

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 596 of 2000.

Dated this _____, the 31st day of December, 2001.

A. Narasimhamurthy, Applicant.

Shri S. P. Saxena, Advocate for the
Applicant.

VERSUS

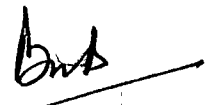
Union of India & Others, Respondents.

Shri R. R. Shetty for Advocate for the
Shri R. K. Shetty, Respondents.

CORAM : Hon'ble Shri B. N. Bahadur, Member (A).

Hon'ble Shri S. L. Jain, Member (J).

- (i) To be referred to the Reporter or not ? Yes
- (ii) Whether it needs to be circulated to other X
Benches of the Tribunal ?
- (iii) Library. X


(B. N. BAHADUR)
MEMBER (A).

OS*

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CORAM : Hon'ble Shri B. N. Bahadur, Member (A).
Hon'ble Shri S. L. Jain, Member (J).

A. Narasimhamurthy,
Suptdg. Engineer (S.G.),
O/o. the Chief Engineer (Navy),
Colaba, Bombay - 5.

...

Applicant.

(By Advocate Shri S. P. Saxena)

VERSUS

1. Union of India through
The Secretary,
Ministry of Defence,
DHQ P.O. New Delhi - 11.
2. The Engineer-in-Chief,
Army Headquarters,
Kashmir House,
New Delhi - 110 011.
3. The Chief Engineer (Navy),
Colaba,
Bombay - 400 005.
4. The Secretary,
Union Public Service Commission,
Shahjahan Road,
New Delhi - 110 001.

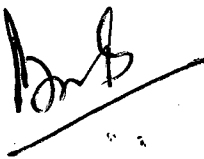
... Respondents.

(By Advocate Shri R. R. Shetty
for Shri R. K. Shetty).

O R D E R

PER : Shri B. N. Bahadur, Member (A).

The Applicant in this case, Shri A. Narsimha Murthy is a
Civilian Group 'A' employee, presently working as Superintending



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Engineer (Selection Grade) [S.E.S.G. for short) in Military Engineering Service (M.E.S. for short) under Respondents. The Applicant describes his career and his promotions right upto the S.E.(S.G.) where he states he is working from 01.03.1995. He states that the next promotional post is of Additional Chief Engineer (A.C.E.) and it has to be filled by usual D.P.C. process, on the basis of merit-cum-seniority principle. It is stated by him that there were posts vacant in the year 1999-2000, as also in 2000-2001, but D.P.Cs. did not meet in time and the D.P.C. for 1999-2000 could not be prepared in time. In other words, the Applicant alleges clubbing of vacancies when the D.P.C. ultimately did take place and the panel dated 12.01.2000 prepared. He, therefore, seeks the quashing of this panel in view of the flaw of clubbing of vacancies, and also challenges the promotions made on the basis of this panel as being wrong/illegal.

2. The Applicant further states that as he never received any adverse remarks in his service as S.E. from 1992, and in the absence of adverse remarks he is deemed to have achieved the required bench mark for the post of Additional Chief Engineer. The ratio in the well known cases of Uttar Pradesh Jal Nigam & Others V/s. Prabhat Chandra Jain & Others reported in JT 1996 (1) SC 641 and Gurdial Singh Fijji V/s. State of Punjab & Others reported at 1979 SCC (L&S) 197 is sought to be relied in this regard.

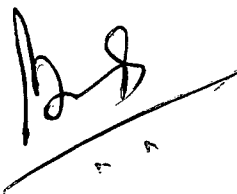


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3. The Applicant thus seeks the relief for quashing and setting aside of the panel dated 12.07.2001 as illegal and bad in law, and also for quashing and setting aside promotions to the post of Additional Chief Engineer, based on this panel. A direction is sought to the Respondents to hold a fresh D.P.C. and prepare panels for 1999-2000 and 2000-2001.

4. The Respondents have filed a Written Statement of reply stating that the bench mark for Additional Chief Engineer (A.C.E.) is indeed "Very Good", and that the Applicant could not be promoted as he had not been able to make the bench mark. It is further contended by the Respondents that the D.P.C. proceedings, which are being produced for the perusal of the Tribunal show that the vacancies for the years 1999-2000 and 2000-2001 have not been clubbed together. Respondents submit that for the year 1999-2000 there were four vacancies, and for 2000-2001, there were 16 vacancies. It is categorically stated that Applicant was not in the zone of consideration for the vacancies in the year 1999-2000 and hence was only considered for the year 2000-2001. The decision in O.A. No. 488/99 (copy at exhibit R-2) is relied upon in this regard. It is further stated that though a single panel dated 12.07.2000 has been prepared at the same time, it is for the four vacancies for 1999-2000 and 16 vacancies for 2000-2001, separately. Twelve officers were assessed for 1999-2000 in which the Applicant was not in the Zone of consideration. Details in this regard have been given elaborately in the Written Statement which also attempts to meet,

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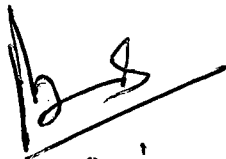


parawise, the averments made in the O.A. These details have been gone through and will be considered alongwith record.

5. The case was argued on behalf of the Applicant by their Learned Counsel, Shri S. P. Saxena, who took me over to the facts of the case in great detail. He first took the stand that the vacancies for the two years have been clubbed and that as per settled law in this regard, at the highest level, this would be a serious flaw in the whole selection which needs to be set aside. Learned Counsel, Shri S. P. Saxena, fairly stated that the matter would be clear only through perusal of the record, and urged the Tribunal to decide the matter on the basis of the record. He also stated that in case the vacancies for 1999-2000 were four, then the Applicant would be out of consideration for the first year.

6. Learned Counsel for the Applicant then went on to argue the second point, as described above, i.e. the fact that since no adverse entries have been communicated to the Applicant, it has to be presumed that he needs the Bench Mark of 'Very Good'. The well-known cases of Gurdial Singh Fijji (supra) and Uttar Pradesh Jal Nigam (supra) were pointed out and argued at some length by Learned Counsel who stressed the fact that even a remark of 'Average' was not communicated. Learned Counsel for the Applicant also relied on the case of Bhaktadas Roy V/s. Union of India in O.A. No. 125/92 of this Bench decided on 18.02.1993. He concluded by saying that either the Applicant

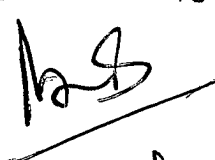
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should be declared fit by the Tribunal or any remark made below 'Very Good' should not be taken into account while judging afresh the suitability of the Applicant to the post of A.C.E.

7. Arguing the case on behalf of the Respondents, their Learned Counsel, Shri R. R. Shetty, made the point that in 1999-2000 there were only four vacancies and 12 officers were in the zone of consideration; further in 2000-2001, there were 16 vacancies and 36 people plus 4 were considered. Learned Counsel reiterated the other points that have been discussed in the Written Statement of Respondents, and urged that the record be seen. He categorically stated that in any case there was no prejudice caused to the Applicant in so far as selection of 1999-2000 was concerned. Learned Counsel for Respondents then took up the matter regarding the arguments on the basis of decisions in cases of U.P. Jal Nigam and sought to rely on the judgement dated 31.03.2000 made by this Bench of the Tribunal in the case of Ram Babu V/s. Union of India & Others in O.A. No. 925/99. He made the point that there was no steep fall in the confidential report of this officer even assuming that 1993-94 be considered as 'Very Good'. He stated that at best the matter could be referred back and urged that the ratio in Ram Babu's case (supra) be followed.

8. Rearguing the case briefly, Shri Saxena stated that there is no definition of steep fall in assessment of performance and any fall is a fall and also stated that Bhaktadas Roy's case



cannot be unsettled by the Tribunal. He made the point that Ram Babu's case was a solitary case and needs to be distinguished. Both Learned Counsel also argued on the point of non-joinder of parties.

9. We have considered all papers in the case, as also the arguments made by Learned Counsel on both sides. As pointed out rightly by Counsels on both sides, the information contained in the record of the relevant D.P.C. and the confidential record is importantly relevant in the present case. We have, thus, gone through the minutes of the meeting of the D.P.C. held on 22.05.2000 to consider the selection of officers for promotion to the grade of A.C.E. In the first place we find that the vacancy position for the two relevant years has been distinctly set out as four and sixteen for 1999-2000 and 2000-2001, as discussed above. Assessment of the performance of some 12 people have been done for the year 1999-2000 and of 40 people for the year 2000-2001. Assessments are recorded separately and panels are also drawn up separately. The case of the Applicant has not even been assessed for the first year in question and since he does not fall in the zone of consideration, as in fact stated by Counsel for Respondents. Since seniority is not a point in dispute, two things become clear. The first is that the allegation of clubbing of vacancies is not found correct on perusal of records and in any case, no prejudice is caused to the Applicant vis-a-vis the 1999-2000 selection. In the selection for 2000-2001 the Applicant, Shri A. N. Murthy, is assessed as



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'Good' which brings us to the second point argued by his Learned Counsel, as brought out in the text above.

10. We have perused the confidential reports of the Applicant, (provided by Respondents). The confidential reports for the five years from the year 1994-95 to the year 1998-99 have to be looked at vis-a-vis the well known judgement of Uttar Pradesh Jal Nigam. This, indeed, would be the only point of focus of our examination because, as we remind ourselves, that in assessing the suitability/performance assessment of the Applicant, we cannot put ourselves as something like a Appellate Authority, in terms of settled law. It is admitted that no adverse entries have been communicated to the Applicant, atleast in the last five years (1994-95 to 1998-99). The only glaring point that occurs is that in 1994-95 the Applicant has been graded as 'Average' by all authorities. These remarks have not been communicated to the Applicant and in terms of the Uttar Pradesh Jal Nigam judgement they should have been. Further, the remarks of the C.O. in part of the year 1997-98 and in the year 1998-99 are rated as 'Good' and in the sense that these are below the accepted threshold, they should have been communicated as such. This is the only flaw that we find in the action of the Respondents vis-a-vis the ratio settled in the Uttar Pradesh Jal Nigam case. It will be desirable in the facts and circumstances of the case, and the law settled, that the remarks for the year 1994-95, 1997-98 and 1998-99 be communicated to the Applicant in terms of the usual rules/instructions governing communication of Confidential

Reports and a reasonable time given for making representations against these remarks. These representations, if made within such reasonable time, shall then be decided within two months thereafter and should any change be made or deletions ordered, etc. in the C.R. on the basis of decisions taken on such representations, then the Respondents shall convene a review D.P.C. which shall reconsider the case of the applicant as if on the date of the aforesaid D.P.C. i.e. 22.05.2000 and take further action depending on the decision taken by D.P.C.

11. The O.A. is, therefore, allowed to the extent, and in terms of, the order contained in para 10 above. There shall be no order as to costs.

S. L. Jain
(S. L. JAIN)
MEMBER (J).

OS*

B. N. Bahadur
(B. N. BAHADUR)
MEMBER (A).

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

R.P. NO.: 10/2002 IN O.A. NO.: 596/2000.

Dated this Monday the 15th day of July, 2002.

CORAM : Hon'ble Shri B. N. Bahadur, Member (A).
Hon'ble Shri S. L. Jain, Member (J).

A. Narasimhamurthy

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Applicant.

VERSUS

Union of India & others.


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Respondents.

TRIBUNAL'S ORDER ON CIRCULATION :

This is a Review Petition numbered 10/2002 filed by Shri A. Narasimhamurthy, who is seeking to review the order made in the O.A. No. 596/2000, which was decided by us on 31.12.2001.

2. We have perused the entire Review Petition, and see no error apparent on the face of record. In fact, the entire Review Petition is an attempt at re-arguing the case. The Applicant also tries to put forth reasons how we have not made correct interpretations in the order vis-a-vis certain judgements which he cites. Well as the Applicant can have grievance on our interpretations and conclusions that we have reached, the grievance cannot be sought to be redressed through a Review Petition. The remedy lies elsewhere. It is clear that no error apparent have been brought to our notice and, therefore, as per the legal position, the Review Petition cannot be entertained and it is hereby dismissed. No costs.


(S. L. JAIN)
MEMBER (J).


(B. N. BAHADUR)
MEMBER (A).