

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI:

D.A. NO.931/90

New Delhi, the 21st September, 1994

Hon'ble Shri J.P. Sharma, Member (J)

Hon'ble Shri B.K. Singh, Member (A)

Shri Lakshman Singh,
s/o late Shri Kundan Lal,
529, Sector-IX, R.K.Puram,
New Delhi.

... Applicant

(By Shri P.T.S. Murthy, Advocate)

Vs.

1. Union of India
through the
Secretary,
Ministry of Defence, South Block,
New Delhi.

2. Engineer-in-Chief, Army Head Quarters,
Kashmir House, New Delhi.

3. Director of Personnel
(Engineer-in-Chief's Branch)
Army Headquarters, Kashmir House,
New Delhi.

... Respondents

(By Shri V.S.R. Krishna, Advocate)

O R D E R

Hon'ble Shri J.P. Sharma, Member (J)

The applicant has been working as Superintendent
E/M Grade since 1980. He belongs to Scheduled Caste (S.C.)
community. The applicant had challenged the action of
the respondents in not considering him for promotion
as Assistant Engineer (E/M) in the MES even though
he fully qualified. He has challenged the order dated
17.4.90 which is panel for promotion to the grade of
Assistant Engineer (E/M) in MES.

2. The application was filed in May, 1990 and the reliefs claimed are:-

- i) That the case of the applicant be considered for promotion to A.E. by the D.P.C. and the D.P.C. has already met a special Review DPC be held to consider the name of the applicant.
- ii) That a direction to the D.P.C. or the Review D.P.C. to consider 650 names in the zone of consideration instead of any other truncated numbers which would be patently wrong and illegal.

3. An interim direction was issued on 18.5.90 that the results of the D.P.C. are going to be announced and the posts are filled up, one post of Asstt.Engineer(E/M) should not be filled up and be kept vacant.

4. A notice was issued to the Respondents. In reply, the Respondents contested the application and stated that the applicant could not be considered by the DPC, since the name of the applicant did not fall within the zone of consideration(normal or extended) as per his seniority in the Feeder Grade i.e. Supdt.E/M Grade I. He was therefore not promoted as Asstt.Engineer(E/M) as per Govt. of India Memo. dated 24.12.80. The applicant has also filed the rejoinder and reiterated the stand taken in the D.A. He has put up a case that 230 additional posts of A.E. were created as a result of cadre review. These 230 additional posts

included 153 posts for A.E.(B/R) and 77 posts for A.E.(E/M). However, only 162 posts were released inspite of Government sanction. The creation of these new posts in 1988 are the vacancies of the same year. Since the panel of September, 1988 DPC was not issued till 21.10.88, the respondents were required to withhold the result of September, 1988 DPC and to hold/fresh/Review DPC for total vacancies of 108 i.e. 31 chain vacancies plus 77 newly created vacancies of A.E.(E/M) in 1988. The respondents however held 2 DPCs which has resulted injustice to the applicant. His case in short is had a DPC for total vacancies of 108 held at a time, extended zone of consideration (5 times of the number of vacancies) would have become larger so as to cover some more S.C./S.T. candidates against the reserved quota. He has also stressed the point that the direct recruit on the post of Supdt.E/M Gr.I have been shown senior on the basis of quota-rata Rule. This is unjust and unfair.

5. Heard the learned counsel for the applicant and Shri V.S.R.Krishna for the respondents. It is admitted to the applicant that a DPC was held in September, 1988. The vacancies as a result of cadre review were sanctioned in October, 1988. The Cadre Controlling Authority only released 162 posts and out of these 54 vacancies were allotted against A.E.(E/M) for the year 1988. Obviously, these 54 vacancies being new creation could not be anticipated by the respondents at the time when the D.P.C. was held in September, 1988. The O.M. DP&T dated 10.3.89 lays down that vacancies due to

death, voluntary retirement, new creation etc. clearly belong to the category which could not be foreseen at the time of placing facts and material before the D.P.C. In such cases, another meeting of the DPC should be held for drawing up a panel for these vacancies as these vacancies could not be anticipated at the time of holding of earlier D.P.C. If for any reason, the DPC cannot meet for the second time, the procedure for drawing up of year-wise panel may be followed when it meets next for preparing panels in respect of vacancies that arise in subsequent years. Another 52 vacancies were released for DPC against the vacancies caused in 1989 due to retirement etc. In the year 1988 DPC the zone of consideration was for the 54 vacancies and 162 officers were considered. For the year 1989 156 officers were considered for 52 vacancies. As per 40% roster, 8 vacancies were reserved for S.C. and 4 vacancies for S.T. against the year 1988 and 8 vacancies for S.C. and 3 vacancies for S.T. against the year 1989. Against this only 2 S.C. candidates were available in the extended zone of consideration 5 times the number of vacancies for the year 1988. It is, therefore, evident that the DPC of 1988 had already taken place when as a result of cadre review certain new vacancies were created. The respondents have rightly considered these vacancies as per O.M. of DP&T dated 10.3.89 in the DPC held in 1989. The respondents have also extended the zone of consideration for S.T. ^{Sc} candidates. The applicant therefore being much below in the seniority list cannot force the respondents that all the vacancies allotted to A.E.(E/M) be considered in the year

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1988 when the DPC had already been held. The contention of the learned counsel that the DPC already convened in September, 1988 should not have published the panel and DPC should have been held not as a Review DPC but as original DPC whereby all the vacancies should have been considered at one point of time. This contention cannot be accepted. The sanction of vacancies as a result of cadre review has been done by the Government. It is for the Cadre Controlling authority to release the vacancies to be filled up seeing the financial position in consultation with the Ministry of Finance, Department of Expenditure. Thus, the release of the vacancies in 2 instalments cannot be said to be arbitrary or in any way with malafide intention. The applicant cannot have any grudge on this account as he did not come within the zone of consideration.

6. The applicant has not prayed for grant of any relief with regard to seniority but he has mentioned in the facts of the application that his seniority has not been correctly fixed. Since he has not raised any specific issue in that regard, that point cannot be considered. The respondents have in their counter stated that the seniority list was circulated according to rules. If the applicant had any grievance with regard to seniority he should have raised the issue when it was circulated in 1987.

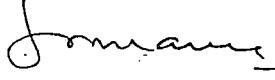
7. The learned counsel for the applicant has also given certain written submissions in written this regard. The points in this submissions are almost the same as has been argued by the learned counsel for the applicant and reasonably analysed above. A reference has also been made to the decision of C.A.T. Chandigarh Bench in Vs. Union of India 1989(10) ATC 583 but that case is not at all relevant because at the time when the DPC met in September, 1988 the only chain vacancy which was likely to occur has been taken into account. The creation of the new posts was not in contemplation when DPC met and the proceedings of the DPC held earlier cannot be in any manner argued by the learned counsel be quashed for holding a second DPC as a result of creation of certain new posts.

8. The learned counsel has also made a reference to guidelines on DPC in O.M. dated 30.12.76 where preparation of yearwise panel has been emphasised. The respondents have followed the procedure in drawing yearwise panel and there is no aberration in this respect. The respondents have also ~~not~~ followed the guidelines in ^{every other} any manner whatsoever. The learned counsel for the applicant in the written submissions has also given certain facts about the calculation of the vacancies and avert that 29 vacancies have not been accounted for though these have been considered. This point should have been taken

in the Original Application. If not known earlier than by getting the O.M. amended so that the stand of the respondents should have been known. The written submissions should have been better made on the basis of the pleadings rather than on certain facts not at all averred.

9. In view of the above facts and circumstances, we find no merit in this application and the same is dismissed.


(B.K. SINGH)
Member (A)


(J.P. SHARMA)
Member (J)

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