

ORIGINAL APPLICATION NO. 37 of 1987

(ORDERS OF THE TRIBUNAL)

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The applicant herein has filed this application seeking to impugn the Order no.A/41021/1/E1R, dated 21-2-1986 issued by the Engineer-in-Chief's Branch, Army Headquarters, Coord.&Personnel Directorate (E1R), New Delhi wherein his name does not find/place among the list of Supdtg. Engineers promoted to officer as Additional Chief Engineers. The applicant herein states that he was considered for selection, but his juniors were promoted and he was not promoted. No adverse remarks were ever communicated to him throughout the period he served as Supdtg.Engineer. No disciplinary proceedings were commenced against him. He states that through-out his tenure as Supdtg.Engineer, his performance has been of a very high standard; that he is a Graduate in Civil Engineering and also holds a first class Post Graduate Master's degree in Structural Engineering (ME Civil-Structures). He was awarded

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Chief of Army Staff Commendation in 1981 for his outstanding performance during the period of 1975-79 which was rated as 'Exemplary'. After that also, the applicant has been working to the full satisfaction of his superiors and at no stage any adverse remark was made against him. The applicant was due for further promotion to the grade of Additional Chief Engineer during 1985. No D.P.C. was held in 1985, but/was held only in February, 1986. The applicant states that promotion is on the basis of ^{it} Merit-cum-Seniority and selection is by a D.P.C. based on the performance of officers as reported in their Annual Confidential Reports. In regard to the year ending 30th September, 1984, the applicant states that the ACR considered by the D.P.C. was not a proper ACR. During the year from 1-10-1983 to 30-9-1984, the applicant served as Commander Works Engineer (CWE) at Jhansi under the Chief Engineer, Jabalpur Zone. He had assumed this appointment in October, 1982 and during 1982-83, he sorted out all the backlog and laxity in the administration that had crept in due to non-posting of an incumbent

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for over 6 months before the applicant had taken over the charge and his performance during that period was exemplary. Shri K. Devarajan, who was the then Chief Engineer, Jabalpur Zone expired on 30-8-1984 and the ACR of the applicant for the year could not be initiated by him. Under the circumstances, it was decided by the higher authorities that Colonel SK Anand who was then the Additional Chief Engineer Jabalpur and the next best officer who had intimate knowledge of the Applicant and his performance would initiate the ACR of the applicant as well as that of the officers ~~which~~ ^{including} one Shri VN. Deshpande who is the officer at serial no. 20 in the seniority list considered by the DPC. Accordingly, Colonel Anand had initiated the ACRs. While the ACRs of other Officers including that of VN Deshpande were progressed further, the ACR of the applicant was misplaced by the Department after it was initiated. The Department did not detect this lapse in time and did not arrange to re-initiate the ACR by Col. Anand ~~even~~ until he retired in February, 1985. Under the circumstances, it was suggested

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to the E-in-C's office, New Delhi by the CE(P), R&D Secunderabad under whom the applicant had been serving from December, 1984 to either dispense with the requirement of ACR of the applicant for the year ending September, 1984 or to consider in lieu, the ACR of the applicant for the subsequent year ending September, 1985, which was also initiated by then. This suggestion was, however, not accepted by the E-in-C's Branch. Latter, as per the decision taken by E-in-C's Branch vide their letter 5-11-1985, the applicant's ACR for the year ending September, 1984 was initiated and reviewed by the then Central Command Chief Engineer sometime during November/ December, 1985, that is, after a period of one year and two months since when it was due. The applicant claims that this ACR is not a proper reflection of the performance and the qualities during the period of reporting. The applicant also submits that the Command Chief Engineer who has initiated and reviewed the ACR of the applicant for that year has no executive functions to perform or has no direct and close dealings with the CWE, the posi-

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tion held by the applicant at that time. He further

states that the Command Chief Engineer cannot have

personal knowledge of the CWE and his performance

Chief when compared to the Zonal/Engineer or Additional

Zonal Chief Engineer, Jabalpur who are have direct

contact with the applicant as an immediate subordinate

officer. Further, it is stated that the role of the then

Central Command Chief Engineer in respect of the ACR

of the applicant was to review the assessment of the

applicant made by the initiating officer and make appro-

priate recommendations in respect of promotions etc.

In case, he did not agree with any good remarks made

by the initiating officer, he was required to state so

and given reasons for his disagreement so that the next

counter-signing officer above him would know of his

disagreement and make accordingly his own remarks /

recommendations. In the present case, the applicant sub-

mits that the ACR was initiated and reviewed by one

officer, who was not required to give any reason for

any low profile report. The applicant further states

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that the applicant and Sri VN Deshpande received different treatment~~s~~ purely due to the lapse on the part of the Department in misplacing the ACR of the applicant initiated by Col Anand, Additional Chief Engineer, Jabalpur and also in initiating of ACR written by another officer after a period of over one year after it was due, which cannot reflect the true performance of the applicant. The period of over one year is enough ^{to} obscure/obliterate the memory of whatever inadequate knowledge the then Central Command Chief Engineer had of the applicant and his performance. It is also submitted that the then CCCE was holding a different appointment at New Delhi at the time of initiation of the ACR and was dealing with different set of officers and his impression of the applicant was, therefore, only a faint memory.

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2/ A counter has been filed by the Department denying various contentions raised by the applicant. It is stated that the applicant has since been selected for promotion to the grade of Additional Chief Engineer by the D.P.C. which met on 8-1-1987. It is also stated that when the applicant became eligible for promotion to the cadre of Additional Chief Engineer and was within the zone of consideration, his case was considered by the D.P.C. which met in February, 1985 against the vacancies for the year 1985. The D.P.C., however, did not find him fit for promotion and as such his ~~name~~ ^{name} did not figure in the approved panel. It is stated that the D.P.C. ^{which} met in February, 1986 made an overall assessment in respect of each officer on the basis of their performance as reflected in their ACRs for the last five years preceding the year in which the D.P.C. had met and the committee had not recommended the name of the officer, obviously for the poor grading he had earned. Denying the contention of the applicant

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that the CECC could not have assessed his qualities correctly, it is stated in the counter that the CECC being higher in rank was always in touch with and is fully aware of the performance of a Chief Works

The counter also states that Engineer under his Command. /the contention of the applicant that the CCCE would not have complete knowledge of his performance is untenable. It was admitted that the CECC had to initiate the ACR of the applicant because of sudden demise of Col. Anand.

A reference was made in the counter to the Ministry of Home Affairs O.M.No.51/14/60-Ests(A) dated 31-10-61, wherein it was made clear that the reviewing officer, that is, the officer superior to the reporting officer should exercise positive and independent judgment on the remarks of the reporting officer under the various detailed heads as well as on the general assessment and express clearly his agreement or disagreement with those remarks. The said O.M. also states that to minimise the operation of the subjective human element and of

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conscious or unconscious bias, the confidential reports of every employee should contain the assessments of more than one officer except in cases where there is only one supervisory level above the officer reported upon. The counter goes on to state that in the instant case, the immediate superior officer, Shri Devarajan, the then Chief Engineer expired on 30-8-1984 before initiating the ACR for the year ending 30-9-1984 and as such, Col. Anand, Additional Chief Engineer was directed to initiate the ACR for the year 1984. The ACR initiated by Col. Anand was, however, misplaced and before reinitiating the ACR, Col. Anand had taken voluntary retirement. The counter states that under such circumstances, the Chief Engineer Central Command who is, in normal circumstances, would have been the reviewing officer has had to both initiate and review the ACR of the applicant for the year 1984. It is further stated that the selection by the DPC was on the basis of over-all assessment as reflected in the ACR for the period of five years preceding the selection

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and that since Shri Deshpande was selected on the basis of such an assessment, the applicant cannot have any grievance. It is also stated that initiation and review of the ACRs by one and the same ~~same~~ Officer is not in conflict with the instructions of the Ministry of Home Affairs in the O.M. dated 31-10-1961. Since the Department did not agree to the suggestion of the Chief Engineer (P)(R&D) to either dispense with the requirement of ACR or to substitute it with the report for the subsequent year ending 30-9-1985, initiating and reviewing of ACR had to be done by one and the same officer, which is permissible under the instructions.

3. We have heard the applicant-in-person and Shri G. Parameswara Rao on behalf of Shri K. Jagannadharao, Central Government Standing Counsel, for the Respondents. The Standing Counsel for the Respondents has produced the ACRs of the applicant for two years, viz., the ACR

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for the period from 24.12.1984 to 30.9.1985 and for the period from 1.10.83 to 30.9.1984. He has also produced the minutes of the DPC meeting held on 18.2.1986 under the advice of the UP SC. The proceedings of the DPC do not give any reasons for categorising the officers as 'Very Good', 'Good' etc., as the case may be. The criteria adopted by the DPC for such categorisation also is not explained. The Official Memorandum No.22011/6/75-Ett. (D), dated 30th December, 1976 and the 11th January 1977 lay down functions, composition and procedures to be adopted by the DPC. The procedure to be observed by the DPC is indicated as below :-

- "1. Each Departmental Promotion Committee should decide its own method and procedure for objective assessment of the suitability of the candidates. Ordinarily a personal interview should not be regarded as necessary and the panel for promotion/confirmation may be drawn up of the basis of assessment of the record of work and conduct of the officers concerned.
2. Selection Method:- Where promotions are to be made by selection method as prescribed in the Recruitment Rules, the field of choice viz; the number of officers to be considered should ordinarily extend to 5 or 6 times the number of vacancies expected to be filled within a year. The officers in the field of selection, excluding those considered unfit for promotion by Departmental Promotion Committee should be classified by the Departmental Promotion Committee as "Outstanding", "Very Good", and "Good", on the basis of their merit, as assessed by the DPC after respective records of service. In other words, it is entirely left to the DPC to make its own classification of the officers being considered by them for promotion to selection posts,

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irrespective of the grading that may be shown in the CRs. The panel should, thereafter, be drawn up to the extent necessary by placing the name of the 'Outstanding Officers' first, followed by the officers categorised as 'Very Good' and followed by the officers categorised as 'good'. The inter seniority officers belonging to any one category would be the same as their seniority in the lower grade."

check It would be seen that the DPC should indicate the method and procedure it will adopt for objective assessment of the suitability of the candidates and secondly the assessment of the DPC is on the basis of the respective record of service of every officer. It is, therefore, very necessary that the Department places the service record of the applicant fairly and completely. The various contentions raised by the applicant in regard to his Annual Confidential Report for the particular year raises questions which have to be considered by the Department and opinion of the Department would also have to be placed before the DPC so that, that Committee may take due note of the contentions raised by the applicant while evaluating the report for that particular period. Secondly, where a junior officer is to be preferred to a senior officer, it will be necessary to record the reasons for so doing. In this connection, the observations of the Supreme Court in AIR 1974 SC 87

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and Reforms extracted above. In regard to other contention of the applicant viz; that his C.R. for the year ending September 1984 was not properly assessed in accordance with the instructions, the applicant relies upon the Government of India Department of Personnel and Training O.M.No.21011/8/85-Est-A dated 23rd September 1985 which is extracted hereunder:-

" The undersigned is directed to say that a question has been raised as to the course of action to be adopted when in the case of any officer where is no Reporting Officer having the requisite experience of 3 months or more during the period of report, as a result of which no reporting officer is in a position to initiate the report. The matter has been considered in this department and it has been decided that where for a period of report (either calendar year or financial year) there is no reporting officer provided the reviewing officer has been the same for the entire period of the report and he is in a position to fill in the columns to be filled in by the reporting officer. Where a report is thus initiated by the Reviewing Officer, it will have to be reviewed by the officer superior to the Reviewing Officer.

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

The applicant's contention is that his C.R. for this period was written by the Central Command-~~Ex~~-Chief Engineer who ^{has} ~~7~~ also reviewed the C.R. This is contrary to the instructions contained in the Official Memorandum dated 23rd September 1985 referred to above. In the absence of the Reporting Officer, it is no doubt open to the CCC.E. to

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(Union of India vs. M.L.Capor) would be relevant:

" 28. In the context of the effect upon the rights of aggrieved persons, as members of a public service who are entitled to just and reasonable treatment, by reason of protections conferred upon them by Articles 14 and 16 of the Constitution, which are available to them throughout their service, it was incumbent on the Selection Committee to have stated reasons in a manner which would disclose how the record of each officer superseded stood in relation to records of others who were to be preferred, particularly as this is practically the only remaining visible safeguard against possible injustice and arbitrariness in making selections. If that had been done, facts on service records of officers considered by the Selection Committee would have been correlated to the conclusions reached. Reasons are the links between the materials on which certain conclusions are based and the actual conclusions. They disclose how the mind is applied to the subject matter for a decision whether it is purely administrative or quasi-judicial. They should reveal a rational nexus between the facts considered and the conclusions reached. Only in this way can opinions or decisions recorded be shown to be manifestly just and reasonable. We think that it is not enough to say that preference should be given because a certain kind of process was gone through by the Selection Committee."

Observations of the Supreme Court extracted above are directly applicable to the case before us. We, therefore, direct that the DPC should reconsider the case of the applicant afresh in the light of the observations of the Supreme Court in AIR 1974 SC 87. The DPC shall also indicate the procedure and method adopted by it for the objective assessment of the suitability of the candidates and criteria adopted for giving gradings as per the instructions of the Department of Personnel Administration

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report on the work of the applicant. However, the review ought to have been done by an Officer superior to him. Since this procedure has not been followed, it would be incumbent on the respondents to consider the contention of the applicant with reference to the instructions dated 23rd September 1985 and place the proper material/C.R. in accordance with the instructions before the DPC. The DPC shall reconsider the applicant's case within three months from the date of receipt of this order.

4. The application is allowed with the above directions. There will be no order as to costs.

B.N.Jayasimha
(B. N. Jayasimha.)
Vice Chairman

D. Surya Rao
(D. Surya Rao)
Member (J)

Dated this the 5th day of January 1988

mdj *

T. Venkateswaran
Deputy Registrar (J)

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