

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

1) OA No. 1806/93

New Delhi: this the 22nd day of July, 1999.

HON'BLE MR. S. R. ADIGE, VICE CHAIRMAN (A).

HON'BLE MR. P. C. KANNAN, MEMBER (J)

(19)

Shri K. Prabhakar Rao,
Chief Engineer, DDG(W P & C),
E-in-C's Branch,
Army Headquarter,
New Delhi

..... Applicant.

(By Advocate: Shri S. K. Gupta)

Versus

1. Union of India,
through
Secretary,
Ministry of Defence,
South Block,
New Delhi.
2. Engineer-in-Chief,
Coordination and Personnel Directorate,
Army Headquarter,
DHQ PO,
New Delhi - 0011.
3. Shri B. M. Gupta,
Chief Engineer,
C/o Engineer-in-Chief,
Coordination and Personnel Directorate,
Army Headquarter,
DHQ PO,
New Delhi - 110011.
4. Shri Vidya Bhushan,
Chief Engineer,
C/o Engineer-in-Chief,
Coordination and Personnel Directorate,
Army Headquarter,
DHQ PO,
New Delhi - 110011.
5. Secretary,
Union Public Service Commission,
Dholpur House,
Shahjahan Road,
New Delhi.

..... Respondents.

(By Advocates Shri B. S. Jain)

Shri V. S. R. Krishna

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2) OA No. 2210/93

Shri Y.N. Ramachandra Rao,
Chief Engineer,
DDG (P&V),
Engineer-in-Chief's Branch,
Kashmir House, AHQ
New Delhi-110011

..... *Applicant*

(None appeared)

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Versus

Union of India,
through
Secretary,
Ministry of Defence,
South Block,
New Delhi - 110011.

2. Engineer-in-Chief,
Engineer-in-Chief Branch,
Kashmir House,
Army Headquarters,
DHQ Post Office,
New Delhi - 110011.
3. Shri B.M. Gupta,
Chief Engineer (Arbitrator),
Standing Panel of Arbitrators,
No.5, Camp Bell Lines,
Nehru Road,
Lucknow Cantt-226002.
4. Shri Mayya Bhushan,
Chief Engineer, Air Force,
S.E. Falls,
Shillong,
5. Shri K.P. Prabhakara Rao,
Chief Engineer,
DDG (P&C),
Engineer-in-Chief's Branch,
Kashmir House, AHQ,
New Delhi - 110011.

..... *Respondents*

(By Advocate: Shri B.S. Jain for R-4,
Shri B.K. Gupta for R-5).
-V/S R. Adige -

ORDER

HON'BLE MR. S. R. ADIGE VICE CHAIRMAN (A).

As these two OAs involve common questions

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of law and fact, they are being disposed of by this common order.

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2. In OA No.1806/93 applicant K.Prabhakar Rao has challenged the placement of Shri Vidya Bhushan and Shri B.M.Gupta over his name in the grade of Chief Engineer, while in OA No.2210/93 applicant Shri Y.N.Ramachandra Rao has challenged placement of Shri B.M.Gupta, Shri Vidya Bhushan and Shri K.P.Rao applicant in OA 1806/93 above, as Chief Engineer.

3. We have heard both sides.

4. Our attention has been invited to CAT Allahabad Bench's order dated 2.3.89 in TA No.639/87 Vidya Bhushan Vs. WOI & Ors. In that OA applicant Shri Vidya Bhushan had challenged the seniority of Shri G.N.Iyenger and Shri Manjit Singh and his contention was that he had joined service earlier than them and he should rank senior to them in accordance with Rule 3(i) of the Military Engineering Service Class I (Recruitment, Promotion and Seniority) Rules, 1949. After hearing both sides on merit, that OA was allowed and the Bench held that Shri Vidya Bhushan was entitled to his due seniority to be determined on the basis of length of service and the year of recruitment, and he should therefore be placed above Respondents No.3 and 4 Shri Iyenger and Shri Manjit Singh in the seniority list. The Bench further held that Shri Vidya Bhushan would be entitled to notional fixation of pay in the rank of ~~SE.E~~ i.e. from the date S/Shri Iyenger and Manjit Singh were promoted, but he would not be entitled to difference in the arrears of pay of the two posts upto 4.9.71 i.e. the date of notification regarding his confirmation. It was further ordered that from the date of this notification he would be entitled to difference in the pay upto the

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date of his promotion as EE. The Bench further held that Shri Vidya Bhushan would be entitled for being considered for promotion as SE from the date Shri Iynger and Manjit Singh were promoted to this post and upon being so promoted, he would be entitled to all consequential benefits including arrears of pay. The respondents were directed to arrange for a review DPC for this purpose within 3 months.

5. Following this order, one Shri B.M.Gupta filed OA No.888/90 in the CAT Allahabad Bench claiming similar reliefs. That OA was also allowed by order dated 22.11.91 and the Bench held that Shri B.M.Gupta would be entitled to seniority on the basis of length of service and the year of recruitment and would therefore be placed above Shri Vidya Bhushan in the seniority list. Regarding promotion and other benefits, the Tribunal held that Shri B.M.Gupta would further be entitled for being considered for promotion as SE, Addl.Chief Engineer and Chief Engineer from the date Shri Vidya Bhushan was promoted and upon being found suitable for the same, he would be entitled to such promotions with all consequential benefits including arrears of pay. The respondents were directed to arrange for review DPC within 3 months.

6. It is not denied that both the aforesaid orders became final.

7. Against the order in Vidya Bhushan's case (supra), the UOI filed a SLP in the Hon'ble Supreme Court but meanwhile SLP filed by one Shri D.N.Sharma claiming similar benefits, was disposed of by the Hon'ble Supreme Court on 8.8.89 on the same lines as CAT Allahabad Bench's order dated 2.3.89 in Vidya Bhushan's case (supra), the UOI withdrew its SLP. Meanwhile as noticed above, the

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order dated 22.11.91 in B.M. Gupta's case (supra) had already been passed by CAT Allahabad Bench and in compliance of that order of CAT Allahabad Bench, the seniority of Shri B.M. Gupta and Vidya Bhushan had to be refixed in the grade AEE and their case for promotion for higher grades had to be considered by the review DPC.

8. Applicants have contended that in the light of CAT Allahabad Bench orders in Vidya Bhushan's case (Supra) and B.M. Gupta's case (supra), the review DPC should have confined itself to promotion in the scale of SE alone and consideration for the higher grades of ACE and CE by the review DPC was illegal.

9. Manifestly this contention is unacceptable in view of clear direction given by CAT Allahabad Bench that seniority of Shri Vidya Bhushan and B.M. Gupta had to be determined on the basis of their length of service and the year of recruitment. Once their seniority in the grade of AEE was determined as per the above direction, they were entitled to consideration for promotion at each of the higher grades and under the circumstance the respondents cannot be said to have acted illegally and arbitrarily in holding DPC for considering the claim of S/Shri Vidya Bhushan and B.M. Gupta for promotions as SE, ACE and CE.

10. Furthermore, the review DPC was held under the authority of UPSC which is a constitutional body and was presided over by a member of UPSC. The other members of DPC were also high ranking officers and there is no reason to hold that the review DPC did not apply its mind fully to the facts of the case and did

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not assess the officers properly.

11. While the gradings of those officers who had already been graded in the regular DPCs could not be changed in view of relevant instructions on the subject, S/ Shri Vidya Bhushan and B.M. Gupta who had not come within the zone of consideration in the regular DPC now came within the zone of consideration consequent to the revision of their seniority and on the assessment made by the review DPC based on their gradings as reflected in their ACRs, they were promoted to the grades SE, Addl. CE and CE which resulted in their placement above that of applicants in the grade of CE.

12. In the light of the above, we see no good reason to interfere in these 2 OAs which are accordingly dismissed. No costs.

13. Let a copy of this order be placed in each case record.

(P.C.KANNAN)
MEMBER(J)

(S.R.ADIGE)
VICE CHAIRMAN(A).

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Aftered copy
Rajendra
Court Officer
Central Administrative Tribunal
Principal Bench, New Delhi
Faridkot House,
Copernicus Marg,
New Delhi - 110001