advanced by Dr. Hooda on behalf of respondent No.4. In other words, counsel adopts the submissions as made by Dr. Hooda.
14. Having heard the learned counsel for the parties, the short question which arises for consideration is whether the OA 3589/2022 filed by respondent No. 4 was barred by time and could not have been entertained by the Tribunal.
15. At the outset, we may state that Dr. Hooda has not contested the filing of the petition by the petitioners on the ground that they have no *locus standi*. If that be so, we consider the present petition on the premise that the petitioners have the *locus* to file the present petition though they were not party before the Tribunal. Having said that there is no dispute that the respondent No.4 had approached the Jabalpur Bench of the Tribunal seeking his promotion to SW. The same was disposed of by the Jabalpur Bench stating that the outcome of Civil Appeal No. 5944/2015 pending consideration before Supreme Court shall govern the respondent No.4. So in that sense, the Supreme Court having declared the equivalence of qualifications, respondent No.4 was required to be considered for promotion to the post of SW retrospectively which according to the learned counsel appearing for the parties shall be 1995-96 when the petitioners who were junior to respondent No. 4 were promoted and the respondent No.4 was denied only on the ground

he does not have the qualifications. Having secured an order in his favour, the respondent Nos. 1 to 3 were required to consider the case of the respondent No.4 and grant him the promotion to the post SW.

It was represented by Dr. Hooda that the respondent Nos. 1 to 3 were undertaking the said exercise. It so happens that on March 29, 2021, some officers had approached the Guwahati Bench of the Tribunal in **OA 100/2021, Atul Kumar Pandey v. MES** and the Bench had restrained respondent Nos. 1 to 3 from conducting review DPC as an interim measure, and we have been informed that in view of the stay order granted by the Guwahati Bench, review DPCs are not being held. We have been informed that the stay is still in operation. Having noted this aspect, surely, the respondent No.4 cannot be denied the benefit which he got in terms of the judgment of the Jabalpur Bench. It was an obligation of respondent Nos. 1 to 3 to give him promotion. There was no requirement for the respondent No. 4 to approach the Tribunal for such a benefit. Even otherwise, if the respondent No.4 is denied the benefit of promotion in terms of the directions of the Jabalpur Bench of the Tribunal, then it shall have the effect of nullifying the judgment of the Jabalpur Bench, which shall be clearly impermissible, more so when the petitioner No.1 was a party before the Jabalpur Bench and had not challenged the Judgment of the said Bench dated October 30, 2003. Similarly, petitioner No.2 who, though not a party, had accepted the judgment of the Jabalpur Bench in favour of the respondent No.4. 17. Surely in the facts of this case, plea that has been urged by Mr. Arora is not at all appealing. If accepted, the same shall amount to injustice being done to respondent No.4. The reliance placed by Mr. Arora on the judgment in **Pankaj Kumar Pathak (supra)**, has no applicability in the facts of this case. This we say so, because the petitioner therein had sought his promotion from 1998-2000, when, respondents Nos.3, 4 and 5 were promoted as SW. The seniority list was issued in the year 2005. The petitioner had not challenged the seniority list issued in the year 2005. The first representation was made in 2015. It was in view of the above facts that this Court had upheld the judgment of the Tribunal dismissing the OA on the ground of limitation. So, the judgment is clearly distinguishable. It necessarily follows that the present petition filed by the petitioners is without merit and is liable to be dismissed. It is ordered accordingly. It goes without saying that the direction given by the Tribunal can only be acted upon if the stay order granted by the Guwahati Bench on March 29, 2021, as has been represented by respondent Nos. 1 to 3 is vacated. The petition is without merit. The same is dismissed.

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