CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH
* * * * * * *

Commercial Complex(BDA)
Indiranagar
Bangalore - 560 038

Dated : 16 FEB 1989

REVIEW APPLICATION NO (S) 8 /89
IN APPLICATION NO. 1173/88(F)
W.P. NO (S) /

Applicant (s) Respondent (s)

Shri K.G. Zecheria V/s The Secretary, M/o Urban Development, New Delhi & another

To

1. Shri K.G. Zecharia
Junior Engineer
Valuation Cell
Income Tax Department
No. 28, Infantry Road
Bangalore - 560 001

2. Shri M.R. Shailendra
Advocate
869/C, 17 'G' Main Road
V Block, Rajajinagar
Bangalore - 560 010

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith a copy of ORDER/~~STAY/INTERIM ORDER~~ passed by this Tribunal in the above said Review application(s) on 13-2-89.

16-2-89

DEPUTY REGISTRAR
(JUDICIAL)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE.

DATED THIS THE THIRTEENTH DAY OF FEBRUARY 1989

Present: Hon'ble Justice K.S.Puttaswamy .. Vice Chairman

Hon'ble Shri. L.H.A.Rego .. Member (A)

REVIEW APPLICATION NO. 8/89

K.G.Zacharia,
Junior Engineer,
Valuation Cell,
Income Tax Department,
No.28, Infantry Road,
Bangalore 560 001. .. Applicant

(Shri M.R.Shailendra .. Advocate)

Vs.

The Secretary,
Union of India,
Ministry of Urban Development,
Central Public Works Department,
Nirman Bhavan, New Delhi.

The Director General(Works),
Central Public Works Department,
Nirman Bhavan, New Delhi. .. Respondents.

This application has come up today before this Tribunal for Orders. Hon'ble Vice Chairman made the following:

ORDER

In this application made under section 22(3)(f) of the Administrative Tribunals Act, 1985(the Act), the applicant has sought for a review of our common order dated 22.11.1988 in so far as it disposes of his application No.1173/88(F).

In Application No.1173/88 and the connected cases, the applicant and the otherswhile challenging their seniority in the cadre had also challenged their non-promotion in 1987 as Assistant Engineer(AE) which we disposed of on 22.11.1988.

..2/-

3. The case of the applicant for review is founded on what we have expressed at paras 50-54relating to his non-promotion as AE. In these paras, we have dealt with the specific contention urged by the applicant in regard to his annual confidential reports (the ACRs) written by the Reporting Officer and the Reviewing authority, with specific reference to his grading and promotion as AE, which we have rejected. After our disposal of the case, the applicant appears to have corresponded in regard to this matter with the Reporting and Reviewing Officers through proper channel who in administrative propriety and discipline should have desisted from entertaining correspondence with him but strange enough acted otherwise which seems to have given a lever to the applicant to agitate the matter anew before this Tribunal through his present application.

4. This application for review, has been filed after a delay of 42 days. In IA No.1, the applicant has sought for condonation of delay.

5. Shri M.R.Shailendra, appearing for the applicant, urges that every one of the facts and circumstances stated in IA No.1, constitutes a sufficient ground for condoning the delay and deciding the case on merits.

6. We are of the view that the facts and circumstances stated by the applicant in IA No.1 constitute a sufficient ground to condone the delay and therefore deal ~~kh~~ with his application on merits. We, therefore, allow IA No.1 and condone the delay.

7. We have earlier noticed that this application for review is founded on the result of the correspondence entertained with the applicant later by the authorities concerned. We are of the view that apart from the fact that these authorities should have refrained from such impropriety, the outcome of that correspondence does not constitute a patent error or a circumstance which would fall within the purview

of Order 47 Rule 1 of the Code of Civil Procedure and section 22(b)(iii) of the Act. On this short ground this application for review is liable to be rejected.

8. We have perused our order dealing with the ACRs of the applicant and his non-promotion. We are of the view that our order which gives more than one reason to sustain the action of the authorities, does not suffer from any patent error to justify a review. In reality and in substance, the applicant is asking us to re-examine our order as if we are court of appeal that too, on evidence which was not earlier adduced. Such a course is impermissible under law.

9. We therefore see no merit in this application and reject this application at the admission stage without notice to the respondents.

Sd/-
VICE CHAIRMAN 12/1

Sd/-
MEMBER(A) 13.2.89.

TRUE COPY

DEPUTY REGISTRAR (JDL) 16/2
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE

Annexure 'A'

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH
********

Commercial Complex (BDA)
Indiranagar
Bangalore - 560 038

Dated : 27 DEC 1988

APPLICATION NOS. 605, 607 to 616 & 1173/88(F)

Applicants

Shri V.M. Mathew & 11 Ors V/s

Respondents

The Secretary, M/o Urban Development, New Delhi & 4 Ors

To

1. Shri V.M. Mathew
Junior Engineer
Bangalore Central Circle
Central Public Works Dept
55/35, II Main
Vyalikaval
Bangalore - 560 003

2. Shri P.A. Mulgund
Junior Engineer
Central Public Works Dept
55/35, II Main, Vayalikaval
Bangalore - 560 003

3. Shri H. Thangavelu
Junior Engineer, Central Public Works Dept.
BCSD 3/I, B.T.M. Layout
Madivala
Bangalore - 560 068

4. Shri H.S. Nagaraj
Junior Engineer (Elec)
Central Public Works Dept
Bangalore Central Sub-Divn.
No. IV, Koramangala
Bangalore - 560 034

5. Shri P.G. Ayyappan
Junior Engineer
Central Public Works Dept
BCSD IV/II Central Silk Board Site
Madivala
Bangalore - 560 068

6. Shri P.N. Mokashi
Junior Engineer
Valuation Cell
Income Tax Department
28, Infantry Road
Bangalore - 560 001

7. Shri A. Krupakaran
Junior Engineer
Valuation Cell
Income Tax Department
28, Infantry Road
Bangalore - 560 001

8. Shri H.S. Krishnamurthy
Junior Engineer
Bangalore Central Sub-Divn No. I/II
Central Public Works Dept.
No. M-10, CPWD Quarters
Domlur
Bangalore - 560 007

9. Shri B.I. Sanjeeva Raya
Junior Engineer
Valuation Cell
Income Tax Department
28, Infantry Road
Bangalore - 560 001

10. Shri C.B. Budihal
Junior Engineer
Office of the Superintending Engr.
Bangalore Central Circle
Central Public Works Dept
55/35, II Main, Vyalikaval
Bangalore - 560 003

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11. Shri M. Kesavan
Junior Engineer
Bangalore Central Sub-Divn
Central Public Works Dept
No. 2, Temple Road
Malleswaram
Bangalore - 560 003

12. Shri K.G. Zacharia
Junior Engineer
Valuation Cell
Income Tax Department
No. 28, Infatry Road
Bangalore - 560 001

13. Shri H. Subramanya Jois
Advocate
36, 'Vagdevi'
Shankarapuram
Bangalore - 560 004

14. Shri M.R. Shailendra
Advocate
No. 869/C, V Block
Rajajinagar
Bangalore - 560 010

15. The Secretary
Ministry of Urban Development
Central Public Works Department
Nirman Bhavan
New Delhi - 110 011

16. The Director General of Works
Central Public Works Department
Nirman Bhavan
New Delhi - 110 011

17. The Superintending Engineer
Bangalore Central Circle
Central Public Works Department
55/35, II Main,, Vyalikaval
Bangalore - 560 003

18. The Superintending Engineer (E)
Central Public Works Department
HCEC/Hyderabad
Sultan Bazar
Hyderabad - 500 001

19. The Superintending Engineer
Valuation Cell
Income Tax Department
28, Infatry Road
Bangalore - 560 001

20. Shri M. Vasudeva Rao
Central Govt. Stng Counsel
High Court Building
Bangalore - 560 001

*****

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Enclosed herewith Please find a copy of the ORDER passed by this Tribunal in the above said applications on 22-11-88.

SECTION OFFICER
(JUDICIAL)

Encl : As above

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE

DATED THE 22ND DAY OF NOVEMBER 1988

Present

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

THE HON'BLE MR.L.H.A.REGO .. MEMBER(A)

APPLICATIONS NOS.605, 607 TO 616 OF 1988(F)
C/w APPLICATION NO.1173/88(F)

In APPLNS.605, 607 to 616/88(F):

1. V.M.Mathew S/o Late Sri C.M.Mani
aged about 48 years, Junior Engineer,
Bangalore Central Circle, CPWD,
Bangalore.

2. P.A.Mulgund S/o late Sri A.S.Mulgund
aged about 46 years, Jr.Engineer,
CPWD, No.55/35, II Main, Vyalikaval,
Bangalore-3.

3. H.Tangavelu S/o Sri A.Mariappan,
aged about 46 years, Jr.Engineer,
BCSD 3/I, BTM Lay Out, Madivala,
Bangalore-68.

4. H.S.Nagaraj S/o Late Sri H.Subba Rao,
aged about 46 years, Jr.Engr.(Elec.)
Bangalore CENTRAL Sub-Dvn. No.IV,
Koramangala, Bangalore-34.

5. P.G.Ayyappan S/o P.A.Govindan,
45 years, Jr.Engineer, CPWD,
BCSD IV/II, Central Silk Board Site,
Madivala, Bangalore-68

6. P.N.Mokashi S/o Sri N.G.Mokashi,
46 years, Jr.Engineer,
Valuation Cell,
Income Tax Department,
28, Infantry Road, Bangalore-1. Applicants

(contd...

7. A.Krupakaran S/o Late Sri A.Sanjeeva-
Setty, 43 years, Jr.Engineer,
Valuation Cell, Income Tax Deptt.,
No.28, Infantry Road, Bangalore-1.

8. H.S.Krishnamurthy S/o late Sri Subbanraiah
45 years, Jr.Engineer, BCSD I/II/BCD-II,
CPWD, Domlur, Bangalore.

9. B.I.Sanjeeva Raya S/o late Sri B.Jannappa,
Naik, age 46 years, Jr.Engineer,
Valuation Cell, Income-tax Department,
No.28, Infantry Road, Bangalore-1.

10. C.B.Budihal S/o Sri B.B.Budihal
45 years, Jr.Engineer,
Office of the Superintending Engineer,
BCC, CPWD, 55/35, II Main,
Vyalikaval, Bangalore-3.

11. M.Kesavan S/o R.Munirathnam,
47 years, Jr.Engr.
BCSD, CPWD No.2, Temple Road,
Malleswaram, Bangalore-3. .. Applicants.

(By Sri H.Subrahmanya Jois, Adv. for the applicats)

- vs. -

1. The Union of India
by its Secretary,
Ministry of Public Works,
New Delhi-1.

2. TheDirector General of Works, Nirman Bhavan,
C.P.W.D. Newdelhi-110 001

3. The Superintending Engineer,
Bangalore Central Works,
C.P.W.D. No.55/35, II Main,
Vyalikaval, Bangalore-3.

4. The Superintending Engineer(E)
CPWD/HCEC/Hyderabad, Sultan Bazar
(A.P.) Hyderabad 5000 001.

5. The Superintending Engineer(Valuation)
Income Tax Department, No.28, Infantry Road,
Bangalore-1. .. Respondents.

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In APPLICATION NO.1173/88(F)

K.G.Zacharia S/o K.C.George,
44 years, Jr.Engineer(on deputation)
Income-tax Valuation Cell,
No.28, Infantry Road,Bangalore. .. Applicant

(By Sri M.R.Shailendra, Adv. for the applicant)

-vs.-

1. The Union of India
by its Secretary,
Ministry of Urban Development
Central Public Works Deptt.,
Nirman Bhavan,New Delhi.

2. The Director General(Works),
Central Public Works Deptt.,
Nirman Bhavan, New Delhi. .. Respondents.

(Sri M.Vasudeva Rao, Central Govt. Addl.Standing Counsel for respondents in all the applications)

These applications coming on for hearing to-day, HON'BLE MR. L.H.A.REGO, MEMBER(A), made the following:

ORDER

These are in all 12 applications filed in two sets under Section 19 of the Administrative Tribunals Act, 1985. For ease of reference, we shall designate Applications Nos.605, 607 to 616/88(F) as the "Ist Set" and Application No.1173/88(F) as the "IInd Set".

2. The main prayer in the Ist Set is,to call for the entire record,including the proceedings

of

of the Departmental Promotion Committee(DPC,for short) leading to issue of the impugned Memorandum dated 26-2-1988(Annexure-E) ~~xxxxx~~ by Respondent (R) 2, [whereby, the DPC did not recommend the applicants(A) in this Set, for promotion to the grade of Assistant Engineer(Civil) [AE(C),for short] on the basis of their service record], examine the same and declare,that the said proceedings and the Memorandum,are arbitrary and illegal, and to issue a consequential direction to the respondents,to finalise the Provisional Seniority List ('PSL' for short), in the cadre of Junior Engineers (Civil) [JE(C), for short] at the earliest, and to convene a fresh meeting of the DPC,to consider and recommend,promotion of the applicants,among others, on the basis of the PSL so finalised and take further necessary action thereon, inclusive of all consequantial benefit in this regard.

3. In the IInd Set, the main prayer is more or less the same,as in the case of the Ist Set, except that the impugned Memorandum from R-2,is dated 7-6-1988(Ann.D). The applicant in this Set, also prays for a consequential direction to the respondents,to reconsider his case for promotion to the post of AE(C), ignoring his

Annual

Annual Confidential Reports(ACRs, for short) for the years 1981 to 1983 and grant him all consequential benefit.

4. As both the Sets of applications are alike on fact and law, we propose to hear them analogously and to pass a common order thereon.

5. The following background to these two Sets of cases, provides the desired perspective, to help determine the various questions urged therein.

6. All the applicants in the Ist Set, are presently working as JE(C), in the Central Public Works Department at Bangalore('CPWD' for short) except A-4, namely, Sri H.S.Nagaraja, who is holding the post of JE(Elec.). The tabular statement below, furnishes at a glance, the relevant details of their service curriculum vitae:

| Applicant No. | Date with reference to the post of JE, in regard to: | | | Rank No. assigned in the PSL(C) i.e. Civil & PSL(E) i.e. Electrical | Region/ Unit where presently posted. |
|---|---|---|---|---|---|
| | Appointment | Confirmation | Appointment to the Selection grade. | | |
| 1 | 2 | 3 | 4 | 5 | 6 |
| 1. | 11-6-1972 | 1-7-1975 | 1-8-82 | 1842(C) | D |
| 2. | 30-4-1963 | 1-4-1974 | - | 1787(C) | D |
| 3. | 10.12.1962 | 1-4-1974 | 1.3.1982 | 1608(C) | D |
| 4. | 7-9-1965 | 2-4-1975 | - | 548(E) | D |
| 5. | 21-12-1963 | 1-4-1981 | - | 1974(C) | C |
| 6. | 1-1-1965 | 1-4-1981 | - | 2333(C) | A |



.....6

| 1 | 2 | 3 | 4 | 5 | 6 |
|---|---|---|---|---|---|
| 7. | 19-6-1965 | 1-4-1981 | - | 2459(C) | Valuation Cell, Bangalore. |
| 8. | 1-12-1965 | 1-4-1981 | - | 2562(C) | D |
| 9. | 4-5-1966 | 1-4-1981 | - | 2633(C) | D |
| 10. | 21.8.1965 | 1-4-1981 | - | 2505(C) | Valuation Cell, Bangalore. |
| 11. | 29-10-1964 | 1-4-1981 | - | 2242(C) | D |

7. The relevant service particulars in regard to the lone applicant, in the IInd Set, who is currently working as JE(C), are furnished similarly, as under:

| Dates with reference to the post of JE in regard to: | | | Rank No. in the PSL(Civil) | Region/ Unit where presently posted. |
|---|---|---|---|---|
| Appointment. | Confirmation. | Appointment to the Selection Gr. | | |
| 21-12-1963 | 1-4-1981 | - | 1980 | ? |

8. It would, thus be seen, that the applicants in both the Sets of applications, have been working as JEs, for periods varying between as long 16 to 26 years.

9. The next post of promotion to these applicants is that of AE, in Group-B, according to the Cadre and Recruitment Rules. The post of AE is categorised as a "selection post", under these rules

and

-17-

and promotion thereto, is based on the recommendations of the DPC. According to these rules, the posts of AEs were initially to be filled in, to the extent of 50 per cent, by "selection", from amongst the eligible permanent JEs and the rest 50 per cent, through a limited departmental competitive examination, in consultation with the Union Public Service Commission (UPSC.).

10. The Government of India is said to have appointed in 1973, a Special Committee, known as the NATARAJAN COMMITTEE, to examine the strength and pattern of the concerned cadres in the CPWD, with a view, to help remove stagnation therein and provide the desired incentive, for career advancement to the incumbents, in these cadres. Pursuant to the recommendations of this Committee, the Government of India, decided to fill in the posts of AEs (both Civil and Electrical) by "selection", in relaxation of the provisions of the above rules, so as to afford an opportunity, for career advancement, to deserving JEs, with due regard to their seniority and merit, taking into account, their stagnation in the post of JE, for inordinately long.

11. According to this relaxation, 50 per cent of the posts, which hithertofore, were earmarked for those who successfully underwent the limited departmental competitive examination, was thrown open for promotion by "selection", from among the permenent JEs, on the basis of seniority-cum-merit.



.....8

12. Pursuant to acceptance of the recommendations of the aforesaid Natarajan Committee, in regard to cadre review in the CPWD, the Government of India created 396 posts of AEs(C) and 163 posts of AEs(E) on 8-5-1987.

13. According to the instructions contained in Memo dated 24-12-1980, of the Department of Personnel and Training, Government of India, i.e., R-1, promotions to the posts of AEs, both Civil and Electrical, were to be effected on the basis of the merit-cum-seniority. The following was the procedure prescribed: The "zone of consideration" for this purpose, was to be thrice that of the number of vacancies to be filled in. The DPC was required to consider the case of each eligible candidate, within the said "zone of consideration", with due regard to his past service record for the relevant period, as based on his ACRs and to grade them within the conventional spectrum, namely, (i) Outstanding, (ii) Very Good (iii) Good and (iv) Average, in that order. A Select List was then to be drawn up, according to the above order of grading, only upto the category of "Good", with due regard to the inter se seniority of the candidates, in their respective units.

14. According to the instructions of R-1 contained in its Memo dated 20-7-1974 (as amended from time to time) 15% and 7½ per cent of the posts, are required

required to be reserved for the scheduled caste(SC) and scheduled tribe(ST) candidates respectively, for promotion to the post of AE. If the requisite number of SC and ST candidates are not forthcoming, within the stipulated "zone of consideration", the same zone is extended upto five times the number of vacancies to be filled in, so as to help accommodate some more deserving SC and ST candidates.

15. A PSL of JEs(C), as on 1-1-1987, came to be drawn up by R-2, on 2-2-1987 (Ann.A-Ist Set), which was circulated amongst all the JEs(C), pointing out therein, various omissions and discrepancies, in regard to service particulars of some of the employees and they were directed to submit their representation thereon, if any, within a period of 45 days. The concerned authorities were instructed, to rectify the errors and omissions in the service particulars, after ascertaining the correctness from the relevant personal dossiers and service books of the JEs.

16. A PSL in respect of JEs(E), was drawn up likewise, by R-2 on 12-2-1987 (Ann.A-1, Ist Set) as on 1-1-1987 and circulated amongst all the JEs(E), with similar directions.

17. The respective ranks of the applicants in both the sets of applications is indicated in column 5 of the tabular statements, in paras 6 and 7 above.

18. The

he actually worked (who were since repatriated to their parent departments on completion of their term) but by others and therefore, they are not valid and the DPC ought not to have taken them into account.

24. He states that he had represented the matter to R2 on 17-2-1988(Ann.C) for redress but his request was turned down by the latter, by his Memo dated 7-6-1988(Ann.D), which is impugned by the applicant.

25. Having failed to secure justice from the respondents, all the applicants have come to this Tribunal through their present applications for succour.

26. The respondents have filed their reply, rebutting both the Sets of applications.

27. Appearing for the respondents, Shri M. Vasudeva Rao, the learned Additional Central Government Standing Counsel, raised at the threshold, a preliminary objection that the IInd Set of application was hit by bar of limitation as the applicant had questioned the validity of his ACRs, relating to the period from 1981 to 1983 far too belatedly, in his application filed before this Tribunal on 17-8-1988. Sri Rao stressed, that the cause of action arose more than 5 to 6 years ago and on account of this inordinate

delay

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delay, ont only was the application barred by limitation but this Tribunal did not have jurisdiction to entertain the same, as the said cause of action originated prior to 1-11-1982. He, therefore, urged that the application be rejected in limine, on account of this impediment.

28. Refuting this preliminary objection, Shri M.R.Shailendra, learned Counsel for the applicant, contended, that the above irregularity in the writing of the ACRs of his client, had a true adverse impact on his client, when they were taken into account by the DPC at its meeting held in September 1987, for considering his promotion to the grade of AE. He submitted, that his client submitted his representation thereon to R2 on 17-2-1983(Ann.C), which came to be rejected by him, by his impugned Memo dated 7-6-1988(Ann.D), from which actually, the cause of action emanated and therefore, the application filed by his client on 17-8-1988, was well within time, he asserted.

29. We are persuaded by the above argument of Shri Shailendra and ex debitio justitiae are inclined to take a liberal view, in holding that the application is not barred by limitation and that it is maintainable before this Tribunal. We therefore, overrule the preliminary objection raised by Shri Rao in this behalf.

30. Shri

30. Shri H.S.Jois, learned Counsel for the applicants, assisted by his resourceful junior Shri R.S. Jois, spearheaded his attack on the ground, that the DPC had flagrantly violated the procedure, prescribed, for considering the case of his clients, for promotion by "selection", to the post of AE. In this connection he invited our attention to the relevant provisions of Section 7: "Promotions" under Chapter V, "Administration" of the CPWD Manual Vol.I ("Manual" for short), on "Staff, Establishment, Organisation and Office Procedure"(1975 Edition). In particular, he referred to the following portion of para 6(a) of Section 7 ibid:

"Procedure for promotion to 'Selection Posts'

6(a). The Departmental Promotion Committee decides the number of eligible officers to be considered for inclusion in the 'Select List'. Normally the number should not exceed 5 to 6 times the number of vacancies during the period of currency of the 'Select List'.

(b) Departmental Promotion Committee may prescribe the minimum length of service for eligibility for promotion.

(c) Consideration of officers of outstanding merit not within the field of choice should not be precluded.

(d) Officers considered unfit for promotion should be excluded from the list of eligibles.

(e) The remaining officers should be classified on the basis of merit as determined by their

record

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record of service as—

'Outstanding'

'Very Good'

'Good'

(f) The 'Select List' should be prepared by placing the names in order of these categories without disturbing the inter se seniority of the pereons placed in each category."

31. He first enlarged on the question of the "zone of consideration". He was emphatic, that the DPC had transgressed the limits of this zone, in that eligible candidates more than thrice the number of vacancies to be filled in, were brought within this zone, which was violative of the limit prescribed in para 6(a) part, of Sec.7 ibid, as amended. The unamended para 6(a) part extracted in para 30 above, shows that the number of eligible candidates should not exceed 5 to 6 times the number of vacancies required to be filled in. Shri Jois informed us, that this was since amended by R-1, to thrice the number of vacancies which was not controverted by Shri Rao. Shri Jois asserted therefrom, that this violation in not adhering to the limit prescribed, in regard to the "zone of consideration", vitiated the very proceedings of the DPC, at its meetings held on 3-9-1987 and 5-9-1987.

32. Shri

32. Shri Rao repudiated this contention, by maintaining, that the DPC had faithfully adhered to the prescribed limit, of the "zone of consideration" (as amended to thrice the number of vacancies to be filled in as aforestated), taking into account, the number of candidates, who became ineligible for consideration for promotion as AEs, for reasons such as: incomplete ACRs, non-confirmation as JEs and currency of disciplinary proceedings against them, on account of which the "sealed cover" procedure had to be taken recourse to.

33. We have examined the averments of both sides carefully and have perused the relevant proceedings of the DPC meetings, in regard to filling in the posts of JEs both Civil as well as Electrical. We have analysed minutely the number of candidates, who were initially included in the "zone of consideration", and some of whom, came to be excluded, on account of the impediments mentioned in para 32 above. This analysis reveals the following:

| Item No. | Particulars | "Zone of consideration" for filling in the posts of | |
|---|---|---|---|
| | | AEs(C) | AEs(E) |
| 1 | 2 | 3 | 4 |
| (i) | Total No. of candidates initially included in the "zone". | 1354 | 556 |
| (ii) | No. of candidates who later become ineligible on account of: | | |
| | (a) Incomplete ACRs. .. | 165 | 47 |
| | (b) "Sealed cover" procedure | 13 | 4 |
| | (c) Non-confirmation as JEs(C) or (E) as the case may be .. | 288 | 97 |
| | | 466 | 148 |

.....

35. The next limb of the argument of Shri Jois was, that the DPC did not meet for a long spell of 14 years from 1983 - 1987 for reasons best known to it. In such circumstances, he submitted, the Government of India, had outlined a procedure, as to the manner in which the vacancies should be staggered and filled in, for the respective years, in relation to the vacancies that had arisen each year. He invited our attention in this regard, to the instructions issued by the Department of Personnel and Administrative Reforms, Government of India, in their Memoranda dated 24-12-1980, 20-5-1981 and 2-1-1985, which are reproduced along with illustrations, as Decision(2) under the caption: "When DPC has not met for a number of years", at pages 81 to 82, in "Swamy's Compilation on Seniority and Promotion in Central Government Service" (First Edition).

36. Shri Rao refuted the allegation of Shri Jois, that no DPC meeting was held between 1983 to 1987. He asserted, that DPC meetings were actually held in 1978, 1980, 1982, 1983 and 1986 to consider promotions to some of the posts of JEs, though on an ad hoc basis. He clarified, that this was not stated in the reply of the respondents, as this was

not

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| 1 | 2 | 3 | 4 |
|---|---|---|---|
| (iii) | No.of candidates prescribed as the outer limit for the "zone" at thrice the number of vacancies to be filled in i.e., 396 in the case of AEs(C) and 163 in the case of AEs(E). .... | 1188 | 489 |
| (iv) | The number of candidates finally included in the "zone"(i.e., Item(i) minus Item (ii) ... | 888 | 408 |

34. It is thus clearly manifest from the foregoing,that the number of candidates finally included (emphasis added) within the "zone of consideration" for promotion to the posts of AEs(C) and (E),were well within the prescribed limit. In fact, we do not understand the rationale of Shri Jois' contention, in pleading for an attenuated "zone of consideration", as that would be detrimental to the interest of his clients, for whom in effect, the larger the zone, the better is the prospect of their being considered for promotion. We are of the view,that Shri Jois is hoist with his own petard,by making this submission,which is not only patently ill-founded but also ill-conceived. We, therefore, reject the same straightaway in the light of the foregoing.

35.The

not specifically referred to, in the applications.

37. We have gone through the above instructions of the Government of India and noted the facts stated by Shri Rao. We find, that they have no relevance to the case before us, as the 396 posts of AEs(C) and 163 posts of AEs(E), were created en masse on 8-5-1987 and not earlier yearwise. The contention of Shri Jois therefore is prima facie, meritless and we therefore negative the same.

38. Shri Jois alleged, that the DPC ought to have prescribed the minimum length of service, for eligibility for promotion, according to para 6(b) of Section 7 of the Manual. Scanning the list pertaining to the "zone of consideration", for promotion to the posts of AEs(C) and(E), we notice, that the last man included therein, was appointed to the post of JE(C) and (E) on 19-2-1977 and 21-9-1978 respectively. Thus, they had more than 10 years of experience as JE. On the one hand, Shri Jois pleads for the removal of stagnation in the cadre of JEs, while strange enough, on the other, he seeks to attach the impediment of ineligibility, to service rendered as JE for over a decade! On the face of it, the argument is self-destructive, and therefore only needs to be stated to be rejected outright.

39. Shri

39. Shri Jois challenged the veracity of the PSLs and of the Select Lists based thereon. Adverting to Annexures A and A-1, he argued, that these PSLs as could be seen from their covering letters, were incomplete and inchoate, as they were beset with many an error and omission and therefore, they could not have formed a valid basis, for assigning seniority to his clients, for onward promotion as AE(C). The very foundation he alleged, was spurious.

40. Shri Rao rebutted this contention, stating, that the PSL was drawn in accordance with the general principles of seniority, enunciated by the Union Ministry of Home Affairs in their Memo dated 22-12-1959, taking due precaution to ensure, that the various omissions and errors as pointed out in the respective covering letters, were rectified before the PSL was finalised. The matter, he stressed, could not brook any further delay, as that would have only further jeopardised the career prospects of the applicants.

41. We find cogent reasoning in the above rejoinder of Shri Rao. Though it would have been desirable, for the respondents, to finalise the PSLs expeditiously, we must observe, that in the peculiar circumstances of the case, it would have been impolitic for them to defer promotions to the posts of AEs, both Civil and Electrical, indefinitely, till everything was

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in apple-pie order, as that would have only resulted, in aggravating the situation of stagnation of the JEs. A test-check of the PSLs, as well as the Select Lists by us, reveals, that they do not suffer from egregious defect, as alleged by Shri Jois. Nevertheless, we exhort the respondents to finalise the seniority list, without further loss of time, as would be spelt out by us at the end of this judgment. Subject to this, we negative the contention of Shri Jois, as regards the veracity of the PSLs and the Select Lists based thereon, by the DPCs.

42. He then questioned the very basis of evaluation of the merit of his clients by the DPC, on the basis of their ACRs. He alleged, that the DPC did not have the complete ACRs of his clients before it. The grading of his clients therefore, he alleged, was imaginary and not based on objective material on which subjective satisfaction could have been arrived at. According to him, all of his clients, on objective assessment, should have been graded as "Outstanding". The primary object of cadre review of JEs, as based on the recommendations of the NATARAJAN COMMITTEE, he argued with vehemence, was to promote career advancement of JEs, who had stagnated far too long, in their posts and thereby, enhance the efficiency of the CPWD. Instead of accomplishing this object, he alleged, the respondents on the contrary, were demoralising the cadre and creating a sense of frustration

frustration among them, by unfair and arbitrary action, in gross violation of the prescribed procedure and guidelines.

43. He also alleged, that the DPC instead of considering the ACRs, for a period of three consecutive years, immediately preceding the date of its meeting, as followed in most of the Departments, has delved into the ACRs, for a quinquennium immediately prior to that date, thereby vitiating its proceedings.

44. Shri Rao countered this argument, stating vaguely, that the ACRs for the period of 5 years, were examined according to the instructions of the Government of India, without citing specific reference thereto.

45. It is apposite here, to refer to (1981) 1 SCR 430 (BALDEV RAJ CHADHA v. UNION OF INDIA), where the Supreme Court held, that it would not be desirable, to scrutinise the entire service record of an employee, but that it would suffice to consider the same, for a period of only 5 years, immediately preceding the date, when the question of premature retirement of an employee was being examined. In 1987(2) SCC 188 (BRIJ MOHAN SINGH CHOPRA v. STATE OF PUNJAB), the Supreme Court had referred to this judgment in its penultimate para without differing therefrom. Though this dicta of

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the Supreme Court was in a different context, namely, that of premature retirement, which is a graver circumstance, the underlying principle would equally govern the case of promotion before us. In fact, in CHOPRA's case itself, the Supreme Court has observed that in the case of premature retirement, the ACRs immediately preceding the date, of such retirement for a decade, could be gone into. We, therefore, find no merit in this contention of Shri Jois, of which he seeks to make a mere fetish. We, therefore, negative the same.

46. We have undertaken a test-check, of the ACRs of some of the applicants, in the presence of Shri Jois. We are satisfied, that they provide a faithful and factual assessment of their work, on all the facets indicated therein. We have also examined similarly, the grading arrived at by the DPC, on the basis of these ACRs, in the case of the applicants. We are convinced, that the grading is in accord. The fact that Shri Jois yet maintains in this background, that his clients should have been graded by the DPC as "Outstanding", as there were no adverse remarks against them, seems to us, prima facie, hyperbolic. This Tribunal cannot arrogate to itself, the function of scrutinising the ACRs of all the JE(s) in question, running to an astronomical figure of nearly 2000, apart from the fact, such a herculean task, is not easy of accomplishment.

47. We

47. We have carefully examined the proceedings of the DPC, at its meetings held on 3-9-1987 and 5-9-1987. We are reproducing herebelow, the relevant excerpt of those proceedings:

"Minutes of the meeting of the Departmental Promotion Committee held on 5-9-1987 to consider the promotion of Junior Engineers(Civil) to the grade of Assistant Engineers(Civil):

The following were present:

1. Shri Harish Chandran, DG(W), CPWD. .. Chairman
2. Shri D.N.Bhargawa, Dir(Works) M/UD .. Member
3. Shri Chander Sain, Dir.of Administration, CPWD. .. Member
4. Shri S.M.Das, Dy.Dir. of Trg. C.P.W.D. .. Member

The committee was informed that the post of Assistant Engineer(Civil)(Group-B) is filled up 50% by selection from among the permanent Junior Engineers(Civil) and 50 per cent by limited Departmental Competitive Examination. It was further informed that 396 posts of Assistant-Engineer(Civil) have been created vide letter No.28017/24/85-EW2/ECI dt.8-5-87 as a result of first cadre review of Junior Engineers(Civil). It has also been decided that all these posts may, in relaxation of the provisions of the recruitment Rules, as indicated above, be filled up by selection from among the permanent Junior Engineers(Civil).

2. The Committee was also informed that in accordance with the existing instructions for preparing a panel of

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396 candidates the zone of consideration should be 3 times the number of vacancies i.e., 1188 candidates. In accordance with the erstwhile DP & AR's O.M.No.10/41/73-Est(SCT) dated 20.7.74 (as amended from time to time), 59 posts are to be reserved for Sch.Castes and 30 for Sch.Tribes. For selection against the reserved vacancies, the SC/ST candidates within the noramal zone of consideration are to be considered on the same basis as others. If the quota is not fulfilled on merit, then all SC/ST candidates in the normal zone of consideration who are considered fit for promotion may be included in the panel irrespective of their grading. If the quota is still not fulfilled, then SC/ST candidates(and not others) from the extended zone of consideration equal to 5 times the number of vacancies may be considered on the same basis. The vacancies reserved for Sch.Castes and Sch.Tribes are inter-changeable in the same year. There is no carry forward fromyear to year. If sufficient number of SC/ST candidates are not available even in the extended zone of consideration, the unfilled reserved vacancies may be filled by general category candidates after de-reservation. The total number of SC/ST candidates recommended for promotion from out of the normal as well as extended zone of consideration is 33. The Committee decided to leave 29 reserved vacancies unfilled for such SC/ST candidates who have not been confirmed or whose complete CRs are not available. The Committee desired that their cases may be submitted after confirmations have been made and complete CRs become available. The Committee also recommended that the remaining 27 vacancies reserved for SC/ST may be filled up by general category candidates after de-reservation.

3. The Committee perused the service records of the candidates and categorised them as given in the Annexure. The whereabouts of a large number of officers in the zone of consideration are not known and it is likely

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that they have left the Department. Since the names of such officers may have to be deleted subsequently on verification, the annexure contains the names of more than 1188 candidates so that the number of officers actually considered is not reduced to less than 3 times the number of vacancies.

4. The Committee noted that in many cases either the officers are not confirmed for their complete CRs are not available. The Committee desired that the cases of such officers may be resubmitted after their confirmation has been done and their complete CRs become available. The Committee decided to leave 30 vacancies unfilled for such officers which may be filled up after finalisation of such cases."

"Minutes of the meeting of the Departmental Promotion Committee held on 3-9-1987 to consider the promotion of Junior Engineers(Electrical) to the Grade of Assistant Engineers(Electrical).

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The following were present:

1. Shri Harish Chandra,D.G(W) C.P.W.D. ..Chairman
2. Shri D.N.Bhargawa, Director (Works), Min.of U.D. ..Member
3. Shri Chander Sain, Director of Admn.CPWD. ..Member
4. Shri S.M.Das, Dy.Dir. of Training, CPWD ..Member

Committee was informed that the post of Assistant Engineer(Electrical)(Group-B) is filled up 50% by Selection from among permanent Junior Engineers(Elecl.)and 50% by Limited Departmental Competitive Examination. It was further informed that

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163 posts of Assistant Engineers (Electrical) have been created vide Letter No.28017/24/85-EW2/EC-I, dated 8-5-1987 as a result of first cadre review of junior Engineers(Elecl.). It has also been decided that all these posts may, in relaxation, of the provisions of the Recruitment Rules as indicated above, be filled up by selection from among permanent Junior Engineers (Electrical).

2. Committee was also informed that in accordance with the existing instructions for preparing a panel of 163 candidates, the zone of consideration should consist of 489 i.e., 3 times the number of vacancies. In accordance with the erst-while ~~time~~ D.P. & LR. OM No.10/41/73-Est(SCT), dated 20-7-74(as amended from time to time), 25 posts are to be reserved for Scheduled castes and 12 for Scheduled Tribes. For selection, against the reserved vacancies, the candidates within the normal zone of consideration are to be considered on the same basis as others. If the quota is not fulfilled, then all those Scheduled Castes/Scheduled Tribes candidates who are considered fit for promotion irrespective of their merit may be included. If the quota is still not fulfilled, then the SC/ST candidates(and not others) from the extended zone of consideration equal to 5 times the number of vacancies may be considered on the same basis. The vacancies reserved for S.C. and S.T. are interchangeable in the same year. There is no carry forward from year to year. If sufficient number of SC/ST candidates are not available from even the extended zone of consideration, the unfilled reserved vacancies may be filled up after de-reservation by promoting general category candidates.

3. The Committee perusedthe service records of the candidates and categorised them as given in the annexure. The whereabouts of a large number of officers in the zone of consideration are not known and it is likely that they have

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left the service. Since the names of such officers may have to be deleted on verification, subsequently, the annexure contains the names of more than 489 candidates to ensure that the number of officers actually considered is not reduced to less than 3 times the number of vacancies.

4. The Committee also noted that in many cases either the candidates have not been confirmed, or their complete CRs are available. Committee desired that the cases of such officers may be submitted after their confirmation has been done and their complete CRs become available. Committee decided to leave 14 posts vacant for such officers, to be filled up after finalisation of their cases. Committee also decided to leave 4 posts reserved for SC/ST unfilled for being filled up after the CRs of 4 SC/ST candidates become available."

48. The very trend and tenor of both the proceedings of the DPC, reveal, the fair and objective manner, in which they have considered the case of all the eligible candidates inclusive of the applicants, for promotion to the posts of AEs. It is striking, that the DPC has been gracious enough, to keep certain vacancies unfilled, to help accommodate such of the candidates whose ACRs are either incomplete or who are not yet confirmed as JEs, ostensibly, for no fault of theirs, after having rendered more than a decade of service, in that post. In this background, it ill-behoves Shri Jois to contend, that the DPC

has

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has been arbitrary, in assessing the merit of his clients and that it arrived at a "subjective satisfaction without objective material" (to use his own words) in denying promotion to them, to the posts of AEs. We notice that the applicants have failed to make the grade, solely on the twin criteria, of seniority and comparative merit, as there were a number of JEs, who were senior to them and had meted grading, as "Outstanding" and "Very Good". We are informed, that there are quite a number of JEs, with "Very Good" grading, senior to the applicants and yet awaiting promotion as AEs. In these circumstances, we cannot understand, as to how the applicants aspire to steal a march over them.

49. Shri Shailendra, learned Counsel for the applicant, in the IInd Set, virtually toed the line of argument of Shri Jois, in the Ist Set of applications, in so far as his client was concerned, except that, he sought to make an issue of the ACRs of his client, for the period from 1981 to 1983, on the score, that these were written by the officers, under whom he had not actually worked, while on deputation on a project, namely, Greater Cochin Development Authority, Cochin, under the State Government of Kerala, and his client had not furnished his SAR, thereon.

50. Sri

50. Shri Shailendra submitted, that the above ACRs for the period from 1981 to 1983, should have been ignored by the DPC, in the above circumstances, so as to ensure objective assessment of his client's merit. Not having done so, he asserted, the proceedings of the DPC in so far as his client was concerned, were vitiated.

51. Shri Rao countered the above contention of Shri Shailendra, on the premise, that it was the applicant's responsibility, to furnish his SAR promptly to his Reporting Authority, every year, for the above period. Having failed to do so, he could not make a grievance of the same, at this belated stage, Shri Rao stated. He affirmed, that the pertinent ACRs were written by the Reporting and Reviewing Authorities, under whom he had worked during his period of deputation as above. We have no reason to disbelieve this affirmation, of Shri Rao. Even otherwise, we notice from the above ACRs, that the Countersigning/ Accepting Authority, who is the final authority in the ACR, under whom the applicant had served, has given his assessment of the applicant for the respective years, which has been the deciding

criterion

criterion, for grading of the applicant by the DPC, while considering him for promotion to the post of A.E.

52. It is relevant to cite here, Rule 6B of the All-India Services(Confidential Rolls) Rules, 1970, which inter alia, states, that notwithstanding anything provided in the preceding rules, where the accepting authority writes or reviews the ACR of any member of the service, it shall not be further necessary to review any such report. Though the above rules do not apply directly to the case before us, nevertheless, they adumbrate a principle of general application, which in our view, is satisfied in the instant case.

53. Besides, we have seen the pertinent ACRs of the applicant and even those immediately preceding the year 1981. We are satisfied that the ACRs viewed in their totality, even ignoring for the sake of argument, the ACRs for the period from 1981-1983, as pleaded by Shri Shailendra, would not have materially altered the grading of his client as just "Good", as arrived at by the DPC, after careful deliberation. We, therefore, find no merit in this contention of Shri Shailendra and reject the same.

54. All

54. All other contentions urged by Shri Shailendra, are alike on facts and law with those advanced by Shri Jois in the Ist Set and that being so, we negative them, for the self-same reasons.

55. We were informed by Shri Jois, that more than 20 posts of AEs, were yet to be filled in, to accommodate the JEs, whose CRs were either incomplete or they were not confirmed or they were subjected to the "sealed cover procedure". This was not denied by Shri Rao. Shri Jois and Shri Shailendra pleaded, that their clients be considered by the DPC for these vacancies after the PSL was finalised.

56. Shri Jois pointed out, that during the intervening period, when these applications were filed before this Tribunal, some posts of AEs were filled in, without the PSL being finalised.

57. We have taken due note of the above submissions.

58. In the result, we make the following order:

(i) We direct R-2, to finalise the PSLs, in respect of the JEs, both Civil and Electrical, expeditiously but not later than 31-5-1989, as agreed to, by both ~~the~~ sides.

(ii)

(ii) We further direct him, to regulate the seniority of the applicants for the purpose of promotion as AEs, Civil or Electrical, as the case may be, in the event, they become eligible therefor, as a result of finalisation of the PSLs as above, in respect of the posts of AEs, considered to be filled in, by the DPC, at its meetings held on 3-9-1987 and 5-9-1987 and also the residual posts of AEs, proposed to be filled in, hereafter.

(iii) In the event of any of the applicants becoming eligible, for promotion to the posts of AEs, considered by the DPC to be filled in, at its meeting held on 3-9-1987 and 5-9-1987, they may be given the benefit of notional promotion only, as AEs, without arrears of emoluments, not having shouldered responsibility in the~~se~~ posts.

59. Both the Sets of applications are disposed of, in the above terms, with no order however as to costs.

Sd/-
(K.S. PUTTASWAMY) 29/8/1988
VICE CHAIRMAN.

Sd/-
(L.H.A. REGO) 22.8.1988
MEMBER(A).

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