

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 505/99

Dated this _____, the _____ day of _____, 2001.

K. Hanumanthappa Naal Applicant.

(By Advocate Shri D.V. Ganga) Advocate for the Applicant.

VERSUS

Union of India & or. Respondents.

S/Shri V.S. Masurkar & Advocate for the Respondents.
B. Dalkamoorthy

CORAM : Hon'ble Mr. B.N. Bahadur - Member (A)
Hon'ble Mr. S.L. Jari - Member (J)

- (i) To be referred to the Reporter or not ? Yes
- (ii) Whether it needs to be circulated to other Benches of the Tribunal ? No
- (iii) Library. No

BNS

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Dated this *Thursday* the *31st* day of October, 2002

Coram : Hon'ble Mr.B.N.Bahadur - Member (A)
Hon'ble Mr.S.L.Jain - Member (J)

O.A.505 of 1999

K.Hanumanthappa, Naval
Store Officer,
Naval Store Depot,
Ghatkopar (W), Mumbai,
R/o Flat No.232, Type D,
Central Govt.
Staff Quarters,
Wadala (W), Mumbai.
(By Advocate Shri D.V.Gangal) - Applicant

Versus

1. Union of India
through the Secretary,
Ministry of Defence,
DHQ,PO, New Delhi - 110 011.
2. The Chief of Naval Staff,
Naval HQrs.,
Sena Bhavan, DHQ PO,
New Delhi - 110 011.
3. The Flag Officer,
Commanding-in-Chief,
SB Singh Marg,
Mumbai - 400 001.
4. The Material Superintendent,
Naval Store Depot,
Ghatkopar (West),Mumbai
5. The Secretary,
Union Public Service Commission,
Dholpur House,
Shahajahan Road,
New Delhi - 110 001
6. Shri N.N.Shrivastava,NSO,
Office of DLS,
Naval Headquarters,
Sena Bhavan, New Delhi - 110 011.
7. Shri Raj Kishore, NSO,
O/o DNAM, Naval Headquarters
New Delhi 110 011
8. Shri K.V.Narayana, NSO,
O/o Material Organisation,
Naval Store Depot,
Visakhapatnam, 530 014.

Bns

9. Shri T.K.Suseelan, NSO,
O/o Controller of Materials
Naval Base, Kochi - 682 002.
10. Shri P.Narasingh Bhatt, NSO,
O/o Controller of Materials,
Naval Base,
Kochi - 682 002.

(By Advocate Shri V.S.Masurkar - Respondents no.1-5 and
Advocate Shri B.Dattamoorthy - Respondent no.8 - 10)

O R D E R

By Hon'ble Mr.B.N.Bahadur - Member (A) -

The applicant in this case has filed this OA stating in Para 1 as follows:"This Application is made against the order bearing No.CP(G)/4008/Rev/98 dated 05 May 1999 passed by Respondent no.2 informing the Applicant that he could not be empanelled as Naval Store Officer in 1986 and 1987 because of his low performance in comparison with his juniors. Annexed herewith and marked as Exhibit '1' is a copy of the said order dated 05 May 1999. He has stated, while giving facts of the case, that he had earlier come up in an OA numbered 82 of 1995, and that this Tribunal had decided the said application on 19.9.1997. The applicant has placed a copy of this judgment as Annexure (Exhibit - 2). Para 6 of the Judgment, which is relevant, reads as follows:

"6. The applicant had been transferred to the Naval Department in 1992 and from then has been struggling for fixation of seniority which has not been finalised. The letter issued by the respondent administration dated 12.4.1994 does not seem to be based on the policy decision of the Government of India and is contrary to the advice given by the Department of Personnel. Taking into consideration all the available record and after hearing both the learned counsel we are of the view that

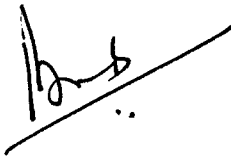
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the applicant is entitled to be absorbed in the cadre of ANSO with seniority from the date of his recruitment as Assistant Director DGS&D. The post of Assistant Director which the Applicant had held be treated as merged with the post of ANSO from the date of his joining the Naval Department and the applicant would be entitled to be promoted to the next higher grade from the date his junior in the Naval Department is promoted. The applicant would be entitled to all the consequential benefits on his absorption as ANSO in the Naval Department and is entitled for seniority in the grade of ANSO and for notional fixation in the promotional grade from the date his junior was promoted, but will be entitled for actual payment of arrears from 2.12.1993 i.e., prior to one year to the date of filing of this O.A., which in this case is 2.12.1994. Implementation of this judgment and payment of dues should be done within a period of three months from the date of receipt of this order. The O.A. is disposed of with the above direction. There would be no order as to costs."

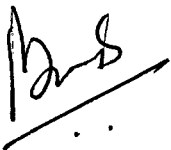
It is therefore a settled position in terms of the law, that the issues which have been decided in an earlier OA or issues which cannot be looked into because of constructive res judicata/Order 2 Rule, 2 CPC cannot be gone into in the present OA. However, the impugned order is dated 5th May, 1999 and the issue that is being raised for seeking the relevant relief relates to the formation of panels for the higher post for the year 1986, 1987 and 1988. In fact the relief sought in this regard is to hold a DPC for such selections and consider the case of the applicant as SC candidate. Importantly the date of DPC is after the decision in above OA. Hence we go into merits of the case.

2. We are not repeating the facts of the case as these are are discussed in the aforesaid order in OA 82/1995 dated 19.9.1997. However, we have seen all papers in the case, namely the averments in the OA, the replies of official and private



respondents and rejoinders etc. We have also heard the Learned counsel for the applicant and respondents. After consideration of all these, we find that the question that is to be decided in this OA is whether the assessment of the suitability for promotion of the applicant was done in accordance with the rules/instructions of government for the purpose in drawing up the panels for the year 1986 and 1987 especially with reference to persons belonging to Scheduled Castes.

3. The learned counsel for the Applicant argued the case in detail first taking us over the background and facts and then making the arguments regarding the main grievance that applicant's case was not assessed in accordance with the instructions relating to assessment of Scheduled Caste officers as the applicant admittedly is Scheduled Caste. He drew our attention to the impugned order dated 5th May, 1999 and contested the statement therein at Para 2 (C) to the effect that the relaxations for which SC/ST candidates are eligible have been provided to the Applicant. A stand is taken by the Respondents, therein, that the post of Naval Store Officer is a selection post and supersession is permissible in view of low performance as compared to juniors. Shri Gangal made the point that Applicant being having graded "Good" cannot be superseded and must need be empanelled, unless he is graded as 'Unfit'.



....5/-

4. Shri Gangal drew attention to the instructions contained in O.M. dated 23.12.1974 and 25.7.1970, copies of which have been made available at pages 56 and 57 of the Paper Book.

5. In the written statement of the respondents the instructions cited on the subject have been contested and the matter has been discussed at length in Para 17 of the written statement of official respondents (Page 100 of Paper Book). It is stated that the aforesaid OMs cited by Applicants at Exhibit - 10 are misleading as these specify concessions for promotion for the post which carry an ultimate salary of Rs.5700/- per month or less whereas Applicants case is a case of promotion is to lowest rung in OA which is governed by OMs as cited in the same para 17. It was argued by learned counsel for Respondents that the guidelines provide for categorisation of officers as 'Outstanding/VeryGood/Good' and for drawing up panels on that basis. Hence the argument that the Applicant would be overlooked only if he was categorised 'Unfit' is not correct. This point is not contested specifically in the Rejoinder filed by the Applicant although he has contested the statement in the Written Statement. The position as stipulated in regard to promotion by selection method is made clear in the OM cited at Annexure-R-3. It would therefore need to be held as applicable. The Applicant has been found fit to be placed in the panel of 1988 but since he has not made the grade on the basis of selection explained by

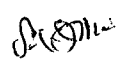
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respondents it is difficult to hold that the selection process was against rules/instructions.

6. We have been provided a copy of the minutes of the meeting of the Review DPC held on 20.10.1998 under the Chairmanship of Member, Union Public Service Commission. We have gone through it. There is a clear reference to the directions made by this Tribunal in OA 82/1995. The Revision in seniority of applicant is taken note of. The fact that applicant is SC is clearly noted in the minutes of the DPC. It is clearly stipulated that separate considerations of the Applicant's case have been made for the years 1986, 1987 and 1988. For all three years the grading of Applicant is 'Good' but he has been able to make it for selection only in 1988 as explained in the DPC Minutes, at length.

7. On a consideration of the above analysis and on going through the instructions etc. cited by rival parties, it has not been shown as to how instructions regarding Scheduled Caste Officers' promotion have been violated. The Minutes of meetings chaired by the Member, UPSC are comprehensive.

8. In view of the detailed discussions made above, we are not convinced that the Applicant has made out a case for our interference in the matter. The relief sought cannot be provided. In the consequence the OA is hereby dismissed. There will be no orders as to costs.


(S.L.Jain)
Member (J)


(B.N. Bahadur)
Member (A)