

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH MUMBAI

ORIGINAL APPLICATION NO: 696/94

DATE OF DECISION: 13<sup>th</sup> January 2000

V.G.Sane Applicant.

Shri S.P.Saxena Advocate for  
Applicant.

Versus

Union of India and others Respondents.

Shri R.K.Shetty Advocate for  
Respondent(s)

**CORAM**

Hon'ble Shri D.S.Baweja, Member(A)

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

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

*S.L.Jain*  
(S.L.JAIN)  
Member(J)

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO:696.94

the 13<sup>th</sup> day of <sup>January 2000</sup>

CORAM: Hon'ble Shri D.S.Baweja, Member(A)

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

V.G.Sane  
Residing at  
248, Narayan Peth,  
Poona.

...Applicant

By Advocate Shri S.P.Saxena.

V/s

1. The Union of India through  
The Secretary,  
Ministry of Defence,  
DHO, PO, New Delhi.
2. The Engineer-in-Chief  
Kashmir House,  
DHQ, PO, New Delhi.
3. The Chief Engineer  
Southern Command,  
Pune.
4. The Chief Engineer  
Pune Zone,  
Pune.
5. Shri H.K.Nagaraja,  
Chief Engineer(Planning)  
C/o C.E., Delhi Zone,  
Delhi.
6. Shri S.R.Ballakoor,  
Chief Engineer,  
Jabalpur Zone,  
Jabalpur.
7. The Chairman  
Union Public Service Commission  
Dholpur House,  
New Delhi.

...Respondents.

By Advocate Shri R.K.Shetty.

By -

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O R D E R

(Per Shri S.L.Jain, Member (J))

This is an application under Section 19 of the Administrative Tribunals Act 1985 for a direction to respondent No.1 to 4 to consider the case of the applicant for his promotion to the post of Chief Engineer from the date his junior, respondent No.5 is promoted, by holding review D.P.C. if found fit by review D.P.C. with all consequential benefits in respect of his salary and other pensionary benefits alongwith costs.

2. The applicant was working on the post of Additional Chief Engineer, as per Seniority list dated 30.3.1993. He was at serial No. 2. He was served with a memorandum of charges dated 30.12.1992 by the respondent No.1 on 18.2.1993 through respondent No.4, in respect of the same, he filed an OA 177/93 before the CAT Bombay, which was decided on 18.6.1993 and the Memorandum of charges dated 30.12.1992 was quashed. The D.P.C. was to be held in the month of August 1993 hence he sent a copy of the order to the respondent No.4 in the month of July 1993. The D.P.C. was conducted as scheduled. The applicant was not promoted. Submitted representation dated 4.10.1993 which was decided on 21.12.1993 and superannuated on 31.10.1993.

3. The grievance of the applicant is that his name was probably not considered as he was not empanelled due to pendency of the disciplinary proceeding against which OA 177/93 was filed, though decided but result could not be noticed by the departmental authorities. The sealed cover procedure was followed

D. Jain - ...3...

which was not permissible in law. Hence D.P.C. proceedings are vitiated and illegal. It is further alleged that the respondents did not communicate to him any adverse remark which was below the Bench mark. Thus the promotion of the junior, overlooking him is not warranted. Hence, this OA for the above said relief.

4. The respondents resisted the claim of the applicant and alleged that though the copy of the order of OA 177/92 was received in the office but the department was considering whether SLP against the said order is to be filed or not. The applicant's name was empanelled, his name was considered. The post being the selection post, the result of the consideration was kept in sealed cover, he was not found fit and accordingly not promoted. Hence prayed for dismissal of the OA alongwith costs.

5. If the procedure for keeping the evaluation of a candidates in a sealed cover is adopted, though memorandum of charges was quashed, not intimated to the D.P.C. the applicant's case is in no way prejudiced but it must have been proper if the departmental authorities brought it to the notice of the D.P.C. alongwith the fact that an S.L.P. against the said order is under consideration.

6. As the post of Chief Engineer is a selection post, the applicant is not entitled to claim the said post only on the basis of his seniority.

*P. G. V. / -*

7. The learned counsel for the applicant relied on JT 1996 (1) SC 641 U.P. Jal Nigam and others V/s Prabhat Chandra Jain and others and argued that even a positive confidential entry in a given case can perilously be adverse. It is proper to note the finding recorded by the Apex Court which are mentioned in para 2 of the same judgement.

The first respondent was down graded at a certain point of time to which the Service Tribunal gave a correction. Before the High Court, the petitioners' plea was that down grading entries in confidential reports cannot be termed as adverse entries so as to obligate the Nigam to communicate the same to the employee and attract a representation. This argument was turned down by the High Court, as in its view confidential reports, were assets of the employee, since they weigh to his advantage at the promotional and extensional stages of service. The High Court to justify its view has given an illustration that if an employee legitimately had earned an 'outstanding' report in a particular year which, in a succeeding one, and without his knowledge, is reduced to the level of 'satisfactory' without any communication to him, it would certainly be adverse and effectg him at one or the other stage of his career.

J.K.D.

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On perusal of the same we are of the considered opinion that if any entry below Bench Mark, the respondents were duty bound to communicate it to the applicant which the respondents failed to communicate.

8. The respondents have placed before us the file of the DPC and the ACRs of the applicant. On perusal of the same we find that applicant's name was considered for promotion and he was not found fit. The reasons which can be attributed and is attributed by the applicant is that the ACRs were not communicated to him.

9. In view of AIR 1979 SC 1622 Gurdial Singh V/s State of Punjab, the principle is well settled in accordance with the Principle of Natural Justice, the adverse report which now in view of U.P. Jal Nigam and others case which is below Bench mark. No ACRs could be acted upon to deny promotion particularly unless it is communicated to the person concerned, so that he will have an opportunity to improve his work and conduct. Such an opportunity is not an empty formality it is objected partially to enable the superior officer to consider explanation offered by the person concerned whether the report is justified.

J.L. Singh

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10. In view of the above finding we come to the conclusion that the matter is to be re-considered by the DPC by Review DPC by correction of ACRs of the applicant to the Bench Mark.

11. The learned counsel for the applicant relied on (1993) 24 ATC 221 decided by CAT Patna, Anil Mahajan V/s Union of India and others for the proposition that in the absence of any evidence to the contrary it must be presumed that there was nothing against the applicant during the period for which the reports were missing. This is not a case missing reports. Hence the said authority will not help the applicant and will not apply to the case at all. The same is the proposition with regard to (1993) 25 ATC 439 decided by CAT Bombay Bench in the case of Ajits Bhatia V/s Union of India.

12. The learned counsel for the applicant relied on an order passed in Contempt Petition No.79/96 in the case of Smt.Pratibha A. Jalgaonkar V/s V.Venkateshwaran and others on 19.11.1997 which is in respect of consequential benefits. The said question would arise after the consideration of the Review D.P.C. and not at this stage.

P. S. N.

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13. In the result OA is partly allowed. Respondent No.1 to 4 are directed to hold Review D.P.C., Applicant's case for the post of Chief Engineer be considered, ignoring the grading in the ACRs of the relevant years which are below the bench mark and not communicated to the applicant as stated above. If found fit, the applicant may be deemed to be promoted as Chief Engineer from the date of promotion of his juniors. The applicant shall be entitled to all the consequential benefits in respect of pay and allowances and retiral benefits. No order as to costs.

*S.L. Jain*  
(S.L. JAIN)  
Member (J)

*D.S. Baweja*  
(D.S. BAWEJA)  
Member (A)

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**CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI**

C.P. No. 47/00 IN.  
ORIGINAL APPLICATION NO. 696/94  
Shri Sudha Same, ..APPLICANT  
Smt V/S  
M/O Defence & ors ...RESPONDENTS

**CORAM: HON'BLE JUSTICE SHRI. A. S. BAGGA MEMBER (J)  
HON'BLE SHRI R. C. JOSHI MEMBER (A).**

**Tribunal's Order.**

**Date: 10-11-2009.**

Applicant by Shri S.A.Deshpande.

Respondents by Shri R.R.Shetty.

2. The learned counsel for the respondents has produced before us letter dated 6.11.2009 of the Military Engineer Services Headquarters, Chief Engineer Pune Zone, Pune. After hearing the learned counsel and after going through the letter the same is taken on record and marked as Exhibit 'X'.

3. It is noted that the respondents are not taking the matter seriously as the Order dated 13.1.2000 passed in OA 696/94, Writ Petition against which was dismissed long back, is not being implemented. Misc.Petition moved for extension of time has also been rejected. The respondents are now left with no other option but to implement the order. We are not inclined to grant any further time. The order dated 13.1.2000 is to be implemented at the earliest. by next date the orders still remain to be implemented, we will be constrained to direct an officer of the rank of Additional Secretary from the Ministry of Defence who is responsible for implementation of the order to remain personally present before this Tribunal.

4. List this matter on 12.1.1010.

Copy of this order be provided to Shri R.R.Shetty counsel for respondents.



C.P. No. 47/00 IN  
NO.CAT/MUM/JUDL/O.A. 696/94 DATE: 10/11/09

Copy to :

1. Shri S.A. Deshpande, counsel for applicant

2. Shri R.R. Shetty, counsel for respondents.

Section Officer  
Central Adm. Tribunal  
Bombay Bench

**SECTION OFFICER**