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7
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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SECTION OFFICER (Judl.)

08/02/17

FORM NO. 4
 (SEE RULE 42)
 CENTRAL ADMINISTRATIVE TRIBUNAL
 GUWAHATI BENCH

ORDER SHEET

Original Application No. 34/2005

Misc. Petition No. _____

Contempt Petition No. _____

Review Application No. _____

Applicants: MR. R. D. Dasgupta

Respondents Govt. of Assam

Advocates for the Applicant Mr. M. Chanda & S. Naik

Advocates of the Respondents C.G.S.C.

Notes of the Registry Date Order of the Tribunal
 14.02.2005 Present : The Hon'ble Mr. M.K.Gupta
 Judicial Member.

This application is in form
 is filed/C. F. for Rs. 50/-
 deposited vide IPO/BD
 No. 209/116008

Dated 4.2.05

Normal
 11/2/05
 1/e Dy. Registrar

mb

16.2.05.

None appears for the applica
 Adjourned to 16.2.2005.

SPW
 Member (J)

Heard learned counsel for the
 applicant. It is contended that
 the Respondent No.5 has been
 selected and posted to Bhutan,
 Investigation Division, without
 adopting any reasonable norms,
 criteria, method of selection and
 also without ^{following} ~~outlining~~ the proce-
 dure. Hence, application is
 admitted. The Respondents are
 directed to file reply within 6
 weeks. List on 4.4.05.

Paras
 Member (A)

SPW
 Member (J)

Notice & order sent
 to D/Section for
 issuing to resp.
 Nos. 1 to 4 by regd.
 A/D post and resp. No. 5
 received by Hand.
 1/3/05.

lm

O.A. 34/05

Notice duly

Post the matter on 27.4.05.

Served on
resp. No-1,5,3.

lm

Vice-Chairman

✓ 22/3.

2 11.4.05.

Post the matter on 27.4.05 alongwith
M.P. No. 82 of 2005.

✓ 14/05-

Preliminary objection
has been filed by the
respondents No. 1-3

lm

K. V. D. Member

Vice-Chairman

✓ 11.4.05

27.4.2005

List on 3 4.5.2005 for hearing.

Vice-Chairman

WPS filed by
Report. No. 5

4.5.05.

Judgment delivered in open Court.

Kept in separate sheets. Application
is dismissed on withdrawal.

K. V. D. Member

Vice-Chairman

26-4-05

lm

✓ Respondent filed
by the applicant.

✓ Reply filed against
Preliminary objection
filed by the respondents.

✓

Case is ready for hearing.

Received

Arshad Ali
11/5/05
Adv. C.G.S.C.

For Regd
no. 805 → Recd
17/5/05

17.5.05.
Copy of the budget has
been sent to the office for issue
to the public to inspect by P.O.D.

CENTRAL ADMINISTRATIVE TRIBUNAL :: GUWAHATI BENCH.

O.A. No. 34 of 2005.

DATE OF DECISION: 04.05.2005

Shri R.D.Deshpande

APPLICANT(S)

Mr. M.Chanda

ADVOCATE FOR THE
APPLICANT(S)

- VERSUS -

Union of India & Ors.

RESPONDENT(S)

Ms. U. Das, Addl.C.G.S.C.

ADVOCATE FOR THE
RESPONDENT(S)

THE HON'BLE MR. JUSTICE G. SIVARAJAN, VICE CHAIRMAN.

THE HON'BLE MR. K.V.PRAHLADAN, ADMINISTRATIVE MEMBER.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether the judgment is to be circulated to the other Benches?

Judgment delivered by Hon'ble Vice-Chairman.

NO
d. Jan. 8

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CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH

Original Application No. 34 of 2005.

Date of Order: This, the 4th Day of May, 2005.

HON'BLE MR.JUSTICE G.SIVARAJAN, VICE-CHAIRMAN.

HON'BLE MR.K.V PRAHLADAN, ADMINISTRATIVE MEMBER

Shri R.D Deshpande,
S/O Late D.M. Deshpande.
Executive Engineer,
North Eastern Investigation Division-II
Central Water Commission.
Aizwal, Mizoram-796017.

Applicant

By Advocate Mr.M.Chanda, Mr.S.Nath.

-Versus-

1. The Union of India,
Represented by the Secretary to the
Government of India,
Ministry of Water Resources,
New Delhi-110001.
2. The Chairman,
Central Water Commission,
New Delhi-110001
3. Member (R.M)
Chairman, Selection Committee,
Central Water Commission,
New Delhi-110001.
- 4.. Shri M.K. Sharma,
Member (R.M)
Chairman, Selection Committee,
Central Water Commission,
New Delhi-110001.
- 5.. Shri D.K. Tiwari
Executive Engineer
C.W.C., Itanagar.

Respondents

By Advocate Ms.U.Das, Addl. C.G.S.C.

ORDER (ORAL)SIVARAJAN J(VC)

The applicant is an Executive Engineer now working at Aizwal, Mizoram. He was transferred and posted to Aizwal on 7.4.2004, in public interest. CWC, vide letter dated 10.11.2004 invited willingness for posting in Bhutan Investigation Division from among the Grade of Deputy Director/Executive Engineer having at least 2 years experience in Investigation work. Certain eligibility conditions were also mentioned in the aforesaid circular dated 10.11.04. The applicant accordingly submitted his willingness for being posted in Bhutan Investigation Division. According to the applicant though he satisfied all the required conditions, his case was not considered by the Selection Committee. He is aggrieved by the posting given to the 5th Respondent in the notified vacancy as per order dated 4.2.2005(Annexure R 1) produced alongwith the preliminary objection filed on behalf of respondents 1 to 3.

2. The matter came up for admission on 16.2.05 and the application was admitted. A preliminary objection was filed by respondents 1 to 3. The 5th respondent has filed his written statement. The applicant filed rejoinder also. The relevant records are also produced by the respondent No.1, 2 & 3.

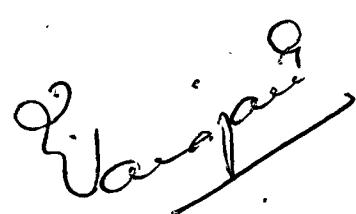
3. Today counsel for all the parties were heard at length. At the end of the hearing, Mr.M.Chanda, learned counsel for the applicant, under instructions from his client who was present submits that applicant wants to withdraw the Original Application with liberty to pursue the Departmental Proceedings. Counsel submitted that the applicant has submitted the representation against the charge sheet and the disciplinary action initiated against him. Mr.M.Chanda further submits that, from the preliminary objection filed by the respondents it would appear that the case of the applicant was not considered for selection for the

posting at Bhutan mainly for the reason that a departmental proceeding is pending against the applicant.

4. Ms.U.Das learned Addl. C.G.S.C for respondent No.1, 2 & 3 submitted that the applicant is free to make any representation and to pursue the matter with the authority. Mr.B.C.Pathak, learned advocate for Respondent No.5 submits that having come to know the reason for not selecting the applicant for posting at Bhutan which is justifiable in law there is no question of considering the issue regarding the posting at Bhutan again by the authorities. Since the applicant wanted to withdraw the application with liberty to pursue the departmental proceedings before the authorities concerned we do not propose to make any observations either way in the matter. However, if any representation filed by the applicant is pending or if any representation is filed the same will be disposed of with a reasoned order in accordance with law. The disciplinary action, if any, pending against the applicant based on the memorandum of charges will has to be completed.

5. In the circumstances the application is dismissed as withdrawn with liberty to the applicant to pursue the disciplinary proceedings. Needless to say representation if any pending or filed by the applicant will have to be disposed of on its merits and in accordance with law at the earliest.


 (K.V.PRAHLADAN)
 ADMINISTRATIVE MEMBER


 (G.SIVARAJAN)
 VICE CHAIRMAN

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Filed by the applicant
Bengali Sub-Division
Arunachal
115705

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

In the matter of:

O.A. No. 34/2005

Shri R.D. Deshpande

-Vs-

Union of India & Ors.

-AND-

In the matter of:

Additional rejoinder submitted by the applicant in reply to the written statement submitted by the Respondent.

The applicant above named most humbly and respectfully begs to state as follows:

1. That the disciplinary proceeding which is initiated only in the month of February, 2004 with a malafide intention to block the service prospect of the applicant, in this connection it may be stated that incident and allegation of withdrawal of double salary happened way back in the month of April, 2000 and when the applicant came to learn about the credit of salary for the month of April, 2000 by the Head Quarter Office, Delhi in his savings account in SBI, R.K. Puram, New Delhi then he has written a letter to the Section Officer, Accounts III, CWC, New Delhi, disclosing the factual position, and also seeking advice for repayment of excess salary for the month of April, 2000 voluntarily from the part of the applicant without even receipt of any show cause notice from the department. The said letter dated 12.02.2001 written by the applicant addressed to Section Officer,

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CWC, New Delhi. However the applicant received the office memorandum No. 1.15/200-CM & V (Vol. IV)/757 dated 12.11.2001 from the Secretary, CWC, Vigilance Officer, whereby it is instructed to deposit an amount of Rs. 12,827/- along with a sum of Rs. 1043/- towards interest calculated upto 15.11.2001 by way of demand draft in favour of DDO-I, CWC, R.K. Puram, New Delhi under intimation to this office. It is also written in the office memorandum pending any other action in this matter. The applicant accordingly deposited the said amount on 22.11.2001 amounting to Rs. 13,870/- by a Bank Draft and accordingly the matter settled itself in the month of November 2001 itself.

A Copy of the representation dated 12.02.2001 and O.M dated 12.11.2001 are enclosed as Annexure- D and E respectively.

2. That it is stated that when the matter of alleged excess drawal occurred due to fault of the HQ Office, New Delhi even after issuance of LPC, has been settled voluntarily by the applicant way back in the month of November, 2001 that too with penal interest, therefore there cannot be any justifiable reason to initiate a minor proceeding under Rule 16 of CCA(CCS) Rules, 1965 in the month of February, 2004 i.e. after a lapse of about 2 and ½ years and as such the said action of the respondents smacks malafide. It is pertinent to mention here that even after submission of the reply of the memorandum dated 13.02.2004 was submitted way back on 12.03.2004, the respondents are silent thereafter with the matter without taking any further action but the minor proceeding for charges kept active to utilize the same as an instrument against the applicant with a malafide intention to deny the case of the applicant for consideration in the matter of posting, at Bhutan Investigation Division and the charge sheet appears to have been initiated on a flimsy ground just with the intention to deny his claim for consideration of

10 3

posting at Bhutan Investigation Division after a lapse of 2 and ½ years. It is submitted that due to non consideration in the selection for posting at Bhutan Investigation Division fundamental right of the applicant is violated, therefore this Hon'ble Court be pleased to direct the respondent to consider the case of the applicant in the matter of posting by holding a review selection without taking into consideration the Memorandum of charge sheet dated 13.02.2004.

That your applicant further begs to say that the respondents in their reply filed in M.P No. 82/2005 furnished a copy of the O.M dated 06.09.1968, wherein it is stated that the case of Govt. Servant who is under suspension or against whom departmental proceeding is pending his application should not be forwarded but in the instant case the case of the applicant has been forwarded to the selection committee but the selection committee deliberately kept the applicant out of consideration and thereby exceeded its jurisdiction. The circular which is enclosed in the reply in the circular dated 06.09.1968, the Hon'ble Court be pleased to direct the respondents to produce the latest circular if any and also be pleased to direct the respondents to produce a Original circular dated 6.9.1968 for perusal of the Hon'ble Tribunal.

It is categorically submitted that the Circular dated 06.09.1968 is not relevant in the instant case and it has no application because, it is neither a foreign assignment nor a case of deputation but is a posting which involves selection in the same cadre.

In the up to dated Vigilance manual from CVC Website, 2005, wherein it is stated that authority can carry a disciplinary proceeding in the event of transfer of an officer from one authority to another authority.

It is categorically submitted in the memorandum of charge sheet that the violation of provision of Rule 3(1)(i) and Rule 3(1)(iii) of CCS (Conduct) Rules, 1964 has been alleged but on a mere perusal of the statement of misconduct it would be evident that there is no such violation of the aforesaid Rules on the part of the applicant.

In the circumstances stated above the original application deserves to be allowed with cost, by setting aside the impugned order of posting dated 04.02.2005.

A copy of the impugned order dated 04.02.05 is enclosed hereto and marked as Annexure-F.

✓ 5

VERIFICATION

I, Shri Ravindra Dhondaji Deshpande S/o Late Dhondaji Deshpande, aged about 37 years, presently working as Executive Engineer, North Eastern Investigation Division-II, CWC, Aizwal, Mizoram, do hereby verify that the statements made in Paragraph 1 to 2 of the additional rejoinder are true to my knowledge and the rest are my humble submission before this Hon'ble Tribunal and I have not suppressed any material fact.

And I sign this verification on this the 25 day of May, 2005.


R D Deshpande

GOVERNMENT OF INDIA
 CENTRAL WATER COMMISSION
 NORTH EASTERN INVESTIGATION DIVN.II
 JALSHAKTIPURAM, ZEMABAWK
 AIZAWL - 796017, (MIZORAM)

No:NEID-II/PF-149/2001/ 46/

Dated, the 12 th Feb. 2001

To :

The Section Officer (Accounts-III),
 Central Water Commission,
 Room No.705 (S),
 Sewa Bhawan, R.K. Puram,
 New Delhi - 66.

Sub : Excess salary payment for the month of April 2000 in respect of Shri R.D. Deshpande, Ex.Engineer - reg.

Sir,

As already discussed on telephone, it is to inform that, consequent upon my transfer from RMCD, CWC, New Delhi to NEID-II, CWC, Aizawl vide O/O No.A-22012/1/2000/Estd.II dated 9th Feb. 2000, I was relieved on 03.04.2000 vide O/O No.1/6/2000/RMCD/1470-84 dt.31.3.2000. I assumed the charge of Executive Engineer, NEID-II, CWC, Aizawl on 07.04.2000 (AN). Subsequently LPC was issued by Account-III (copy enclosed); indicating therein "paid upto 31.3.2000". Further, as obvious, the payment of the month of April 2000 was drawn at Aizawl.

However, as I learnt recently from my previous office i.e. RMCD, the salary for the month of April 2000 was drawn in CWC, New Delhi and paid vide cheque No. 279898 dated 26.04.2000 for Rs 12,827/- (Rupees twelve thousand eight hundred & twenty seven) only, may be by oversight and the same was deposited in my SBI, R.K.Puram, Bank Account. Moreover I did not visit New Delhi after joining at Aizawl. Thus salary of April 2000 amounting to Rs 12,827/- (Rupees twelve thousand eight hundred & twenty seven) only drawn at CWC New Delhi was excess along with recoveries / deduction made therein.

Therefore, it is requested that I may kindly be advised, whether I can repay the above excess salary payment of April 2000 of Rs 12,827/- by Demand Draft in favour of Pay & Accounts Officer or by recovery / deduction in three instalment from regular salary at Aizawl along with schedule to be adjusted by Pay & Accounts Office, CWC, New Delhi. It may also be advised how the recoveries / deductions in April 2000 salary payment made at CWC New Delhi could be regularised. The copy of pay slip for March 2000 issued by AC-III is enclosed for ready reference.

Yours faithfully


 (R.D. Deshpande)
 Executive Engineer

Encl : As above



Annexure - F

CONFIDENTIAL

No.1/15.2000-CM&V(Vol.IV) /257-

Government of India
Central Water Commission



Room No.329, Sewa Bhawan,
R.K. Puram, New Delhi-06.
Dated: 12.11.2001

OFFICE MEMORANDUM

Pending any other action in the matter, Shri R.D.Deshpande, Executive Engineer, CWC, Aizawl with reference to his letter dated 5.7.2001, is hereby directed to deposit a sum of Rs. 12827/- along with a sum of Rs. 1043.00 towards interest (calculated upto 15.11.01) by way of Demand Draft in favour of DDO-I, CWC, R.K.Puram, N.Delhi under intimation to this office.

met aqeeq

(M.E.HAQEEQ)
SECRETARY, CWC &
VIGILANCE OFFICER

12.11.2001

✓ Shri R.D.Deshpande,
Executive Engineer,
NEID, CWC,
Aizawl.

*True copy
and correct*

(15)
-8-~~CONFIDENTIAL~~
Annexure-F

No.A-22012/2/2004 E.II
 Government of India
 Ministry of Water Resources
 Central Water Commission

New Delhi, the 4th February, 2005

OFFICE ORDER

Shri D.K. Tiwary, Executive Engineer, North Eastern Investigation Division-III, Central Water Commission, Itanagar is hereby transferred and posted to Bhutan Investigation Division, Central Water Commission, Phuntsholing (Bhutan), with immediate effect in public interest.

(J.S.S. SASTRY)
 UNDER SECRETARY
 TEL. No.26107770

Copy to:

1. PPS to Chairman, CWC, New Delhi.
2. PPS to Member(D&R)/PPS to Member(RM)/PPS to Member(WP&P), CWC, New Delhi
3. The Chief Engineer (G&BBU), CWC, Shillong
4. The Chief Engineer (TDO), CWC, Siliguri
5. The Superintending Engineer (Coord.), office of Chief Engineer, (TBO) CWC, Siliguri
6. Superintending Engineer (North Eastern Investigation Circle) Central Water Commission, Jamir Mansion, Nongshilliang, Shillong-793014.
7. Pay and Accounts Officer, CWC, New Delhi
8. Director, (D&R Coord.)/(RM Coord.)/(WP&P Coord.), CWC, New Delhi
9. Under Secretary, (CM&V)/(O&M), CWC, New Delhi
10. Shri D.K. Tiwary, Executive Engineer, North Eastern Investigation Division-III, Central Water Commission, P.O. Box-144, Chimpoo, Itanagar-7911111 (Arunachal Pradesh)
11. Personal file of Shri D.K. Tiwary, EE

*True copy
for [unclear]*

N.R.A-22012/2/2005 P.II
 Government of India
 Ministry of Water Resources
 Central Water Commission

New Delhi, the 4th February, 2005

OFFICE ORDER

Shri D.K. Tiwary, Executive Engineer, North Eastern Investigation Division-III, Central Water Commission, Itanagar is hereby transferred and posted to Bhutan Investigation Division, Central Water Commission, Phuentsholing (Bhutan), with immediate effect in public interest.

(J.R.S. RAJASTHAN)
 UNION SECRETARY
 TEL No 28107770

Copy to:

1. PPS to Chairman, CWC, New Delhi.
2. PPS to Member(D&R)/PPS to Member(RM)/PPS to Member(WP&P), CWC, New Delhi.
3. The Chief Engineer (D&R), CWC, Shillong.
4. The Chief Engineer (TDO), CWC, Siliguri.
5. The Superintending Engineer (CWC), Office of Chief Engineer, (TDO) DWN, Itanagar.
6. Superintending Engineer (North Eastern Investigation Circle) Central Water Commission, Itanagar, Nongshilong, Shillong-783014.
7. Pay and Accounts Officer, CWC, New Delhi.
8. Director, HR-Board (P.M. Committee) CWC, CWC, New Delhi.
9. Under Secretary (CWA/WRD), CWC, New Delhi.
10. Shri D.K. Tiwary, Executive Engineer, North Eastern Investigation Division-III, Central Water Commission, P.O. Box-144, Chimpoo, Itanagar-781111 (Arunachal Pradesh).
11. Personal file of Shri D.K. Tiwary, EE.

11 FEB 2005

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

O.A. No. 34 /2005

Shri Ravindra Dhondaji Deshpande

-Vs-

Union of India & Ors.

LIST OF DATES AND SYNOPSIS OF THE APPLICATION

24.11.1993- Applicant was initially appointed as Assistant Director/Assistant Engineer in the department of Central Water Commission.

17.11.1998- Applicant was promoted as Deputy Director/Executive Engineer on adhoc subsequently regularised.

07.04.2000- Applicant was posted as Executive Engineer in the North Eastern Investigation Division II, C.W.C, Aizwal, Mizoram, where he is working till date.

10.11.2004- Govt. of India, Central Water Commission invited application from the willing officers working in the grade of Deputy Director/Executive Engineer, having experience in the investigation work of atleast 2 years and desirous of being considered for posting at Bhutan Investigation Division, Phuntsholing.

(Annexure-1)

Applicant in response to the said circular applied for appointment/posting at Bhutan Investigation Division as Executive Engineer since he has maximum experience in the field of investigation work and having a very outstanding service record in the investigation work.

R. D. Deshpande

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17.01.2005- Selection for appointment/posting of Executive Engineer at Bhutan Investigation Division was held in the Headquarter office, New Delhi and the said selection committee was headed by Respondent No. 3 and acted malafide without adopting any reasonable procedure/norms, criteria or guideline for proper assessment of suitability of the candidates and arbitrarily selected and recommended the name of Respondent No. 5 for the post of Executive Engineer in the Bhutan Investigation Division.

04.02.2005- Respondents on the basis of unfair recommendation of the selection committee have issued impugned order of appointment/posting of Respondent No. 5 to the post of Executive Engineer at Bhutan Investigation Division. Applicant being highly aggrieved against the arbitrary recommendation of the selection committee that too by adopting a unfair procedure in the matter of assessment of suitability of the officers approaching this Hon'ble Tribunal for setting aside and quashing of the impugned order of appointment/posting dated 04.02.2005 issued in favour of Respondent No. 5.

Hence this Original Application before this Hon'ble Tribunal.

P R A Y E R S

Relief(s) sought for:

Under the facts and circumstances stated above, the applicant humbly prays that Your Lordships be pleased to admit this application, call for the records of the case and issue notice to the respondents to show cause as to why the relief(s) sought for in this application shall not be granted and on perusal of the records and after hearing the parties on the cause or causes that may be shown, be pleased to grant the following relief(s):

1. That the Hon'ble Tribunal be pleased to set aside and quash the selection proceeding conducted pursuant to the circular dated 10.11.2004, the

R.D.Deshpande

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recommendation of the said selection committee and the impugned order of appointment/posting bearing letter No. A-22012/2/2004-Estt. II/751 dated 04.02.2005.

2. That the Hon'ble Tribunal be pleased to declare that the selection proceeding which is held pursuant to the circular dated 10.11.2004 for selection of the post of Executive Engineer in the Bhutan Investigation Division is illegal and unfair and the same is void.
3. That the Hon'ble Tribunal be pleased to direct the Respondents to appoint the applicant to the post of Executive Engineer in the Bhutan Investigation Division by holding a review selection.
4. Costs of the application.
5. Any other relief(s) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper.

Interim order prayed for.

During pendency of this application, the applicant prays for the following interim relief: -

1. That the Hon'ble Tribunal be pleased to stay the operation of the impugned order of posting dated 04.02.2005 issued in favour of the Respondent No. 5, appointing him to the post of Executive Engineer in the Bhutan Investigation Division till disposal of this Original Application and further be pleased to direct the Respondents to restrain the Respondent No. 5 in joining as Executive Engineer at Bhutan Investigation Division at Phuntsholing.

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filed by the applicant
through Subrata Nalini
Advocate

11/02/05

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH: GUWAHATI

(An Application under Section 19 of the Administrative Tribunals Act, 1985)

Title of the case : O. A. No 34 /2005

Shri R.D Deshpande. : Applicant

- Versus -

Union of India & Others: : Respondents.

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Filed by

Subrata Nalini
Advocate.

Date 11.02.05

R.D. Deshpande

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

(An Application under Section 19 of the Administrative Tribunals Act, 1985)

O. A. No. 34 /2005

BETWEEN

Shri R.D. Deshpande,
S/O- Late D.M Deshpande.
Executive Engineer,
North Eastern Investigation Division-II,
Central Water Commission,
Aizwal, Mizoram- 796017.

...Applicant

-AND-

1. The Union of India,
Represented by the Secretary to the
Government of India,
Ministry of Water Resources,
New Delhi- 110001.
2. The Chairman,
Central Water Commission,
New Delhi-110001.
3. Member (RM),
Chairman, Selection Committee,
Central Water Commission,
New Delhi-110001.
4. Shri M.K.Sharma,
Member (R.M)
Chairman, selection Committee,
Central water Commission,

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New Delhi-110001

5. Shri D.K. Tiwari,
Executive Engineer,
CWC, Itanagar.

... Respondents.

DETAILS OF THE APPLICATION

1. Particulars of order(s) against which this application is made.

This application is made challenging the validity and legality of the selection proceeding held on 17.01.2005 pursuant to the advertisement/circular dated 10.11.2004 for filling up the post of Executive Engineer, Bhutan Investigation Division, Phuntsholing of department of Central water Commission and also against the order of appointment/posting of the Respondent No. 5 vide impugned selection proceeding dated 17.01.2005 in a most arbitrary and unfair manner without following any norms/rules or criteria and also without following any reasonable guidelines in the matter of selection by the selection committee, rather selection committee is being influenced due to political pressure and on extraneous consideration. The applicant also prays for a direction for his appointment/posting at Bhutan Investigation Division, Phuntsholing by holding a review DPC.

2. Jurisdiction of the Tribunal.

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The applicant declares that the subject matter of this application is well within the jurisdiction of this Hon'ble Tribunal.

3. Limitation.

The applicant further declares that this application is filed within the period of limitation prescribed under section-21 of the Administrative Tribunals Act, 1985.

4. Facts of the Case.

4.1 That the applicant is a citizen of India and belongs to Scheduled caste Community and as such he is entitled to all the rights, protections and privileges as guaranteed under the Constitution of India.

4.2 That the applicant is presently working as Executive Engineer, in the North Eastern Investigation Division II Central Water Commission (in short C.W.C), Aizwal, Mizoram. The applicant was initially appointed as Assistant Director/Assistant Executive Engineer on 24.11.1993 in the Department of Central Water Commission, Nagpur, He was promoted on 17.11.1998 as Deputy Director/ Executive Engineer on adhoc basis and posted in the Headquarter office, CWC, New Delhi, however subsequently regularized in the said post of Executive Engineer. The promotion of the applicant was effected while working in the CWC, Vadodara. Thereafter applicant was posted at Aizwal, in the State of Mizoram in North Eastern Region in the capacity of Executive Engineer in the North Eastern Investigation Division II, C.W.C, Aizwal, Mizoram on 07.04.2000 and continuously working in the aforesaid Investigation Division for more than 5 years and thereby gained sufficient experience in the Investigation work in the

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C.W.C department. The performance of the applicant both in the headquarter office as well as in the investigation work in the field office is all along outstanding.

4.3 That the Govt. of India, Central Water Commission invited applications from the willing officers working in the grade of Deputy Director/ Executive Engineer, having experience in the investigation work of atleast 2 years and desirous of being considered for posting at Bhutan Investigation Division, Phuntsholing, willing candidates have been asked to submit their biodata as per prescribed proforma given in the circular bearing No. A-22012/2/2004-Estt. II dated 10.11.2004, it is categorically stated in the aforesaid circular that the officers who have applied for such posting will not be allowed to withdraw their candidature at a later stage if selected. It appears from the last line of the circular that the filling up of the post of Executive Engineer at Bhutan Investigation Division involves element of selection.

A copy of the circular dated 10.11.2004 is enclosed herewith for perusal of Hon'ble Tribunal and marked as Annexure-1.

4.4 That it is stated that a large number of officers not less than 20 have applied for posting at Bhutan Investigation Division including the present applicant. It is pertinent to mention here that the applicant have already acquired more than 5 years experience in the investigation work after being posted at North Eastern Investigation Division II, Aizwal. It is ought to be mentioned here that applicant has acquired maximum experience in the investigation work as executive Engineer, among the candidates who have applied for posting at Bhutan Investigation Division, apart from that, applicant has got outstanding service

record during short service career in the department, therefore the applicant has a legitimate expectation that his case ought have been considered in a fair manner along with others in view of the fact that he has long experience as Executive Engineer in the investigation work as such he is entitled to be appointed/selected on priority basis for the post of Executive Engineer in the Bhutan Investigation Division, than the respondent No.5.

4.5 That your applicant came to learn from a reliable source that a 4 Member selection committee has been constituted by the Chairman, CWC appointing Shri M.K. Sharma, Member, (River Management) of the department of CWC as Chairman of the selection committee and other officers, of CWC have been appointed as members of the selection committee for the purpose of selection of the post of Executive Engineer under Bhutan Investigation Division, Phuntsholing. The aforesaid selection held on 17.01.2005 in the Headquarter office, New Delhi. It is pertinent to mention here that the aforesaid selection is made on the basis of experience in the investigation work as well as on the basis of performance based on the confidential reports of preceding 5 years, however seniority has not been taken into consideration for the purpose of selection by the selection committee as learnt by the applicant.

4.6 That it is stated that the applicant also came to learn that one Shri D.K. Tiwari, Executive Engineer, CWC, Itanagar has been selected by the selection committee on the basis of the selection held on 17.01.2005 for posting at Bhutan Investigation Division, Phuntsholing. It is relevant to mention here that Shri D.K. Tiwari, Respondent No.5 has got only 2 and 1/2 years experience in the relevant field of investigation work, whereas applicant has got about 5 years experience in

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the investigation work, moreover he has got outstanding service record. It is also relevant to mention here that the applicant is still working in the Investigation Division at Aizawl, it is further learnt by the applicant that the selection for Bhutan posting for the post of Executive Engineer has been made on the basis of political pressure as well as on the basis of extraneous consideration by the said selection committee without adopting any reasonable norms, criteria, method of selection and also without outlining the procedure for objective assessment of the suitability of the candidate and also without assessment of grading of the officers in the manner it is required under the law. But the selection committee has adopted pick and choose method at their whims and accordingly the selection committee has recommended the name of Shri D.K. Tiwari, Executive Engineer, Itanagar for the post of Bhutan Investigation Division. The selection committee deliberately did not make proper assessment of grading of the officers, who are candidates for the post of Executive Engineer in the Bhutan Investigation Division. The selection committee also not acted fairly in preparing comparative statement of merit of the individual candidates on the basis of experience as well as on the basis of performance recorded in the annual confidential reports. Therefore entire selection proceeding has been vitiated due to non adoption of fair method of selection by the selection committee hence the entire selection proceeding which is held pursuant to the circular dated 10.11.2004 and the recommendation of the said selection committee are liable to be set aside and quashed.

4.7 That it is stated that the respondents have issued order of appointment/posting of Shri D.K. Tiwari, respondent No. 5 on the basis of the recommendation of the

aforsaid selection committee for his posting as Executive Engineer in the Bhutan Investigation Division, Phuntsholing vide impugned order bearing letter No.A-22012/2/2004-Estt.II/751 dated 04.02.2005. The applicant is highly aggrieved against the arbitrary recommendation of the selection committee that too by adopting a unfair procedure in the matter of assessment of suitability of the officers. The applicant inspite of his best efforts could not collect the impugned order of appointment/ posting order dated 04.02.2005, therefore the Hon'ble Court be pleased to direct the respondents to produce entire selection selection proceeding and the impugned order of appointment/posting dated 04.02.2005 which is issued in favour of Respondent No.5 for perusal of the Hon'ble Court.

4.8 That it is stated that although the selection committee is vested with certain powers and discretion to frame its own procedure for assessment of suitability of the officers in the event of a selection post but it is obligatory on the part of the selection committee to act fairly in the matter of selection and cannot adopt an unfair policy/ procedure to give undue advantage to the candidates of their choice, therefore recommendation of the selection committee is required a judicial scrutiny in the facts and circumstances stated above. It is also relevant to mention here that even the appointing authority without any further scrutiny mechanically acted upon the recommendation of the selection committee, since the recommendation made by the selection committee as per choice of the appointing authority in violation of rules, regulations and guidelines issued by the Govt. of India, and on that score alone the recommendation of the selection committee as well as further order of appointment/posting of respondent no 5 are liable to be set aside and quashed.

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4.9 That it is stated that the selection committee is headed by Respondent No.4 Sri M.K. Sharma, Member (River Management) of the department of C.W.C as Chairman of the said selection committee and infact at his instance, Sri. D.K. Tiwari the respondent No. 5 has been selected and recommended for the post of Executive Engineer for Bhutan Investigation Division in a most arbitrary manner. Since Sri M.K. Sharma respondent No.4 is holding a very high port folio in the Department as such other three members of the selection committee who are subordinate officers working in the department of C.W.C has no say in the matters of selection but they have simply followed Sri M.K.Sharma, respondent No.4, Chairman of the selection committee, the selection is vitiated due to favoritism and nepotism and the said selection has not been made bona fide. Therefore the entire selection proceeding, recommendation of the selection committee and further order of appointment and posting of Sri D.K. Tiwari is require a judicial scrutiny and the impugned selection proceeding as well as impugned order of appointment and posting of respondent No. 5 for Bhutan Investigatin Division are liable to be set aside and quashed. It is pertinent to mention here that Sri M.K. Sharma, Chairman of the Selection Committee is impleaded as respondent No. 4 by name, since he has acted with a malafide intention and managed to get selected Sri D.K. Tiwari, Respondent No. 5 without making any proper assessment of the suitability of the officers/candidates who have applied for the post of Executive Engineer under Bhutan Investigation Division. It is categorically submitted that the selection committee failed to make proper assessment of suitability or grading of the candidates in the matter of selection as required under the law and as a result the

applicant has been deprived in a very arbitrary and unfair manner for the post of Executive Engineer, in the Bhutan Investigation Division.

It is further submitted that although Sri D.K. Tiwari respondent No. 5 is senior to the applicant, but the seniority has not been taken into consideration as one of the criteria for the purpose of aforesaid selection as because there are good numbers of officers who are working in the cadre of Executive Engineer in C.W.C and also applied for the post of Executive Engineer for Bhutan Investigation Division and they are Senior to Sri D.K. Tiwari Respondent No.5. Therefore it can rightly be presumed that the post of the Executive Engineer of Bhutan Investigation Division is purely a "selection post". Therefore seniority has no role in the matter of selection, once role of seniority is excluded for the purpose of selection then only two other criteria or norms normally available with the selection committee i.e. experience in the field of investigation work as Executive Engineer as well as performance in the field of investigation works recorded in the Annual Confidential Report and as such the selection is liable to be confined with the aforesaid criteria and the selection committee is duty bound to make its assessment. Even assuming other criteria if laid down by the selection committee since the selection committee is at liberty to frame its own procedure for the purpose of selection, then also applicant is entitled to be appointed on priority basis since he has long experience in the investigation work. The applicant is very much confident that he will score more marks or higher grading than Sri D.K. Tiwari Respondent No. 5 even in case some other criteria is adopted. It is mandatory for the selection committee that it must have regard to the experience and previous record of the work as well as the performance in the field of investigation work reported in the ACR of the candidate. Since it is a

paper selection the mark should be awarded and assessment should be made objectively and fairly in all front and particularly taking into consideration the experience and performance in the relevant field.

It is true that for allocation of marks or assessment of suitability for a selection post no hard or fast rule of universal application which would meet the requirements of all cases can be laid down, however when allocation of such marks, grading or assessment is made with an intention which is capable of being abused or misused in its exercise it is liable to be struck down as ultravires Article 14 of the Constitution of India.

It is also true that the competent authority may follow its own procedure subject to the condition that the same is not hit by the Article 14 of the Constitution of India.

In view of the facts stated above selection procedure as well as impugned order of appointment/posting dated 04.02.2005 issued in favour of the Respondent No. 5 is liable to set aside and quashed.

4.10 That it is stated that the applicant was posted at Aizwal way back in the month of April 2000 and he had served five years continuously in the remote and difficult part of North Eastern Region, as such applicant is entitled to special weightage in the matter of selection/promotion in terms of the Govt. of India's office memorandum letter dated 14.12.1983, 1.12.1988 as well as 22.07.1998. The relevant portion of the memorandum dated 14.12.1983 is quoted below: -

"(ii) Weightage for Central deputation/training abroad and special mention in confidential report:

Satisfactory performance of duties for the prescribed tenure in the North-East shall be given due recognition in the case of eligible officers in the matter of-

- (a) promotion in cadre posts;
- (b) deputation to Central tenure post; and
- (c) courses of training abroad.

The general requirement of at least three years in a cadre post between two Central tenure deputations may also be relaxed to two years in deserving cases of meritorious service in the North-East.

A specific entry shall be made in the CR of all employees who rendered a full tenure of service in the North-Eastern Region to that effect/

Cadre authorities are advised to give due weightage for satisfactory performance of duties for the prescribed tenure in the North-East in the matter of promotion in the cadre posts, deputation to Central post and courses of training abroad."

A Copy of the Extract of the office memorandum dated 14.12.1983 is enclosed herewith for perusal of Hon'ble Tribunal and marked as Annexure-2.

4.11 That in view of the aforesaid provision applicant is entitled to get a special weightage in the matter of selection for such lucrative posting at Bhutan where the total pay and allowances is much higher in the event of posting at Bhutan but the selection committee perhaps not granted any special weightage to the applicant. It is ought to be mentioned here that Sri D.K. Tiwari Respondent No. 5 has joined at CWC, Itanagar in the middle of 2002 as such the applicant is entitled to more weightage than Mr. D.K. Tiwari in the matter of selection.

4.12 That it is stated that the applicant came to learn that the selection and posting of Sri D.K. Tiwari, Respondent No. 5 issued only on 04.02.2005 and as such there is no scope on the part of the applicant to submit any representation. More so in view of the fact that the appointment/posting order has been issued in favour of the Respondent No.5 by the respondents, therefore applicant apprehending that Sri D.K. Tiwari Respondent No. 5 may be released at any moment. However, the applicant came to learn that the Respondent No. 5 has not so far been released from the post of Executive Engineer, Itanagar pursuant to the impugned order dated 04.02.2005, till filing of this application.

In such a compelling circumstances applicant has no other alternative but to approach this Hon'ble Court for appropriate and adequate relief.

4.13 That the Hon'ble Court be pleased to direct the Respondents to produce all the relevant records, selection proceedings held on 17.01.2005 pursuant to the circular dated 10.11.2004 and the ACR of the applicant and Respondent No. 5 which were considered by the selection committee for perusal of the Hon'ble Tribunal.

4.14 That it is a fit case for the Hon'ble Tribunal to interfere with and protect the right and interest of the applicant by passing an appropriate interim order staying the operation of the impugned order of posting dated 04.02.2005, otherwise applicant will suffer irreparable loss and injury. The Hon'ble Tribunal further be pleased to grant adequate relief as prayed for.

4.15 That this application is made bonafide and for the cause of justice.

5. Grounds for relief(s) with legal provisions.

5.1 For that, the selection has been conducted for the Post of Executive Engineer, pursuant to the circular dated 10.11.2004 by the Selection Committee without adopting any reasonable norm/criteria, procedure and also without proper assessment of suitability or grading of the candidates including the applicant and Respondent No. 5 but the selection committee recommended the name of the Respondent No. 5 for the post of Executive Engineer in the Bhutan Investigation Division in a most arbitrary and unfair manner.

5.2 For that, the selection committee headed by the Respondent No. 3 has acted with a malafide intention and at the instance of the Respondent No. 3, Shri D.K Tiwari, Respondent No. 5 managed to get selection for the post of Executive Engineer in the Bhutan Investigation Division in violation of rule of selection.

5.3 For that, applicant posses maximum experience in the matter of investigation work than all other candidates including Respondent No. 5 for the purpose of selection for the post of Executive Engineer in the Bhutan Investigation Division, moreover in addition to the experience applicant has got outstanding service record in the field of investigation work, further performance of the applicant in all other field is much higher than the Respondent No. 5 therefore applicant is entitled to be appointed/selected on priority basis for the post of Executive Engineer in the Bhutan Investigation Division in preference to the Respondent No. 5.

5.4 For that, the selection committee totally failed to make proper assessment of the suitability and grading of the candidates who have applied for the post of Executive Engineer for the Bhutan Investigation Division but the selection

committee deliberately selected Respondent No. 5 in violation of Article 14 of the Constitution.

5.5 For that, the selection committee is duty bound to act fairly in the matter of selection by adopting reasonable and fair norms, procedure, criteria for assessment of the suitability of the candidates who are standing more or less on a same footing in the cadre of Deputy Director/Executive Engineer, who have applied for the selection post of Executive Engineer in the Bhutan Investigation Division.

5.6 For that, selection recommendation made by the selection committee in favour of the Respondent No. 5 in violation of fair norms and thereby the selection committee acted malafide in the selection held on 17.01.2005, as such entire selection proceeding and its recommendation as well as the order of appointment/posting of Respondent No. 5 for the post of Executive Engineer in the Bhutan Investigation Division are liable to be set aside and quashed.

5.7 For that, Govt. of India, department of Personnel and Training repeatedly instructed all the Central Govt. organization to adopt fair and reasonable norms and procedure in the matter of selection by the selection committee but in the instant case the selection committee deliberately made a departure from the set norms in order to select the Respondent No. 5 for the post of Executive Engineer in the Bhutan Investigation Division, and the selection committee also acted on extraneous consideration in the matter of selection.

5.8 For that, selection committee has adopted unfair procedure and recommended Respondent No. 5 for appointment and posting in the Bhutan Investigation

Division at the instance of Respondent No. 3 i.e. Chairman of the Selection Committee, thererfore entire selection proceeding and recommendation conducted in pursuance to the circular dated 10.11.2004 and the order appointment/posting dated 04.02.2005 are liable to be set aside and quashed.

5.9 For that, applicant is entitled to be appointed for the post of Executive Engineer in Bhutan Investigation Division in view of his long and maximum experience in the investigation work and also in view of the fact that applicant has got outstanding service records in the investigation work and also in other fields.

6. **Details of remedies exhausted.**

That the applicant states that there is no statutory service rule for filing of any appeal/representation, moreover there is no scope to prefer any appeal/representation in view of the fact that selection committee has already recommended the name of the Respondent No. 5 for appointment to the post of Executive Engineer in the Bhutan Investigation Division and the appointing authority has already acted upon on the recommendation of the selection committee and issued impugned order of appointment/posting dated 04.02.2005 in favour Respondent No. 5 and there is no other alternative remedies available to him and there is no other alternative and efficacious remedy than to file this application.

7. **Matters not previously filed or pending with any other Court.**

The applicant further declares that he had not previously filed any application, Writ Petition or Suit before any Court or any other authority or any other Bench

of the Tribunal regarding the subject matter of this application nor any such application, Writ Petition or Suit is pending before any of them.

3. Relief(s) sought for:

Under the facts and circumstances stated above, the applicant humbly prays that Your Lordships be pleased to admit this application, call for the records of the case and issue notice to the respondents to show cause as to why the relief(s) sought for in this application shall not be granted and on perusal of the records and after hearing the parties on the cause or causes that may be shown, be pleased to grant the following relief(s):

- 8.1 That the Hon'ble Tribunal be pleased to set aside and quash the selection proceeding conducted pursuant to the circular dated 10.11.2004, the recommendation of the said selection committee and the impugned order of appointment/posting bearing letter No. A-22012/2/2004-Estt. II/751 dated 04.02.2005.
- 8.2 That the Hon'ble Tribunal be pleased to declare that the selection proceeding which is held pursuant to the circular dated 10.11.2004 for selection of the post of Executive Engineer in the Bhutan Investigation Division is illegal and unfair and the same is void.
- 8.3 That the Hon'ble Tribunal be pleased to direct the Respondents to appoint the applicant to the post of Executive Engineer in the Bhutan Investigation Division by holding a review selection.
- 8.4 Costs of the application.

8.5 Any other relief(s) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper.

9. Interim order prayed for.

During pendency of this application, the applicant prays for the following interim relief: -

9.1 That the Hon'ble Tribunal be pleased to stay the operation of the impugned order of posting dated 04.02.2005 issued in favour of the Respondent No. 5, appointing him to the post of Executive Engineer in the Bhutan Investigation Division till disposal of this Original Application and further be pleased to direct the Respondents to restrain the Respondent No. 5 in joining as Executive Engineer at Bhutan Investigation Division at Phuntsholing.

10.

This application is filed through Advocates.

11. Particulars of the I.P.O.

i)	I. P. O. No.	: 204.116008
ii)	Date of Issue	: 4-2-05
iii)	Issued from	: C.P.O. Cumhth.
iv)	Payable at	: C.P.O. Cumhth.

12. List of enclosures.

As given in the index.

VERIFICATION

I, Shri Ravindra Dhonduji Deshpande S/o Late Dhonduji Deshpande, aged about 37 years, presently working as Executive Engineer, North Eastern Investigation Division-II, CWC, Aizwal, Mizoram do hereby verify that the statements made in Paragraph 1 to 4 and 6 to 12 are true to my knowledge and those made in Paragraph 5 are true to my legal advice and I have not suppressed any material fact.

And I sign this verification on this the 11/2 day of Febraruay, 2005.

R. D. Deshpande

No. A-22012/2/2004-Estt.II
Government of India
Central Water Commission

10/12

New Delhi, the November, 2004.

CIRCULAR

Sub:- Filling up the post of Executive Engineer, Bhutan Investigation Division, Phuntsholing.

The post of Executive Engineer, Bhutan Investigation Division, CWC, Phutsholing(Bhutan) under the Superintending Engineer, Investigation Circle, Sikkim, is required to be filled up.

The officers working in the grade of Deputy Director/Executive Engineer and having experience in investigation work of atleast two years, desirous of being considered for posting in Bhutan may send their willingness and bio-data(in triplicate) as per proforma given below through proper channel to reach Secretary, Central Water Commission latest by 30.11.2004. The officers who apply for the above posting will not be allowed to withdraw their candidature at a later stage, if selected.

PROFORMA

1. Name
2. Date of Birth
3. Date of retirement
4. Educational Qualification
5. Present post held, date from which held on regular basis
6. Experience in the field of investigation work
7. Nature of duties performed so far in brief

(Signature of the Candidate)

Gulshan Lal

(GULSHAN LAL)
UNDER SECRETARY-II

Copy to:

1. PPS to Member(RM), CWC.
2. Chief Engineer, TBO, CWC, Siliguri
3. Ministry of Water Resources(Attn. Shri N.K. Gupta, U.S(Admn.) for circulation among Dy. Commissioners working in MOWR..
4. Superintending Engineer, I.C., CWC, Gangtok
5. All Superintending Engineer in filed offices in CWC.
6. All Dtes./Units at the HQs. (including TCD, CEA)
7. All Ex. Engineers in filed offices of CWC.
8. Ganga Flood Control Commission, Patna.
9. SSCAC, Vadodara.

*To be confirmed
After final selection*

APPENDIX - 9

INCENTIVES FOR SERVING IN REMOTE AREAS

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[G.I., M.F., O.M. No. 20014/3/83-E. IV, dated the 14th December, 1983, read with O.M. No. 20014/3/83-E. IV, dated the 30th March, 1984, 27th July, 1984, G.I., M.F., U.O. No. 3943-E. IV/84, dated the 17th October, 1984, O.M. No. F. 20014/3/83-E. IV, dated the 31st January, 1985, 25th September, 1985, U.O. No. 824-E. IV/86, dated the 1st April, 1986, O.M. No. 20014/3/83-E. IV, dated the 29th October, 1986, O.M. No. 20014/3/83-E. IV/E. II (B), dated the 11th May, 1987, 28th July, 1987, 15th July, 1988 and O.M. No. F. 20014/16/86-E. IV/E. II (B), dated the 1st December, 1988 and O.M. No. 11 (2)/97-E. II (B), dated the 22nd July, 1998.]

I

Allowances and facilities admissible to various categories of civilian Central Government employees serving in the North-Eastern Region comprising the States of Assam, Meghalaya, Manipur, Nagaland and Tripura and the Union Territories of Arunachal Pradesh and Mizoram, Andaman and Nicobar Islands and Lakshadweep Islands. These orders also apply *mutatis mutandis* to officers posted to N-E Council, when they are stationed in the N-E Region and to the civilian Central Government employees including officers of All India Services posted to Sikkim.

(i) **Tenure of posting/deputation:**

There will be a fixed tenure of posting 3 years at a time for officers with service of 10 years or less and of 2 years at a time for officers with more than 10 years of service. Periods of leave, training, etc., in excess of 15 days per year will be excluded in counting the tenure period $\frac{2}{3}$ rd years. Officers, on completion of the fixed tenure of service mentioned above may be considered for posting to a station of their choice as far as possible.

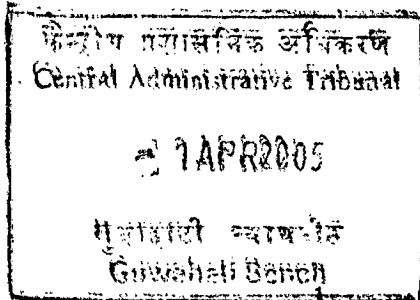
The period of deputation of the Central Government employees to the States/Union Territories of the North-Eastern Region, will generally be for 3 years which can be extended in exceptional cases in exigencies of public service as well as when the employee concerned is prepared to stay longer. The admissible deputation allowance will also continue to be paid during the period of deputation so extended.

(ii) **Weightage for Central deputation/training abroad and special mention in Confidential Reports:**

Satisfactory performance of duties for the prescribed tenure in the North-East shall be given due recognition in the case of eligible officers in the matter of—

- (a) promotion in cadre posts;
- (b) deputation to Central tenure posts; and
- (c) courses of training abroad.

*True Copy
After being
read and
verified*



File No. 1 to 3
Filed by
the Respondents No. 1 to 3
through
Advocate
C.A.T./Guwahati
11/4/05

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

OA NO. 34 / 05

SHRI R. D. DESPANDE

.....APPLICANT

-VERSUS-

UNION OF INDIA & ORS

.....RESPONDENTS

IN THE MATTER OF

Preliminary objection raised by the
1, 2 & 3 respondents regarding maintainability of the
OA.

1) That the respondents have received copy of O.A. and have gone through the same. The respondents have understood the contentions made thereof. Save and except the statements, which are specifically admitted herein below, rest

may be treated as total denial. The statements, which are not borne on record, are also denied and the applicant is put to the strictest proof thereof.

2) That before submission of the paragraph-wise reply the respondents beg to raise the preliminary objection regarding the maintainability of the OA. The respondents beg to submit that the applicant has not submitted any representation against the impugned order No. 2201/2/2004-E.II/749-64 dated 4/2/2005 regarding transfer/posting of the respondent No.5 as Executive Engineer (EE) to Bhutan Investigation Division (BID) , Bhutan, to the Appointing Authority i.e. the President of India, ~~represented~~ by the Hon'ble Union Minister of Water Resources. Without making efforts to exhaust the departmental remedies available to him, the applicant has rushed before the Hon'ble Tribunal with this OA in violation of the statutory provisions of Section 20 of the Administrative Tribunal Act, 1985. Therefore on this ground alone, this OA deserved to be dismissed ~~in~~ *in limine*.

3) That the respondents beg to submit the background of the case.

Central Water Commission, which is an attached office of the Union Ministry of Water Resources, has 38 Divisions in its field offices. While 37 of the Divisions are located in various parts of the country, one Division viz., Bhutan Investigation Division (BID in short) is located abroad at Phuentsholing, Bhutan and has international commitments. As bid is one of the Divisions of CWC, all the posts in the Division form part of the respective service cadres of CWC. Thus, the post of Executive Engineer (EE), BID is one of the 249 posts in the Senior Time Scale of Central Water Engineering (Gr.A) Service. Therefore, posting to NID is in fact a transfer to a cadre post within the same organization i.e. CWC.

As BID has international commitments, posting/transfer to that Division is not treated as a routine affair and an elaborate process is followed since it is the endeavour of CWC to post officers of high caliber with clean image and potentially suitable for the jobs assigned to BID. To achieve the above objectives, applications from eligible officers are invited and their vigilance clearance status is checked up since posting to BID is an international posting. The relative merits of eligible officers are assessed by a Selection Committee, which normally takes into consideration the attributes of seniority, relevant experience, age, foreign assignments done earlier, over all reputation of the officer and his ability to handle challenging tasks and assessment of his performance. After evaluation of the eligible officers, the Selection Committee recommends a panel of suitable officers. On acceptance of Selection Committee's recommendations by the competent authority, posting orders of the selected officers are issued.

The tenure of Executive Engineer, BID is 3 years. Since the tenure of the present incumbent in the post of EE, BID was up to January, 2005 only, applications of officers in the grade of EE and equivalent having at least 2 years experience in investigation works were invited vide circular dated 10.11.04. While 18 officers have applied, only 11 of them fulfilled the eligibility criterion of having at least two years experience in investigation work. Since officers to be posted in BID should be clear from vigilance angle, the Selection Committee decided not to consider officers who are under a cloud i.e., against whom disciplinary proceedings are pending. Among the 11 eligible officers, two officers including the applicant have been issued with charge sheet under Rule 16 of the CCS(CCA) Rules, 1965 and the disciplinary proceedings are pending. Hence, the Selection Committee evaluated relative merit of the balance 9 eligible officers taking into consideration the attributes mentioned in the preceding para, each of which has been assigned weightage. The Selection

Committee recommended a panel of four officers with Respondent No. 5 as the most suitable officer. After the Competent Authority approved the panel, orders posting Respondent No. 5 as EE, BID, Bhutan have been issued.

- 4) That the respondents most humbly beg to submit that the applicant has approached the Hon'ble Tribunal making a false statement that he has already exhausted the alternative remedies because the applicant has not filed any representation before the Competent Authority i.e., the President of India. The Respondents further beg to submit that the reason narrated above in the brief history of the case the applicant is not entitled for any relief as prayed for.
- 5) That the respondents beg to state that in view of the above facts and circumstances of the case the OA is deserved to be dismissed with costs.

VERIFICATION

I Shri Anup Kumar Srivastava at present working as EXECUTIVE ENGINEER at CWC ADABARI GUWAHATI who is taking steps in this case, being duly authorized and competent to sign this verification, do hereby solemnly affirm and state that the statement made in paragraph

1, 4

are true

to my knowledge and belief, those made in paragraph
2, 3, 5 being matter of records, are true to my information derived there from and the rest are my humble submission before this Humble Tribunal. I have not suppressed any material fact.

And I sign this verification this 15 the day of ^{April} March 2005 at Guwahati.

Anup Kumar Srivastava

1 APR 2005

गुवाहाटी बैच अधिकारी
Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, AT GUWAHATI

OA No. 34 of 2005

Shri R D Deshpande Applicant

-vs-

Union of India & Others..... Respondents

(Written statements filed by Shri D.K.Tiwary, the Respondent No.5)

The written statements of the respondent No.5 are as follows:

1. That a copy of the OA No. 34 / 2005 (hereinafter referred to as "Application") has been served on the Respondent No.5. The respondent No.5 has gone through the application and understood the contents thereof.
2. That the statements made in the Application, which are not specifically admitted are hereby denied by the Respondent No.5.
3. That before traversing the statements made in various paragraphs of the Application, the Respondent No.5 begs to submit a brief resume of the facts and circumstances of the case as under:
 - (a) The Central Water Commission (for brevity, CWC) sought willingness of officers of the rank of Executive Engineer/Deputy Director vide their circular No. A-22012/2/2004-Estt.II dated 10.11.2004 (As in Annexure 1 in the OA), for transfer and posting in the post of Executive Engineer, Bhutan Investigation Division (for brevity, "EE, BID"), Phuentsholing, Bhutan. This was widely circulated within the CWC because it is an internal arrangement of posting of CWC, from/among the officers holding the post of Executive Engineer/ Deputy Director and having the experience of at least two years in the field of investigation works. The post of EE, BID is in the same grade/scale as any other post of Executive Engineer/ Deputy

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filed by
the Respondent No.5
through
Biduak Pathak
Advocate
4/3/2005

Director under the CWC, only some allowances are differently paid being a posting in a foreign country.

(b) The Respondent No.5 applied for the said post, through proper channel, like any other officers who also applied in response to the said circular. The selection committee and the competent authority has found the respondent No.5 as fit for such transfer and posting and accordingly he has been transferred and posted as EE, BID, Bhutan vide order No. A-22012/2/2004-Estt.II/763 dt. 04th February 2005 which the Applicant has challenged.

The copy of the order-dated 4.2.2005 is annexed as
ANNEXURE-R1.

(c) The applicant by the instant application has challenged the transfer and posting of the respondent No.5 on the ground that the applicant is a better and more suitable candidate than the respondent No.5 for transfer and posting as EE, BID. Therefore, the applicant prefers to give here a comparative statements relating to the Bio-data showing the individual merits on all such relevant points between the applicant and the respondent No.5 as under:

Sl	Particulars	The Applicant	The Respondent No.5	Remarks
1.	Name	Shri RD Deshpande	Shri D K Tiwary	
2.	Date of Birth	05.08.67	13.02.63	The Respondent No.5 is senior by age.
3.	Educational Qualification	M Tech (Marine Technology)	M Tech (Foundation Engineering)	The field of specialization of the Respondent No.5 is directly relevant to works in Bhutan while that of Applicant is not at all relevant.
4 (i)	Present post held	Executive Engineer	Executive Engineer	
4 (ii)	Date from which held on regular basis	04.03.2002	14.06.1996	
5.	Seniority	S No 131	S No. 110	The Respondent No.5

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				is senior as per the seniority list of Deputy Directors/Executive Engineers of CWC as on 01.01.03
5.	Eligibility criteria of two years experience of investigation works	Fulfilled (with 4 years and 7 months of investigation experience)	Fulfilled (with 2 years and 6 months of investigation experience)	Not " <i>more than five years</i> " as claimed by the Applicant. Since it is only the eligibility, additional experience not necessarily entitles one for special weightage.
6.	Awards/Appreciations	None	Several [1994, 1999, 2000, 2001(twice), 2004 (twice)] well dispersed throughout the career from 1991 to 2005, including award for implementation of Govt. policy in the field of Official Language Act.	The Awards/appreciations received by the Respondent No.5 are well distributed over his service career. Thus, he has an outstanding /proven service record.
7.	Disciplinary Proceedings	Proceeding is going on	None	The Respondent No.5 has never been under cloud while the same cannot be said about the Applicant.
8.	Prescribed Tenure in NE	Completed with overall service in NE region of 4 years and 7 months	Completed satisfactorily with overall service in NE region of 2 years 6 months	Respondent No.5 has equal right of consideration since as per Govt. of India policy, it is the satisfactory completion of "prescribed tenure" which is given due consideration in matters of transfer & postings.
8.	Prior Association with NE Region	None	Five years in the Hydrology (NE) Directorate of CWC which also earned him a Certificate of Merit in 1994	The Respondent No.5 has an Award winning prior association with the NE region while the Applicant has none.
9.	Prior Association with Bhutan works	None	Involved in Hydrological analysis and design of Tala HE Project, Wang Chu Reservoir Scheme, Bunakha HE Project. The works on Tala HE Project led to an Award of	The Respondent No.5 has an Award winning prior association with the works in Bhutan while the Applicant has none.

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			Certificate of Merit.	
10	Publications	None	Two (including one international)	
11	Nature of Duties performed	-----	Very diverse nature including those involving river water disputes and use of modern technology and survey of Manas-Sankosh – Tista link, a part of which passes through Bhutan	
12	Additional Duties	-----	Since 6 th May 2005, he is also successfully serving as Chairman (Nominee) of the Vidyalaya Management Committee and Vidyalaya Executive Committee of Kendriya Vidyalaya-2 of Itanagar.	Respondent No.5 has proven record of administrative capabilities beyond the call of his normal sphere of duties.

That as evident from the above comparative statements, the respondent No.5 is more qualified having special expertise on the matter of duties assigned to investigation and research relating to Bhutan than the applicant. He is senior to the applicant and he has got unblemished and impeccable service career at his credit and he has not been at all under any disciplinary proceeding. That being the position, the applicant is in no way in a better position than the respondent No.5.

(d) The Respondent No.5 was not aware about the details of the process involved in the matter which are done confidentially at a very high level as the matter pertains to posting in a foreign country. However, he has come to know all about the matter from the application and also on his persuasion after filing of the case. The post of EE, BID is a sensitive post having international ramifications. The applicant has himself admitted that a committee consisting of very senior officers was constituted by the Competent Authority for selection of the suitable candidate for posting as EE, BID. The Applicant has alleged that the Chairman of the selection Committee acted with malafide intention, who has been supported by the other members of the said selection committee and according to the applicant the entire Committee acted with malafide and selected the respondent No.5. It has also been alleged by the applicant that the Authority who is competent to order transfer and posting and who

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happens to be ex-officio Secretary to the Govt. of India in the Ministry of Water Resources mechanically acted upon the recommendations of the said Committee. The applicant has also alleged the recommendation of the committee is nothing but the choice of the Chairman and no proper procedure etc has been followed by all of them. In alleging so, the applicant has not given any evidence or documentary proof in support of such allegations. He has further alleged "favouritism" and "nepotism" against the Chairman of the said Committee but again without any proof whatsoever. It cannot be believed by the Respondent No.5 that the entire higher echelons of CWC comprising very senior officers holding positions of high responsibility in administration acted in cahoots with a malafide intent and on extraneous considerations in this matter. Whereas the law is well settled that inference of mala fides cannot be drawn on the basis of insinuations and vague suggestions.

Moreover, as stated above, the transfer and posting as EE,BID is not a normal course of transfer and posting, rather it is a posting in a foreign country and such posting are sensitive in nature involving international ramifications. Further, it is for the high power selection committee to decide with their wisdom and discretion as to who is to be selected for such sensitive posting having international ramifications and who are not. Moreover it is within the competence of the authority in the CWC to act in consonance with the Govt. of India foreign policy and international relations to frame policy, guidelines, criteria that it thinks fit for a post in a foreign country which has been done in this case. As apparent on the face of the records of the case, the Applicant has claimed as a matter of his right to be transferred and posted to the post of EE, BID on the grounds of his experience of about 4 years 7 months years in the field of investigation and his "long outstanding service record as reflected in ACR" and has further stated that the criteria should have been restricted to these bases only. According to the applicant the basis for selection should have been longer experience in investigation work. But this is not the fact or the sole basis for such selection for posting in a foreign country. The basis of selection has been drawn from the circular dated 10.11.2004 itself and based on overall assessment of the eligible candidates in addition to the criteria of vigilance clearance.

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PARAWISE REPLY:

4. That with regard to the statements made in para 1 of the application, the answering respondent states that there is no cause of action to justify for filing of the instant application as no condition of service or rule thereof has been violated by the respondent authority or any legal right of the applicant has been taken away by the selection, transfer and posting of the Respondent No.5 as EE, BID. Therefore the application is liable to be dismissed with cost.
5. That the respondent No.5 has no comment to offer to the statements made in para 2 and 3 of the application.
6. That with regard to the statements made in para 4.1, the respondent No.5 states that the matter of transfer and posting in a foreign country has no relevance as to whether some one belongs to Schedule Caste community or not more particularly in the instant case.
7. That with regard to the statements made in para 4.2, the answering respondent states that those are matter of records, hence nothing is admitted which are not supported by any such records. From the comparative statements given hereinabove in this written statements showing the seniority, qualification, experience etc between the applicant and this respondent will clearly show as to who is having better and more suitable career prospect. The claim of the applicant that his performance has been all along outstanding is far from truth and reliability. The respondent No.5 has his personal knowledge that the service career of the applicant is still under cloud as a disciplinary proceeding is going on against him for his irregularity in financial matter. In this regard this respondent craves the leave of this Hon'ble Tribunal to direct the official respondents to confirm the issue of pendency of disciplinary action against the applicant and to produce such relevant records in the Hon'ble Tribunal. The ACR is not the criteria for selection as the posting in EE, BID is not a selection post nor the transfer and posting in the said post is by way of promotion.

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8. That with regard to the statements made in para 4.3 and 4.4, the answering respondent states that the post of Executive Engineer, BID, Phuentsholing Bhutan is a post in the same scale/grade as any other post of Executive Engineer in the CWC. The only difference which exists are in payment of allowances as it is a posting in a foreign country. In this connection this respondent also states that normally in such posting in foreign country, it is desired that an employee is not to be posted without his consent to a foreign country. Therefore, *the circular dated 10.11.2004 (Annexure 1), has been issued in order to ascertain willingness of the eligible officers*. As per the said circular only those officers were eligible who were working in the grade of Deputy Director/Executive Engineer and having experience in investigation work of *at least* two years. Invitation to express willingness does not necessarily imply element of selection, as has been claimed by the Applicant. The last sentence of the circular which has been emphasized by the applicant merely states that the officers who applies for the above *posting* will not be allowed to withdraw their candidature at a later stage, if selected. However, the candidate for such foreign posting is to be made by assessing the suitability and fulfilment of the criteria as enumerated in *column No.2 to 7* of the said circular dated 10.11.2004. This process of selection of best suitable officer out of the candidates who exercised their options for such foreign posting is a routine administrative precaution taken to avoid repetition of the same process in case anyone withdraws at the last moment. Based on the above criteria, overall assessment of the standing of a candidate in the post of Executive Engineer/ Deputy Director regarding his caliber, clean image, potentiality and suitability for the post apart from his seniority, relative experience and overall reputation and ability is to be made. From these input the assessment of performance of the candidate is also to be ascertained. From the criteria given in column 6, it is to be ascertained about the experience of the candidate in the field of investigation which does not mean alone his attachment to the post in service but also his other relative works in such

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investigation work. The selection for such posting is made by assessing the overall merit and suitability taking all the criteria as a whole. Therefore, the assertion of the application that such selection is to be made only considering the length of experience in investigation work is not correct. The law is also well settled that for consideration of any suitability for a post, the vigilance clearance is another requirement. As the answering respondent has the personal knowledge as stated above, there is a disciplinary proceeding pending against the applicant relating to some financial irregularity.

In this connection this respondent also state that the requirement of at least 2 years working experience in the investigation work is only a criteria to come within the zone of consideration. This condition creates a right only to be considered but it does not create a right for selection for foreign posting. The circular does not speak of any bonus or added qualification to be assessed for the number of years beyond the 2 years eligibility criteria. Hence, the applicant has filed this application guided by misinterpretation and mis-understanding of the aforesaid provisions. The legitimate expectation is an aspect of Article 14 and it itself does not create any right. As explained hereinabove, there has not been any discrimination meted out to the applicant in the process of selection of this respondent for the foreign posting.

9. That with regard to the statements made in para 4.5, 4.6 and 4.7 of the application, this respondent state that although he had no prior information about the Selection Committee comprising of as many as 4 members including a Chairman, he has come to know from the application that the process of selection was made through a very high power expert body considering the various aspects of the candidates, including the backdrop of the status of the CWC organization, its functioning in the realm of international commitment and bi-lateral relations between two countries. This process was not narrowly construed by the limit of experience of investigation work alone behind a particular candidate. This criteria of experience is only a entry point to the zone of consideration without conferring any right to be selected to the exclusion of others who fulfils so many other conditions required in the process. This respondent reassert

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here that the ACR is not a criteria for such selection as the transfer and posting as EE, BID is neither a promotion nor a selection post. As stated above, the applicant perhaps has not been cleared from the vigilance angle as a disciplinary proceeding relating to financial irregularity is going on against him. As such, the allegations of pick and choose and adoption of unfair method in the selection process cannot sustain in law.

10. That with regard to the statements made in para 4.8 and 4.9 of the application, this respondent denies the correctness of those averments and states that it is not a case of promotion and the post of EE, BID is not a selection post. There is no such given provisions of law, regulation or rules for such selection and posting in the post except the provisions laid down in the circular dated 10.11.2004 and also the guidelines issued by the Govt. of India, Ministry of Finance OM No. 20014/3/83.E.IV dated 14.12.1983. However, such posting being a sensitive one having international ramification in a foreign country, it is incumbent on the part of the Govt. of India to choose a most suitable and competent person with capability, high calibre, clean image and whose career is not under cloud or against whom no disciplinary proceeding is pending. The applicant has lodged some wild and baseless allegations against the high power expert body, the Selection Committee, without any cogent proof to support such allegations. This is nothing but a clear attempt to delay the process of posting to wreak his vengeance and frustration. Law is well settled that the allegations of malafide and biasness cannot sustain in law unless the same is proved with support of irrefutable evidence. The applicant has implicated the Chairman of the Selection Committee by his name whereas allegations are made against all the 4 members of the said Committee without implicating them *eo nomine*. It is unthinkable and unimaginable that all the members of a Selection Committee could be biased for the cause of a particular candidate without showing any nexus of that particular candidate with the members of such Selection Committee. Biasness may be inferred with personal biasness, pecuniary biasness or the biasness of subject matter. The applicant has alleged favoritism and nepotism that has been indulged by the Selection Committee, more particularly by the Chairman. But the applicant has not shown with proof as to how the favoritism and nepotism was linked with this respondent No.5. This respondent respectfully submits that he has no relation with

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said Respondent No.4 and he personally does not know any of the members of the said Selection Committee including the Chairman. The applicant has categorically admitted that this respondent is senior to him whereas he has further stated that the seniority is not a criteria for such selection. But from the given format in the Circular dated 10.11.2004 it is very much indicative as in Column 2 to 7 that all these factors/ elements were the criteria to be taken into consideration in the process of selection where seniority is also one of those criteria. The process of selection as understood is not the same like those of promotion and to be followed by a DPC. As stated above, the process of selection is to obviate certain disqualification and to select a most suitable person for the foreign posting on the basis of the performance and standing in the threshold of column 2 to 7 of the Circular dated 10.11.2004. The minimum experience of 2 years in investigation work is the eligibility criteria for making application for such selection and any more number of years for such experience in investigation work is not an additional qualification to be assessed to. There is no marking system or any benchmark for such selection. This respondent is not under any disciplinary proceeding and he has a clear and unblemished service career; whereas the applicant is very much under cloud as the disciplinary proceeding initiated against him is still pending. As such, he is otherwise also not eligible for selection. That being the legal position, the selection of this respondent cannot be termed as violative of Article 14 or liable to be struck down as ultra vires.

In this connection, it is pertinent to mention here that the constitution of Selection Committee for selection of a suitable candidate for posting in foreign country is very much significant so that no wrong selection is made which may invite various complications in future in the field of discharge of international function and commitment guided by bi-lateral relations. This Selection Committee is constituted to obviate administrative error in any form.

11. That with regard to the statements made in para 4.10 and 4.11, this respondent states that the provisions of OM dated 14.12.1983 (as in Annexure 2 in the OA) are very clear that the 3 / 2 years tenure posting in the North Eastern State/ Union Territory gives certain benefits like

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promotion in cadre post, deputation to central tenure post and courses of training abroad. The said OM does not speak directly anything about transfer and posting in a foreign country. The said OM however provides for choice station posting within the country after serving in the North Eastern State/ Union Territory for the aforesaid tenure. Even if it is assumed, but not admitted by this respondent that the said provisions is also to be considered as a qualification towards eligibility for transfer and posting in a foreign country, in that case this respondent is also equally entitled to get the same benefit as the applicant. The said OM however does not speak anything about additional qualification for the added number of years in service in the North Eastern Region beyond the given number of 3/2 years as the case may be. This respondent, at the same time respectfully submit that this qualification, if at all accrued to the credit of any such person serving in the North Eastern Region is not free to claim the said as a matter of right as such qualification is further subjected to other conditions like allegations/ complaints against such officer or whose service is under scrutiny. The law is well settled that an officer has not legal right to insist for being posted at any particular place when the transfer is made which is justifiable on administrative grounds. The non consideration of the applicant is supported by such ground of disciplinary action which is pending against him and which is a justifiable administrative reason.

12. That with regard to the statements made in para 4.12, 4.13, 4.14 and 4.15, this respondent states that in view of the above facts and circumstances and the provisions of law, the applicant is not entitled to any relief whatsoever and the application is liable to be dismissed as devoid of any merit. The instant application has been made only to delay the transfer and posting of this respondent out of sheer jealousy and frustration.
13. That with regard to the statements made in para 5.1, this respondent states that the criteria for selection as stated above in this written statements are limited to the circular dated 10.11.2004 including the inputs to be furnished in Column 2 to 7 including vigilance clearance. Hence, it

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cannot be said that the selection was de hors any criteria/ norms and that the same was arbitrary and unfair.

14. That with regard to the statements made in para 5.2, this respondent states that mere allegation of malafide cannot sustain in law unless it is alleged with cogent and irrefutable proof and the same is proved. Moreover, the persons against whom malafide is alleged needs to be implicated as party eo nomine thereby giving them a chance of hearing and defending his case. Failure to do so amounts to violation of rules of natural justice and consequently the violation of Article 14. Therefore, no such order or decision could be passed by any Court or Tribunal while malafide is alleged and the parties against whom such allegation is made is not a party eo nomine.
15. That with regard to the statements made in para 5.3, this respondent states that the grounds shown by the applicant in this para cannot sustain in law as the same has been made by misinterpretation and misconception of the of the provisions of circular dated 10.11.2004 and the OM dated 14.12.1983.
16. That with regard to the statements made in para 5.4, this respondent states that the Selection Committee being a high powered expert committee considered all the facets and inputs as submitted by the candidates including the applicant as submitted in the given format under the Circular dated 10.11.2004 in addition to vigilance clearance. That being the position, no court or Tribunal will sit in appeal over the decision of such an expert committee; the law is well settled in this regard. Such selection cannot be alleged to be passed in violation of Art.14.
17. That with regard to the statements made in para 5.5 and 5.6, this respondent respectfully state that there is nothing to show and nothing has been shown that the respondents had ever acted unfairly and failed to adopt reasonable and fair norms, procedure, criteria in the process of selection. Mere wild allegation cannot sustain in law.
18. That with regard to the statements made in para 5.7, 5.8 and 5.9, this respondent states that the selection of suitability for such foreign posting is

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not guided by any other law or rules except the criteria laid down in the circular dated 10.11.2004 and also the principles laid down in such allied matters. Therefore, the allegation of departure from set norms and the selection allegedly made on extraneous consideration cannot be attracted here in view of the above facts and circumstances of the case. In view of the totality of the facts and circumstances of the case, the applicant cannot claim that only he should be selected to the exclusion of others who have better suitability and merit for being selected and posted in a foreign country.

19. That with regard to the statements made in para 6 and 7 of the application, this respondent has no comments to offer.
20. That with regard to the statements made in para 8.1 to 8.5 and 9.1 of the application, this respondent states that under the facts and circumstances of the case and the settled principles of law the applicant is not entitled to any relief whatsoever as prayed by him. The application is liable to be dismissed with cost and the same is liable to be declared as filed devoid of any merit.

In the premises aforesaid, it is therefore prayed that Your Lordships would be pleased to hear the parties, peruse the records and after hearing the parties and perusing the records shall also be pleased to dismiss the application with cost.

Dhirendra Kunwar Tejwary

Verification

I, Sri Dhirendra Kumar Tiwary, son of Sri G.S. Tiwary, aged about 42 years, at present working as the Executive Engineer, North Eastern Investigation Division III, Central Water Commission, Itanagar (Arunachal Pradesh), do hereby solemnly affirm and state that the statements made in para 4, 2, 4, 5, 6, 9, 11 to 20..... are true to my knowledge and belief, those made in para 3, 7, 8, 10..... being matter of records are true to my information derived therefrom and the rest are my humble submission before this Hon'ble Tribunal. I have not suppressed any material fact.

And I sign this verification on this 4th day of April, 2005 at Guwahati.

Dhirendra Kumar Tiwary
DEPONENT

(15)

ANNEXURE : R1

Annexure-II

No.A-22012/2/2004 E.II
 Government of India
 Ministry of Water Resources
 Central Water Commission

New Delhi, the 4th February, 2005

OFFICE ORDER

Shri D.K. Tiwary, Executive Engineer, North Eastern Investigation Division-III, Central Water Commission, Itanagar is hereby transferred and posted to Bhutan Investigation Division, Central Water Commission, Phuntsholing (Bhutan), with immediate effect in public interest.

(J.S.S. SASTRY)
 UNDER SECRETARY
 TEL. No. 26107770

Copy to:

1. PPS to Chairman, CWC, New Delhi.
2. PPS to Member(D&R)/PPS to Member(RM)/PPS to Member(WP&P), CWC, New Delhi
3. The Chief Engineer (B&BDO), CWC, Shillong
4. The Chief Engineer (TBO), CWC, Siliguri
5. The Superintending Engineer (Coord.), office of Chief Engineer, (TBO) CWC, Siliguri
6. Superintending Engineer(North Eastern investigation Circle) Central Water Commission, Jamir Mansuri, Nongshilliang, Shillong-793014.
7. Pay and Accounts Officer, CWC, New Delhi
8. Director, (D&R Coord.)/(RM Coord.)/(WP&P Coord.), CWC, New Delhi
9. Under Secretary, (CM&V)/(O&M), CWC, New Delhi
10. Shri D.K. Tiwary, Executive Engineer, North Eastern Investigation Division-III, Central Water Commission , P.O. Box-144, Chimpoo, Itanagar-7911111(Arunachal Pradesh)
11. Personal file of Shri D.K. Tiwary, EE

Certified to be true Copy.

Bibhash Pathak
 Advocate

26 APR 2005

गुवाहाटी न्यायालय
Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH: GUWAHATI

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Filed by the applicant
through Subroto Nabi
Chowdhury
26/04/05

In the matter of:

O.A. No. 34/2005

Shri R.D. Deshpande

-Vs-

Union of India & Ors.

-AND-

In the matter of:

Rejoinder submitted by the applicant in reply to the written statement submitted by the Respondent No.5.

The applicant above named most humbly and respectfully begs to state as follows:

1. That in reply to the brief resume described in Para 3(a), (b), (c), and (d) of the written statement, the applicant begs to state that the Central Water Commission (for short CWC), Govt. of India vide its circular No.A-22012/2/2004-ESTT.II dated 10.11.2004 (Annexure-I to the O.A) sought willingness from officers working in the grade of Deputy Director/Executive Engineer for filling up the post of Executive Engineer, Bhutan Investigation Division (for short E.E.BID), Phunt Sholing (Bhutan). It was specifically mentioned in the said circular that the eligibility criteria for selecting the candidate for the said post were: -

- (1). Working in the Grade of Deputy Director/Executive Engineer.
- (2). At least two years experience in the investigation works.

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The applicant having possessed the above mentioned eligibility criteria, applied for the said post of Executive Engineer, Bhutan Investigation Department through proper channel alongwith other candidates. The selection Committee selected the Respondent No. 5 for the said post without even assessing the suitability of the applicant by acting with malafide intention, in an arbitrary, unfair, illegal manner and violating all procedures of selection established by law, as narrated in the Original Application. Eventually, the impugned order of appointment bearing no. A-22012/2/2004-Estt.II/751 dated 04.02.2005 was issued in favour of Respondent no.5, posting him as Executive Engineer, BID and the said selection and order of appointment dated 04.02.2005 have been challenged before this Hon'ble Tribunal.

The Respondent No.5 in a bid to project himself as a better candidate than the applicant and in order to substantiate his impugned selection to the post of EE, BID has furnished a comparative statements of biodata in para 3 (c) of the written statement. In doing so, the respondent has evolved a format as per his own choice and imagination, incorporating therein some parameters/criteria which are not in consonance with those specified in the circular dated 10.11.2004. This apart some of the informations furnished in the format under the para are either false or not relevant to the post under selection or misrepresentation of facts. The parameters cited therein are unwarranted and the only criteria to be considered, as specified in the circular dated 10.11.2004, are experiences in investigation works. However, since the appointment to the post of Executive Engineer, BID involves a detailed selection process to be conducted by a duly constituted selection committee, as admitted by the respondent, and where seniority, age or qualification have not been a point of consideration as evident from the very selection made, and where

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the selection is based on records only, it is the relevant experience and ACRs of the candidates which alone have to be the basis of consideration for selection under the procedures established by law. However, if at all the selection has been made on the parameters as framed/stated by the respondent No.5 in para 3 of his written statement, then a factual comparative statement of the same in respect of the applicant and the respondent No. 5 are furnished below: -

Sl. No	Particulars	The applicant	Respondent No.5	Remarks
1.	Name	R.D.Deshpande	D.K.Tiwari	-----
2.	Date of birth	05.08.67	13.02.63	Applicant being younger, is more fit for field works.
3.	Educational qualification	M.Tech (Marine Technology), IIT, Kharagpur.	M.Tech (Foundation Engineering)	Both are working in the same grade, doing same nature of duties, but R.D. Deshpande having more experience in the investigation work and outstanding performance in every field.
4.	Present post held.	Executive Engineer	Executive Engineer.	-----
5.	Seniority position	Sl. No. 131	Sl. No. 110	Seniority has not been taken into consideration in the selection. There were candidates senior to respondent no.5.
6.	Experience in the field of Investigation	5 years	2 years 8 months	As per circular, this experience is in the key requirement for the post of EE, BID in which the applicants experience is almost double than that of the Respondent no. 5.
7.	Award/Appreciations	(1) Appreciation letter given by the Govt. of Mizoram for outstanding	Ward and appreciations are not in the field of	Applicant has got appreciations in the required field which is essential for the post

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		<p>performances in the field of survey and investigation which is directly related to the works of EE, BID.</p> <p>(2) Attended various trainings in the specific fields.</p> <p>(3) Outstanding ACRs all through.</p>	<p>investigation works and in no way connected to the works of EE, BID.</p>	under selection.
8.	Disciplinary proceeding.	<p>A proposal for proceeding under Rule 16 of CCS (CCA) Rules, was initiated and the representation of the applicant rebutting the allegations left unattended for more than a year. No article of charges issued against the proposed minor penalty.</p>	<p>Memos/warnings have been issued by SE, NEIC, Shillong for disobeying instructions etc.</p>	<p>Plea not relevant in this case since it is not a case of promotion. Even in case of promotion, the provision of "Sealed cover" procedure exists. Applicant cannot be excluded from being assessed for his suitability for the post of EE, BID on this ground as per settled laws.</p>
9.	Prescribed tenure in N.E.Region.	<p>Completed 5 years service in the region and that too upto the utmost satisfaction of the Govt. of Mizoram.</p>	<p>Completed only 2 years 8 months service in the region with average performance in the field of investigation.</p>	<p>Applicant is entitled to special weightage in the matter of selection for the tenure post of EE, BID in tems of Govt. of India's OM dated 14.12.1983 (Annexure-2 in O.A)</p>
10.	Prior association with N.E.Region.	<p>Applicant was associated as member secretary for committee to oversee the project in NER under investigations while he was in the HQ, and this experience is very much relevant to the works of BID.</p>	<p>Associated with Hydrology (NE), Director of CWC.</p>	<p>However, this is not required in the instant case.</p>
11.	Prior	-----	-----	Not required for

	association with Bhutan works.			selection in the instant case.
12.	Publication.	Two papers have been co-authored by the applicant and both are in the field of Hydropower sector relevant to the works of BID.	Not known.	-----
13.	Nature of duties performed.	Performed divergent works in the field of Hydrological observations, Flood Forecasting, monitoring and appraisal of project and coordination.	-----	-----
14.	Additional duties.	Applicant is also the Secretary of K.V, Aizawl for parent Teachers Associations.	-----	Not a criteria for selection to the post of EE, BID.

It is evident from the above comparative statements that the applicant has got longer experience in the desired/ wanted field, outstanding ACRs and Superior bio data than the respondent No.5 on all counts. However, it is only the records of selection proceedings which can reveal as to what parameters/criteria have been taken into consideration by the selection committee and whether those conform to specification given in the circular dated 10.11.2004 and in accordance with the procedures established by law.

The respondent No. 5 has fairly admitted that the posting as EE, BID is not a normal course of transfer. It is true in the sense that the said posting involves willingness of the concerned official for which applications were obtained, and also involves a detailed process of selection which in the instant case, has been done by a duly constituted selection committee. But the fact remains that the

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selection is not supposed to be as per the "wisdom and discretion" of the selection committee as contended by the respondent No. 5, when there is a question of selection, there is no scope of any discretion since the law is very clear on this point. It is the settled position of law that where the selection is made on the basis of records, it is only the performance and the experience in the relevant field which forms the basis of selection, more so when seniority, age and qualification have not been taken into consideration in the instant selection. The candidates being all departmental candidates and the eligibility criteria being common for all of them as specified in the circular dated 10.11.2004 and when the post under consideration is in the same grade in which all the candidates including the applicant are already working, the parameters of age and qualification do not come into picture for consideration since all of them are within the zone of eligibility and hence stand on the same platform. The parameter of seniority also cannot form the basis in the instant case since there are precedents of posting of juniors at the cost of seniors in similar cases earlier and even in the instant selection also for the post of EE, BID, there were candidates who are senior to and experienced than even the respondent No. 5 but the selection committee has selected the respondent No. 5 ignoring those candidates and to illustrate the cases, the names of Shri Munni Lal and Shri S.K. Anil are worth mentioning. Situated thus, it is only the performance and experience of the candidates which form the basis of consideration for selection stretch it further to any other considerations at the whims and caprices of the selection committee smacks malafide and as ill-motivated, unfair, extraneous and aimed at fitting to the advantage of some particular candidate so as to give him undue benefit in selection which the selection committee resorted to in the instant case. It is relevant to reiterate here that the applicant's performances were

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outstanding as recorded in his ACRs for preceding five years and his experience is almost double than that of the respondent No. 5 and that too in the specific field i.e. field of investigation as specified in the circular dated 10.11.2004, which has been admitted by the respondent No.5 also. The records of the selection proceedings may be called for which will unfold the entire facts and will establish beyond doubt that the respondent No. 5 has been selected by ignoring the better eligibility of the applicant in terms of performance and experience and as such violating all norms and reasonableness of selection. If any other criteria for selection were to be taken into consideration, the same ought to have been specified in the circular dated 10.11.2004 so as to enable the applicant to furnish many other certificates and testimonials in support of his candidature which he has got in his credit.

As regards vigilance clearance stated by the respondent no. 5 in the concluding line of his Para 3(d), the matter has been clarified in the relevant para herein below.

2. That the applicant categorically denies the statements made in para 4 and 6 of the written statements and begs to state that due to the impugned selection of respondent No.5, the applicant has been deprived of his legitimate entitlement for selection to the post of EE, BID and as such this Original Application deserves to be allowed with cost.

Further the appointment to the post of EE, BID is not a simple transfer and posting as stated by the respondent No. 5 but involves a detailed process of selection and as such the parameter of SC/ST merits consideration, as enshrined in the Constitution of India.

3. That in reply to the statements made in para 7, 8 and 9 of the written statement, the applicant begs to submit that the respondent No. 5 cannot design a comparative chart of eligibility criteria as per his own choice and advantage for consideration of the selection committee and cannot be a judge of his own merit and efficiency. Even the selection committee cannot make a selection on the basis of their subjective satisfaction and also cannot adopt reasonable norms, but fettered by the settled laws and the doctrine of reasonableness and fairness. The contention of the respondent that the post of EE, BID is a post in the same scale/grade as any other post of Executive Engineer in CWC and that it does not involve element of selection is a misrepresentation of facts in as much as that the posting as EE, BID involves a detailed process of selection for which a selection committee also has been constituted which has made the selection. This has also been admitted by the respondent No. 5 and hence his contention otherwise is not sustainable. When there is a question of selection, the assessment of performance of the candidate is the key parameter and it is the settled position of law that ACRs alone form the basis for assessment of performance of a candidate. Hence, the contention of he respondent No. 5 that ACR is not the criteria for selection to the post of EE, BID and his emphasis on other self-construed parameters some of which are only abstract and do not have specific yard stick for assessment and unwarranted, is against the procedures established by law and such contention is aimed at eclipsing the objectivity and fairness of selection. Further the contention of the respondent that longer experience beyond the required two years of experience does not entitle the applicant of any bonus and the applicant does not have a right for selection thereof, strikes at the root of elementary principles of service jurisprudence. It was clearly mentioned in the circular dated 10.11.2004

that experience in investigation work for "at least two years" which clearly implies that experience beyond two years would carry additional weightage which is also the cardinal principle of service jurisprudence and the instant case is in no way an exception.

The contention of the respondent No. 5 in para 9 of the written statement that the selection is not based on experience alone but on "many other conditions" leads to the incapable questions that what are those conditions and why those conditions were not spelt out in the circular dated 10.11.2004 but preferred to be taken into consideration in a clandestine manner.

As regards the plea of vigilance clearance vis-à-vis disciplinary proceeding against the applicant as stated in para 8 of the written statement, the applicant begs to submit that this is a conspired move against the applicant, meticulously planned by the respondents just for the purpose of pulling back the applicant and making way for the respondents No.5 for selection to the post of EE, BID. The fact remains that the respondents vide their memorandum dated 13.02.2004 proposed to initiate a disciplinary proceeding against the applicant on some vague allegations for which no formal proceedings was drawn nor even the Article of charges or relevant documents relied upon, were given to the applicant. The applicant submitted representations on 12.03.2004 rebutting the allegations and thereafter the respondents neither acted on the said representation nor drew any proceeding against the applicant but kept the matter unattended deliberately for more than a year till now and in the meantime, held the selection on 17.01.2005 to the post of EE, BID selecting the respondent No. 5 at the exclusion of the applicant on the pretext of disciplinary proceeding etc against the applicant. Virtually there is no disciplinary proceeding initiated till now and not to speak of

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proving the allegations whatsoever. Assuming but not admitting that such a proceeding has been pending, this was not a case before the selection committee for consideration in assessing the suitability of the applicant for the post. It is the settled position of law that the mere fact that there is a disciplinary proceeding pending, does not bar the employee for selection posting. Even in case of promotion of a Govt. Servant who is under cloud, the sealed cover procedure has been provided under law but assessment of suitability of such employee for promotion has not been barred on the ground of pendency of disciplinary case/criminal prosecution. The instant case of the applicant being a merely a case of transfer and posting (not even a promotion), the question of disciplinary proceeding or vigilance clearance cannot come on the way and as such the contention of the respondent No.5 is strictly against the procedures established by law and selection made on such grounds is liable to be set aside and quashed.

4. That the applicant categorically denies the statements made in para 10 and 11 of the written statement and further begs to reiterate that the post of EE, BID is definitely a selection post and as such a detailed selection process has been adopted for appointment to the said post. It is also reiterated that the selection for the said post has been made by adopting unfair means and violating all rules and the records of the selection proceeding will provide ample proof of that for which this applicant is not required to produce any further proof as pleaded by the respondent No.5. Regarding seniority, additional experience, disciplinary proceeding etc. averred by the respondent in his context are not at all sustainable in the eye of law for the reasons stated in the proceeding paragraphs hereinabove.

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Further, regarding weightage against tenure posting in N.E. Region in terms of the Govt. of India's O.M dated 14.12.1983, the respondent No. 5 has misinterpreted in para 11 of his written statement the post of EE, BID is a tenure post and as such the principle professed in the said OM is certainly applicable for selection of candidate for the said post. The applicant having a longer tenure than that of the respondent No. 5 in the N.E. Region to his credit has definite edge over the respondent and cannot be equated as contended in the written statement.

5. That the applicant categorically denies the statements made in para 12 and 20 of the written statement and begs to submit that in the facts and circumstances stated above, the applicant is entitled to all the relief's prayed for and the application deserves to be allowed with costs.
6. That the applicant categorically denies the statements made in Para 13, 14, 15, 16, 17 and 18 of the written statement and begs to submit that the criteria of selection have not been confined to those specified in the circular dated 10.11.2004 as averred by the respondent No.5 nor it has been in accordance with the provisions of law and as such the selection has been arbitrary, unfair and opposed to law, and the records of selection proceedings will speak by itself the extent of malafide action which the respondents have resorted to.

Further, the contention that the selection has been made by a high-powered expert committee does not mean that such selection is not amenable to judicial scrutiny but when such selection smacks malafide, it attracts court's interference in all cases. It is beyond any doubt that the respondents acted unfairly and failed to adopt any reasonable or objective criteria for assessing the suitability

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of the candidates and as such the said selection is certainly de hors the rules and is unsustainable in law.

This apart, the plea of the respondent No. 5 that this is foreign posting and hence not guided by any law averred in Para 18 only reflects the mind-set of the respondents and not sustainable in law.

7. That in the facts and circumstances, the applicant humbly submits that the applicant is entitled to the relief's prayed for, and the Original Application deserves to be allowed with costs

VERIFICATION

I, Shri Ravindra Dhonduji Deshpande S/o Late Dhonduji Deshpande, aged about 37 years, presently working as Executive Engineer, North Eastern Investigation Division-II, CWC, Aizwal, Mizoram, do hereby verify that the statements made in Paragraph 1 to 7 of the rejoinder are true to my knowledge and the rest are my humble submission before this Hon'ble Tribunal and I have not suppressed any material fact.

And I sign this verification on this the 24th day of April, 2005.

R.D. Deshpande

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1 APR 2011

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

f/ Radheyne applicant
through Gaurav Nandy
26/04/2011
26/04/2011

In the matter of:

O.A. No. 34/2005

Shri R.D Deshpande

-----Applicant.

-Versus -

Union of India & Others.

-----Respondents.

-And-

In the matter of:

Reply submitted by the applicant against the preliminary objection raised by the Respondents regarding ^{Maintainability} ~~maintaining~~ of the Original Application.

The applicant above-named most respectfully begs to state as follows: -

1. That the applicant categorically denies the statements made in Para 1, 2 and 4 of the preliminary objection and begs to state that the Respondents have misconceived/ misconstrued the provisions of Section 20 of the Administrative Tribunal's Act, 1985 as averred by them and have simply made an attempt to divert the attention of the Hon'ble Tribunal in order to eclipse the actual issue in the instant case. Section 20 of the Administrative Tribunal's Act, 1985 provides as follows: -

"20. Application not to be admitted unless other remedies exhausted.-

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- (1) A Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances.
- (2) For the purpose of Sub-Section (1), a person shall be deemed to have availed of all the remedies available to him under the relevant service rules as to redressal of grievances, -
 - (a) if a final order has been made by the Government or other authority or officer or other person competent to pass such order under such rules, rejecting any appeal preferred or representation made by such person in connection with the grievance; or
 - (b) where no final order has been made by the Government or other authority or officer or other person competent to pass such order with regard to the appeal preferred or representation made by such person, if a period of six months from the date on which such appeal was preferred or representation was made has expired.
- (3) For the purpose of sub-sections (1) and (2), any remedy available to an applicant by way of submission of a memorial to the President or to the Governor of a State or to any other functionary shall not be deemed to be one of the remedies which are available unless the applicant had elected to submit such memorial."

It is clearly evident from the above quoted provisions that the applicant has to exhaust; -

"----- the remedies available under the relevant service rules----".

It has no where been provided in the service rules that appeal has to be made by the applicant against a final order of posting and transfer of a candidate by way of illegal selection, more so, when the execution of such order of posting

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will not depend on the appeal of the applicant whatsoever and once executed, there shall be no remedy for the applicant.

Further the applicant submitted his application for consideration of his posting to the post of Executive Engineer under Bhutan Investigation Division alongwith that of other applicants including that of Respondent No. 5. The Respondents vide their impugned order No. 2201/2/2004-E.II/749-64 dated 04.02.05 selected and ordered for transfer and posting of Respondent No. 5 in the aforesaid post which means that the said impugned order is a final order and the logical corollary to that is that the application of the applicant has been rejected in the process of selection. As such the applicant herein has approached the Hon'ble Tribunal against a final order which has been issued after rejection of the application for posting at BID submitted by the applicant which is in conformity with the provisions laid down under Section 20 (2) (a) of the A.T. Act, 1985.

Hence the contention of the Respondents that the applicant did not exhaust departmental remedies and violated the provisions of Section 20 of the Administrative Tribunals Act, 1985 is a misconstruction of the rules which has been done with the intention of diverting the attention of the Hon'ble Tribunal and as such the alleged objection in the wrong premises is not substantive in law.

2. That the applicant categorically denies the statements made in Para 3 and 5 of the preliminary objections and beg to state that in the circular dated 10.11.2004 (Annexure-1 to the O.A) whereby applications were invited for filling up the post of Executive Engineer, Bhutan Investigation Division, it was clearly mentioned that the eligibility criteria for selecting the candidate for the said post were: -

(1) Working in the grade of Deputy Director/Executive Engineer

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(2) At least two years experience in the investigation works.

The applicant fulfilled the above criteria and as such applied for the post of Executive Engineer under Bhutan Investigation Division (BID). The Respondents have also fairly admitted that out of 18 applicants, 11 of them fulfilled the eligibility criteria who includes the applicant also. The Respondents have now taken plea that the eligibility criteria for selection against the said post in BID include seniority, experience, age, foreign assignments, reputation of officers, vigilance clearance etc. etc. Surprisingly these criteria were not mentioned in the circular dated 10.11.04 and these are their after thoughts which they have designed in order to suit to their convenience for resorting to an unfair selection as has been done. Even then, the parameters of seniority and experience have not been taken into consideration as pleased now, while selecting the Respondent No. 5 and also the candidates having more experience in investigation works but the Respondents ignored those candidates and selected the Respondent No. 5 on extraneous considerations. It is relevant to mention here that the applicant has got outstanding service records/ ACR including appreciation letters and certificates to his credit and has got about 5 years experience specifically in investigation works as against much lesser experience of Respondent No. 5 in investigation works which is the key requirement prescribed in the circular dated 10.11.04. As such the applicant has definite edge and has much better records and eligibility than the Respondent No. 5 but the Respondents, in spite of admitting the eligibility of the applicant, decided to exclude the applicant from consideration outright on the pretext of pendency of a disciplinary proceeding against him and vigilance clearance thereof. It is relevant to mention here that in the instant case, the post of Executive Engineer in Bhutan Investigation Division

is to be filled up by way of transfer posting only and it is not even a case of promotion and as such it does not warrant for vigilance clearance.

Further the said Disciplinary proceeding was proposed to be initiated under Rule 16 of the CCS (CCA) Rules, 1965 for imposing a minor penalty. The Respondents vide their memorandum No. 7/25/2003-Vig dated 13.02.2004 only proposed to initiate a Disciplinary proceeding against the applicant on some allegations but no Article of Charges thereof and relevant records etc. was issued as required under the relevant CCS (CCA) Rules 1965 and the applicant was directed to submit representation against the proposal. The applicant being innocent, submitted detailed representation rebutting the allegations on 12.03.2004 and thereafter the Respondents neither replied to the said representation during this long one year time nor initiated any further action on the matter. As such the contention of the Respondents that charge sheet has been issued and disciplinary proceeding is pending against the applicant amounts to misrepresentation of facts. Presumably, the Respondents made some allegations and proposed for initiating Disciplinary proceeding against the applicant and thereafter has left the matter unattended for more than one year deliberately just with the malafide intention of hanging an issue alive against the applicant so as to deprive him of his legitimate selection for the post of Executive Engineer in Bhutan Investigation Division on such pretext and to make way for their chosen candidate. The Disciplinary Proceeding so stated, was neither initiated nor the allegations have been proved but the Respondents have taken it as a ground as per their own convenience and stretch of imagination and excluded the applicant from consideration outright for the post of Executive Engineer in Bhutan Investigation Division,

in the last Example of malafide, that -
the very statement of Exclusion of the applicant from consideration on the pretext of Pending of disciplinary Proceeding itself is malafide, which is contrary to subtle position of law, and applicant need not prove malafide

Further, even if a disciplinary proceeding is claimed to be pending, this cannot be a bar for assessing the suitability/eligibility of the applicant, for the said transfer/posting when it is not permissible under law even in case of a promotion. In this context specific procedures have been laid down by the Government which have been stated in "Swamy's Complete Manual on Establishment and Administration, 2003 edition" which runs as follows: -

"Procedure to be followed by DPC in respect of Government servants under cloud: -

11.1 -----

11.2 Sealed cover procedure- The DPC shall assess the suitability of the Government servants coming within the purview of the circumstances mentioned above alongwith other eligible candidate without taking into consideration the disciplinary case/criminal prosecution pending-----."

From the above quoted rules it is clear that even if the government servant is thought to be under cloud, he cannot be excluded from being assessed of his suitability when he is otherwise eligible. But in the instant case the Respondents decided to exclude the applicant from assessing outright and made the selection even without going through the records of the applicant on a vague plea of a disciplinary proceeding and that the applicant is under cloud which has been barred even in case of promotion and not to speak of a transfer/posting as in the instant case. As such the very decision of the Respondents to exclude the applicant from consideration is malafide, arbitrary, unfair and violative of the provisions of law.

(Copy of the memorandum dated 13.02.04, representation dated 12.03.04 and relevant portion at Page No. 847-848 in Swamy's manual are annexed

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hcreto for perusal of Hon'ble Tribunal as Annexure- A, B and C respectively).

3. That under the facts and circumstances, the applicant begs to state that preliminary objections filed by the Respondents regarding maintainability of the instant Original Application is not sustainable in law as well as in fact and is liable to be ignored.

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VERIFICATION

I, Shri Ravindra Dhonduji Deshpande S/o Late Dhonduji Deshpande, aged about 37 years, presently working as Executive Engineer, North Eastern Investigation Division-II, CWC, Aizwal, Mizoram, do hereby verify that the statements made in Paragraph 1 to 3 are true to my knowledge and I have not suppressed any material fact.

And I sign this verification on this the 3rd day of April, 2005.

R.D.Deshpande

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No.7/25/2003-Vig.
Government of India
Ministry of Water Resources

ANNEXURE-A

83
Shram Shakti Bhawan,
Rafi Marg, New Delhi.
Dated: 13th February, 2004.

MEMORANDUM

Shri R.D. Deshpande, Executive Engineer, CWC is hereby informed that it is proposed to take action against him under Rule 16 of CCS (CCA) Rules, 1965. A statement of the imputation of misconduct or misbehaviour on which action is proposed to be taken is enclosed.

2. Shri R.D. Deshpande is hereby given an opportunity to make such representation as he may wish to make against the proposal.
3. If Shri R.D. Deshpande fails to submit his representation within 10 days of the receipt of this Memorandum, it will be presumed that he has no representation to make and orders will be liable to be passed against Shri R.D. Deshpande, ex parte.
4. The receipt of this Memorandum should be acknowledged by Shri R.D. Deshpande.

(BY ORDER AND IN THE NAME OF THE PRESIDENT)


(I.L. BHATIA)
DIRECTOR (A) &
CHIEF VIGILANCE OFFICER
Tel. No. 2371 1988

✓ Shri R.D. Deshpande,
Executive Engineer,
Central Water Commission.
(Through Secretary & VO CWC)

Transl. for private

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64/80

**STATEMENT OF IMPUTATION OF MISCONDUCT OR MISBEHAVIOUR FRAMED
AGAINST SHRI R.D. DESHPANDE, EXECUTIVE ENGINEER, CWC.**

IMPUTATION

It is observed that Shri R.D. Deshpande, Executive Engineer, CWC was transferred vide Order No. A.22012/1/2000/E.II dated 09.02.2000 from CWC Headquarters to NEID – II, CWC Aizawl. Shri Deshpande was relieved vide Office Order No. 1/6/2000-RMCD/1470-84 dated 31.03.2000 w.e.f. 03.04.2000 (AN). Shri Deshpande joined NEID – II, CWC, Aizawl on 07.04.2000 (AN). LPC was issued on 19.04.2000 by the then DDO-I, CWC showing the salary paid upto 31.03.2000 and a copy was also endorsed to EE, NEID - II, CWC Aizawl. The salary bill in respect of Shri Deshpande for the month of April, 2000 and arrear on account of pay for the month of April, 2000 was prepared by NEID – II, CWC, Aizawl vide Bill No. P-658 dated 24.04.2000 and Bill No. 674 dated 22.05.2000 respectively and passed by the Aizawl Division and amount of Rs. 9507/- and Rs. 4313/- were passed and paid to Shri Deshpande vide cheque Nos. A/30-018825/00189 dated 29.04.2000 for amount Rs. 9507/- and A/30-018829/00189 dated 31.05.2000 for amount Rs. 14959/- (Rs. 4313/- arrear + Rs. 10646/- salary for month of May, 2000) through Acquittance Roll Register maintained by NEID – II, CWC, Aizawl. A proper receipt was also obtained from Shri Deshpande for delivery of these two cheques.

2. In-spite of the fact that Shri Deshpande was relieved from CWC Hqrs., New Delhi and that the LPC was issued by the DDO, the salary bill for the month of April, 2000 in respect of Shri Deshpande was prepared by CWC Headquarters, New Delhi vide Bill No. P-153 III dated 19.04.2000 and passed by PAO. An Account Payee Cheque No. 279898 dated 26.04.2000 for an amount of Rs.12827/- in favour of Shri Deshpande was issued by PAO in lieu of the Bill of salary of April, 2000. The said amount was credited on 28.04.2000 as Trf SALARY in the SBI account of Shri Deshpande bearing No. 125895. Thus, Shri R.D. Deshpande received two salaries for the month of April, 2000. ✓

3. Shri Deshpande vide his letters dated 09.05.2001 and 05.07.2001 stated that he came to know about the deposit of Rs. 12827/- from Shri J.P. Varshney, Deputy Director & Branch Officer, RMCD, CWC in December, 2000. The passbook was got updated by S/Shri M.C. Saphia, UDC and P.N. Singh, LDC, working in the Accounts Branch of NEID – II, CWC, Aizawl, who were on tour to PAO, CWC, New Delhi for reconciliation of accounts during 20.11.2000 to 24.11.2000. Shri Deshpande has further stated that he had given post dated cheques to Thrift & Credit Society, Department of Irrigation at CWC, to the owner of the house at Delhi taken on rent by him and also to friends for other petty loans taken from them. Therefore, money was being withdrawn by them regularly. Moreover, he has also stated that since he could not visit Delhi after joining at Aizawl, he could not update the passbook and therefore, he did not know the exact balance in his account. He has also stated that he used to send draft from time to time for crediting in his SBI A/c so that the post dated cheques issued by him did not bounce. ✓



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4. This contention of Shri Deshpande, however, has not been found to be convincing as when he left New Delhi, there was only Rs. 16,257.27 ps. (as on 28.04.2000) balance in his said account and he withdrew Rs. 25,790/- between 02.05.2000 to 02.09.2000. Thus Shri Deshpande, had withdrawn more than the balance in his accounts, if the credit due to double drawl is excluded. It is also not a fact that he was sending drafts regularly for credit, into his account as only one draft of Rs 10,000/-was deposited in his account and that too as late as 8.9.2000, by the time when he had already withdrawn Rs 25,790/-. Thus it is established that Shri Deshpande was aware of the deposit of the cheque of Rs. 12827/-, as without knowing his balance, he would not have had drawn Rs. 25790/-. Further, as per his own statement, although Shri Deshpande had come to know about the double drawl of salary in December 2000, yet he intimated the office about the double drawl only in February 2001. It is thus established that he had issued fourteen cheques, amounting to Rs. 25790/-, to withdraw money from the Bank knowing fully well that the balance of Rs. 16,257.27 ps. available in his account as on 28.04.2000, had substantially increased with the credit of the Government cheque for Rs. 12,827/- on 28.4.2000. Therefore, Shri R.D. Deshpande, Deputy Director, CWC is responsible for drawing double salary for the month of April, 2000.

4. By the aforesaid act, Shri R.D. Deshpande, Deputy Director, CWC contravened the provisions of Rule 3(1) (i) and Rule 3 (1) (iii) of the CCS (Conduct) Rules, 1964.



Gram : NEIDIV:Aizawl

Phone/Fax : (0389)2352266
E-mail : neid2cwc@sanchamet.in

Confidential

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/ /
**GOVERNMENT OF INDIA
CENTRAL WATER COMMISSION
NORTH EASTERN INVESTIGATION DIVN.II
ZEMABAWK, AIZAWL-796017 (MIZORAM)**

No.NEID-II/PF-149/2000/ 18

Dated, the 12th March, 2004

To, Govt. of India

Shri I. L. Bhatia
Director (A) &
Chief Vigilance Officer,
Ministry of Water Resources,
Govt. of India,
Shram Shakti Bhawan, Rafi Marg,
New Delhi.

Sub :- Representation against Memorandum No. 7/25/2003-Vig. Dated 13th Feb.2004.

Sir,

I, the undersigned hereby acknowledge the receipt of the memorandum cited above on 12th March 2004.

A representation on the above mentioned Memorandum is also enclosed herewith for kind consideration please.

Encl.: As above.

Yours Faithfully

(R.D.Deshpande)
Executive Engineer

P/c

Took by
for Advocate

9
ConfidentialDated, the 12th March, 2004
Aizawl, Mizoram

To,

Shri I.L. Bhatia
 Director (A) &
 Chief Vigilance Officer,
 Ministry of Water Resources,
 Govt. of India,
 Shram Shakti Bhawan, Rafi Marg,
 New Delhi.

Sub :- Representation against Memorandum No. 7/25/2003-Vig. Dated 13th Feb.2004.

Sir,
 Kindly refer to the Memorandum No. 7/25/2003-Vig dated 13th Feb. 2004. In this context, at the first instant I, the undersigned respectfully express that I am not, in any way, responsible for drawing double salary for the month of April 2000 because of the following reasons;

- i) In spite of the fact that I was relieved from RMCD, CWC Hqrs., New Delhi on 03.4.2000 for joining duty as Executive Engineer, NEID-II, CWC, Aizawl and that the LPC was issued by DDO, CWC Hqrs. indicating therein 'paid upto 31.3.2000', the salary bill for the month of April 2000 was prepared at CWC Hqrs. without my knowledge, may be by oversight, which otherwise should not have been prepared and the same was paid without my signature on receipt.
- ii) And obviously the salary for the month of April 2000 of self was prepared and drawn at Aizawl Division.
- iii) Neither I could visit Delhi after my relieving on 03.4.2000 till Sept. 2001 (visited Delhi Aizawl Division on tour during Sept,01), nor I had personal contacts with any individual in Accounts-III section or PAO, CWC Hqrs.

Further, as soon as I came to know from my previous office i.e. RMCD, CWC Hqrs about the deposit of Rs. 12827/- in Dec. 2000 and also simultaneously got confirmation from updated bank pass book of SBI, R.K.Puram, New Delhi through accounts staff of Aizawl Division (Sh M.C. Saphia & Sh. P.N.Singh, who were on tour to PAO, CWC), I tried to know telephonically from Accounts-III Section, CWC Hqrs. regarding procedure/ methods of refunding the excess salary payment and regularisation of recoveries / deductions already made from salary bill of April 2000 at CWC Hqrs.

However, when I could not receive proper communication / procedure on subsequent telephonic enquiry, SO, Accounts-III, CWC Hqrs suggested me to write a letter in detail & therefore as a result, I sent a letter to this effect on 12th Feb. 2001 addressed to SO, Accts-III, CWC, requesting to advise the procedure of repayment of excess salary of April 2000. Subsequently excess salary payment of Rs.12827/- was refunded alongwith penal interest of Rs. 1043/- as directed by Secretary & Vigilance Officer, CWC and recoveries set right.

Contd. to page 2...

True copy
 from
 [Signature]

3. Regarding withdrawing of Rs. 25,790/- from my bank accounts at SBI, RK Puram between 02/5/2000 to 02/9/2000 against the balance in my A/c of Rs. 16257.27ps/- (as on 28.4.2000) it is to inform that my account in SBI, R.K. Puram was operative since various payments of Thrift & Credit Society at CWC Hqrs, house rent for owner of rented house and other petty loans was to be drawn by the concern individual through cheques given in advance to them as post dated cheques in the span of long period. Since the advance cheques was to be drawn in the span of long period in the different months and moreover I could not visit Delhi during the period and update the pass book after 29.3.2000 till 20.11.2000 (updated by Account staff of Aizawl Division on tour to PAO,CWC on 20.11.2000), I could not understand / take notice of the exact balance amount and exact withdrawn. Meanwhile I did sent a demand draft for depositing in the accounts as per my financial position so that any cheque may not bounce.

Because of my lack of contact / knowledge & perception of the fact about exact balance amount viz- a-viz withdrawal in my SBI account, the excess amount may be mistakenly withdrawn through the post dated cheques given in advance utilising the amount of Govt. cheque deposited without my information in my account, of which I was absolutely anaware. Thus there was no malafide/ bad motive to utilise the amount of Govt. cheque deposited without my knowledge wrongly in my account of SBI,R.K.Puram .

The various facts stated above have already been communicated through various letters to the concerned offices which is also mentioned in the above referred Memorandum. However a copy of each is enclosed for kind reference.

4. In view of the above stated facts, once again I beg to express that I was absolutely innocent about the drawing of double salary by DDO, CWC Hqrs for the month of April 2000 and therefore I should not be held responsible for the same.

However, if it is felt that " because of my not visiting Delhi during the period, due to stationed at very difficult & remotely located place (Aizawl, Mizoram) having very meagre communication facilities and also having occupied with the survey & investigation work of the Aizawl Division, CWC and working sincerely with full devotion with the utmost satisfaction of superiors", lack of contact / awareness and ignorance of exact transactions i.e. balance amount viz- a- viz withdrawal of my bank account at SBI, RK.Puram, New Delhi is not permissible, I may kindly be forgiven for my ignorance and innocence.

I, the undersigned therefore, humbly request that disciplinary proceedings against me may kindly be dropped/ withdrawn and give me an opportunity to serve honestly & sincerely in the Water Resource sector without any black spot on my carrier. If permitted, I may also be allowed to explain my case to your goodself personally at Delhi.

Thanking you in anticipation of kind and sympathetic consideration please.

Yours faithfully


(R.D.Deshpande)
Executive Engineer
N. E. Investigation Division, II
CWC, Aizawl, Mizoram

Non-Selection Method

7. Where the promotions are to be made on 'non-selection' basis according to Recruitment Rules, the DPC need not make a comparative assessment of the records of officers and it should categorize the officers as 'fit' or 'not yet fit' for promotion on the basis of assessment of their record of service. While considering an officer 'fit', guidelines in Para. 6.1.4 should be borne in mind. The officers categorized as 'fit' should be placed in the panel in the order of their seniority in the grade from which promotions are to be made.

Confirmation

8. In the case of confirmation, the DPC should not determine the relative merit of officers but it should assess the officers as 'fit' or 'not yet fit' for confirmation in their turn on the basis of their performance in the post as assessed with reference to their record of service.

Probation

9. In the case of probation, the DPC should not determine the relative grading of officers but only decide whether they should be declared to have completed the probation satisfactorily. If the performance of any probationer is not satisfactory, the DPC may advise whether the period of probation should be extended or whether he should be discharged from service.

Efficiency Bar

Procedure to be followed by DPC in respect of Government servants under cloud

[11.1 At the time of consideration of the cases of Government servants for promotion, details of Government servants in the consideration zone for promotion falling under the following categories should be specifically brought to the notice of the Departmental Promotion Committee:—

- (i) Government servants under suspension;
- (ii) Government servants in respect of whom a charge-sheet has been issued and the disciplinary proceedings are pending; and
- (iii) Government servants in respect of whom prosecution for a criminal charge is pending.

✓ 11.2 *Sealed cover procedure.*— The DPC shall assess the suitability of the Government servants coming within the purview of the circumstances mentioned above along with other eligible candidate without taking into consideration the disciplinary case/criminal prosecution pending. The assessment of the DPC, including "Unfit for Promotion", and the grading

*True copy
for disclosure*

awarded by it will be kept in a sealed cover. The cover will be superscribed "Findings regarding suitability for promotion to the grade/post of in respect of Shri. (name of the Government servant). Not to be opened till the termination of the disciplinary case/criminal prosecution against Shri. The proceedings of the DPC need only contain the note 'The findings are contained in the attached sealed cover'. The authority competent to fill the vacancy should be separately advised to fill the vacancy in the higher grade only in an officiating capacity when the findings of the DPC in respect of the suitability of a Government servant for his promotion are kept in a sealed cover.

11.3 *Procedure by subsequent DPCs.* — The same procedure outlined in Para. 11.2 above will be followed by the subsequent Departmental Promotion Committees convened till the disciplinary case/criminal prosecution against the Government servant concerned is concluded.]

In case of ad hoc promotion also

It has been decided that the "Sealed Cover Procedure" prescribed in the Department of Personnel and Training, O.M. No. 22011/4/91-Estt. (A), dated 14-9-1992 referred to above may be followed at the time of consideration for *ad hoc* promotion also in the case of Government servants —

- (i) who are under suspension;
- (ii) in respect of whom a charge-sheet has been issued and the disciplinary proceedings are pending; and
- (iii) in respect of whom prosecution for a criminal charge is pending.

Ministries/Departments are requested to bring the aforesaid instructions to the notice of all concerned and to take action accordingly.

[G.I., Dept. of Per. & Trg., O.M. No. 28036/2/98-Estt. (D), dated the 23rd February, 1999.]

Adverse remarks in a CR

[12.1 Where the Departmental Promotion Committee find that the adverse remarks in the Confidential Report of an officer have not been communicated to him but the adverse remarks are of sufficient gravity to influence their assessment of the officer concerned, then the Committee shall defer consideration of the case of the officer, provided these remarks have been recorded in any of the CRs pertaining to three immediately preceding years prior to the year in which the DPC is held and direct the cadre controlling authority concerned to communicate the adverse remarks to the officer concerned so that he may have an opportunity to make a representation against the same. Where the uncommunicated adverse remarks pertain to a period earlier than the above or where the remarks are not considered of sufficient gravity to influence the assessment of the officer concerned, the

1. G.I., Dept. of Per. & Trg., O.M. No. 22011/3/88-Estt. (D), dated the 11th May, 1990.

To be kept
for
Advocate