

53

Central Administrative Tribunal  
Principal Bench

OA.1096/90

New Delhi, the 2nd July, 1996.

Hon'ble Shri A.V. Haridasan, VC(J)  
Hon'ble Shri K.K. Ahooja, M(A)

Jitender Nath  
54-A, New Lyalpur Extension  
near Som Bazar Chowk  
Delhi.110051.

.. Applicant

(Adv. Sh.US Bisht )

vs

Union of India, through  
1. Secretary,  
Ministry of Defence,  
New Delhi.110011.

2. Engineer-in-Chief's Branch  
Army Headquarters  
Kashmir House  
New Delhi.110011.

.. Respondents

(Adv. Sh. VSR Krishna)

ORDER (Oral )

Hon'ble Shri A.V. Haridasan, VC(J)

The grievance of the applicant who was working as ASW (ad hoc) in the Military Engineering Service is that while the respondent No.2 issued two panels for regular promotion of 213 officers to the post of ASW, the applicant's name was not included in the panel though he was fully qualified and eligible and has been holding the post for the last six years on ad hoc basis.

The DPC according to the applicant has gone wrong in not considering his merits on the basis of grading in the ACR in respect of the higher post which he was holding and comparing the same with those of persons who was holding the post of Surveyor Asstt. Gr.I. This according to the applicant, is against the principle laid down by the full Bench of the Tribunal reported in SLJ 1992(1)Vol.43 225 in case of SS Sambus and others vs. UOI and others. Further grievance of the applicant is that he should have been given seniority in the cadre of SA Gr.I. w.e.f. the date he was promoted as Supdt. B/R Gr.I. On the basis of opinion given by him in the year 1978. These two claims are being contested by the respondents. The respondent's counsel admit that the full Bench of the Tribunal has in its decision referred to by the applicant laid down certain principles in considering the suitability of officers working on a higher post on adhoc basis while holding the lower post substantially, but they contend that since the applicant was not a party either in this case before the Tribunal which led to the full Bench decision and upheld by the Supreme Court or as intervened before the Supreme Court he is not entitled to get the benefit of the judgement. Regarding the second claim of the applicant of seniority from the date of exercise of option, in the year 1978, it is contended

that the option given in the year 1978 has been cancelled and further option was called for.

Later it is also argued by the ld. counsel for respondents that there has been difference of opinion between the two members hearing the case OA No.448/93 and as a result the matter has been referred by the Bench to the Hon'ble Chairman for constituting the larger Bench to settle the issue. Ld. counsel for the respondents therefore contend that this issue could be finally decided only after full Bench settled the referred point.

2. Ld. counsel for the applicant states that regarding the seniority in the cadre of Supdt.B/R, the applicant would seek relief in separate application if liberty to do so is given to him; and that the issue regarding the comparison of ACRs as settled by the full Bench which is confirmed by the Supreme Court alone may be decided in this application. Ld. counsel for the respondents has no objection in leaving open the issue which has to be considered by a full Bench and disposing of this application deciding the other issue.

3. Accordingly, we have heard the ld. counsel on either side. It is not in dispute that the OPC while considering the case of the applicant considered his ACRs in the higher post of ASW

and equated the same with the ACRs of his juniors working on a lower post SA Gr.1. On the identical issue the full Bench of the Tribunal in case of SS Sambbus and others vs UOI and others (supra) has opined as follows:

"The only reasonable and just suggestion that in our opinion can be made to meet the end 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."

4. Aggrieved by the decision of the full Bench, the respondents filed an SLP before the Hon'ble Supreme Court and <sup>the</sup> SLP was dismissed by order dated 17.11.94.

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It may also be mentioned that certain persons who were not parties to the original application which led to full Bench ruling had intervened in the SLP and the Supreme Court held that though they had not raised this issue before the Tribunal in view of the fact that they were also be identically constituted in the interest of justice their case had to be reconsidered by a review DPC in the light of the directions given by the Full Bench/Tribunal in the judgement.

5. The applicant in this case is also similarly placed like the applicants in the Full Bench case also like the intervenors before the Supreme Court. The situation is identical. The consideration of the DPC of the applicant's case was obviously incorrect in view of the Full Bench ruling. Therefore, it is necessary in the interest of justice that Review DPC should be held in the case of the applicant to consider his case for regular promotion as ASW in accordance with the formula evolved by the Full Bench in its ruling.


6. In the result, giving liberty to the applicant to agitate the question of seniority in the grade of ASW and promotion as ASW on the basis of option exercised in the year 1978 as SA Gr.I. in a separate proceedings, we dispose of this

58

application with the following direction  
to the respondents.

To constitute the review DPC as on  
*and consider the arrears*  
8.3.1990 for regular promotion to ASW  
*or*  
on regular basis in accordance with the  
guidelines evolved by the full Bench of  
this Tribunal in its ruling in case of  
SS Sambus and others vs UCI and others  
(supra).

The above direction shall be complied with  
by the respondents within a period of four months  
of the date of communication of this order.  
There will be no order as to costs.

  
( R.K. Anooja )  
Member(A)

  
( A.V. Haridasan )  
Vice Chairman(A)