

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI

O.A.NO.314/99

Wednesday, this the 5th day of March, 2003

Hon'ble Shri Govindan S. Tampi, Member (A)  
Hon'ble Shri K.V.Sachidanandan, Member (J)

Surinder Kumar Kapur  
working as Barrack Store Officer  
in Military Engineering Services  
in the Office of Garrison Engineer  
(Project) NW, R.S.Colaba  
Navy Nagar, Colaba  
Mumbai 400 005, and residing at  
c/o V.S.Tribhuvan,  
D-101, Gokul Residency,  
Near Dattani Park, Borivli  
Mumbai 400 101

...Applicant

(By Advocate: Shri R.Ramamurthy)

Versus

1. Union of India  
through the Secretary  
Ministry of Defence  
Govt. of India  
South Block, New Delhi-1
2. Engineering in Chief  
Army Headquarters  
DHQ PO  
New Delhi-11
3. The Chief Engineer  
Engineering Branch  
Headquarters  
Southern Command  
Pune 411 001
4. The Chief Engineer (Navy)  
Headquarters  
26, Assaye Building  
Colaba, Mumbai 400 005

...Respondents

(By Advocate: Shri R.K. Shetty)

O R D E R (ORAL)

Shri Govindan S. Tampi:

The applicant is aggrieved that he has been superseded by seven of his juniors for promotion to the post of Sr. Barracks Officer in the respondents' Organisation and his representation on the issue has been rejected by the respondents on 10.11.1998.

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2. Heard S/Shri Ramesh Ramamurthy and R.K.Shetty, learned counsel for the applicant and respondents respectively.

3. Shri S.K.Kapur, the applicant, who joined as Storeman on 10.6.1961, came up in ranks to become Barrack Stores Officer, Group 'B' on 2.9.1983. On completion of eight years' service, he became eligible, in terms of Recruitment Rules, for promotion as Sr. Barracks Officer in September, 1991, for which the bench mark was "good". DPC, which met in May, 1998, considered the case of eligible officers for promotion to the post of Sr. Barracks Officer against the vacancies of 1996-97 and 1997-98 and on 1.6.1998 published panel of fifteen selected officers, which included seven of the applicant's juniors, who had apparently superseded him. This was shocking and surprising as he had not been adversely commented upon in the earlier years and only those against whom proceedings were pending, were to be denied promotion. The applicant filed representation dated 26.6.1998, 23.9.1998 and 29.9.1998, which were replied by the impugned order dated 10.11.1998, stating that as adequate number of officers with better grading were available, the applicant was not recommended for promotion. Hence this OA.

4. Grounds raised in the OA are that:

i) the applicant's supersession by the juniors as well as the respondents' reply was illegal and improper;

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- ii) his having always received the grading 'very good', while the benchmark was 'good', he could not have been superseded;
- iii) the communication dated 10.11.1998 gives rise to the apprehension that his grading was reduced below benchmark, without communicating the same;
- iv) an uncommunicated gradation below the accepted benchmark should not have been considered by the OPC,
- v) in view of the fact that no adverse remarks were given to him, he could not have been superseded; and
- vi) all who have obtained the benchmark 'good' should have been promoted and wholesale promotions of the juniors on the basis of their alleged high grading was improper.

5. During the oral submissions, Shri Ramesh Ramamurthy forcefully reiterated his pleadings and averred that his client had suffered irreparable damage by the actions of the respondents in superseding him for promotion. The basis for the above apparently was indifferent record of performance, which was not correct or fall in standard or adverse records, which have not been communicated to him. This cannot at all be sustained in view of the Hon'ble Supreme Court's judgment in the case of U. P. Jal Nigam Vs. Prabhat Chandra Jain & Others [AIR 1996 SC 1661], wherein it was directed, that records showing fall in standard of performance of any officer would have to be communicated to the concerned officers before taking such remarks into consideration for any purpose. Shri

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Ramamurthy also referred to the decision dated 10.12.2002 of the Tribunal (Principal Bench) in OA-2607/2002 (Smt. T.K. Aryavir Vs. Union of India & Others), reported in 2003 (1) ATJ 130, which, he said, fully covered his case. OA, therefore, merits to be allowed with full consequential benefits to the applicant, prays Shri Ramesh.

6. In the counter affidavit filed on behalf of the respondents, it is pointed out that the applicant has no case for any grievance, as in the selection for the vacancies of 1997, 1998, only those with higher gradings than him have gone above. This was fully justified in a selection promotion. The DPCs proceedings chaired by a member of the UPSC was totally fair and could not be assailed. The applicant having completed eight years' eligibility service as Barracks Officer was indeed considered for promotion by the DPC for promotion as Sr. Barracks Officer, but 'since there were both there were both seniors and juniors, who had better grading, they were selected in preference to him. It was very much in order. The applicant cannot agitate merely because he had been superseded by better candidates, even if they were originally his juniors. There has thus been no irregularity, nor was there any violation of the Articles 14 & 16 of the Constitution, as alleged. The applicant's case has indeed been considered, keeping in mind his relative seniority but only on account of the fact that others had better grading, his case could not be recommended. In terms of Home Ministry's OM dated 30.12.1993, it was for the DPC to make its own grading, irrespective of the gradings shown in the ACRs and, therefore, it was neither necessary nor practical to

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communicate fall in standard, unless there were any adverse or remedial remarks. Respondents' having acted properly; there was no reason for any interference by the Tribunal. Shri R.K. Shetty, who represented the respondents, urged that the selection having been gone through was made out for interference by the Tribunal. He placed before us the minutes of the relevant OPC and the ACR folder of the applicant for our perusal. Shri Shetty also informed that the applicant has already been promoted by the subsequent OPC and, therefore, nothing survived in the OA.

7. We have carefully deliberated upon the rival contentions and perused the records placed before us. In this case, the applicant, a Barracks Officer working with the respondents' Organisation, is aggrieved that he has been superseded in promotion to the grade of Senior Barracks Officer by his juniors apparently on account of the reports, which were below the bench mark, or which represented the fall in standards, which should have been communicated but have not been done so, so that he could represent against the same. The plea raised on behalf of the respondents is that having become eligible for consideration for promotion to the post of Senior Barracks, his case was in fact considered by the OPC which met in May, 1998 but he could not be recommended by OPC in view of the fact that there were number of officers, both senior and junior to him, who had better gradings. A perusal of the minutes of the OPC held on 30.4.1998, chaired by a member of the UPSC, which considered the question of officiating promotion of officers to the post of Senior Barracks Officer in Military Engineering Service, have been placed before us.

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It is seen that the applicant's case had been considered for filling up the 9 vacancies in the general category for the year 1997-98. The applicant, who was at No.19 in the consideration list, is found to have been graded as "Good", which was the gradation given to a few of his seniors as well. All the other candidates, including those junior to him, who were considered by the said DPO for the same year, have been graded as "Very Good". Therefore, 7 officers below him in the seniority list are found to have superseded him.

8. We have also perused the ACR folder of the applicant with reference to the period of five years preceding the period to which the selection related (1997-98). It is seen that the applicant has been graded as "Very Good" (B) in the years 1992-93, 1993-94 and 1996-97. In fact for the part of 1997, he has been graded as "Outstanding" (A). In 1994-95 for part of the year, he has been rated as "Outstanding" and for the remaining part as well as for the next year 1995-96, he has been graded as "Good" (C). Thus, we note that there is a perceptible fall in his gradation during the second half of 1994-95 and in 1995-96, which had obviously come in the way of his promotion. Evidently, therefore, the applicant, though he had obtained bench mark as "Good", had lost to his juniors on account of the fall in performance appraisal from "Outstanding/Very Good" to "Good" while his juniors had obtained the grading of "Very Good". We also note that this fall from "Very Good/Outstanding" to "Good" had not been communicated to him and it is on the basis of this report his juniors have been permitted to go above him on the basis of their "Very Good" gradation. It is also seen that the above remarks had not been

communicated to him and he has lost, vis-a-vis his juniors on account of the above. When a fall in performance level from 'Outstanding/Very Good' to 'Good' had taken place, it was incumbent upon the respondents to have communicated the above to the applicant well in time, so that he could have explained his case. Without having done so, the OPC could not have considered his performance for promotion as Senior Barracks Officer. In the circumstances of the case, the applicant was fully protected <sup>by</sup> and correctly entitled to have the benefit of the decision of the Hon'ble Supreme Court in U.P. Jal Nigam's case (supra), the relevant portion of which reads as under:

"We need to explain these observations of the High Court. The Nigam has rules, where under an adverse entry is required to be communicated to the employee concerned, but not down grading of an entry. It has been urged on behalf of the Nigam that when the nature of the entry does not reflect any adversereness that is not required to be communicated. As we view the extreme illustration given by the High Court may reflect an adverse element compulsorily step down, like falling from 'Very Good' to 'Good' that may not ordinarily be an adverse entry since both are positive grading. All what is required by the authority recording confidentials in the situation is to record reasons for such down grading on the personal file of the officers concerned and inform him of the in the form of an advice; if the variation warranted be not permissible, then the very purpose of writing of annual confidential reports would be frustrated. Having achieved an optimum level of the employee on his part may slacken in his work, relaxing secure by his one time achievement. This would be an undesirable situation. All the same the sting of adverness must, in all events, be not reflected in such variations, as otherwise they shall be communicated as such. It may be emphasised that even a positive confidential entry in a given case can perilously be adverse and to say that an adverse entry should always be qualitatively damaging may not be true. In the instant case we have seen the service record of the first respondent. No

reason for the change is mentioned. The down grading is reflected by comparison. This cannot sustain. Having explained in this manner the case of the first respondent and the system that should prevail in the Jal Nigam, we do not find any difficult in accepting the ultimate result arrived at by the High Court."

9. Applicant's case is also covered by the decision of the Principal Bench in Smt. T.K. Aryavir's case (supra) on account of the fact that the specific fall in standard recorded in the ACR for the year 1994-95, which was very much material for consideration for promotion to the grade of Senior Barracks Officer, had not been communicated to the applicant, so as to enable him to make a representation, the same should not have been considered by the OPC. The respondents' answer that the applicant's case was considered but he could not be recommended on account of the fact that other persons, including those juniors to him, having obtained higher gradings, does not answer his allegation that the applicant has been denied his promotion on the basis of uncommunicated remarks representing the fall in performance. Respondents' further averment that on the basis of the further OPC he has been promoted as SBSO on regular basis on 29.1.2001, also does not meet the requirement of law, as the applicant had suffered, vis-a-vis, his juniors in the matter of officiating promotion during the year 1997-98 and the injustice would have obviated with reference to the said period itself.

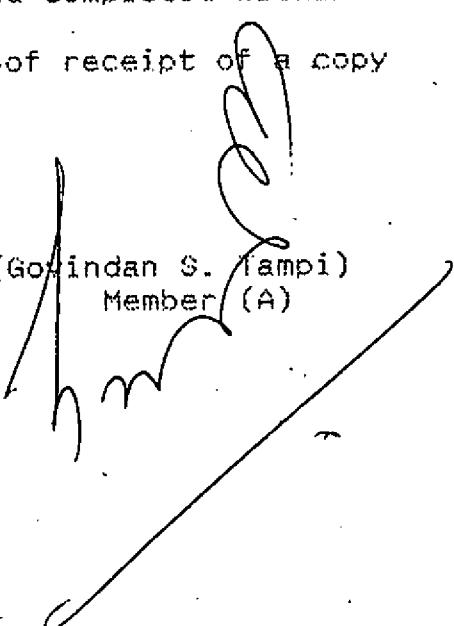
10. In the above circumstances, the OA succeeds and is accordingly allowed. The respondents are directed to consider holding a review OPC as far as the applicant is concerned in respect of the vacancies for the period 1997-98, excluding him from consideration the ACR for the

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period 1994-95, which represented a fall in standard, in comparison to the previous year and which was not communicated and take a decision on the suitability of the promotion to the post of Senior Barracks Officer for the vacancies of 1997-98. If in such consideration he is found fit, he shall be promoted in officiating capacity on the date his immediate junior was promoted with full consequential benefits, including arrears of pay and allowances. This shall be taken up and completed within a period of four months from the date of receipt of a copy of this order. No costs.

  
(K.V. Sachidanandan)  
Member (J)

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(Govindan S. Tamai)  
Member (A)