

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

Regn.No.O.A. 1363 OF 1987

Decided on 17-5-1989.

S.N.Dimri.

.. Applicant.

Vs.

Union of India and others.

.. Respondents.

For the Applicant:

Shri G.D.Gupta, Advocate.

For Respondents 1 and 2:

Shri P.H.Ramachandani, Sr. Advocate.

CORAM: HON'BLE MR.JUSTICE K.S.PUTTASWAMY, VICE-CHAIRMAN (J)
HON'BLE MR.V.S.BHIR, ADMINISTRATIVE MEMBER.

JUDGMENT (ORAL)

This is an application made by the applicant under Section 19 of the Administrative Tribunals Act, 1985 ('Act').

2. Col.S.N.Dimri, the applicant before us, with the educational qualifications of ISc, Long Degree Engineer and Long Degree Survey Courses, commenced his career in June, 1954 as a Commissioned Officer in the rank of 2nd Lieutenant in the Indian Army.

3. In accordance with the Survey of India (Recruitment from Corps of Engineer Officers) Rules, 1950 ('the Rules') the applicant joined on 19-10-1959 the Survey of India Class I Service as Deputy Superintending Surveyor and has thereafter made career advances in the Survey of India. He was promoted as Director on 17-12-1986 on ad hoc basis in which capacity he has continued ever since then on the basis of the orders made by Government and the interim orders made by this Tribunal.

4. In this application, being really a continuation of his earlier Application O.A.No.1120 of 1985, disposed of by a Division Bench consisting of one of us [Hon'ble Mr.V.S.Bhir, Member(A)] and Hon'ble Mr.C.Sreedharan Nair, Member(J) on 3-4-1987 (Annexure-F), the applicant claims for regular promotion as Director from 1983/1984 and thereafter in preference to respondent No.4 in particular. This claim is founded on the creation of a post of Director by Government

21

on 30-8-1982 (Annexure-C) and the vacancies that arose for the years 1982 and 1983 and their non-bunching and strict adherence of eligibility criteria for those years.

5. In their reply, respondents 1 and 2 have asserted that in the year 1983 there were 4 vacancies of Directors and all the eligible officers including the applicant had been rightly considered by the Departmental Promotions Committee ('DPC') on 28-10-1983 and the promotions made in conformity with its recommendations were in order and legal. Respondent-6 who has filed his reply is absent. Respondents 3, 4, 5, 7 and 8 who have been duly served have neither filed their reply nor present.

6. Shri G.D.Gupta, learned Advocate has appeared for the applicant. Shri P.H.Ramchandani, learned Senior Advocate for Central Government has appeared for respondents 1 and 2. Respondents 3 to 8 are absent and are not represented.

7. Shri Gupta contends that the order made by Government on 30-8-1982 (Annexure-C) upgrading the post of OC 501 Fd Svy Engr Gp to the rank of 'Colonel' had sanctioned the post of a Director in the Survey of India and since that post had not been filled up during the end of that year, had to be treated as a distinct vacant post of that year and promotions to the same regulated separately for that year in terms of the rules, and orders issued by Government from time to time.

8. Shri Ramchandani contends that the upgradation of the post sanctioned by Government was not in the Survey of India or was outside that department and therefore, the same cannot be reckoned as a vacancy in the Survey of India for the calendar year 1982.

9. The material part of the order of the Government dated 30-8-1982 which is decisive to answer the question, reads thus:

"I am directed to invite reference to the Government of India, Ministry of Defence letter No.3(1)/ED/D(NS/IS) dated 14th Feb., 1980, as amended by corrigendum No.3(1)82/834/S/D(NS), dated 20th April, 1980 on the above subject and convey the sanction of the President for upgradation of 211 appointments, as per

list attached, to the rank of Col. during the year 1982.
All the prescribed criteria for selection to higher ranks will be followed.

The PEs/WEs will be amended accordingly.

The expenditure involved is debitable to the relevant Head of the Defence Services Estimates.

This issues with the concurrence of the Ministry of Finance (Defence) vide their U.O.No.1063/S/CSI of 1982.

Sd/- K.A.Nambiar,
Joint Secretary to the Government of India.

Copy to:- The Director Audit, Defence Services.

Appendix-A

List of 211 appointments approved for upgradation to the rank of Col. in phase 3 of Cadre Review Implementation.

Sr. of	No. appt.	Formation/ Branch	Appoint	
			Before	After upgradation.
xx	xx	xx Misc.		xx
143	Military Survey	OC 501 FD Svy. Engr	GP.	
xx	xx	xx		xx

There is no dispute that the rank of a 'Colonel' is equivalent to the post of a Director in the Survey of India. This order has been clarified in the later orders made on 5-10-1982 and 15-3-1983. On a close examination of these orders and all other related documents the one and the only inference which flows from them is that the post of a Director had been sanctioned by Government in its order dated 30-8-1982. Even the pleadings of respondents 1 and 2 and the view of the DPC only support this conclusion and no other. We, therefore, find it difficult to uphold the plea of Sri Ramchandani that the post of a Director was not sanctioned in 1982 in the Survey of India.

10. The post of Director sanctioned was not filled up by promotion in that year is not in dispute. We are not concerned with the reasons or difficulties ^{in not} in filling up that post during that year. On the very terms of the OM dated 24-12-1980 of Government regulating the principles of promotions for selection posts, the post sanctioned in 1982 had to be treated as a post available for promotion for that year and promotions for the same regulated strictly in conformity with that order only. Whether this has been so done or not, is the next question that calls for our examination.

11. We have carefully examined the proceedings of the DPC held on 28-10-1983. We find that the DPC had not treated the vacancy of 1982 as available for that year and had not so regulated the promotions. If any thing, the DPC had bunched up that vacancy with the vacancies that arose or available for the year 1983. This was clearly irregular, impermissible and was contrary to the instructions issued by Government on 24-12-1980 which were binding on the DPC. The instructions regulating eligibility criteria and all other matters thereto had been contravened by the DPC and the same had prejudiced the case of the applicant for promotion in 1983. Hence, the proceedings of the DPC held on 28-10-1983 and the Review DPC held on 2-7-1985 being in continuation of the earlier proceedings held on 28-10-1983 have therefore to be annulled and appropriate directions issued thereto.

12. On the existence of vacancies for the year 1983, while the applicant claims that there were only two, respondents 1 and 2 claim that there were three. Which of the two is correct calls for a detailed examination. We are of the view that we should leave this question to be decided by the DPC in the first instance.

13. On 28-10-1983 the DPC had graded the applicant as 'Good' and the same had not challenged by him or others. On this, it follows that the same must necessarily stand.

14. On what we have so far held, we must necessarily annul the proceedings of the DPC held on 28-10-1983 and 2-7-1985 and all orders made thereto from time to time and direct the DPC to re-do them leaving open all other questions urged by both sides to be examined and decided by it/Government.

15. We have earlier noticed that the applicant had been holding the post of Director from 17-12-1986 on ad hoc basis without interruption. On the peculiar facts and circumstances of this case, we consider it proper to direct respondents 1 and 2 not to revert the applicant or respondents 3 to 3 and continue them in the posts of Director till the matter is re-examined and decided afresh, and orders are made

thereon.

16. In the light of our discussion, we make the following orders and directions:

- (i) We quash the proceedings of the DPC held on 28-10-1983 and review proceedings held on 2-7-1985 and the promotion orders issued on the basis of those proceedings by Government in favour of respondents 3 to 8.
- (ii) We declare that one more post of a Director in the Survey of India, was sanctioned by Government on 30-8-01982 and that the same had not been filled up in that year.
- (iii) We leave open the number of vacancies for the year 1983 to be ascertained by the DPC/Government.
- (iv) We direct respondents 1 and 2 to consider the cases of the applicant and other eligible officers for vacancies that existed for the year 1982 and 1983 separately with the assistance of a special review DPC strictly in conformity with the instructions issued by Government in its Memorandum dated 24-12-1980 and issue all such orders as are necessary in that behalf..
- (v) We direct respondents 1 and 2 not to disturb the applicant and respondents 3 to 8 till the matters are re-done and fresh orders are made thereon.
- (vi) We direct respondents 1 and 2 to re-do the matters with all such expedition as is possible in the circumstances of the case and in any event on or before 30-10-1989.

17. Application is disposed of in the above terms. But, in the circumstances of the case, we direct the parties to bear their own costs.


(V.S. BHIR)
ADMINISTRATIVE MEMBER


(K.S. PUTTASWAMY)
VICE-CHAIRMAN(J). 17/5/8