

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

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Date of decision: 10.4.92

(1) OA No.1849/88

Shri Tilak Raj ... Applicant

versus

Union of India & Ors... Respondents

(2) OA No.2011/88

Shri R.D.Gupta ... Applicant

versus

Union of India & Ors... Respondents

For the Applicants .. Shri R.P.Oberoi, Counsel

For the Respondents ... Shri J.C.Madan,
proxy counsel
for Sh.P.P.Khurana,
Counsel.

CORAM: THE HON'BLE MR.S.P.MUKERJI, VICE CHAIRMAN(A)
THE HON'BLE MR.T.S.OBEROI, MEMBER(J)

1. Whether Reporters of local papers may be
allowed to see the Judgement?

2. To be referred to the Reporters or not?

JUDGEMENT

(OF THE BENCH DELIVERED BY HON'BLE MR.S.P.MUKERJI,
VICE CHAIRMAN)

Since common questions of law, facts and
reliefs are involved in the aforesaid two applications
filed under Section 19 of the Administrative Tribunals
Act, 1985, they are being disposed of by a common
judgement, as follows. Both the applicants belong
to the what ^{was} ~~is~~ used to be known as ^{the} Military Lands
and Cantonments Service later known as Indian Defence
Estates Service. In 1983 the services were bifurcated
in Group 'A' and Group 'B' separately. The Group 'A'
appointments were governed by the Military Lands
and Cantonments Service (Group 'A' Rules) published

on 23.9.81 which were replaced by ^{the} Indian Defence Estates Service Group 'A' Rules, 1985. The Group 'B' part of the Military Lands & Cantonments Service continued to be governed by Military Lands & Cantonments Service Rules till 1983 when Group 'B' was further sub-divided into two parts and separate set of recruitment rules for separated cadres were published. The separated cadres were called ^{the} Cantonment Executive Officers Service Group 'B' and ^{the} Assistant Military Estates Officers Group 'B'.

2. The applicant in the first case (OA No.1849/88) was appointed as Executive Officer in Class II of the service through the Union Public Service Commission on ad hoc basis on 18.8.75. He was later regularly appointed with effect from 25.2.76. Later, on the recommendations of the D.P.C, he was confirmed in Group 'B' post with effect from 25.2.78. He was further promoted to the Junior Time Scale of Group 'A' post of Military Lands and Cantonment Service with effect from 4.11.78 initially for a period of six months on ad hoc basis and his tenure in the grade was extended from time to time. He was further promoted to the Senior Time Scale of Group 'A' Service with effect from 20.2.82 initially for a period of six months but his term was further extended from time to time. His last extension expired on 30.6.87. No formal extension for any

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further period was issued but the applicant and ^{some} other officers continued to function in the Senior Time Scale of Group 'A' till date.

3. The applicant in the second case(OA No. 2011/88) joined the Military Lands and Cantonment Service as Superintendent Grade I in 1963 as a direct recruit and was promoted to Group 'B' post on ad hoc basis with effect from 11.10.71 for a period of six months. His promotion was approved by the DPC and his appointment continued. In 1983, on the recommendations of the DPC he was appointed ^{to} the Junior Time Scale as Assistant Military Estate Officer. He continued to function in the Junior Time Scale of Group 'A' right from 21.5.81. Having been appointed to Group 'B' Service on 11.10.71 under the rules, according to him, he became eligible for regular promotion to the Junior Time Scale of Group 'A' post, from 10.10.74.

4. The applicants in both the cases are aggrieved by the fact that the Departmental Promotion Committee which met in August, 1988 for regular promotion to the Junior Time Scale of the Service did not include their names in the panel as a result of which, vide the impugned order dated 20.9.88(Annexure I in both the applications) their juniors were promoted even when some of them had not officiated at all in Group 'A' posts whereas the first applicant

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who had officiated for 7 years in the Junior Time Scale of Group 'A' Service and thereafter for more than 5 years in the Senior Time Scale and the applicant in the second case, who had officiated in the Junior Time Scale of Group 'A' Service from 1971 were excluded. They have contended that the respondents did not hold the meetings of the D.P.C for a number of years when they had become eligible for promotion to Group 'A' Junior Time Scale even when there were regular vacancies, as a result, their chances of promotion which arose from year to year, after they became eligible, have been ^{lost} ~~endangered~~. The first applicant has also alleged harassment by Respondent No.2 through adverse entries in 1984 and 1985 and transfer. The 1985 adverse entry was later expunged in 1988 after the applicant had approached this Tribunal. His suspicion is that the D.P.C which met in August, 1988 might have taken into account the adverse entry of 1985 also which was to be expunged and thus excluded him unjustly. He was also pre-maturely retired but the order of retirement was stayed when the applicant approached this Tribunal in OA No.1188/'87.

5. One of the main grounds taken by both the applicants is that while they had been working in more responsible ^{and higher} posts in Group 'A' of the Service their performance in the higher posts was compared

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with the assessment of the performance of their juniors, (who had never worked in grade 'A' posts) in the lower Group 'B' posts. The D.P.C, have, therefore, gravely erred in comparing some of the contesting respondents in Group 'B' with the performance of the applicants in Group 'A' posts for the last 7 to 10 years. This amounts to comparing the unequals and the proceedings of the D.P.C are thus vitiated.

6. In the counter-affidavit, the respondents have not refuted the factual contents in the application but have denied any malafides on the part of any of the respondents. They have argued that ad hoc promotion does not entitle the applicants to regularisation without being assessed by the D.P.C. They have explained that no meeting of the D.P.C could be held earlier as the seniority list of August, 1975 had been set aside by the courts. They explained that after 1.5.76 apart from the Executive Officers of Group 'B' cadre to which the applicants belong, another Group 'B' cadre i.e. Assistant Military Estates Officer (Technical) also became eligible for promotion to the Junior Time Scale of Group 'A' and since common seniority/eligibility list could not be finalised, the D.P.C meetings had to be delayed. They have stated that in the combined seniority list, the applicant in

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the first case was at Serial No.52 and not at Serial No.7 as claimed by him.

7. We have heard the arguments of the learned counsel for the parties and gone through the documents carefully. The learned counsel for the applicants in both the cases, Shri R.P.Oberoi argued that both the applications should be allowed on the sole ground that the performance of the applicants in higher grades was compared by the D.P.C with the performance of others in the lower grade and thus two incomparable have been compared and the applicants have been put to great disadvantage. In this regard, he brought to our attention the judgement of the Full Bench at Hyderabad in **Mr.S.S.Sambhus Vs.Union of India & Ors.** reported in 1992(1)ATJ 11 in which the Full Bench directed review in a case where the performance of the higher grade of some candidates was compared with the performance in the lower grade of others. The following extracts from that judgement are relevant:-

" We are fully convinced that comparing the quality of performance of a candidate at the class-III level of S.A. with the quality performance of another at the class-I level of ASW on equal footing will be comparing the incomparables and will be not only illegal, irrational but also violative of article 14 of the Constitution. To this extent we agree entirely with the Madras Bench of the Tribunal. Since neither the Principal Bench nor the Bangalore Bench of the Tribunal has gone into the basic

infirmity of the assessment process, the judgements in those cases which are based on entirely different grounds are of no assistance to us. The Allahabad Bench of the Tribunal in C.A. No.336/1990(V.N.Dutta v.Union of India & ors), however, took the view that comparative assessment of performance based solely on the C.R.entries, irrespective of the level on which the performance was discharged is in accordance with law. One of us ~~was~~ was a party to that judgement. However, the said judgement is under review and the operation of that judgement has been stayed by the Bench itself. In the instant cases the Class-III post of S.A., is two levels below the Class-I post of A.S.W. The enormity of hostile discrimination suffered by the applicants in these cases calls for serious consideration. One of the applicants in the Bombay cases stated that he, an adhoc ASW, wrote the CR of one of his juniors who was working as SA under him, and now that junior would be working as ASW and he has been reverted as SA. Such a situation is an anathema to service jurisprudence and discipline. Just as the quantity of water will reach a higher level in a tumbler of narrow girth but a lower level in a tumbler of wider girth, and the lower level does not signify a lower quantity of water as compared to the water in the narrow tumbler, similarly 'good' performance in a Class-I post as compared to 'Very Good' performance in a Class-III post does not signify lesser talent of the incumbent in the higher post. We feel that para 2-2(d) of the Dept.of Personnel's O.M dated 10.3.89 cited earlier needs to be reviewed and modified to the extent it purports to equalise the yardstick of assessment of performance at two different level..... Thus, there remains no doubt in our mind that the performance of the applicants on the post of Assistant Surveyor of Works was found satisfactory

and upto the mark. The only reasonable and just suggestion that in our opinion can be made to meet the ends of justice in the circumstances of the case is that for the period during which the applicants shouldered the higher responsibilities of the higher Class-I posts of ASW/SW their gradation as SA should be treated as one level higher than the grading awarded to them as ASW as per the ACRs for that period. That is, if the ACR as ASW reflects 'good', it should be taken as 'very good', and if 'Very Good', then it should be taken as 'outstanding'. In this manner they are placed on equal footing for the purpose of assessment of comparative merits. With this modification in the grading, the comparative assessment of the merits of the candidates may be made by the selection committee and they may be accordingly considered for empanelment."

One of us(Sh.S.P.Mukerji) was a party to the aforesaid judgement. In the light of what has been stated ^{by} ~~in~~ the Full Bench, we are convinced that the applicants in both the applications have not been correctly assessed for promotion to the Junior Time Scale of the Service as their performance in the higher grade was compared with the performance of their juniors in the lower grade. Accordingly, the assessment done by the D.P.C which met in August, 1988 will have to be reviewed. It appears from Misc.Petition No.893/92 dated 12.3.92 filed by the applicant in the first case that during the pendency of these applications some of the Assistant Military Estate Officers challenged the seniority list before the Tribunal in OA No.838/87 and OA

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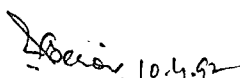
No.1502/87 and the decision of the Tribunal was upheld by the Supreme Court. The revised seniority list as on 1.5.76 of Group 'B' officers was confirmed on 15.1.91 and the review D.P.Cs were held in 1968, 1971, 1972 and 1974. In view of this background the review D.P.C for 1988 even otherwise becomes necessary.

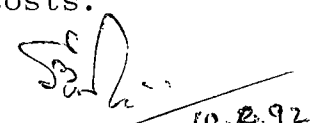
8. In the facts and circumstances, we allow both the applications, set aside the panel at Annexure I and direct the respondents 1&2 in both the applications to arrange ^a ~~to~~ review D.P.C for August 1988 for promotion to the Junior Time Scale of the Service. The D.P.C should be directed that for the candidates who are officiating in Group 'A' posts, their gradation recorded in their CRs in relation to ^{the periods of} ~~their~~ performance in 'Group 'A' posts, should be graded ~~as~~ ^{at} one level higher than the grading actually awarded to them. That is, when the officer ^{has been} ~~is~~ working in Group 'A' and has been graded as 'Good', it should be taken as "Very Good" and if his grading is "Very Good", then it should be taken as "Outstanding" and on that basis they should be considered for inclusion in the panel for promotion. Those, who have already been promoted on the basis of ^{the} ~~1988~~ selection may not be disturbed till the review D.P.C's assessment is finalised. In case, respondents 1&2 do not want to disturb those who

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have already been promoted, they are at liberty to give regular promotion with all consequential benefits to the applicants as per the reviewed panel in both these cases by creating supernumerary posts notionally from the dates they are entitled to be promoted on the basis of their assessment and the position in the panel given to them by the review D.P.C or by reverting others lower in the panel. Action on the above lines should be completed within a period of four months from the date of communication of this order.

There will be no order as to costs.


(T.S.OBEROI)
MEMBER(J)


(S.P.MUKERJI)
VICE CHAIRMAN(A)