

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH
* * * * *

Commercial Complex(BDA)
Indiranagar
Bangalore - 560 038

Dated : 19-10-87

APPLICATION NO. 7/87(F)

Applicant

Shri M. Manoharan

To

1. Shri M. Manoharan
Draughtsman Grade-I
Gas Turbine Research Establishment
Jeevanbhimanagar
Bangalore - 560 075
2. Shri M. Narayanaswamy
Advocate
844 (Upstairs)
Vth Block, Rajajinagar
Bangalore - 560 010
3. The Secretary
Ministry of Defence
South Block
New Delhi - 110 011
4. The Scientific Adviser to
Raksha Mantri & DG, R&D
DHQ PO, New Delhi - 110 011
5. The Director
Gas Turbine Research Establishment
Jeevanbhimanagar
Bangalore - 560 075
6. The Director
Aeronautical Development Establishment
Jeevanbhimanagar Post
Bangalore - 560 075

Respondents

V/s The Secy, M/o Defence & 17 Ors

7. Shri P.K. Raja Rao
Chief Draughtsman
Gas Turbine Research Establishment
Jeevanbhimanagar
Bangalore - 560 075
8. Shri R. Sathya Narayana Rao
Chief Draughtsman
P.C.D.G., A.D.E.
Jeevanbhimanagar
Bangalore - 560 075
9. Shri K.S. Abdul Hameed
Chief Draughtsman
Re Heat Division
GTRE, Suranjandas Road
Bangalore - 560 075
10. Shri M. Jaganath Rao
Chief Draughtsman
S & M Division
A.D.E., Jeevanbhimanagar
Bangalore - 560 075
11. Shri K. Ganapathi Rao
Chief Draughtsman
E.P. Division, GTRE
Suranjandas Road
Bangalore - 560 075
12. Shri S.C. Uppal
Chief Draughtsman
M.B.S.I. Division
GTRE, Suranjandas Road
Bangalore - 560 075

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13. Shri K. Balasubramanian
Chief Draughtsman
Turbine Section
GTRE, Suranjandas Road
Bangalore - 560 075

14. Shri R.D. Sharma
Chief Draughtsman
D.D. Works, DRDO HQrs
Sena Bhavan
New Delhi - 110 011

15. Shri M.S. Kulkarni
Chief Draughtsman
ADE, A&K Building
Jeevanbhimanagar
Bangalore - 560 075

16. Shri N.L. Sachdev
Chief Draughtsman
Officer-in-Charge
Defence Standardisation Cell
C/o C.I.T.F.C., Kanpur
Uttar Pradesh

17. Shri Abdul Hafiz
Chief Draughtsman
R.D.I.F. Section
GTRE, Suranjandas Road
Bangalore - 560 075

18. Shri B.K. Balaji
Turbine Section
GTRE, Suranjandas Road
Bangalore - 560 075

19. Shri T.B. Devanath
Chief Draughtsman
M.B.S.I., GTRE
Suranjandas Road
Bangalore - 560 075

20. Shri P. Prabhakaran
Draughtsman Grade-I
S & M Division
ADE, Jeevanbhimanagar P.O.
Bangalore - 560 075

21. Shri M. Vasudeva Rao
Central Govt. Stng Counsel
High Court Buildings
Bangalore - 560 001

22. Shri S.K. Srinivasan
Advocate
35 (Above Hotel Swagath)
1st Main, Gandhinagar
Bangalore - 560 009

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER passed by this Tribunal in
the above said application on 15-10-87

R. Venkatesh
DEPUTY REGISTRAR
(JUDICIAL)

Encl : As above

obj.

RECEIVED 22 copies 21-10-87

Diary No. 1325/CR/87

Date: 21-10-87 *[Signature]*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE

DATED THE 15th DAY OF OCTOBER 1987.

Present

THE HON'BLE MR. JUSTICE K.S. PUTTASWAMY, VICE CHAIRMAN

And

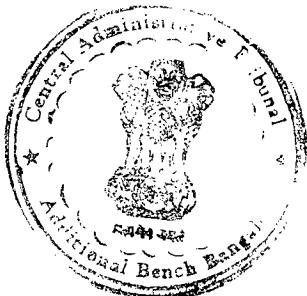
THE HON'BLE MEMBER: SHRI L.H.A. REGO

Application No. 7 of 1987(F)

M.Manoharan S/o Muniswamy,
38 years, Draughtsman Gr.I,
Gas Turbine Research Establishment
Jeevanbimanagar, Bangalore-75. .. Applicant
(By Shri M.Narayana Swamy, Advocate)

-vs.-

1. The Union of India
by its Secretary,
Ministry of Defence,
South Block, New Delhi-11.
2. The Scientific Adviser,
Raksha Mantri,
South Block, New Delhi-11.
3. The Director,
Gas Turbine Research Establishment,
Jeevanbimanagar P.O.
Bangalore.
4. The Director,
Aeronautical Devt. Establishment,
Jeevanbimanagar P.O. Bangalore.
5. P.K.Raja Rao,
Chief Draughtsman,
Gas Turbine Research Establishment,
Bangalore-75.
6. R.Satyanarayana Rao, Major,
Chief Draughtsman,
P.C.D.G., A.D.E. Jeevan-
bimanagar, Bangalore.
7. K.S.Abdul Hameed, Major,
Chief Draughtsman,
Re Heat Division, Suranjan Das Road,
GTRE, Bangalore-75. .. Respondents
Contd....



8. M.Jaganatha Rao, Major,
Chief Draughtsman,
S & M Division, A.D.E.
Bangalore-75.
9. K.Ganapathi Rao, Major,
Chief Draughtsman,
E.P.Division, Suranjan Das Road,
GTRE, Bangalore-75.
10. S.C.Uppal, Major,
Chief Draughtsman, M.B.S.I. Dn.
Suranjandas Road,
GTRE, Bangalore-75.
11. K.Balasubramanian, Major,
Chief Draughtsman, Turbine Section,
Suranjandas Road, GTRE, B'llore-75.
12. R.D.Sharma, Major,
Chief Draughtsman, D.D.Works,
DRDO Hqs., Sena Bhavan, New Delhi-11
13. M.S.Kulkarni, Major,
Chief Draughtsman,
A & K Building, ADE,
J.B.Nagar P.O., Bangalore-75
14. N.L.Sachdev, Major,
Chief Draughtsman,
Officer-in-charge, Defence -
Standardisation Cell,
C/o CITFC, Kanpur, U.P.State.
15. Abdul Hafiz, Major,
Chief Draughtsman,
R.D.I.F.Sec. G.T.R.E.,
Suranjandas Road, Bangalore-75
16. B.K.Balaji, Major,
Turbine Section, GTRE,
Suranjandas Road, Bangalore-75
17. T.B.Devanath, Major,
Chief Draughtsman,
MBSI, GTRE, Suranjandas Road,
Bangalore-75
18. P.Prabhakaran, Major,
Draughtsman, Gr.I, S & M.Division,
J.B.Nagar P.O., Bangalore-75. . . RESPONDENTS.
(R-6 to R-18 are impleaded vide Court Order dt.8-9-1987)
(By Shri M.Vasudevrao, Addl. Standing Counsel for Central
Govt. for R-1 to R-4).



The application coming on for hearing
SHRI L.H.A. REGO, HON'BLE MEMBER, made the following:

ORDER

This application has had a chequered origin. It is seen to have emanated from Writ Petition No.14188 of 1984 filed by the applicant in the High Court of Judicature, Karnataka, which was transferred to this Tribunal under Section 29 of the Administrative Tribunals Act,1985, and registered as Application No.1292 of 1986(T). The same was dismissed by another Bench of this Tribunal on 23-9-1986, whereon, the applicant filed Review Application No.3 of 1986, which too was dismissed by the same Bench on 5-11-1986, with an observation however, that if the applicant felt that the Departmental Promotion Committee ('DPC', for short) went wrong, in assessing his merit or there was any legal flaw in the proceedings of the DPC, that would be a separate issue, which the applicant could agitate by a separate application, if he so desired; hence the present application seems to have been filed by the applicant before us, on 25-12-1986. It came to be heard on 23 and 24-6-1987 in part, when learned Counsel for the applicant prayed for time, to consider the necessity of (i) impleading certain persons as additional respondents, (ii) raising additional grounds



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and

and (iii) amending the prayer with due regard to the developments that had since taken place. Accordingly, he filed three Interlocutory Applications on 29-6-1987 seriatim, which were examined by us and allowed on 8-9-1987, after hearing counsel on both sides, with a view to facilitate effective and complete adjudication of the various questions raised for determination. Thirteen more respondents have consequently been impleaded and numbered as R-6 to R-18 inclusive.

2. The applicant mainly prays that:

(i) by an appropriate order, R1 to R4 be directed to annul the proceedings of the meeting of the Review DPC II, held on 17-3-1986, in so far as they relate (vide Annexure-A) to consideration of the case of the applicant for promotion to the cadre of Chief Draughtsman ('CD', for short), being violative of Articles 14 and 16(1) of the Constitution, and that they be further directed, to promote him, with all consequential benefits to the cadre of CD, with effect from 15-3-1982, i.e., the date on which R5, namely Shri P.K.Raja Rao, his junior, was promoted as CD.

(ii) by an appropriate order or direction as the case may be, to R1 to R4, the proceedings of the meeting of the Original DPC II held on 15-3-1982, in so far as they relate to the promotion of R5 to R18(except R-12, namely, Shri R.D.Sharma, who



actually was not considered for promotion at the meeting of DPC II) to the cadre of CD, be declared as void, illegal and invalid, as also the promotions to the said cadre, effected on the basis of the above proceedings; and

(iii) by a further order, R1 to R4 be directed to consider anew, the case of the applicant, as well as of R6 to R16 (who alone, came within the "zone of consideration" according to the Seniority List dated 5-3-1982, in respect of Draughtsmen Grade-I [⁷'D(I)', for short] which was valid on 15-3-1982) for promotion to the cadre of CD and grant them consequential relief.

3. The salient facts of the case are as follows: The applicant was recruited as temporary D(I), with effect from 17-5-1978 (i.e., prior to decentralisation of DPC-II) in the Methods and Tools Designs Group of the Gas Turbine Research Establishment ('GTRE', for short) at Bangalore, and was assigned seniority below Shri M. Maridevaru, of the Aeronautical Development Establishment ('ADE', for short) with due regard to the date of finalisation viz., 17-4-1978 of the proceedings of the Recruitment Board.

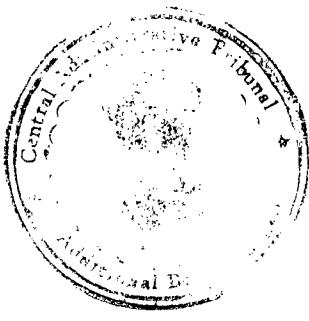
4. In accordance with the Recruitment Rules then applicable to the post of D(I), the applicant was recruited against the direct recruitment quota (33 $\frac{1}{3}$ % or 1/3rd). His seniority was refixed between



R-16(Shri B.K.Balaji) and R-5(Shri P.K.Raja Rao) in the Seniority List of D(I)s, drawn up as on 5-3-1982 and maintained thereafter, in consideration of the representation of the applicant in this behalf, deeming him as a direct recruit.

5. The applicant states, that in his transferred Application No.1292 of 1986, he had prayed for a direction to R1 to R4, to include his name at S.No.11-A, in the Seniority List of D(I)s, (as drawn up on - 5-3-1982) between R-16 and R-5, as also to consider his case for promotion, to the cadre of CD, with effect from 15-3-1982 [i.e., the date on which, R-5 his junior, was promoted as CD, on the basis of the recommendations of DPC II (Aero Group)] with consequential benefit. Since seniority was a pre-requisite to his promotion as CD and its refixation as above, was conceded by R1 to R4, the applicant submits, that he did not consider it necessary to emphasise the aspect of his promotion, which should have been a natural corollary, as he would have by virtue of his revised seniority, come within the "zone of consideration", for promotion as CD, with effect from 15-3-1982 and thereby displaced R-5 from that zone.

6. According to Letter dated 9-12-1985, addressed by R-4, to R-3(Annexure-A1), the applicant was to be placed at S.No.11-A, between R-5 and R-16, in the



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Seniority

Seniority List of D(I)s, circulated by R-4, under his letter dated 5-3-1982 and in the Seniority Lists to be drawn up thereafter. R-3 had requested R-4, on 9-12-1985 (Annexure-A contd.,) to inform the applicant accordingly, and to ascertain from the applicant, as to whether he would pursue his case in the Court of Law, even after revision of his seniority in the cadre of D(I)s as above, to his advantage and to intimate R-4, about the result, to enable him to offer parawise comments, on the aforementioned Writ Petition No.14188 of 1984. R-4 enquired from the applicant accordingly, under his letter dated 17-12-1985 (Annexure-A). In reply thereto, by his letter dated 23-12-1985 (Annexure-B), the applicant reiterated his request for grant of promotion to the cadre of CD, according to his revised seniority.

7. By his letter dated 9-12-1985 (Annexure A-1), R-4 had informed R-3, that consequent to revision of seniority of the applicant, his case for promotion to the cadre of CD, necessitated review by DPC II, with reference to the proceedings of its meetings convened in the past i.e., on 15-9-1982, 15-3-1984 and 15-9-1984, as he would fall within the "zone of consideration" on those dates and that accordingly, DPC II would review his case at its meeting scheduled to be held on - 15-3-1986. R-4 had requested R-3, to inform the applicant about the same.



8. The applicant alleges, that though his seniority was restored, he was denied consequential promotion to the cadre of CD, by R1 to R4, on account of arbitrariness and discrimination, on the part of the DPC. Writ Petition No.14188 of 1984, filed by him in the High Court of Judicature, Karnataka, which was transferred to this Tribunal and registered as Application No.1292 of 1986(T), wherein he had mainly prayed for restoration of his seniority, was dismissed by another Bench of this Tribunal, on 23-9-1986 and Review Application No.3 of 1986 filed by the applicant therein, was also dismissed on 5-11-1986 by the same Bench, subject to certain observations, on account of which the applicant has filed the present application, as stated in para-1 supra.

9. Shri M.Narayanaswamy, appeared as Counsel for the applicant, while Shri M.Vasudeva Rao appeared for the respondents 1 to 4, Shri S.K.Srinivasan appeared as Counsel for R-13 (Shri M.S.Kulkarni), Respondents-8, 10, 11, 13,15 and 16 were present in person. R1 to R4 have filed their reply to the application as amended but not the other respondents. The applicant has filed a rejoinder too, to the reply of R-1 to R-4.

10. Shri Narayanaswamy, learned Counsel for the applicant, spearheaded his attack on the lack of fairness in procedure and departure from well-established

principles by DPC II in its proceedings, in respect of its meeting convened on 15-3-1982 at Bangalore, to consider the promotion of the employees in the cadre of D(I)s to that of CDs. He alleged, that these proceedings were clearly violative of the guidelines ('Guidelines', for short) outlined in Office Memorandum of 24-12-1980 of the Ministry of Home Affairs and the Department of Personnel and Administrative Reforms, Government of India (Annexure-F), in regard to drawing up panels, for the "zone of consideration" by the DPC, for promotion to posts to be filled by "selection". According to him, DPC II at its meeting held on 15-3-1982, as also the Review - DPC II at its meeting held on 15-3-1986, had flagrantly deviated from the above Guidelines and had not properly rated the applicant and the concerned respondents, on the basis of their ACRs, as was evident from the following:

(i) Only three posts in the 'general category' were available to be filled in, by promotion, to the cadre of CD. If the fourth post meant for the scheduled tribe (ST), was to be "dereserved" and added to the "general category", if ST/SC candidates were not available, the total number of posts in the "general category", would have been four. According to the above Guidelines, the "zone of consideration", for promotion to the cadre of CDs, should have been confined to twelve employees

only



only i.e., thrice the number of posts to be filled in. DPC II however, enlarged this zone, to cover as many as fourteen employees, on account of which, R-5(Shri - P.K.Raja Rao), who was junior to the applicant and was well below the twelfth place (the outermost limit of the legitimate zone) came to be considered by DPC II for promotion as CD, to the detriment of the applicant, which was a clear violation of the above Guidelines.

(ii) The name of Shri R.D.Sharma, D(I), (R-7), who was much senior to R-5 and even to the applicant, had appeared in the Seniority - List of D(I)s as drawn up on 5-3-1982 which was taken as the basis, by DPC II, for the purpose of determining the "zone of consideration" and yet, he was excluded from that zone, thereby jeopardising his prospects of promotion, to the cadre of CDs, on the twin criteria of seniority and rating of service record, the post of CD being a "selection" one.

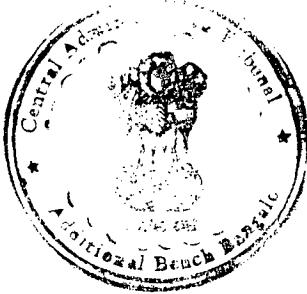
(iii) The fourth post of CD, earmarked for ST employees, in the first instance, failing which for the scheduled caste ('SC', for short) employees, should have been first "dereserved", according to the prescribed procedure, if no ST or SC employee was available after due effort, and only thereafter, included in the "general category", for consideration of promotion by DPC II, of deserving employees in that category. In this connection, Shri Narayanaswamy referred to the provisions, particularly in para 10.4

of Chapter 10, captioned DERESERVATION, in the brochure on "Reservation for SCs and STs in Services" (VIth Edition) - ('Brochure', for short), brought out by the Government of India, Department of Personnel and Administrative Reforms, Ministry of Home Affairs. According to Shri Narayanaswamy, R-1 to R-4, should have as a pre-requisite, first "dereserved" according to prescribed procedure the post in question, earmarked for ST employees and only thereafter, included this post in the "general category", for consideration by DPC II, for promotion to the cadre of CD. He pointed out, that they however failed to do so, which was clearly violative of both, the Guidelines, as well as the - Brochure and also of Article 14 of the Constitution, to substantiate which, he relied on the ruling of the Supreme Court in 1981 SCC(L&S) 184 = (1981)1 SCC 397 (S.S.SHARMA & ORS. -vs.- UNION OF INDIA AND OTHERS) which dwells (in so far as the matter is relevant to the case before us) on the aspect of administrative discretion of Government as to whether or not, - "reserved" vacancies should be "dereserved" and recourse to be taken to, by Government to "dereserve" the "reserved" vacancies, if there was no prospect of finding suitable SC and/or ST candidates, for appointment to the "reserved" vacancies.

(iv) The deliberations of DPC II at its meeting held on 15-3-1982 and of the Review DPC at its meeting held on 15-3-1986, were merely



a farce, as the performance of the employees was not assessed with the desired objectivity and fairness and in conformity with the material on record. According to Shri Narayana-swamy, the applicant was the lone Engineering Graduate, among those included in the "zone of consideration" and yet strange enough, his merit was rated as inferior to those who were Non-Graduates. He singled out R-5 in particular in this context, who he said was just a matriculate. The merit of R-6 (Shri R.Satyanarayana Rao), he pointed out, was assessed by the DPC in the absence of his Annual Confidential Reports (ACRs, for short) for the relevant period. Shri Narayanaswamy questioned the veracity of the assessment of merit of R-15 (Shri K.S.Abdul-Hafiz) particularly in the context of the adverse remarks recorded in his ACR, proximate to the relevant period, their expunction at the nick of time and the competence of the authority, who expunged these remarks. He therefore contended, that the assessment of merit of R-15, was not objective but was arbitrary. As assessment by DPC II, in regard to merit of the concerned respondents, as also of the applicant, was not objective and the DPC II had violated the Guidelines and instructions in the Brochure, Shri Narayana-swamy asserted, that the entire proceedings of the DPC, in respect of the meeting held on 15-3-1982, were vitiated and were therefore liable to be declared as void and



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invalid. Besides, according to him, the Review DPC which met on 15-3-1986 should have assessed the merit of the employees within the correct "zone of consideration" de novo and not have mechanically relied upon the assessment made by the previous DPC II at its meeting held on 15-3-1982.

11. Shri S.K.Srinivasan, learned Counsel for R-13, while lending support on the whole, to the various contentions urged by Shri Narayanaswamy, reiterated, that the DPC should objectively and in strict conformity with the prescribed procedure and on the basis of relevant service records and other material, re-do the exercise, it carried out on 15-3-1982, to help ensure justice and fairness to all concerned. He averred, that the vacancy meant for a ST/SC employee, could have been filled in, on an ad hoc basis, (not necessarily in accordance with seniority) till such time, this vacancy was "dereserved", according to proper procedure and therefore, DPC II ought not to have recommended R-5 for promotion, in this vacancy, at its meeting held on 15-3-1982, specially, when he did not fall not within the legitimate "zone of consideration".

12. Shri M.Vasudeva Rao (Additional Standing Government Counsel) learned Counsel for R-1 to R-4 at the outset, raised the plea of limitation on the

ground, that the application was highly belated, as the cause of action had arisen prior to 1-11-1982, for the relief sought by the applicant, was in regard to promotion to the cadre of CDs, with effect from 15-3-1982. He therefore contended, that this Tribunal had no jurisdiction, to entertain this application. Rebutting the contentions of Shri Narayanaswamy and Shri Srinivasan, he maintained, that the DPC II (on 15-3-1982) and the Review DPC (on 15-3-1986) had in no manner violated the Guidelines and the instructions contained in the Brochure, in recommending promotion of eligible D(I)s, to the cadre of CDs and in fact, had based their recommendations with all fairness and objectivity, in conformity with the said Guidelines and instructions contained in the Brochure. He contended, that Counsel for the applicant and for R-13, could not make a fetish of the "zone of consideration", having been enlarged to the detriment of their clients, as in the ultimate analysis, neither the applicant nor R-13, would have made the grade, on the basis of their service record, for promotion, to the post of CD, which was a "selection post" and therefore, seniority alone, was not the criterion but positive merit was also an important factor to be reckoned. Shri Rao affirmed, that the DPC had meticulously scanned the service record of the concerned employees and had rated them on merit factually and objectively. He repudiated the



allegation

allegation of Shri Narayanaswamy, that the merit of R-6 was assessed arbitrarily in the absence of the ACRs, for the relevant period and that of R-15 was overrated. He confirmed, that the so called adverse remarks entered in the ACR of R-15, were of a venial nature and were expunged under proper procedure, by the competent authority. As regards the contention of the applicant, that by virtue of his educational qualification as a Graduate in Engineering, he should have been rated higher in merit by the DPC, than the Non-Graduates, Shri Rao stated, that this had no relevance to departmental promotion, to the post of CD, which was a "selection" post, ⁱⁿ ~~and~~ where the principal criterion for promotion was seniority and positive merit.

13. Countering the contention of Shri Narayanaswamy, that R-7 (Shri R.D.Sharma) was arbitrarily excluded from the "zone of consideration", to the detriment of the applicant, Shri Rao clarified, that R-7 was excluded on the basis of the telegram dated 9-3-1982, received from the Solid State Physics Laboratory, Delhi, that his name be omitted from the Seniority List of D(I)s, in the Aeronautical Group, as he was promoted in another unit.

14. We have heard this case at length for nearly 4 days on 23-6-1987, 24-6-1987, 29-9-1987 and 30-9-1987, have minutely scrutinised the relevant record and

other

other material placed before us, inclusive of the ACRs of the applicant and the concerned respondents and have carefully examined the averments and pleadings on all sides.

15. In their reply, respondents 1 to 4 have urged, that this application is barred by time, which contention was reiterated before us by Sri Rao, at the very threshold.

16. We have earlier noticed, that this very grievance made by the applicant in Application No. 1292 of 1986 which was a transferred application, was not accepted by this Tribunal on 23-9-1986. But, the same was allowed to be re-agitated in a separate and independent application by this Tribunal on 5-11-1986, in Review Application No. 3 of 1986 filed by the applicant. On the basis of that order, the applicant has filed this fresh application on 2-1-1987.

17. In reality and in substance, this application is only a continuation of Application No. 1292 of 1986. In other words, the grievance which arose on 15-3-1982 or sometime thereafter, was agitated before the High Court and thereafter, before this Tribunal. If that is so, we cannot hold, that this application is barred by time under Section 21 of the Act.

18. Even otherwise, the period of limitation for this application had to be really computed from 5-11-1986,

on which day, this Tribunal disposed of the Review Application No.3 of 1986 and not from 15-3-1982 or thereafter. If that is so, then also this application is not barred by time under Section 21 of the Act.

19. We will even assume that this application is barred by time as urged by respondents 1 to 4. But, even then, we are of the view, that this is a fit case, in which we should really treat the delay as condoned and decide the case on merits only. We, therefore, reject⁴ the objection of Shri Rao, and now proceed to examine the merits.

20. Shri Narayanaswamy had requested the Tribunal to examine in particular, the ACRs of R-6 to R-10, as also of the applicant, to satisfy itself about the veracity of his allegation, that the DPC II, had not objectively assessed their merit, on the basis of the ACRs. We not only examined these ACRs ourselves, for the relevant period but also showed them to Counsel for the applicant, as also to Counsel for R-13. We also showed to R-10 (Shri Abdul Hafiz), his ACRs for the relevant period, since his assessment was called in question. Not only were we wholly satisfied, that the assessment of the applicant and the concerned respondents by DPC II, on 15-3-1982, was factual and objective, on the basis of these ACRs, but the Counsel



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for the applicant and for R-13 too, gave us such an impression after seeing the ACRs. As regards R-6, we were convinced, on the submission made by Shri Rao, learned Counsel for R-1 to R-4, that his assessment too, was not without basis. We therefore reject the contention of Shri Narayanaswamy and Shri Srinivasan, that the DPC did not assess the merit of the applicant and the concerned respondents, with the desired objectivity and fairness.

21. Having rejected the above contention, the plea of Sarvashri Narayanaswamy and Srinivasan, that the DPC violated the Guidelines in regard to delimitation of the "zone of consideration", does not hold water, considering the fact, that seniority alone, is not the criterion for promotion to the post of CD, which is a "selection" post, but positive merit is also an important factor to be taken into account, which is reflected in the rating given by the DPC, on the basis of the ACRs, for the relevant period and on other material evidence. In AIR 1987 SC 593 (R.S.DASS & ORS. -vs.- UNION OF INDIA & ORS), the Supreme Court has observed that the officers are distinguished into four categories viz., "Outstanding", "Very good", "Good" or "Unfit" as the case may be, on an overall relative assessment of their service record, according to the prescribed guidelines, that this categorisation is objectively made on the material available in the



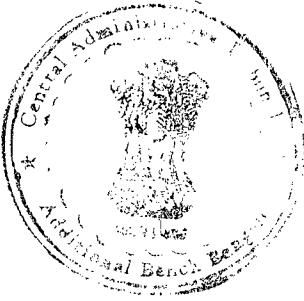
service record of the officers, and that there is hardly any scope for applying different standards or criteria at different times, as the service record would indicate the category of the officers as adjudged by the authority recording his annual confidential remarks. Besides, more than one authority, namely the Reporting, Reviewing and Countersigning Authorities, in successive order of superiority, is involved in making this assessment, which as far as possible, tends to eliminate the likelihood of bias and arbitrariness. Among the 14 candidates assessed by DPC II on 15-3-1982, the rating in order of original seniority, ^{as in} respect of the applicant and the concerned respondents, was as below:

| Employee | Rating | Remarks |
|-----------|--------|---------------------------|
| R-6 | VG | |
| R-7 | OS | |
| R-8 | VG | |
| R-9 | OS | |
| R-10 | VG | |
| R-11 | VG | |
| R-12 | - | <u>vide para-13 supra</u> |
| R-13 | VG | |
| R-14 | VG | |
| R-15 | OS | |
| R-16 | VG | |
| R-5 | OS | |
| R-17 | VG | |
| R-18 | VG | |
| Applicant | VG | |

Abbr: 'OS' means "Outstanding"
'VG' means "Very Good"



22. It would be seen from the foregoing table, that as against 4 vacancies of CDs, available (inclusive of the one for the ST/SC vacancy proposed to be "dereserved") according to original seniority, in the cadre of D(I)s, R-7, R-9, R-15 and R-5(Shri P.K.Raja Rao), were categorised as "OS" and therefore, recommended by DPC II, for promotion as CDs against the above 4 vacancies. The applicant and R-13 were however not recommended, on account of lower merit, as they were rated as "VG". When the seniority of the applicant came to be revised, he was placed between R-16 and R-5 (vide para 6 supra). Taking into account this revised seniority, the recommendation of DPC II (at its meeting held on 15-3-1982) in regard to promotion of R-7, R-9 and R-15 remained unaffected, as they were rated as "OS" and were within the "zone of consideration" but if R-5 is to be excluded, as seems to be the contention of Shri Narayanaswamy, then R-6(Shri R.Sathyanarayana Rao) would take his place, on the basis of his seniority (being 11 places senior to the applicant) and merit (rated as "VG"). It is thus apparent, that the applicant does not stand to gain in either case i.e., according to his original seniority(i.e., as on 5-3-1982) or his revised seniority for promotion to the cadre of CD, as on 15-3-1982, when DPC II, met. The contention of Shri Narayanaswamy on this score, therefore falls to the ground. We are



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informed

informed, that the applicant was later considered by the DPC (Aero Group) at its meeting held on 17-3-1986, for promotion to the cadre of CD, retrospectively on 15-9-1982, 15-3-1984 and 15-9-1984 when he fell within the "zone of consideration", but he could not be recommended for promotion, for want of a vacancy.

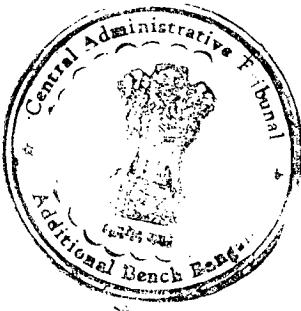
23. We are convinced about the exclusion of R-7 (Shri R.D.Sharma) from the relevant seniority list and from the "zone of consideration" by DPC II, at its meeting, held on 15-3-1982, in the light of the submission made by Shri M.V.Rao, in para-13 supra and of the pertinent record verified by us. We therefore find no merit in the contention of Shri Narayanaswamy, that DPC II excluded Shri R.D.Sharma arbitrarily, from the "zone of consideration", at its meeting held on 15-3-1982, to the detriment of the applicant.

24. We lastly advert to the contention of Shri Narayanaswamy, that R-1 to R-4 and the DPC II (at its meeting held on 15-3-1982), violated the instructions contained and the procedure outlined in the Brochure, in regard to "dereservation" of vacancies, reserved for ST/SC employees (vide para 10(iii) supra). We extract below, para 10.4 of the Brochure, which is relevant:

"10.4 Dereservation of reserved vacancies can be resorted to, only when suitable Scheduled Castes/Scheduled Tribes

candidates

SL



candidates are not available. Thus, before deciding to dereserve a vacancy Ministry or Department should ensure that the steps prescribed in Chapters 7, 8 and 9 of this Brochure have been taken to secure Scheduled Castes/Scheduled - Tribes candidates for appointment against reserved vacancies. Similarly, in promotion steps prescribed in Chapters 7 and 12 of this Brochure should be followed to fill up the reserved vacancies. It is only when it becomes inevitable to dereserve a vacancy, the Ministries and Departments should do so. It should also be kept in view that no reserved vacancy can be filled up by general community candidates unless it is dereserved."

25. Inter alia, the instructions in para 10.4 ibid enjoin, that no "reserved" vacancy can be filled up, unless it is dereserved. In the instant case, we are informed by Shri Rao, Counsel for R-1 to R-4, that the fourth vacancy earmarked for ST candidates arose in 1980 and despite all effort, no ST or SC candidate was available, to be considered against this vacancy. The said vacancy was therefore proposed to be "dereserved", and included in the "general category" as the prescribed "carry forward-period" of two years, had elapsed. The post was therefore indicated to DPC II, to be considered at its meeting scheduled to be held on 15-3-1982, for recommendation to be filled in by an eligible "general category" candidate. All that the DPC II did at its

meeting on 15-3-1982, was to recommend R-5 for promotion in this vacancy, subject to its "dereservation". Shri Rao explained, that in administrative interest and exigency, it was but proper and in keeping with established practice and procedure, for the DPC II to do so, as the DPC meets seldom, and it is not administratively convenient to summon it now and then, to fill individual vacancies. Besides, it needs to be ensured, that administrative efficiency is not impaired, by keeping the posts vacant for too long. Nevertheless, care was taken by the administration, to fill in the vacancy in question, only after it was duly "dereserved", according to the prescribed procedure, which he said was well-worn and established. Shri Rao affirmed, that this procedure in no manner militated against the avowed object of Government, of safeguarding the interests of SCs and STs in regard to service matters, but on the contrary, conduced to administrative efficiency. Shri Rao pointed out, that the analogy drawn by Shri Srinivasan, that the post could have been filled in, on an ad hoc basis, not necessarily with regard to seniority, till such time the vacancy was "dereserved", under the prescribed procedure, had no relevance to a regular vacancy of the like, where the "carry forward period" was over and it was ensured by due effort, that no suitable SC or ST candidate was available to fill in this vacancy.



26. The Supreme Court ruling relied upon by Shri Narayanaswamy (vide para 10(iii) supra) scarcely comes to his avail in this regard, as nowhere, does it specifically prohibit the DPC or the administration, from initiating preparatory action, to fill in from the "general category", vacancies proposed to be "dereserved", after duly complying with the procedural formalities prescribed. This is precisely what the administration and the DPC have done, in the instant case.

27. In the light of the above facts and circumstances, all the contentions of the Counsel for the applicant and for R-13 fail and the application thus is bereft of merit. We therefore dismiss the application but with no order as to costs.

Sd/-

(K. S. PUTTASWAMY)
VICE CHAIRMAN. C-10-1987

Sd/-

(L. H. A. REGO) '87 x 487
MEMBER(A).

NB: I have signed this order
on 9-10-1987 at Bangalore
as I will not be in station
on 15-10-1987 to which date
the same is set down for
pronouncement.

Sd/-

VICE CHAIRMAN. 9/10/87

- True Copy -



B. Venkateshwar
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ADDITIONAL BENCH
BANGALORE