

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH : NEW DELHI

O.A.No. 2937/91

New Delhi this the 25<sup>th</sup> day of November, 1993

HON'BLE MR. J.P. SHARMA, MEMBER (J)  
HON'BLE MR. S.R. ADIGE, MEMBER (A)

1. D.K. Reddy  
Son of D. Narayana Reddy  
316 Asia House, Kasturba Gandhi Marg  
Working as Director (DARE)  
Ministry of Agriculture, Krishi Bhawan,  
New Delhi  
And

2. K.N. Kumar  
S/o Shri Kaushal Ram  
C-8/8184 Vasant Kunj  
New Delhi  
Working as Defence Estate Officer  
Chandigarh ..... Petitioner  
(By SC Gupta with Shri R. Doraiswamy)  
VERSUS

Union of India  
Through

... Respondents

1. Secretary  
Ministry of Defence  
South Block  
New Delhi-110011

2. Director General  
Defence Estates  
West Block  
R.K. Puram  
New Delhi-110066

3. Shri Ved Prakash  
Cantonment Executive Officer  
Kanpur Cantt (U.P.)

4. Smt Arti Kant  
Defence Estates Officer  
Karnataka Circle  
Sub Area HQ, Bangalore

5. Shri Balsharn Singh  
Deputy Director General  
C/o Director General  
Defence Estates  
West Block, R.K. Puram  
New Delhi

6. Shri Aditya Kumar  
APPA Course,  
Indian Institute of Public Administration  
Indraprastha Road  
New Delhi

(62)

7. Shri N.N. Ojha  
Defence Estates Officer  
Jaipur Circle  
Jaipur
8. Shri N.B. Ray  
C/O Director General,  
Defence Estates  
West Block, R.K. Puram  
New Delhi-110066
9. Shri O.P. Mishra  
Deputy Director General (Admin)  
Directorate General Defence Estates  
West Block, R.K. Puram  
New Delhi-110066
10. Shri P.S. Fatehullah  
Deputy Secretary  
Minorities Commission  
Lok Nayak Bhavan  
New Delhi
11. Shri A.S. Rajagopal  
Deputy Secretary  
U.P.S.C.  
Shahjahan Road  
New Delhi
12. Shri Ashok Harmal  
Deputy Secretary  
Dept of Science and Technology  
Technology Bhawan  
New Mehrauli Road  
Delhi
13. Shri Venkataramani, G  
Deputy Secretary  
Dept of Culture  
Shastri Bhawan  
New Delhi
14. Shri V.K. Srivastava  
Deputy Secretary  
Dept of Science and Technology  
Technology Bhawan  
New Mehrauli Road  
Delhi
15. Shri T. Parthasarathy  
Deputy Director  
C/O Director Defence Estates  
HQ Eastern Command  
13, Camac Street  
Calcutta
16. Shri M. Guruswamy  
Regional Provident Fund Commissioner  
Maharashtra and Goa Area  
Bandra, Bombay

(23)

17. Shri Dhanpat Ram  
Deputy Director  
C/o Director, Defence Estates  
HQ Central Command, Lucknow (U.P)
18. Shri R.K. Chopra  
Cantonment Executive Officer  
Kirkee Cantt  
Pune
19. Shri B.A. Thayalan  
Defence Estates Officer  
Madras Circle  
Fort St George  
Madras
20. Shri R.S. Cheema  
Cantt Executive Officer  
Jullunder Cantt  
Punjab
21. Smt. S.S. Pujari  
C/o Directorate General Defence Estates  
West Block, R.K.Puram  
New Delhi-110066
22. Shri Mohinder Lal  
Defence Estates Officer  
Danapur Circle  
Danapur Cantt, Bihar
23. Shri Ashwani Kumar  
Deputy Director  
Defence Estates  
Western Command, Sector-8  
Chandigarh
24. Shri R.P. Singh  
Deputy Secretary  
Dept of Environment and Forests  
Govt of India  
New Delhi
25. Shri Sudhir Chopra  
Defence Estates Officer  
Bikaner  
Rajasthan
26. Shri Ravi Raj  
Defence Estates Officer  
Tejpur  
Assam
27. Shri A. Chhawanmawia  
Defence Estates Officer  
Gauhati  
Assam

(By Dr.Gauri Shanker for Respondent No. 10 &  
11)  
Mrs. Raj Kumari Chopra, Counsel for  
Official respondents)

ORDER

HON'BLE MR. J.P. SHARMA, MEMBER (J)

Both the applicants belong to Indian Defence Estate Service (referred to as I.D.E.S. hereinafter) which was formerly Military Lands and Contonment Service. The applicants are working in Junior Administrative Grade from 22.2.1988. One Shri M.P. Singh and another, working as Assistant Defence Estate Officers (Tech) filed J.A. No. 838/87 and J.A 1502/87 in CAT, Principal Bench for proper fixation of their inter se seniority vis-a-vis Group 'B' officers (Direct Recruit - I.D.E.S. Officers) and regular Group A Officer (Direct Recruit I.D.E.S.). These applications were allowed by the judgement dated 30.11.1988. The operative part of the said judgement dated 30.11.1988 relevant for consideration of the present application is as follows:

Para 46

In the light of the aforesaid observations, it would be in the interest of justice to direct the respondents to prepare fresh seniority lists on the basis of length of service in each of the relevant grades of service. Review DRCs will have to be convened afresh to consider the suitability of the officers, including the applicants, for promotion to the various grades. If, as a result of such promotions, some persons who have already been promoted, are likely to be adversely affected they should not be reverted and they should be accommodated by creating supernumerary posts.

Para 47

We, therefore, order and direct as follows:

- (a) Respondent No. 1 should prepare fresh seniority lists treating AMEOs also as members of the service from the date of their respective appointment. Such appointments must be deemed to be in relaxation of the relevant recruitment rules.
- (b) Review DPCs should be held afresh as of various years in which vacancies in the higher posts in Group 'A' had arisen and regular appointments should be made on the basis of the recommendations of the Review DPCs.
- (c) In case the applicants are duly recommended by the Review DPCs for promotion, they will be entitled to consequential benefits, including arrears of pay and allowance admissible under the Rules.
- (d) If in the process of such review and promotions held on the basis of such review, persons who have already been promoted are likely to be adversely affected, they should be accommodated by creating adequate number of supernumerary posts.
- (e) The respondents should comply with the above directions within a period of six months from the date of communication of this order.
- (f) In the circumstances of the case, there will be no order as to costs.
- (g) A copy of this judgement may be placed on the case files of OA 838/87 and OA 1502/87".

-: 6 :-

2. A special leave petition was also filed before the Hon'ble Supreme Court was dismissed Civil Appeal No. 4397-98/89 and 4395-96/89 on February 27, 1990. The Hon'ble Supreme Court while dismissing the Civil Appeals observed that, "The Tribunal projected interest of all those persons who were working at present by directing them that they should not be disturbed".

3. The respondents implemented the directions issued by the Tribunal by its order dated 30.11.1988, recasting the seniority list of Class II (Group 'B') Officers by their letter dated 25.4.1990 (Annexure A IV). Consequently by another letter dated 15.1.1991 they reviewed the promotion of the Class II (Group 'B') officers of IOES to Class I (Group 'A'). Jr. Time scale (Annexure A 1). The name of the applicants do not figure in Annexure A I which is a promotion list to Group 'A' Jr. Time scale posts for vacancies arising upto 1974, on the recommendation of review DPC.

4. The grievance of the applicants is the omission of their names from the list of promotees drawn by the review DPC. The respondents have also issued another list dated 22.8.1991 (Annexure A2) containing a revised panel of promotion from Group A Jr. Time Scale to Group A Sr. Time Scale on the basis of review DPC. The names of the applicants do not figure in the said list. According to them Applicant No. 1 should have been above Shri Ved Prakash at Serial No. 17, and applicant No. 2 above that of Shri P.S. Fatehullah. In view of the aforesaid grievance this application under Section 19 of the Administrative Tribunals Act, 1985 has been filed on 2.12.1991 for the following reliefs:

-: 7 :-

- (a) In the letter dated 15.1.1991 the names of the applicants be included and shown against supernumerary post in compliance with CAT Judgement of 30.11.1988.
- (b) In the list circulated on 22.10.1991 the name of the applicant No. 1 be shown above Shri Ved Prakash and that of Applicant No. 2 be shown above Shri R.S. Fatehullah and the CAT be implemented accordingly.
5. A notice was issued to the respondents. The official respondents in the reply dated 17.2.1992 opposed the grant of the relief prayed by stating that the letter dated 15.1.1991 and 22.8.1991 were issued consequent to the review of promotion made to JTS and STS of Group 'A'. This review of promotion was made in compliance with the order of the Hon'ble Supreme Court dated 27.2.1990 in the case of Union of India vs. M.P. Singh and Ors and Shri S.K. Arora & Ors vs. M.P. Singh & Ors. The present application, therefore, does not lie because the respondents have simply followed the directions of the Hon'ble Supreme Court. The applicants are the Officers of the Indian Defence Estate Service, IDES and have not been reverted from the posts in the JAG but retained in a supernumerary capacity, as directed by CAT/Hon'ble Supreme Court. The promotion of the applicants earlier to JTS of Group 'A' or to the STS and to the JAG becomes irrelevant in the light of the recommendations of the reviewed DPC, which was done as directed by the CAT/Hon'ble Supreme Court. The seniority of the applicants in various grades of Group 'A' has come down, and their places have been taken by the AMEDs (Tech).

-: 8 :-

who were not considered by the earlier DPCs being treated as ex cadre till May 1976. Thus the applicants according to official respondents have no case. The private respondents No. 3 10,11,13 and 14 have also contested the application by filing their replies. It is stated that AMEOs(Tech) who joined the service in 1963 onwards but did not form part of the military land and cantonment service (in short ML&CS). These officers were considered as ex cadre and they had no promotional avenues. These officers were brought in the main stream of ML&CS for giving them promotional avenues to reach Group 'A' posts, alongwith Group 'B' officers like the applicants herein, who are already in the main stream. An amendment was made in ML&CS rules in 1951 and 1976 to this effect. The AMEOs (Tech) approached the Tribunal seeking the relief that they should be considered as Members of the ML&CS right from the date of their appointment i.e. 1963 onwards and not from the date of amendment to the Rules of 1951 with effect from 1.5.1966. This contention was allowed by the Tribunal and upheld by the Hon'ble Supreme Court and Union of India was directed to review the seniority of these officers in Class II treating their seniority in Group 'B' from the date of their appointments and to hold DPCs for promoting the said applicants to the higher grades of Groups 'A', provided they are found fit to be promoted to the higher grades. The applicants, therefore, have lost their original seniority in Class II, because of the fact that AMEOs (Tech) who joined services earlier to them, were placed above them.

1

Thus the applicants can have no grievance whatsoever, because they went down in the zone of consideration, and their names could not be recommended for promotion to Class I, and some of the AMLOs (Tech) who were not earlier considered for promotion to Class I by the original DPCs, had now entered the zone of consideration, and were given promotion on the basis of the recommendation of the review DPCs.

6. The applicants have so filed rejoinder to the counter filed by the respondents reiterating the same points as averred in the application.

7. We have heard the learned counsel for the parties at length and perused the record. We have already quoted Para 46 and Para 47 of the directions issued by the Tribunal which have been upheld by the Hon'ble Supreme Court. The learned counsel for the applicant has laid great emphasis on the portion of the Tribunal's Judgement dated 30.11.1988 which states that if by the review DPCs recommendations some persons are promoted, then if as a result of such promotions some persons who have already been promoted, are likely to be adversely affected, they should not be reverted, but they should be accommodated by creating supernumerary posts. Thus it is contended by the learned counsel that the Judgement dated 30.11.1988 has not been rightly interpreted and the non creation of supernumerary posts at each level has created anomalies and adversely affected the applicants. The respondents interpretation of the judgement only protects them at the present place of posting and in the grade in which they are working.

8. Both the applicants are working in Jr. Administrative Grade since August 1982. By the revision of the seniority list on the basis of the review DPCs' recommendation which was held in November, 1990 to

-: 10:-

review the original DPCs recommendation held in 1968, 1971, 1972 and 1974 for promotion from Group 'A' to Group 'B' service, the applicants could not come within the zone of consideration, and their names could not be recommended for promotion to Class I. Even so, their present position of working in Jr. Administrative Grade is not being touched. The interpretation placed by the applicants that at each level the supernumerary posts should have been created has no meaning whatsoever. The applicants have adopted a novel way of circumventing the directions issued in the judgement of 30.11.1988 for giving promotions to AMEOs. The learned counsel for the applicant argued that Applicant No. 1 was promoted to Jr. Time Scale Group 'A' on 15.1.1973 and Applicant No. 2 on 5.3.1975. Further, their date of regular promotion to Sr. Time Scale in Group 'A' post is from 15.6.1982 and further promotion to Jr. Administrative Grade of both the applicants is 22.2.1988. When the review DPC was held in November 1990 the applicants apparently went down in the zone of consideration, because Assistant Military Estate Officer (Tech) were given seniority in Class II Grade from the date of their respective appointments. If equal number of supernumerary posts are created at every level, in order to include the applicants who do not qualify in the zone of consideration, the Tribunals judgement dated 30.11.1988 as upheld by the Hon'ble Supreme Court cannot be given effect to. The learned counsel argued that the applicants were working on permanent posts and according to the definition laid down in FR 9(22), a permanent post means a post carrying a definite right of pay sanctioned without limit of time. The learned counsel has also referred to Govt. of India's Order Under FR 22. This is quoted below:

Jc

" Creation of Supernumerary Posts. - It appears that there are doubts as to the circumstances in which supernumerary posts may be created and the principles governing the creation of such posts. While it is obviously not possible to give an exhaustive list of the circumstances in which supernumerary posts may be created, the following broad principles governing the creation of such posts may be identified.

- i) "A supernumerary post is normally created to accommodate the lien of an officer, who, in the opinion of the authority competent to create such a post, is entitled to hold a lien against a regular permanent post but who, due to non-availability of a regular permanent post, cannot have his lien against such a post.
- ii) It is shadow post, i.e., no duties are attached to such posts. The officer, whose lien is maintained against such a post, generally performs duties in some other vacant temporary or permanent post.
- iii) It can be created only if another vacant permanent or temporary post is available to provide work for the person whose lies is retained by the creation of the supernumerary post. In other words, it should not be created in circumstances which, at the time of the creation of the post or thereafter, would lead to an excess of the working strength.
- iv) It is always a permanent post. Since, however, it is a post created for accommodating a permanent officer till he is absorbed in a regular permanent post, it should not be created for an indefinite period as other permanent posts are, but should normally be created for a definite and fixed period sufficient for the purpose in view.
- v) It is personal to the officer for whom it is created and no other officer can be appointed against such a post. It stands abolished as soon as the officer for whom it was created vacates it on account of retirement or confirmation in another regular permanent post or for any other reason. In other words, no officiating arrangements can be made against such a post. Since a supernumerary post is not a working post, the number of working posts in a cadre will continue to be regulated in a manner that, if a permanent incumbent of one of the regular posts returns to the cadre and all the posts are manned, one of the officers of the cadre will have to make room for him. He should not be shown against a supernumerary post.

vi) No extra financial commitment is involved in the creation of such posts in the shape of increased pay and allowances, pensionary benefits etc.

It has been decided that, subject to the observance of the principles set out in the preceding paragraph, supernumerary posts may be created by the administrative authorities under their own powers to the same extent as they are competent to create regular permanent posts. Cases where deviations from the general criteria mentioned above are involved may be dealt with in consultation with the Ministry of Finance.

Administrative authorities should maintain a record of the supernumerary posts, the particulars of the individuals who had lien against them and the progressive abolition of such posts as and when the holders of the posts retire or are absorbed in regular permanent posts, for the purpose of verification of service for pension".

9. The Judgement given by the Tribunal dated 30.11.1988 is clear which directs that review DPCs should be held afresh as of various years in which vacancies in the higher posts in Group 'A' had arisen, and regular appointment should be made on the basis of the recommendations of the review DPC. Thus, the cases of the applicants have also to be considered in the Review DPCs, but their earlier promotion affected by the original DPCs does not give them any benefit either on these posts or a claim for creation of supernumerary posts at each level to accommodate them, because this would not only lead to anomalous results but would also not be practical to implement. There is a sanctioned strength of the cadre which cannot be enlarged. If supernumerary posts are created at every level & for higher promotion posts, and incumbents on those supernumerary posts are considered, it would

mean in effect that the applicants would be promoted from one level to another without being found fit for promotion by the review D.P.C. The official respondents have therefore rightly interpreted the judgement. On the basis of a zone of consideration equal to 3 times the number of vacancies applicant No. 1 could not have found himself in the consideration zone. Applicant No. 2 could have come within the zone of consideration, and would have found himself in the list only if he had better merit than his juniors, which evidently he had not, as his name is omitted from the recommendation of the D.P.C. The applicant cannot have any grievance against the order dated 22.7.1991 which was issued after the review D.P.C. was held to review the promotion from JTS Group A to STS Group A. Since the applicants could not be promoted to JTS Group 'A', as said above, there is no question of considering them for promotion to STS Group 'A'.

10. In fact when the applicants have not been recommended by the review D.P.C. they should normally have been reverted but this has not been done in view of the directions issued by the Tribunal in its judgement dated 30.11.1988. The applicants should not have any grievance, also because they were promoted to STS by the original D.P.C. of 1982, having been already promoted to feeder grade of JTS Group 'A' they could not be promoted by the review D.P.C. as they were not in the feeder grade Group 'A'.

11. Taking all these facts into account we do not find that the impugned order calls for any interference. The application is, therefore, devoid of merit and is dismissed leaving the parties to bear their own costs.

*Anil Adige*  
(S.R. Adige)  
Member(A)

*J. P. Sharma*  
(J. P. Sharma,  
Member(J),