

...of two groups of officers...
 ...in these cases...
 ...The applicants in these cases...
 ...while holding...
 ...CHENNAI...
 ...A...
 ...1991 of 306, 307 and 308 of 1990...
 ...Date of...
 ...However...
 ...They...
 ...had been allowed to cross the efficiency bar also by the DPC in...
 ...this...
 ...Applicant...
 ...AND...
 ...The Union of India represented by...

1. The Secretary to Government,
 Ministry of Defence,
 New Delhi-11.
 2. The Engineer-in-Chief,
 Army Headquarters,
 DHQ (PD) New Delhi-11.
 3. The Chief Engineer,
 Southern Command,
 Pune.
 4. The Chief Engineer,
 Dry Dock & VZ,
 Visakhapatnam.
 5. Shri K. Ravi Babu
 6. K. G. Devan
 7. M. Thomas John
 8. A. K. Gupta
 9. Bhupendra Rastogi
 Respondents
 (Respondent No. 7 was given up as per the orders of the Registrar dated 19.6.1990 on advocate's letter)

O.A.NO: 307/90.

Mr. R.Y. Deshmukh
 Applicant
 AND
 Union of India represented by:
 1. The Secretary to Government,
 Ministry of Defence,
 New Delhi.
 2. The Engineer-in-Chief,
 Army Headquarters,
 DHQ (PD)
 New Delhi-11.
 3. The Chief Engineer,
 Southern Command,
 Pune.
 4. The Chief Engineer,
 Dry Dock & VZ,
 Visakhapatnam.
 5. Shri K. Ravi Babu
 6. K. G. Devan
 7. M. Thomas John
 8. A. K. Gupta
 9. Bhupendra Rastogi
 Respondents

(Respondents 7 and 9 were given up as the order of the Registrar dated 19.6.90 on advocates letter)

O.A.NO. 308 of 1990.

Mr. I. Rama Rao
 Applicant
 AND
 The Union of India represented by:

1. The Secretary to the Government, Ministry of Defence,
New Delhi.
2. The Engineer-in-Chief,
Army Headquarters,
DHQ (PO),
New Delhi-11.
3. The Chief Engineer,
Southern Command,
Pune.
4. The Chief Engineer(P) FY,
Near Parade Grounds,
S.P. Road,
Secunderabad.
5. Shri V. Omprakash Kohli
6. " Balkrishna Trikha
7. " Kishanlal Suri
8. " Omprakash Satija
9. " V.V. Somsekhar Rao
10. " Vinod kumar.

..... Respondents.

Counsel for the Applicants in all cases. : Shri. K.S.R. Anjaneyulu

Counsel for the Respondents No. 1 to 4 in all cases : Shri. N. Bhaskar Rao, Addl. CGSC.

For Respondents 5 to 9 in OA 306 : Neither they represented in
and 307 and R.5 to 10 in OA 308/90 X person nor were represented
X through counsel.

CORAM:

Hon'ble Shri S.P. Mukherji, Vice Chairman (Ernakulam Bench)

Hon'ble Shri D.K. Agrawal, Member (Judl) (Allahabad Bench)

Hon'ble Shri. A.V. Haridasan, Member (Judl) (Ernakulam Bench)

JUDGMENT OF THE LARGER BENCH DELIVERED BY THE HON'BLE
SHRI D.K. AGRAWAL, MEMBER (JUDICIAL)

The three original applications mentioned above came up for consideration before the Hyderabad Bench of this Tribunal consisting of the Hon'ble Shri. J. Narasimha Murthy, Member (Judl.) and Hon'ble Shri. R. Balasubramanian Member (Admn.). By separate orders, a recommendation was made to the Hon'ble Chairman for constituting a larger Bench to decide the cases. No specific point was formulated for reference in these cases. However, from the perusal of the referral orders it is clear that the main issue is the modality of making a comparative assessment of the performance of two groups of officers for promotion by selection to a higher grade. The applicants in these cases while holding substantively Class-III posts of Surveyors Assistants Gr. I have been officiating in Class-I posts of Assistant Surveyors (Works) for a number of years continuously with some technical breaks of one or two days. They were however officiating as such on an adhoc basis and had been promoted not by selection but on the basis of seniority. They had been allowed to cross the efficiency bar also by the DPC in

the Class-I posts. When the question of regular selection came up against the vacancies of ASW for 1985, 1986 and 1987 their performance as ASW also was taken into account for the years they have been working as ASW on an adhoc basis. Their performance as Surveyor Assistant Gr.I only in Class-III grade was taken into account for the same period. By this process, the grading as "good" of the applicants as Class-I ASWs was valued as lower than the grading as "very good"/"outstanding" of the individual respondents as Class-III SAs and the applicants were superseded by their juniors for regular promotion as ASW. The grievance of the applicants is that there has been clear violation of Article 14 and 16 of the Constitution by comparing their performance as Class-I ASWs with the performance of their juniors in the Class-III grade of SA-I. Persons similarly situated like the applicants before us had moved various Benches of the Tribunal against their supersession and proposed reversion from the posts of ASWs on various grounds. The Bangalore Bench of the Tribunal in their Judgment dated 22.2.91 in OAs 333 and 334 of 1990 dismissed the applications without going into the question of comparative assessment on the basis of performance at two distinctly different levels. This point had neither been raised in the applications nor discussed in the Judgment. Similarly, the Principal Bench of the Tribunal was moved by another two adhoc ASWs similarly placed as the applicants before us, in O.A.s 690 of 1990 and 693 of 1990, on identical grounds taken up before the Bangalore Bench viz., (a) juniors were included in the panel, (b) ineligible persons were considered and, (c) vacancies of 1986 and 1987 were clubbed. These two applications were also dismissed by rejecting the grounds taken up. The applicant who moved the Madras Bench of the Tribunal in O.A.NO.246 of 1990, however, specifically took up the ground that by comparing his performance as ASW, a class-I, post with that of his juniors, as SA, Class-III post, unequals have been treated as equals in violation of Article 14 of the Constitution. The Madras Bench found that there has been such a violation, allowed the application and directed a review DPC to consider the case of the applicant before it after obtaining the 'dual assessment' as prescribed by the Department. The dual assessment contemplated was to grade the performance of the ad-hoc promotees not only in the grade of ASW in which he was actually functioning but simultaneously also in his substantive grade of SA which he was holding in a regular manner though not actually working therein during the period of adhoc officiation. The Hyderabad Bench of the Tribunal in their order of reference observed as follows:

" Assessment is possible only on actual performance irrespective of in the substantive post or in adhoc higher post. Any other assessment cannot be objective. It was for this reason that the latest order of the concerned Department (Department of Personnel) laid stress on assessment in

while in case of their juniors impleaded as respondents who had never been promoted as ASW on an adhoc basis,

the current grade held. The letter dated 16.7.82 of the Chief Engineer, Southern Command is only a domestic innovation and its feasibility is doubtful. It is also seen that the Jabalpur Bench (although in a different case where there might not have been such a letter as the one dated 16.7.82 of the Chief Engineer, Southern Command) did not suggest such a dual assessment as remedy. There were only two persons whose performance was to be compared and the Jabalpur Bench directed that the performance during the period when both held the same grade of posts should be compared.

"Moreover, as in the case before us where the applicant had been holding the higher adhoc charge for well over 5 years at the time of the DPC, assessment of the performance in the higher capacity cannot be termed as harsh. Any handicap due to the burden of the higher charge can only be in the early years and had been overcome as seen from the claim of the applicant that he had been doing well in the higher adhoc charge.

"For the above mentioned reasons, we are unable to agree with the Madras Bench and are inclined to fall in line with the decision of the Delhi and Bangalore Benches.

"The Full Bench of this Tribunal has decided in the case, Vijaya Kumar Srivastava and others Vs. Union of India and others (1986 (4) SLJ (CAT) 649), that where there is difference in views between Benches, a larger Bench is called for. In our opinion, a larger Bench is required to adjudicate the cases before various Benches and accordingly refer the case to the Hon'ble Chairman for constituting a larger Bench. In the meantime, the interim order dated 11.7.90 given by this Bench may continue although it will further prolong the adhoc promotions which have created this avoidable situation".

2. The learned Members of the Hyderabad Bench were more inclined to place reliance on OM NO. F.22011/5/86-Estt.(D) dated 10-3-89 which inter-alia reads as follows:-

"Where an officer is officiating in the next higher grade and has earned CRs in that grade, his CRs in that grade may be considered by the DPC in order to assess his work, conduct and performance, but not extra weightage may be given merely on the ground that he has been officiating in the higher grade."

From the above, it appears to us that the Hyderabad Bench of the Tribunal disagreed with the Madras Bench on the question of 'dual assessment' and also thought that it will not be improper to compare the performance of the applicants as ASW with the performance of others as SA and agreed with the decision of Delhi (Principal) and Bangalore Benches in so far as rejecting the application goes. Since as stated above, neither the Delhi nor the Bangalore Bench considered the feasibility of the 'dual assessment' or the vires of comparing

The 'lis' is therefore clearly not ^{on} comparative seniority but on comparative merit. The applicants have not even indirectly challenged the seniority list of SAs by specifically mentioning names of their seniors who would be junior to them if the seniority list were correctly prepared. They have also not impleaded such SA-I who though placed above them in the seniority ~~list~~ should have been placed below them in that list. Therefore, we find it neither necessary nor proper to adjudicate upon the controversy and relief if any in the mind or arguments on behalf of the applicants about their inter-se seniority in the grade of Survey Asst. Gr.I. We have, therefore, confined ourselves strictly to the pleadings and the reliefs prayed for which concerned only the supersession of the applicants by their juniors to the post of Assistant Surveyor of Works by the review DPC and the regular DPCs in respect of the vacancies for the years 1981 to 1987. We may mention at this stage that the impleadment of the respondents 5 to 9 in OAs 306 and 307 of 1990 and the respondents 5 to 10 in OAs 308 of 1990 further make us believe that the applicants are aggrieved only against them on the ground that although they are junior to them yet they have been selected by the review DPC or DPC for the posts of ASW while the names of the applicants have been omitted to be placed in the select list for the reasons which are violative of Article 14 of the Constitution of India. The main contention of the applicants is that it was not proper for the DPC to compare their assessment in Class-I post, they were holding on an adhoc basis, with the assessment of the others working in Class-III posts and that treating of 'unequals' ^{as equals} amounted to discrimination, and is violative of Art. 14 of the Constitution. Thus, the limited controversy which we are called upon to resolve is as to how an officer working on an adhoc basis in a higher post for a certain number of years relevant for the purpose of regular promotion, should be assessed, especially when he is compared with those holding the lower substantive posts in the feeder cadre and having had no occasion to shoulder the responsibility of the higher post. The principle underlying Art.14 of the Constitution requires that when several persons compete for a post or grade, their merit assessment should be by the same yardstick and of same character otherwise it may result in discrimination and the selection process may be violative of the principles of equality enshrined in Art.14 of the Constitution. We make it clear that the promotions in accordance with the Recruitment Rules for the posts of ASW being

The Department is of seniority against them. The applicant as SA, hence there can be no 'dis' of seniority against them. to be junior to the applicant as SA, hence there can be no 'dis' of seniority against them.

on equal footing the quality of performance of the applicants at higher level of ASW with that of their juniors at lower level. SA, the orders of these two Benches are not at all helpful in resolving the basic divergence between the Madras and the Hyderabad Benches on the modality of comparative assessment of merits between officers working in two distinctly different and hierarchical planes, one (SA) lower and the other (ASW) two levels higher.

The grievance expressed in these three applications is identical. The facts are also almost identical with slight variations in dates. The three applicants were promoted on an adhoc basis from the post of Surveyor Assistant Grade-I to the post of Assistant Surveyor of works on adhoc basis. The applicant namely, I. Rama Rao (applicant in O.A.NO.308/90) was promoted on 18.2.1983. The two other applicants viz. S.S.Sambhus and R.Y.Deshmukh (applicants of O.A.NOs. 306 and 307 of 1990 respectively) were promoted on 11.4.1984. Their grievance is that although they are senior to the respondents 5 to 9 in O.A.NOs. 306 and 307 of 1990 and also senior to the respondents 5 to 10 in O.A.NO.308/90 in the grade of Surveyor Assistant Grade-I, they were wrongfully superseded by them in the selection for the post of Assistant Surveyor of Works by the review D.P.C. held for the vacancies of the years 1981 to 1985, and by the DPC held for the vacancies for the years 1986 and 1987. The relief prayed by them is that the orders of promotions dated 7.3.1990 and 8.3.1990 promoting their juniors on a regular basis are without any valid principles and consequently be held as arbitrary, illegal and irrational and the respondents may be directed to consider the applicants for promotion on regular basis as Assistant Surveyor of Works giving them seniority over and above their juniors with all consequential benefits. In this connection, an attempt was made, in the written and oral arguments to agitate the seniority of the applicants in the grade of Surveyor Assistant on the basis of de-merger of the two cadres viz. Surveyors and Engineers, vide the order of the Government of India, Ministry of Defence No.PC/64287/EIB/346/5/D(W.III) dated 31.3.1978. However, there is neither any pleading nor a specific prayer to enable us to go into the question of inter-se seniority in the grade of the Surveyor Assistant. The individual respondents impleaded have been conceded by the Department as unequivocally stated that these respondents have been selected inspite of their being junior to the applicants because they have been adjudged to be more meritorious than the applicants who have been excluded inspite of their seniority over these respondents.

by selection on merits, adhoc promotion ^{per} use of the applicants made on the basis of seniority alone cannot confer on them any right of regularisation 'de hors' those Rules. They have to be screened by regularly constituted D.P.C. in accordance with law before they can be regularly appointed with prospective or retrospective effect. It is another matter whether after their regularisation, their previous adhoc service will count for seniority or not. Further, it is not the case of the applicants that because they are senior to the individual respondents who have been empanelled, they should also be empanelled. The case of the applicants rests mainly on the erroneous method of comparative assessment of the merits of the applicants vis-a-vis their junior who are only working in Class-III posts while the applicants were working in Class-I posts when their merits were judged on the basis of such performance.

4. Coming back to the facts of the case, the applicant, ~~Mr.~~ Rama Rao in OA 308/90 was promoted on adhoc basis as Assistant Surveyor of Works (ASW) on 18.2.1983 and the other two applicants namely, S.S. Sambhus and R.Y. Deshmukh in OAs 306 and 307 of 1990 were promoted as ASW on 11.4.84. The respondents 5 to 9, OAs 306 and 307 and the respondents 5 to 10 in OA 308 of 1990 have been promoted on regular basis as ASW for the vacancies of the year 1986 on the recommendations of the DPC. Thus, the supersession of the applicants has taken place in respect of the vacancies for the year 1986. The question, therefore, to be considered by us is as to whether they were rightly superseded or did the DPC arbitrarily supersede the applicants as alleged by them. The sole ground for branding the selection as arbitrary is that the applicants and the respondents were not placed on equal footing that is the assessment of the applicants was made on their performance while they were working on the post of ASW while on the other hand the assessment of the respondents was made while they were working on the post of Surveyor Assistant Grade-I. The factual position is that

by selection on merits; adhoc promotion ^{per} use of the applicants made on the basis of seniority alone cannot confer on them any right of regularisation. ^{per} Those rules. They have to be screened by regularly constituted D.P. in accordance with law before they can be regularly appointed with prospective or retrospective effect. It is another matter whether after their regularisation, their previous adhoc service will count for seniority or not. Further, it is not the case of the applicants that because they are senior to the individual respondents who have been empanelled, they should also be empanelled. The case of the applicants rests mainly on the erroneous method of comparative assessment of the merits of the applicants, ^{per} of vis-a-vis their junior who are only working in Class-III posts, while the applicants were working in Class-I posts when their merits were judged on the basis of such performance.

4. Comming back to the facts of the case, the applicant, I. Rama Rao in OA 308/90 was promoted on adhoc basis as Assistant Surveyor of Works (ASW) on 18.2.1983 and the other two applicants namely, S.S. Sambhus and R.Y. Deshmukh in OAs 306 and 307 of 1990 were promoted as ASW on 11.4.84. The respondents 5 to 9, OAs 306 and 307 and the respondents 5 to 10 in OA 308 of 1990 have been promoted on regular basis as ASW for the vacancies of the year 1986 on the recommendations of the DPC. Thus, the supersession of the applicants has taken place in respect of the vacancies for the year 1986. The question, therefore, to be considered by us is as to whether they were rightly superseded or did the DPC arbitrarily supersede the applicants as alleged by them. The sole ground for branding the selection as arbitrary is that the applicants and the respondents were not placed on equal footing that is the assessment of the applicants was made on their performance while they were working on the post of ASW while on the other hand the assessment of the respondents was made while they were working on the post of Surveyor Assistant Grade-I. The factual position is that that

for making selection in respect of the vacancies of the year 1986, the assessment for the preceding five years 1980-81, 1981-82, 1982-83, 1983-84 and 1984-85 was taken into account for comparison of the merits of the respective eligible candidates. Consequently, it would mean that for three years i.e., 1980-81, 1981-82 and 1982-83 the applicant in O.A.No. 308/90 and for four years i.e. 1981-84 the applicants of O.A.Nos. 306 and 307 of 1990, as well as the respondents were assessed on equal footing in respect of their work on the post of Surveyor Assistant Gr.I. Thus, it is only with respect to the years 1983-84 and 1984-85 in the case of applicant of O.A.308/90 and 1984-85 in the case of the other applicants that the assessment while working on the post of Assistant Surveyor of Works on adhoc basis and the assessment of the respondents while working in the feeder grade of Surveyor Assistant Grade-I was taken into account by D.C. As such the anomaly, if any, has arisen because of the mistake on the part of the DPC to consider the comparative merit of the applicants and the respondents in the years 1983-84 and 1984-85 at par while they were working in different grades, the applicants shouldering the responsibility of Class-I posts while the respondents were still working in the Class-III posts ~~while working~~ of Surveyor Assistant Grade-I. Consequently it is alleged that it cannot be said to be a proper and fair comparative assessment for the purpose of selection. Reference has been made to the case of G.N.Disaval Vs. Union of India and others, 1989(1) (CAT) SLJ 430 decided by the Jabalpur Bench of this Tribunal where the comparative gradation assessment of the Assistant Engineers was to be made for promotion to the post of Senior Engineer. However, in the process, no notice was taken of the fact that the Respondent No. 3 therein at the time of comparative assessment was officiating on the post of Senior Engineer. In the circumstances, following the decision rendered in the case of the Union of India, Vs. M.L.Kapoor and others, AIR 1974 SC 87, wherein it was held that the two contesting candidates were not judged equally and therefore consequential discrimination was attracted, the Jabalpur Bench, came to the conclusion that comparative assessment of the performance of the petitioner and the Respondent No.3 therein may be conducted only on the basis of their record as Assistant Engineers for an equivalent number of years ignoring the general rule to consider the period of preceding five years usually adopted for gradation assessment of officers. The Madras Bench of the Tribunal in O.A. 246/90 while dealing with an identical case as these cases

"(b) Adhoc promotees are considered for regular promotion along with their juniors not holding any higher adhoc appointments and without giving any special consideration for their higher adhoc status;

"(c) ACRs of juniors not holding adhoc appointments may have a better write up on account of their long service in the same grade/post. In the case of those holding adhoc appointments, if their ACRs are to be written relating to the adhoc grade only, they may not be getting a fair chance to prove their worth being new to the adhoc higher grade. This will result in a disadvantageous position to those holding adhoc appointments in regard to promotions and order of selection in the panel, based on seniority-cum-merit."

5. Relying on the above cited quotations as well as the principle of law that the comparative assessment of merits of two categories of persons, one placed in SA Grade-I and the other posted as ASW is violative of Article 14 of the Constitution, the Madras Bench remanded the case for constitution of the review DFC directing the competent reporting authority to proceed with the 'dual assessment.'

The Division Bench of the Hyderabad (supra) disagreeing with the opinion of the Division Bench of the Madras Tribunal referred these three cases to Hon'ble Chairman for constitution of Larger Bench. It is in that manner that we are called upon to decide these petitions.

7. The respondents 5 to 9 in OA 306 and 307 of 1990 and respondents 5 to 10 in OA 308 of 1990, despite notice, have not appeared before us. Thus, we have been deprived of the benefit of their address. However, Sd/Shri D.S.Inamdar and V.J.Desai, applicants in two cases before the Bombay Bench having similar grievance as the applicants, of being superseded by the juniors, appeared and addressed us contending that it was unfair to have been superseded despite their satisfactory performance on the post of ASW for number of years. They also brought to our notice that one of them had been even made to work in still higher post i.e. Surveyor of Works on account of his good performance as ASW. It was also ~~xxx~~ contended by them that they were made to cross their Efficiency Bar (EB) in

of Surveyor Assistants and Assistant Surveyor of Works also came to the conclusion that comparison of merits of the candidates on the post of SA G.I and ASW is bad i. law and therefore directed the Department to constitute a review DPC after obtaining from the competent reporting authority the dual assessments as prescribed by the Department. The theory of dual assessment has been inferred on the basis of instructions contained in order No. 30599/P/EIR, dated 16-8-1976 issued by the Chief Engineer, Southern Command, Pune which reads as follows:-

"It will be seen from the letter dated 16-8-76 that the present grade and the adhoc appointment held by the individual are to be shown separately in the ACR forms. As such the performance of the individuals in the present grade and the adhoc appointment should also be reflected in Part-II of the CR separately, under 'General Remarks'. It follows that their fitness for promotion to higher grades, to be shown under part-III, should also be reflected separately.

"Recommendations/remarks about the outstanding work of the individual to be shown in Part-III should be given with reference to both the present appointment and the adhoc appointment separately."

There is yet another letter dated 16.7.1982 from the Chief Engineer, Southern Command to all Zonal Chief Engineers and the following extracts thereof were also quoted in the said judgment of the Madras Bench. These are as follows:-

"2. Instructions were issued under this HQ letter quoted above that assessment/recommendation for promotion in respect of those individuals holding adhoc appointments should be given, both in respect of their regular lower grade and the higher adhoc grade held by them, separately under the General Remarks column by the Reporting/Initiating officers and in Part-III/IV (as the case may be) by the Reviewing Officers. The said procedure is necessary, in view of the following:-

"(a) Adhoc promotions are made strictly on seniority-cum-fitness basis, and not based on seniority-cum-merit as for the regular promotion;

signify lessen talent of the incumbent on the higher post. We feel that para 2.2.1(d) of the Lpt. of Personnel's OM dt.10-3-89 cited earlier needs to be reviewed and modified to the extent it purports to equalise the yardstick of assessment of performance at two different levels.

9. We are however of, the opinion that the modality of "dual assessment" as endorsed by the Division Bench of the Tribunal at Madras is neither practizable nor will it be proper. The reasons are obvious. The principle of dual assessment endorsed by the Madras Bench of the Tribunal cannot be based on an objective assessment of the work actually performed by the candidates. The purpose of writing ACRs is to objectively judge the performance of the candidates on the post they are made to work in the year in question. In the case of those who had already been made to officiate on the post of ASW, the dual assessment of their performance on the post of SA Grade-I when they were actually working as ASW can be based on imagination only. It cannot be an objective assessment. Thus, the very purpose of the assessment is likely to be defeated. Therefore, the officers entrusted with the task of making the assessment are likely to be substantially handicapped and hence misdirected in their assessment, because such assessment could only be a hypothetical assessment. We have carefully given our thought to the letters of the Chief Engineer, Southern Command referred to above, dated 16.8.1976 and 16.7.1982 which envisage the system of dual assessment. We are of the view that such an assessment as suggested is likely to be arbitrary resulting in further discontentment amongst eligible candidates. Besides, such a modality adopted in one command (southern) of the Army, is likely to create problems in an All-India cadre unless it is adopted on an all India basis. The alternative mode expressed by the Jabalpur Bench about taking into account C.R. entries in similar posts for equivalent number of synchronous years was also debated. The facts as they stand are that the adhoc appointments have been made from the year 1982 and onwards. The controversy is about the selections for the vacancies of the years 1985-1986 and 1987. Thus, if we direct that the confidential roll entries of officers under consideration for equivalent number of years be taken into account on similar posts, it would mean that in some cases,

the Class-I grade of ASW on the basis of the recommendation of the DPC like the applicants and that in such circumstances it requires serious thought whether justice has been denied to them or not. However, we do not have before us the applications filed by them before the Bombay Bench. Therefore, we cannot apply our mind to the pleadings contained therein, although we have permitted them to address us on account of the fact that they were similarly placed persons and having identical grievance and particularly in view of the fact that our decision might affect them too.

8. We are fully convinced that comparing the quality of performance of a candidate at the class-III level of S.A. with the quality of performance of another at the class-I level of ASW on equal footing will be comparing the incomparables and will be not only illegal, irrational but also violative of article 14 of the Constitution. To this extent we agree entirely with the Madras Bench of the Tribunal. Since neither the Principal Bench nor the Bangalore Bench of the Tribunal has gone into this basic infirmity of the assessment process, the judgments in those cases which are based on entirely different grounds are of no assistance to us. The Allahabad Bench of the Tribunal in C.A.No. 336/1990 (V.N.Dutta Vs. Union of India & Ors), however, took the view that comparative assessment of performance based solely on the C.R. entries, irrespective of the level on which the performance was discharged is in accordance with law. One of us was a party to that judgment. However, the said judgment is under review and the operation of that judgment has been stayed by the Bench itself. In the instant cases the class-III post of S.A. is two levels below the Class-I post of A.S.W. The enormity of hostile discrimination suffered by the applicants in these cases calls for serious consideration. One of the applicants in the Bombay cases stated that he, an adhoc ASW, wrote the CR of one of his juniors who was working as SA under him, and now that junior would be working as ASW and he has been reverted as SA. Such a situation is an anathema to service jurisprudence and discipline. Just as the same quantity of water will reach a higher level in a tumbler of narrow girth but a lower level in a tumbler of wider girth, and the lower level does not signify a lower quantity of water as compared to the water in the narrow tumbler, similarly 'good' performance in a Class-I post as compared to 'Very Good' performance in a Class-III post does not

10. We may mention here that we are of the opinion that if a person is discharging higher responsibilities satisfactorily and also allowed to cross E.B. in a higher post, it is unjust to ignore that fact as it clearly furnishes evidence of the merits and the suitability of that person to discharge higher duties in comparison to those who have yet to show their performance. We may also refer in this connection to the principle laid down in the Judgment of the Supreme Court in the case of Dineshkumar Vs. Motilal Nehru Medical College, 1985(3) SCC 22 (para 4). Their Lordships of Supreme Court laid down as follows:-

"It would be wholly unjust to grant the admissions to students by assessing their relative merits with reference to the marks obtained by them not at the same qualifying examination where standard of judging would be reasonably uniform but at different qualifying examinations held by different State Governments or Universities where the standard of judging would necessarily vary and not be the same. That would indeed be blatantly violative of the concept of equality enshrined in Article 14 of the Constitution."

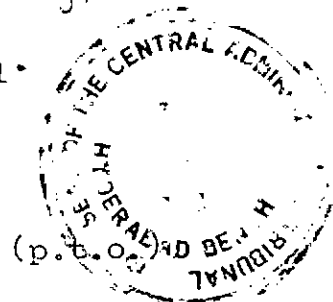
11. In the result, we allow these applications in part and direct that a Review DPC duly constituted should consider the case of the applicants for promotion to the post of ASW for the vacancies occurring in the years when they were eligible and entitled to be considered for promotion in the light of the observations made above in the body of the judgment. If on the basis of the assessment, the applicants are found entitled regular promotion, they should be so promoted even by creation of supernumerary posts and granted all consequential benefits. Action on the above lines should be completed within a period of four months from the date of communication of this order. We make it clear that in the meantime, the applicants shall not be disturbed from their position. The parties are left to bear their own costs.

CERTIFIED TO BE TRUE COPY

Dated 11/1/81

Court Officer

Central Administrative Tribunal
Hyderabad Bench.



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the performance of the officers on the post of feeder cadre i.e., SA Grade-I should be ignored for complete five years preceding the year of vacancy for which they are being considered. For example, if an officer is being considered to a vacancy for the year 1986, the gradation assessment of the officers working on adhoc basis on the post of ASW may have to be ignored for four years preceding the year of vacancy. It may give rise to a grievance to an officer of the feeder cadre i.e., SA Grade-I whose performance might have been found very good or 'outstanding' during the said period of four years, but ignored under the scheme. Having taken up the individual case of the applicants and the respondents impleaded in these three applications, we have come to a conclusion that their comparative assessment can be made on the basis of actual performance in the posts of SA Grade-I for three years i.e., 1980-81, 1981-82 and 1982-83 in the case of the applicant in O.A.308/90 and for four years i.e., 1980-81 to 1983-84 in the case of the other applicants as mentioned above. The controversy thus narrows down with regard to the comparative assessment for the years 1983-84 and 1984-85 (in the case of the applicant in OA. 308/90) and 1984-85 (in the case of the other applicants) when they were working not as SA but as ASW. In this connection, a definite statement was made at the Bar on behalf of the applicants that the applicants were found fit to cross the EB on the post of ASW and that some of them were also made to work as SW (a post still higher to the post of ASW). Thus, there remains no doubt in our mind that the performance of the applicants on the post of Assistant Survey of Works was found satisfactory and upto the mark. The only reasonable and just suggestion that in our opinion can be made to meet the ends of justice in the circumstances of the case is that for the period during which the applicants shouldered the higher responsibilities of the higher Class-I posts of ASW/SW, their gradation as SA should be treated as one level higher than the grading awarded to them as ASW as per the ACRs for that period. That is, if the ACR as ASW reflects 'good', it should be taken as 'very good', and if 'Very good', then it should be taken as 'outstanding'. In this manner they are placed on equal footing for the purpose of assessment of comparative ~~merits~~ merits. With this modification in the grading, the comparative assessment of the merits of the candidates may be made by the selection committee and they may be accordingly considered for empanelment.

To

1. The Secretary to Govt. Union of India, Ministry of Defence, New Delhi.
2. The Engineer-in-Chief, Army Headquarters, DHQ (PD) New Delhi.
3. The Chief Engineer, Southern Commandant, Pune.
4. The Chief Engineer, Dry Dock & VZ, Visakhapatnam.
5. Three copies to Mr. K.S.R. Anjaneyulu, Advocate, 1-1-365/A, Jawaharnagar, Bakaram, Hyderabad
6. One copy to Shri N. Bhaskar Rao, Addl. CCSC, CAT, Hyd.
7. One copy to Shri D.S. Inamdar, C/o Chief Engineer Southern Command, Manekji Mehta Road, Pune - 411 001.
8. One copy to Mr. G.J. Desai, C/o Supdt. Technical Examiner Southern Command, 1, Finance Road, Pune-411 001
(Applicants in O.A. 535/90 & O.A. 536/90 before New Bombay Bench of Central Administrative Tribunal)
9. Copy to The Personal Secretary to the Hon'ble Vice-Chairman, Central Administrative Tribunal, Ernakulam Bench, Ernakulam. Kandamukulathil Towers, 5th & 6th Floors, Opp. Maharaja College M.G. Road, Ernakulam, Cochin - 682001.
10. One copy to Shri D.K. Agrawal, Member (Judl) Central Administrative Tribunal, 23-A, Thornhill Road, Allahabad Bench, Allahabad - 211 001.
11. One copy to Shri A.V. Haridasan, Member (judl) Central Administrative Tribunal, Ernakulam Bench, Ernakulam, Kandamukulathil Towers, 5th & 6th Floors Opp. Maharaja College M.G. Road, Ernakulam, Cochin - 682 001.
12. Copy to All Benches and Reports as per the standard list of CAT CAT. Hyd-Bench.
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