

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI MEMBAI BENCH

ORIGINAL APPLICATION NO 1163 OF 1996

SHRI DS INAMDAR, JSW

- APPLICANT

Vs

UNION OF INDIA & OTHERS

- RESPONDENT

WRITTEN STATEMENT ON BEHALF OF THE RESPONDENTS

MAY IT PLEASE THIS HON'BLE TRIBUNAL

At the outset the Respondents submit that the Applicant in this application ^{is} aggrieved by his non-selection by the Review DPC in the post of Asst. Surveyor of Works which was held in compliance of the decisions of the full bench of the CAT, Hyderabad and the Hon'ble Supreme Court of India. The Respondents submit that the applicant's main contention is that he was holding the post of ASW on an adhoc basis from 1985 to 1990 during which ^{he} period he was also allowed to pass the Efficiency Bar in 1988. To this the Respondents submit that the applicant was duly considered by the Review DPC in deference to the wishes of the Hon'ble Supreme Court as well as the full Bench of the CAT but could not be promoted as he could not make the grade. Hence the applicant in this OA desires to impose his views so far as his merits for promotion to the post of ASW is concerned upon the views already expressed by the Review DPC. The Respondents crave leave of this Hon'ble Tribunal to produce the proceedings of the Review DPC for the perusal of this Hon'ble Tribunal. The applicant has also not alleged any malafides against the DPC panel members. In view of the above submissions this Hon'ble Tribunal be pleased to dismiss this OA with costs.

2. With reference to para 1 of the OA, the Respondents submit that ^{at} it would be seen from the contents of letter referred to ^{to OA} exhibit No.1 that the Review DPC was held based on the various court directions including the applicants. As the applicant was ^{by} duly considered by Review DPC which was held in consultation with the Union Public Service Commission and the applicant could not make the required grade as per the directions of Supreme Court, hence challenge by the applicant of Review panel is illegal, void and uncalled for.

3. With reference to paras 2 & 3 of the OA, the Respondents have no comments to offer.

4. With reference to paras 4.1 & 4.2 of the OA the Respondents have no comments to offer.

5. With reference to para 4.1⁽²⁾, of the OA the Respondents submit that it is not denied that prior to 1991 the promotion from Surveyor Assistant Grade I Group 'C' post) was to Assistant Surveyor of Works (Group 'A' post) but the matter was reviewed considering the promotional avenue of similarly educated persons who were being promoted to a Group B post hence a new post of Joint Surveyor of Works (Group 'B') post was created to avoid discontentment amongst similarly educated persons and now promotion from Surveyor Assistant Gde-I is being done to JSW. There has been delay in finalising of Recruitment Rules for the post of ASW and a new post of JSW was being considered. Certain SA I were promoted as ASW on adhoc basis in 1985. The applicant was also considered and promoted as Adhoc ASW. On finalisation of Recruitment Rules for the post of ASW, the case applicant was considered alongwith his seniors and juniors in the

Union public Service Commission in 1990 but the applicant could not make the required minimum grade as per his assessment performance, he was not promoted as ASW but subsequently was promoted as JSW which post the applicant is holding till now. As regards assessment of DPC in the ACR's/OPC proceedings it is a confidential matter the applicant can not claim with certainty that the assessment which he has presumed may be correct. Moreover, it is upto the DPC (an independent body) to evolve a formula for assessment of individuals which can not be challenged in any court of law until it is established that the DPC is biased and has not considered the applicant by fair means. Since such thing has not been established ~~hence~~ ^{the} applicant has no claim and this OA has no merits.

6. With reference to para 4.4 of the OA, the Respondents submit that it is not denied that the applicant has officiated on adhoc basis w.e.f. 24/5/85 and has worked on this post on adhoc basis upto July 1990. He has also been allowed to cross efficiency bar in the pay scale of Rs.2,000/- - 4,000/- but this can not be claimed as basis for his regular promotion as ASW. As the DPC for crossing of efficiency bar has a criteria that individual should not be involved in any disciplinary case and has ever earned an average report can be allowed to cross efficiency bar but same is not in the case for promotion when Govt has fixed some bench mark (grading) in the performance reports for regular promotion from Group 'C' post to Group 'A' post which criteria applicant could not make hence he was not promoted as ASW on Regular Basis. Not only this the applicant had filed one more case vide

OA NO 1712/94 in CAT P B New Delhi. Matter on this OA has not yet been decided by this Hon'ble CAT. However, the applicant has been an intervener in OA No 306, 307 and 308 of 1990 (SS Shombus & Shombus Others) in the Supreme Court and the matter has been decided in favour of the applicant. This applicant was also considered by the review DPC which was held on receipt of Supreme Court Judgment but the applicant could not make the grade hence he has no claim at all.

7. With reference to para 4(5) of the OA, the Respondents submit that as already explained in reply to para 5 above the necessity of creating JSW has already been explained hence no further comments are offered.

8. With reference to para 4(6) of the OA, the Respondents submit that they neither admitted nor denied being a matter of records. However, the applicant has not challenged in this OA that any junior person to him was promoted as ASW in the vacancy of 1987. However, it is submitted that the information given about the DPC is a classified matter and the applicant has no access to such information being not connected with these documents hence argument is not tenable.

9. With reference to para 4(7) of the OA, the Respondents have not denied being matter of records. However, as explained reply to para 5 above the applicant has already been considered by a review DPC held in the UPSC as per Supreme Court judgment in the case of SS Sombus & Others Vs Union of India but he could not make the grade.

10. With reference to para 4(8) of the OA, the Respondents have not denied, however the Respondents again submit that the applicant was considered by a Review DPC held in UPSC after receipt of Supreme Court judgment but the applicant could not make the grade hence was not promoted as ASW.
11. With reference to para 4(9) of the OA, the Respondents have not denied the contents.
12. With reference to para 4(10) of the OA, the Respondents have not denied being a matter of records. However, the applicant's claims that since he has worked in the higher post for a short period when regular incumbent was not there (in addition to his duties), can not bestow any right to promotion as ASW when his records/ACR grading are not upto the grade as specified in Rules for promotion to the post of ASW.
13. With reference to para 4(11) of the OA, the Respondents have no comments to offer.
14. With reference to para 4(12) of the OA, the Respondents submit that it is fact that the applicant case was forwarded to DPC after receipt decision of larger Bench Hyderabad and Supreme Court judgment in the case of SS Shombus and Others Vs Union of India. The DPC which is held in the UPSC has considreed him as per the direction of the Supreme Court but he could not be found fit for promotion as ASW on regular basis. UPSC being an independent body, will not do injustice with any particular individual such as applicant. The Govt. has given powers to DPCs for fixing the norms for Assessment of the performance report, which can not be challenged in any being an independent body.

15. With reference to para 4(13) of the OA, the Respondents submit that in view of the factual position which is well known to the applicant and he had not brought out any new points the respondents did not consider it necessary to give reply to his application.
16. With reference to para 5(1) of the OA, the respondents submit that they have not denied the contents but if an person has worked on higher post as Adhoc basis it does not give him the right to claim his regular promotion on that post till he meets the criteria fixed for promotion to the posts as per DOP&T orders hence claim of the applicant is not tenable.
17. With reference to para 5(2) of the OA, the Respondents have not denied the same.
18. With reference to para 5(3) of the OA, the respondents submit that it is totally baseless and incorrect fact that the applicant has illegally been superseded by his junior. As per court directions, the applicant was duly considered by legally constituted DPC which is an independent agency (i.e. UPSC) but he could not make the grade hence his claim is not maintainable.
19. With reference to para 5(4) of the OA, the respondents neither deny nor confirm about the Assessment of the ACR in the DPC proceedings but being confidential in nature, however, the respondents will produce the DPC Proceedings if desired by this Hon'ble Tribunal.

20. With reference to para 5(5) of the OA, the respondents have not denied but if the applicant's assessment is the same as previous year then the respondents are not bound to inform the applicant. Even an individual if graded as average can not be informed about it because he is considered fit for the present regular appointment until something adverse has come to the light of Initiating Officer/Reviewing Officer, hence the claim is without any ground and hence not maintainable.
21. With reference to para 5(6) of the OA, the respondents submit that it is not a fact that the applicant was not considered by a Review DPC as per various court directions but he could not make the grade hence the submission of the applicant is baseless and uncalled for.
22. With reference to para 5(7) of the OA, the respondents submit that the Supreme Court has evolved a special formula that those applicants who had worked as ASW on Adhoc basis when compared in ACR's with SA Gde I such people will be assessed one Degree about the SA Gde I hence the plea in this para is not tenable and is not justified. This direction of the Supreme Court was duly followed by the Respondents.
23. With reference to para 5(8) of the OA, the respondents submit that as already explained in response to earlier paragraphs that crossing of efficiency bar does not give any right to promotion on regular basis for both assessments are different and can not be compared with each others and it does not give any right to applicant for promotion to a post if he has been allowed to cross EB when he holds the same post on adhoc basis. It is not justified that the applicant should claim that justice has not been done to him.

24. With reference to para 5(9) of the OA, the respondents submit that these points here have already been argued in OA No.535/90 and 536/90 and that matter has been settled made once and for all in the judgment in above OA(attached as Appen-^{to OA} A-4) as such no further arguments are offered at this stage but respondents pray to make submission when arguing the case. However, the judgment of Supreme Court which is in favour of the applicant has fully been implemented but due to the applicant not making the Grade set by the DPC he was not promoted hence provision Articles 14 & 16 of the Constitution of India have not been violated.

25. With reference to para 5(10) of the OA, respondents submit that the argument of the applicant is totally baseless as the DPC held for vacancies prior to 1987 in the post of ASW has correctly followed the Rules then prevalent for the DPC. The applicant is only making the allegations without knowing the facts. It is again confirmed that the correct procedure was followed by the DPC.

26. With reference to para 5(11) of the OA, the respondents submit that it is denied that the respondents have acted arbitrarily and in violation of Article 14 and 16 of the Constitution of India as no discrimination has been made with him and full justice has been done to him as per various CAT judgments.

27. With reference to para 5(12) of the OA, the Respondents submit that this is repetition of earlier paragraph No4, please refer to reply in above paragraph hence no further comments are offered.

28. With reference to para 5(13) of the OA, the Respondents submit that the posting to Port Blair is on tenure basis but it can not be claimed as North East. The area with Southern Command for some time but it is with Southern Command hence the benefit of Assessment in ACR for such applicant is not maintainable.

29. With reference to para 5(14) of the OA, the Respondents submit that the judgment of full bench of CAT Ahmedabad as given finally by the Supreme Court order dt 17 Nov 94 in SLP No. 22859-61/1992 has been fully implemented and the case of applicant has been considered taking into consideration direction of above courts, the sumrise of applicant that he has not been considered according to above directions is baseless and unfounded, since he is not aware of the full facts of DPC proceedings and grading given in the ACR but DPC has correctly assessed the applicant in review DPC but he could not make the grade hence claim is denied.

30. With reference to para 5(15) of the OA, the respondents have not denied since the matter has been argued in OA No.306, 307 & 308 of 1990 in a larger Bench and applicant has been considered according to formula and applicant has been considered according to formula evolved by the Supreme Court the settled matters cannot be reopened in this OA.

31. With reference to para 5(16) of the OA, the respondents submit that the argument in this paragraph has already been dismissed in OA No.306,307 and 308 of 1990 decided by larger bench in CAT and the matter is settled once for all it can not be raised again and again in this new OA.

32- With reference to para 5(17) of the OA, the respondents submit that it is denied that the applicant has ever been harrassed by the respondents will fully or otherwise. As his case has properly been considered by a Review DPC who has not considered him fit for Regular Promotion as ASW as per direction of various courts including the Hon'ble Supreme Court. In view of the above, submission this OA is not maintainable in the eyes of law. And needs to be dismissed with cost to respondents.

33. With reference to para 5(18) of the OA, the respondents submit that since the case has been considered by the Review DPC but the applicant could not make the grade as per laid down norm of the Rules hence DPC has not considered him fit for promotion to the post of Regular ASW, hence his application was not replied by the respondents.

34. With reference to para 5(19) of the OA, the respondents submit that it is not denied that applicant has rendered some service as ASW on adhoc basis but his case was decided by CAT Mumbai Bench vide Order dt 23/2/1995 and the rules have been applied as per this as well as directions in the case of SS Shambhus Vs Union of India decided by the Hon'ble Supreme Court but applicant could not come upto the standard laid down by Govt Rules as well as by the DPC hence he was not promoted to the post of Regular ASW.

35. With reference to para 5(20) of the OA, the Respondents submit that it is a fact that the DPC for the year 1988-89 and 1990 were not held as there was proposal with the Ministry that a new post of JSW should be created between SA I(Group'C' post) to JSW (a group 'B' post) before these Group 'C' employees are promoted to Group 'A' post hence these vacancies were not released. However, finally 120 post of JSW were created and DPC was first held in

1991. Hence there were no vacancies of promotion from SA I to ASW.

36. With reference to para 5(21) of the OA, the respondents submit that it is not denied that applicant has the required service and has passed the direct final examination which is a pre-requisite for the post of SW but the applicant could not make the grade even while giving one degree above that the unequals i.e. SA Is in the ACR's but he could not make the grade hence the applicant could not be promoted to the post of ASW (Regular) and until a person is promoted as ASW he can not claim promotion to the next post of Surveyor of Works.

37. With reference to para 5(22) of the OA, the respondents submit that it is totally denied that applicant has not been considered alongwith his juniors who were working as SA Gde I but even after giving the extra benefits as per directions of Larger Bench CAT Hyderabad and Supreme Court directions in the case of SS Shombus and Others Vs Union of India, he failed to make the grade hence the claim of the applicant is not tenable.

38. With reference to para 5(23) of the OA, the respondents submit that it is desired that the applicant has not been given the benefits as per the Rules but he has been given extra weightage in the ACR's grading as per Supreme Court judgment as mentioned in reply to Para 5(22) hence the judgment referred in this paragraph is not applicable in this case.

39. With reference to para 5(24) of the OA, the respondents submit that it is presumption of the applicant that DPC has not considered him as per the CAT larger Bench Hyderabad and Supreme Court directions. But on receipt of directions of these benches a review DPC was held in the Union Public Service Commission which considered the applicant alongwith some other similarly situated persons, but he could not be selected by this Review DPC for Regular promotion to ASW, hence allegation is baseless and unfounded and uncalled for.

40. With reference to para 5(25) of the OA, the respondents submit that in case the applicant was not satisfied with DPC findings he had open option to file a contempt petition in the larger Bench CAT at Hyderabad or in the Supreme Court, which applicant did not do, but he has filed a fresh application in the Hon'ble Tribunal which is not maintainable being all the point brought out in this OA have already been discussed argued and decided. Since applicant has failed to follow the court procedure and has ~~delayed~~ delayed to file a contempt petition within the stipulated time he has got no right to file this OA at this belated stage and needs to be dismissed as most of the matters referred to have already been discussed and settled.

41. With reference to para 6 of the OA, the respondents have not denied in view of their reply to para 5(18) no further comments are offered.

42. With reference to para 7 of the OA, the respondents submit that the applicant has filed similar cases in two other CAT Bench vide OA No.535/90 and 536/90 in CAT Bench, Mumbai and another OA No.1712/94 in CAT Principle Bench New Delhi raising the similar issues which matters have been decided and settled hence applicant should be prosecuted for filing this false affidavit under the perjury of law of the land.

43. With reference to para 8(a) of the OA, the respondents submit that the respondents will produce the Review DPC Proceedings in which applicant has been considered by UPSC in review DPC.

44. With reference to para 8(b) of the OA, the respondents submit that the respondents respondents have given him full chance to be considered for promotion to the post of Regular ASW but he failed to make the grade hence claim is not tenable.

45. With reference to para 8(c) of the OA, the Respondents submit that since the applicant could not make the grade as per the DPC norms and was not considered fit for promotion to the post of Regular ASW, he can not claim any pay and allowances for this, being applicant not eligible for any benefits.

46. With reference to para 8(d) of the OA, the respondents have not denied the same.

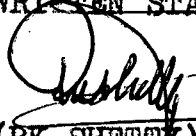
47. With reference to para 8(e) of the OA, the Respondents submit that the Respondents pray that cost litigation to be awarded to respondents as applicant is trying to waste the time of this Hon'ble Tribunal as well as the respondents.

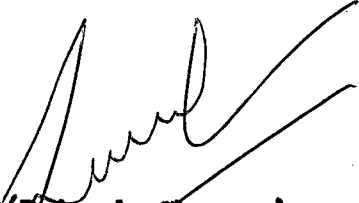
48. With reference to paras 9 to 11 of the OA, the Respondents have no comments to offer.

49. All statements, submissions and contentions of the applicant in this application which are contrary to and inconsistent with what is stated hereinabove ~~and~~ denied as if each such statements, submissions and contentions is specifically set out herein and traversed.

50. The Respondents hereby crave, leave of this Hon'ble Tribunal to add to, amend and alter this written statement and also to file relevent documents if found necessary during the proceedings.

WRITTEN STATEMENT DRAWN BY


(RK SHETTY)
Central Government Standing Counsel Maj
CAT Mumbai


(Hakesh Sharma)
Offg SO I (Pers)
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Pune - 1

V E R I F I C A T I O N

I, Maj Rakesh Sharma, Offg SO I(Pers, working in the office of Chief Engineer, Southern Command, Pune - 1

do hereby solemnly affirm and state that what is

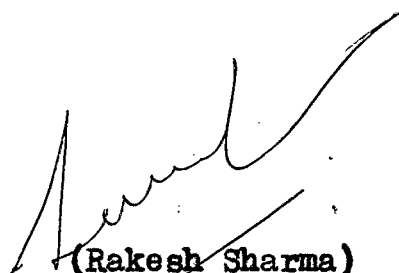
stated in paras 1 to 50 is true to my knowledge and

that I have not deliberately suppressed any material facts.

This verification is signed by me at Pune on this 10th

day of 10 June 1997.


(R.K. Shetty)
CGSC CAT Mumbai


(Rakesh Sharma)
Maj
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