

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 379/93

Transfer Application No: --

DATE OF DECISION: 14/10/94

Tawnluiaia

Peticioner

Applicant in person

Advocata for the Peticioners

Versus

U.O.I & 16 Ors.

Respondent

Mr.P.M.Pradhan for R.Nos. 1 to 3

Mr.A.N.Kulkarni for R.Nos.6&8 Advocate for the Respondent

Mr.A.M.Shiraji for R.No.11

CORAM :

The Hon'ble Shri B.S.Hegde, Member(J)

The Hon'ble Shri M.R.Kolhatkar, Member(A)

1. To be referred to the Reporter or not ?
2. Whether it needs to be circulated to other Benches of the Tribunal ?

M.R.Kolhatkar
(M.R.KOLHATKAR)
M(A)

M

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A.379/93

Tawnluaia
Joint Director,
Defence Estates,
Ministry of Defence,
Maneckji Mehta Road,
Southern Command,
Pune - 411 001.

.. Applicant

-versus-

1. Union of India
through
Secretary,
Ministry of Defence
'S' Block,
New Delhi - 110 011.
2. Union Public Service Commission,
through
The Secretary,
Dholpur House,
Shahjehan Road,
New Delhi 110 011.
3. The Director General of
Defence Estates,
Ministry of Defence,
R.K.Puram,
New Delhi - 110 066.
4. Shri K.P.S.Bawa
5. Shri T.Lamare
6. Shri O.P.Agarwal
7. Shri R.K.Sharma
8. Shri S.K.Arora
9. Shri A.Bhattacharya
10. Shri M.Nautiyal
11. Shri C.R.Mohapatra
12. Shri S.C.Nagpal
13. Shri G.S.Sohal
14. Shri Jai Prakash
15. Shri T.Parthasaradhi
16. Shri J.P.Mittal
17. Smt. Arti Kant .. Respondents

Coram: Hon'ble Shri B.S.Hegde, Member(J)
Hon'ble Shri M.R.Kolhatkar, Member(A)

Appearances:

1. Applicant in person
2. Shri P.M. Pradhan
Counsel for
respondents No.1 to 3
3. Shri A.N. Kulkarni)
Counsel for)
Respondents No.6 & 8) Not present at final
 hearing.
4. Shri A.M. Shiraji)
Counsel for)
Respondent No.11)

JUDGMENT: Date: 14-10-94
(Per M.R. Kolhatkar, Member(A))

The brief facts are that the applicant was appointed in January, 1971 in the Class-I service of the then Military Lands & Cantonments, now re-designated as Indian Defence Estates Service Group 'A'. Thereafter, he was posted as the Cantonment Executive Officer in the junior scale and he was holding that post till 1974. In the seniority list published in the year 1976 the applicant's name was shown at Sr. No.1 in Class-I, Group 'A', Junior Scale. In 1975 he was posted as Defence Estates Officer and he continued in that post till August, 1978. In November, 1978 he was promoted to Class-I Group 'A' Senior Scale in Defence Lands and Cantonment Service on ad-hoc basis. At that time he was on deputation to the Ministry of Defence as Under Secretary. Subsequently, on the recommendation of DPC, the applicant was promoted to Senior Scale on 26-6-1982 and his seniority position had been shown at Sr. No.1

2. It is an admitted fact that since 1976 onwards no DPC was held for empanelling officers for promotion to the Junior Administrative Grade (Joint Director) and all the vacancies

in the Junior Administrative Grade were filled up by officers appointed on adhoc basis. On 21-5-1983 the applicant was given ad-hoc promotion in the post of Deputy Director(now Joint Director) and was posted as Joint Director at Shillong. The adhoc promotion was extended from time to time.

3. It is an admitted fact that DPC held on 21-9-87 had considered vacancies for the years 1976, 1977, 1978, 1979, 1980, 1980, 1981, 1982 and 1985. DPC held that there were no vacancies for the year 1986. The applicant was considered for 1985 vacancies but could not be selected, the last person selected being Mrs. Malati Krishnakumar. DPC held on 22-2-88 empanelled 20 officers against 18 vacancies in which applicant finds a place at Sr.No.17. The main grievances of the applicant are:

- (1) DPC did not reckon the vacancies correctly;
- (2) That DPC wrongly considered officers with 5 years of regular service in STS alone to be eligible, leaving out officers like him who had either put in 5 years adhoc service ^{in STS} or who had put in 9 years' regular service in JTS/STS;
- (3) So considered applicant would have made it to the panel in 1987 itself being an ST officer;
- (4) As a result he was not held eligible by 1987 DPC and when he was held eligible by 1988 DPC, ^{the} same involved supersession.

4. As regards method for determination of the vacancies it has been laid down by the Govt. vide circular of Department of Personnel No.22011/6/75-Estt.(D) dated 30-12-76 and 11-1-1977 which is

reproduced below :

"IV. Determination of regular vacancies

It is essential that the number of vacancies in respect of which a panel is to be prepared by a DPC should be estimated as accurately as possible. For this purpose, the vacancies to be taken into account should be the clear vacancies arising in a post/grade/service due to death, retirement, resignation, regular long term promotion of incumbents of one post/grade to higher post/grade and vacancies arising from creation of additional posts on a long term basis and those arising out of deputation. As regards vacancies arising out of deputation, it is clarified that for the purpose of drawing up a select list for promotion, vacancies arising out of deputation for periods more than a year should be taken into account, due note, however, being kept also of the number of the deputationists likely to return to the cadre and who have to be provided for. Purely short term vacancies arising as a result of officers proceeding on leave, on deputation for a shorter period, training, etc. should not be taken into account for the purpose of preparation of a panel. "

5. As regards instructions regarding SC/ST officers, the same are to be found in Home Ministry's instructions dated 21-9-1988 at Annexure A-23 which are reproduced below:

"The undersigned is directed to invite a reference to the Ministry of Home Affairs O.M. No.1/9/69-Esstt(SCT) dated 26th March,1970 as amended vide O.M. No.1/10/74-Estt(SCT) dated 23rd December, 1974 according to which in promotions by selection to posts within Group'A' (Class-I), which carry an ultimate salary of Rs.2250/- (pre-revised), the SC/ST officers, who are senior enough in the zone of consideration for promotion so as to be within the number of vacancies for which the select-list has to be drawn up, would be included in that list provided they are not considered unfit for promotion. The scales of pay of Group'A' Post have been revised on the basis of recommendations of the 4th Central Pay Commission. It has, therefore, been decided that orders contained in the aforesaid O.M. would apply to promotions by selection to posts within Group'A' carrying an ultimate salary of Rs.5700/- or less in the revised scale of pay.

2. Ministry of Finance etc. are requested to bring the above decision to the notice of all concerned."

6. This is the third round of litigation. Being aggrieved by the decisions of the DPC as a result of which he felt that he was illegally superseded ^{applicant, first} approached Calcutta Bench of the C.A.T. vide O.A. 970/88 which disposed of the petition on 25-6-91 by giving the following directions:

"In that view of the matter, O.A.970/88 is disposed of with a direction to the respondents to consider the case of the applicant for promotion to the post of Junior Administrative Officer(Selection Grade) on the basis of yearwise vacancies and from the year when he became eligible for such promotion as per rules. It is

also directed that the seniority of the applicant, who has been working as Junior Administrative Officer on ad hoc basis, shall be determined as per rules."

In the meanwhile there was protracted litigation about seniority of Military Lands & Cantonments Service. Because of dispute of two sets of promotees for seniority viz. Assistant Military Estate Officers(AMEO) and Assistant Military Estate Officers(I) (AMEOT). This litigation culminated in the Supreme Court judgment in Union of India vs. M.P.Singh and S.K.Arora and Others vs. M.P. Singh and others (1991 SCC (L&S) 463) The operative portion of the judgment is reproduced below :

"Injustice to respondents is apparent as admittedly these officers were promoted in Class 'A' in 1978 and are working since then uninterruptedly yet when review DPCs were held in pursuance of the judgment given by Allahabad High Court and seniority list was published in 1987, they were ignored as they were working as ad hoc resulting in pushing up AMEOs who were junior to them. AMEOs were granted seniority from the date of appointment in MLC service whereas similar benefit was denied to AMEOT as they were working as ad hoc. To remove this irritant Tribunal directed that they shall be deemed to be holding regular posts. Officers working since 1964 without any flaw could not be treated as ad hoc. In any case once review DPCs were held it was incumbent on it to include these persons and if necessary to evaluate their services or get it evaluated by appropriate authority, regularise them and then determine seniority: But in ignoring them in 1987 even when they had become members of MLC service was arbitrary and unjustified."

7: The department prepared seniority list in terms of Supreme Court order. Still the applicant felt aggrieved. He, therefore, approached in the second round of litigation the Bombay Bench of the CAT which disposed of the O.A. by giving certain directions in O.A.1012/92 decided on 11.12.1992 vide Annexure A-17. The Tribunal gave liberty to make representation to the appropriate authority within a period of two weeks which has to be disposed of on merits and in accordance with law within a period of two months. The authority was also to take into account the directions contained in the order dated 25-6-91 passed by a Bench of this Tribunal at Calcutta.

8: The competent authority i.e. Director General, Defence Estates after giving hearing to the applicant passed an order on 3-3-93 which appears at Annexure A-19 page 99 onwards. It is this order which has been impugned by the applicant in this O.A. and the main grounds urged by the applicant are relating to reckoning the number of vacancies and the zone of consideration in terms of recruitment rules referred to earlier. We have already referred to the Department of Personnel instructions relating to reckoning of vacancies and we may now refer to the relevant rules. The relevant rules are Indian Defence Estates Service (Group 'A') Rules, 1985, vide Annexure A-8 and in particular Rule 7(4) thereof which reads " Appointment to the posts in Group 'A' senior scale and above of the service shall be made by promotion from

amongst the officers in the next lower grades with the minimum qualifying service as specified in Schedule III failing which by transfer on deputation." So far as Schedule III is concerned in relation to the post of Joint Director(Ordinary Grade)/Assistant Director General) which is the post in question the field of selection and minimum qualifying service are as below:

"Assistant Director/Deputy Assistant Director General/Defence Estates Officer/Cantonment Executive Officer (Senior Scale) with 5 years regular service in the grade, failing which Assistant Director/Deputy Assistant Director General/Defence Estate Officer/Cantonment Executive Officer (Senior scale) with 9 years combined regular service in the grades of Assistant Director/Deputy Assistant Director General/Defence Estates Officer/Cantonment Executive Officer (Senior scale) and cantonment Executive Officer/Attached Officer (Junior scale)."

9. On the specific point made by the applicant regarding incorrect reckoning of vacancies in various years and in particular in the year 1987, the applicant has invited our attention to the following statement which shows that the Respondents proceeded on the basis of existence of 17 vacancies, but according to the applicant they ought to have proceeded on the basis of 3 additional vacancies. This statement is reproduced below for ready reference:

STATEMENT SHOWING THE YEAR, THE NUMBER OF VACANCIES AND THE NAME OF THE OFFICERS PROMOTED TO THE JUNIOR ADMINISTRATIVE GRADE SINCE 1976 AS FURNISHED BY THE RESPONDENTS NO,3 - 1987 DPC.

Year	No.of vacanc- ies	Name of the officers	Remarks
1	2	3	4
1976	04	1. Shri M.N.Das 2. Shri Bharat Bhusan 3. Shri M.K.Sengupta 4. Kum. A.Mubayi	Promoted to Senior Administrative Grade w.e.f. 13-12-1984 on ad hoc basis.
1977	02	5. Shri R.R.Pillai 6. Vacancy reserved	
1978	02	7. Shri I.R.K.Bhat 8. Shri S.A.A.Rizvi	
1979	01	9. Shri P.S.Vimal	
1980	02	10. Shri S.N.Chaturvedi 11. Shri L.S.A.Mendies	On deputation to ex-cadre post w.e.f. 27-9-1985
1981	01	12. Shri Inderjit Singh	On deputation to Ex-cadre post w.e.f. 9.1.1986
1982	01	13. Dr.Nagabhusanam	
1985	04	14. Shri S.K.Arora 15. Shri M.H.H.Alvi 16. Smt. Veena Mitra 17. Shri O.P.Agarwal 18. Smt. M.Krishnakumar	

be held to mean
 What the applicant should is that if the vacancies on account of S/Shri M.N.Das, S.N.Chaturvedi and Inderjit Singh were reckoned the first of whom was already promoted and the latter two were on deputation to an ex-cadre post on a long term basis, in that case vacancies of 1986 ~~ies~~ should have been reckoned to be a number and not zero.
positive The last candidate empanelled by the DPC in 1987 is Smt.M.Krishnakumar who is the immediate senior officer of the applicant. If the panel was expanded, the applicant's name would have been figured in the 1987 panel by virtue of Home Ministry's instructions referred to above and the subsequent supersession of the applicant in the 1988 DPC would not have taken place. On this point the speaking order of the competent authority reads as below :

"Shri Tawnluiaia has alleged incorrect reckoning of vacancies in various years.

This, again, is perhaps on the basis of misunderstanding. The actual vacancies in a grade is what would be reckoned, and was reckoned, by the original DPC and the review DPC. The Review DPC could and did reckon only the same number of vacancies. Following the Cadre Review in 1987, 17 additional posts were sanctioned in the JAG and 4 additional posts in the next higher level of SAG. However, in the absence of making promotions to the SAG on regular basis and causing resultant vacancies in JAG, the DPC for filling the vacancies in the JAG could reckon only the additional vacancies that had arisen in the JAG with the cadre expansion and the vacancies that had arisen following other contingencies like officers going out on deputation and returning. A total of 18 vacancies were to be filled. The DPC held on 4/5.2.1988 empanelled 20 officers as 2 officers figuring in the panel against 18 vacancies were out of the Department on deputation and were not expected to revert to the Cadre. All the vacancies were of the same year and a single panel containing 20 names with the name of Shri Tawnluia at Sr.No.17 was made by the DPC which was accepted by the Competent authority. The orders on this were issued vide Ministry of Defence letter No.102/187/ADM/L&C dt. 24-2-1988. The Review DPC held on 11.2.1992 took the same number of vacancies and adopted the same criteria as the original DPC had adopted and gave the same number of persons in the panel reckoning that 2 officers within the first 18 were not available for posting in the Cadre because of their being out on deputation. The Review DPC, held thus, only brought about the changes warranted by the order of the CAT as confirmed by the Supreme Court in M.P.Singh's case. "

10. Thus the Competent Authority had proceeded on the basis that the DPC in 1992 was only the Review DPC and it could not modify the vacancies as reckoned by the original DPC. However, the competent authority has not classified why the deputation vacancies could not be considered by 1987 DPC treating them to be 1986 vacancies. The moot point is whether the appropriate authority can take the stand that the number of vacancies could not be modified. The direction of the Tribunal to the competent authority was that it should deal with the case on merits and in accordance with law. The competent authority, therefore, ought to have gone into the question as to whether the Review DPC

for 1987
had correctly reckoned the number of vacancies.

The competent authority instead, proceeded on the footing that Review DPC had no authority to change the number of vacancies from what had been considered by the original DPCs in 1987 and 1988 ~~not taken into account deputation vacancies. DPC had~~ It is not disputed by the competent authority that the Officer at Sr.No.10 Shri S.N. Chaturvedi one of the officers from the service was on deputation to an ex-cadre post viz. DL&C Officer w.e.f. 27-9-1985 and that he expired in 1991 nor that Shri Inderjit Singh an officer at Sr.No.12 was on deputation as Project Manager in R & D Construction Estt. w.e.f. 9-1-1986 till he retired at the end of 1988. That being the case and the methodology of computing vacancies requiring that the vacancies on account of long term deputation, should be counted, the competent authority ought to have gone into the question as to whether the 1987 DPC had correctly calculated the number of vacancies and ~~the vacancies were~~ ~~xxxxxxxxxx and more~~ if as per rules then in that case the Review DPC ought to have considered the question of including the name of the applicant in the panel as per his ~~ST~~ status. ~~xxxx~~ If this had been done, the applicant in terms of Home Ministry instructions dated 21-9-88 could have been included in the panel as these envisage that SC/ST officers who are senior enough in the zone of consideration for promotion so as to be within the number of vacancies for which the select list has to be drawn up, would be included in that list provided they are not considered unfit for promotion.

11. Here the respondents have raised the question that even if the vacancies are recalculated the applicant may not benefit therefrom because the applicant must first satisfy the eligibility criterion of five years ~~regular service in~~ STS. No doubt, applicant was recruited on 15-1-71 in the service but he was appointed ~~as Deputy Director~~ ~~xxxx~~ only on 21-5-83 and even that appointment was on adhoc basis. The official last promoted viz. Smt. Malati Krishnakumar belonged to 1969 batch but she was regularly promoted to the senior scale on 1-1-1973 and she had completed the requirement of five years ~~regular service in~~ Senior Time Scale at the relevant time viz. 1987. It is because of this difficulty that the applicant has prayed for his adhoc service to be counted as regular, relying on the judgment of this Tribunal in O.A.764/88 in the case of Dharam Prakash Ahuja decided on 4-9-1992 or alternatively he has suggested that he may be considered on the basis that the DPC ought to have considered the total length of ^{Class-I} service of the officers on which basis he qualifies to be considered. Here the respondents counter that the DPC assessed the persons who satisfied the eligibility criterion of 5 years service in STS till 1985 and did not consider the persons ~~who had~~ less than five years service in STS. DPC did not consider it necessary to resort to the exception ⁱⁿ case of considering persons with 9 years of Class I service in the context that the number of persons required to fill the vacancies were already available by restricting it to persons with 5 years service in STS. Respondents state that Smt. Malati Krishnakumar was the last person recommended by 1987 DPC and

she had ~~worked~~ ^{worked} in the STS from 1-1-73 and if the applicant or any other person had been considered along with her, it would have meant that persons ~~with nine years~~ ^{Class-I} could have considered along with her for the same post. The respondents also contend that statutory rules prevail over the general guidelines of the DPC, ^{and} when the latter are inconsistent with the rules, statutory rules provide the field of selection as certain designated posts which are all in the Senior Time Scale and 5 years' regular service in the grade. DPC guidelines provided the maximum number of eligible persons who can be considered for certain number of vacancies. If the number of eligible persons available is not to the extent of the maximum permissible, it is not that the eligibility criteria should be modified to enlarge the zone of consideration.

(12) It is not necessary for us to consider whether adhoc service of the applicant should be treated as regular service. The case of Ahuja did not relate to direct recruits but it related to an officer who belonged to the service of AMEO technical. The second case cited by the applicant viz. the case of Bhowmick could not be perused by us. It is wellknown that there are pronouncements of the Supreme Court to the effect that under certain circumstances adhoc service has to be treated as regular service. In this connection we may refer to the conclusion No.(B) in the Direct Recruit Class II Engg. Officers' Assn. V. State of Maharashtra, AIR 1990 SC 1607 which reads as below:

"(B) If the initial appointment is not made by following the procedure laid

down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted. "

In our view this is adequate ground for counting the adhoc service of the applicant as regular. But even that may not help the applicant because he can be said not to have completed 5 years of service for purposes of 1987 DPC but the applicant has completed 9 years of service in Class I. Now although the respondents have stated that the last official promoted viz. Smt. Malati Krishnakumar was nine years senior to the applicant, it is clear from the facts and circumstances of the case that this was due purely due to pending litigation. If we consider the year of recruitment, Smt. Malati Krishnakumar is only two years senior to the applicant but she happened to be promoted to the STS on regular basis much earlier than the applicant and that is how she got the benefit. The applicant, however, could not be so promoted because in the meanwhile protracted litigation intervened. It is not disputed that for over 10 years, the department was not able to hold DPCs and to finalise selections and to make regular appointments because several branches of the service had gone to the court of law and the matter ended only with the judgment of the Supreme Court in the case of M.P. Singh.

13. We may, therefore, as well refer to certain pertinent observation of the Hon'ble Supreme Court in that case. There was a dispute between two sets of promotee officers for

seniority viz. Assistant Military Estate Officers(AMEO) and Assistant Military Estate Officers(T) (AMEOT). The relevant portion of the judgment may be reproduced :

"Injustice to respondents is apparent as admittedly these officers were promoted in Class 'A' in 1978 and are working since then uninterrupted yet when review DPCs were held in pursuance of the judgment given by Allahabad High Court and seniority list was published in 1987, they were ignored as they were working as ad hoc resulting in pushing up AMEOs who were junior to them. AMEOs were granted seniority from the date of appointment in MLC service whereas similar benefit was denied to AMEOT as they were working as ad hoc. To remove this irritant Tribunal directed that they shall be deemed to be holding regular posts. Officers working since 1964 without any flaw could not be treated as ad hoc. In any case once review DPCs were held it was incumbent on it to include these persons and if necessary to evaluate their services or get it evaluated by appropriate authority, regularise them and then determine seniority. But in ignoring them in 1987 even when they had become member of MLC service was arbitrary and unjustified."

It would be seen that in M.P.Singh's case the dispute did not relate to direct recruits and if at all, the M.P.Singh's case has emphasised the need for the DPC to consider the officers who are eligible and to evaluate the record.

x 14. The contention of the department that promotion guidelines will have ^{to} give way when there is a conflict between guidelines and the rules does not appeal to us. These promotion guidelines are issued by the Department of Personnel which is a nodal department. They apply to all the departments equally. Therefore, it is the duty of the court to read these two sets of rules ~~and~~ guidelines namely the Indian Defence Estate Service Group 'A' Rules and the

guidelines of the Department of Personnel harmoniously. When we so read them it will be clear that it is incumbent on the department to refer to the second mode of consideration viz. if the officers with regular service of 5 years in STS are not available, officers with 9 years' Class I Service are to be considered and while considering such officers the vacancies to be taken into account are the vacancies which are calculated as per the Department of Personnel guidelines. In view of the above position we have, therefore, no doubt that the competent authority erred in not considering the case of the applicant to be considered on the footing that there were certain vacancies which had not been taken into account by the 1987 DPC and the review DPC 1992 had also failed to take them into account. For this purpose the zone of consideration would be expanded by referring to the second mode which would involves consideration of the officers who have completed more than 9 years of Class I service.

15. We, therefore, dispose of this case by passing the following order :

O R D E R

1. The application is partly allowed. The order D.G. Defence Estate dated 3-3-1993 is set aside. The competent authority is directed to hold a Review DPC for 1987 by including
 - o Deputation vacancies in the
 - o computation of vacancies and if available officers with 5 years regular

-: 17 :-

STS fall short of vacancies expand the zone of consideration by including the officers who have completed nine years of service in Class I. On that footing the DPC may consider the record of the applicant and if the applicant on the basis of the number of vacancies and his record and also in terms of Home Ministry's instructions dated 21-9-88 is entitled to be included in the panel, necessary action may be taken.

2. If he is so included in the panel the competent authority is also further directed to give him all consequential benefits relating to his deemed date of promotion from an earlier date.

3. No order as to costs.

M.R.Kolhatkar

— (M.R.KOLHATKAR)
Member(A)

B.S.Hegde

(B.S. HEGDE)
Member(J)

M

For Office Information/Note:

- ✓ 1. Entry in O.R./T.A. Register.
- ✓ 2. Proforma for circulation to other Benches.
- ✓ 3. Circulation.
- ✓ 4. Notices to parties of Lodgment.
- ✓ 5. Acknowledgement received and submitted Sup. Court.
- ✓ 6. Preparation for record & Proceedings.
- ✓ 7. Dispatching K/P to Supreme Court.