

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application No. 459 of 2013

Date of CAV: 11.09.2018

Date of Order: 25.09.2018

Between:

1. Joy Kongari, S/o. Late Herman Kongari,
Aged 50 years, Deputy Director,
Southern Printing Group,
Survey of India, Uppal, Hyderabad.
2. G. Varuna Kumar, S/o. late G. Dharmiah,
Aged 44 years, Superintending Surveyor,
Indian Institute of Surveying and Mapping,
Survey of India, Uppal, Hyderabad.
3. T.P. Mallik, S/o. T.V. Subba Rao,
Aged 45 years, Superintending Surveyor,
Indian Institute of Surveying and Mapping,
Survey of India, Uppal, Hyderabad.
4. Association of Civilian Class I (Group A) Officers,
Survey of India, (Recognized by Govt. of India &
Affiliated to all India Confederation of Central Govt.
Officers Association), represented by its Local Branch Secretary
G. Varuna Kumar, Superintending Surveyor,
Indian Institute of Surveying and Mapping,
Survey of India, Uppal, Hyderabad.

... Applicants

And

1. Union of India, Ministry of Science & Technology,
Department of Science & Technology,
Represented by Secretary to Government,
Technology Bhavan, New Mehrauli Road, New Delhi – 110 016.
2. Surveyor General of India,
Post Box No. 37, Hathibarkala Estate,
Dehradun – 248001, Uttarakhand.
3. Departmental Promotion Committee,
Represented by the Chairman (Surveyor General of India),
O/o. Surveyor General of India,
Post Box No. 37, Hathibarkala Estate,
Dehradun – 248001, Uttarakhand.
4. S. Sridhara Rao, Presently working as Director,
A.P. Geospatial Data Centre, Survey of India,
Uppal, Hyderabad.

5. D. Arun Kumar, Presently working as Director,
O/o. Dte. Gen. INFO SYSTEM,
A.D.G., Director General, Military Survey (GSGS),
2nd Floor, DGIS Enclave,
Rao Tularam Marg, Delhi Cantt. – 110 010.
6. B. Sareen Chander, Presently working as Director,
O/o. Dte. Gen. INFO SYSTEM,
A.D.G., Director General, Military Survey (GSGS),
2nd Floor, DGIS Enclave,
Rao Tularam Marg, Delhi Cantt. – 110 010.
7. Amardeep Singh, Presently Director (under training),
Indian Institute of Surveying and Mapping,
Survey of India, Uppal, Hyderabad.

... Respondents

Counsel for the Applicants	...	Mr. Meherchand Nori
Counsel for the Respondents	...	Mr. V. Vinod Kumar, Sr. CGSC Mr. Rupendra Mahendra, for R-4

CORAM:

<i>Hon'ble Mr. B.V. Sudhakar</i>	...	<i>Member (Admn.)</i>
<i>Hon'ble Mr. Swarup Kumar Mishra</i>	...	<i>Member (Judl.)</i>

ORDER

{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.) }

The OA is filed against the orders dt 21.12.2012 of the 1st respondent communicating the approval of the minutes of the Departmental Promotional Committee (DPC) held on 17.1.2012 promoting the private respondents to the post of Director (Defense stream) in the respondents organization for the year 2011.

2. Brief facts of the case are that the applicants from 1 to 3, are working as Superintendent surveyor in the respondents organization. The fourth applicant namely Association of Civilian Class I (Group A) officers of the Survey of India is a party to the OA, espousing the cause of the applicants 1 to 3 and other Civilian Officers. Service conditions of officers of Survey of India, in Group A cadre are governed by the Survey of India (Group A) Service Rules 1989,

(hereinafter referred to as the 1989 Rules). The Survey of India is administered by defence and civilian personnel. They are governed by 1989 Rules with a certain difference between the civilians and the defense personnel with the later on their secondment to the Survey of India get 2 years ante-dated seniority. As the respondents from 4 to 7 (private respondents) have been promoted to the post of Director (Defence Stream) in the JAG Non Functional Grade by elongating the length of service invoking the ante dating seniority clause and presenting so to the DPC, the civilian stream is aggrieved that defense personnel though junior would get accelerated promotions and would naturally become senior in the promoted grades leading to extreme career risks in the future, which they feel is unfair and hence this OA.

3. The spinal ground of attack by the applicants against the private respondents is that the mode of induction of the private respondents into the respondents organization is against statutory rules and the private respondents do not have the required length of 13 years of service to be considered for the promotion under challenge. Not considering civilian officers in the said DPC whose composition itself is defective, ignoring recommendation of the chairman DPC to cancel the DPC proceedings, promoting Private respondents without holding the basic JAG grade post, safe guard provision for defense officers, posts not being earmarked, lack of adequate exposure to the private respondents in the respondent organization to handle issues at senior level are *inter alia* objections raised by the applicants.

4. The respondents admit that the appointment to Group A Posts in respondents organization are governed by the 1989 rules. Statutory rules reign supreme. The defence and the civilian streams have been clearly bifurcated by the 1989 rules into two water tight compartments. There is no combined

seniority of the two streams. Each has got certain specific provisions. Hence the applicants facing obstacles in their promotions due to the induction on secondment of the defense personnel is illogical. Moreover the secondment of the defense personnel has been well settled by the Hon'ble Supreme court judgment in Civil Appeal Nos.1754-1755 of 1975, with the attended privileges extended to the army personnel. Based on the observation of the 2nd respondent and on consulting the Min. of Defence and Min. of Science and Technology the decision to promote the private respondents was taken. The army officers have put in the requisite service of 13 years of commissioned service as per 1989 rules by taking cover of the contents of the Letter No 02920/87 TGC&07/UES/MS 8B dt 4.6.1999 which provides for ante dating of service and therefore the private respondents were given the legitimate promotion due to them. The posting was done after consulting the UPSC. The Class I Association of civil officers had no *locus standi* to oppose the case since the issue pertains to the defence personnel quoting Hon'ble Supreme court judgment in **Jashbhai Motibhai Desai v Roshan Kumar, Haji Bashir Ahmed and ors of (1976) 1 SCC 671** wherein it was held that persons who do not have any *locus standi* agitating before a Hon'ble court should not be entertained. The applicants were subsequently promoted by holding DPC and their prayer in the OA has been met. Hence the present OA need to be dismissed.

5. Heard the learned counsels and perused the documents.

6. The ld. counsel for the applicants quoting a few judgments of the Hon'ble Supreme Court on the subject stating that the statutory rules cannot be violated. Inducting officers of the rank of Major in a lower grade post of Dy. Superintendent Surveyor which is in the rank of Captain is irregular. Ante dating service to elongate the length of service is against 1989 rules which specify

mandatory 13 years of commissioned service to be considered for JAG (NFSG) and it also violates the instruction not to do so in the letter sanctioning JAG NFSG post. The army officers will march over the civilian officers as they rise in the hierarchy though they are junior to the civilian officers and thereby the career prospects of the civilian officers will be irreparably hampered. The coordinate Bench of this Tribunal namely Allahabad Bench is already in their favour by setting aside such similar induction of defense personnel in OA 1367 of 2011. The learned counsel has also mentioned that though the applicants have been promoted subsequently after repeated persuasion but they lost the vital seniority and hence the prayer in the present OA is to set aside the DPC minutes to right the wrong.

7. The ld. counsel for the private respondents has argued that when the streams of the defence and the civilians are disparate, there is no reason for the applicants to agitate on an issue which does not concern them. There is no *inter-se* seniority. Number of posts at each level is clearly spelt out separately for both the streams. There is no restriction in a Major rank army officer joining the grade of Dy Superintendent Surveyor as army rules provide for protecting his pay and seniority. Whenever they get a promotion in the army there pay is protected though they may be holding a post lower to their rank in the respondents organization. This flexibility is ingrained in the secondment of the defence personnel to the respondents' organization. Ante dating of service of army officers is a benefit extending to army officers as per relevant army orders. Allahabad bench of this Tribunal has erred in presuming that posts were not available and not reading the rule in the correct perspective in regard to the entry grade of the defence personnel into the respondents organization. Presuming that

the career of the civilian officers will be adversely effected with the present recruitment processes is imaginary and is not a subject matter of this O.A.

8. The learned counsel for the official respondents has taken the line that the statutory rules prescribed have been followed. The benefits sought for have been granted and therefore the OA is not sustainable. Besides, the Allahabad bench judgment of this Tribunal is not applicable as the relief sought was different from the one in the present OA. In fact, the Jabalpur bench of this Tribunal has disposed the representation of a similar type of case in OA 561/2011 at the admission stage and did not entertain when it was re-filed subsequently in another OA stating that that their plea was rejected by the respondents. He has also stated that there is no bar in taking army officers on transfer/deputation in Dy Superintendent Surveyor post even if they are of the rank of Major under Rule 6 of 1989 Rules.

9. At the outset we out rightly reject the contention of the applicants that the Private Respondents lack exposure to handle senior positions. The merit and relevance of the army officers to the respondents' organization has been summed up by the Hon'ble Apex court in Civil Appeal Nos.1754-1755 of 1975 as under:

“To attract engineers into the Survey of India by assuring them all that they were enjoying in their existing service, namely, credit for the years under commission in reckoning seniority and fitment of their salary and other benefits is not discriminative or favoured treatment but justice to those whom of necessity , the service wants.”

Therefore the defense element through permanent secondment is an essential requirement to keep the institution going in the years to come. The stance adopted by the respondents in this regard has been perfect and understandable. They have taken remedial measures of ushering in the 1989 rules where in the streams of the civilian and the defence are bifurcated and also provided a safeguard clause to create a supernumerary post for defense personnel in case

their interests are adversely affected at any interval of time. Their acumen, courage, discipline and decision making prowess are unparalleled in the most trying circumstances. Their exposure is undoubtedly far superior and we do not agree with the applicants that they do not have adequate exposure to the respondents organization. They can handle any situation and therefore they are pride of the country. No doubts on this and let there be none. The proximate link between the Survey of India and the Uniform force is succinctly brought out by the Apex Court in the case of Col. A.S. Iyer vs V. Balasubramanyam (1980) 1 SCC 634 as under:-

13. But we cannot get away from the historic fact — not merely the fact of history — that the Survey of India is, first and foremost, an instrument of military strategy for the defence of the country although its talents are not allowed to grow into thistles but to serve wherever needed.. If competing demands come, it opts for and is therefore geared to defence goals. That is its first charge and, in that sense, it is defence-oriented, has an army bias and cannot afford to ignore the indispensability of a military component. The history of a nation is never written by the military but its history ceases to be, if its reserves of military manpower cannot be mobilised for active duty at an instant's notice. The Survey of India, with its signal service to the planned progress of the people, has a tryst with national security and an ever-ready commitment to the country's defence requirements. This may look overdrawn but embeds a core of truth cardinal to the issue in the case — why weightage to the “uniformed” recruits as against their counterparts in “mufti”?

10. However, to make a dispassionate assessment of the case the following questions concerning DPC with pertinent issues impinging on the same have to be duly addressed lest justice would be miscarried. Therefore we will make a conscious and considered attempt to answer them to uphold justice.

A. Is the DPC composition as per rules which was found fault by the applicants?

DPC composition is as per sl no 3 and sl 8 of Schedule III of 1989 Rules with 2nd respondent as Chairman. Hence the action of the respondents cannot be

faulted. Objection raised by the applicants in their additional affidavit is therefore untenable.

B. Can antedating of service be applied in the context of the 1989 rules while considering the candidature of the applicants before the DPC?

As is seen from the close reading of the 1989 rules there is no such provision for antedating seniority. The Chairman (2nd respondent) of the controversial DPC, which is a subject matter of this OA, has stated so in unequivocal terms in his letter dt C 1901/611/class 1 dt 28.3.2012 to the 1st respondent. Even the 1st respondent while sanctioning the post of Dy. Director (Non functional selection grade), against which the Private Respondents have been promoted, in lr no SM/01/078/87 dt 13.6.1988 addressing the 2nd respondent, has clarified as a note appended thereto as under:

“ Any ante date period given to civilians or army officers for working out the year of entry in service in case of civilian officers or on account of technical qualifications etc permitted to Army officers, would not count for this purpose. ”

Moreover, the respondents have in their reply did take a fair and principle stand that Statutory rules reign supreme in comparison to executive instructions. The ante dating aspect communicated vide Sena Sachiv Shaka/ MS BB dt 4.6.1999 is an executive instruction which is subservient to the statutory 1989 rules framed by exercising power vested in Article 309 of the Constitution. Ante dating as we understand, was issued in the context of extra years of study undergone by the corps of Engineer officers to complete their engineering graduation when compared to the peers in the other corps in Army. If such ante dating of service is not allowed as discussed above then the minimum years of service of 13 years prescribed for promotion to NFSG- JAG at Sl 3 and Sl 7 of Schedule III of

1989 Rules is not fulfilled, thereby putting a question mark on the decision of the respondents in promoting the Private Respondents. The private respondents while joining the Survey of India have given an undertaking to the effect that they would forego their claim to seniority and promotion in their parent service. Hon'ble Supreme Court has observed on multiple occasions as referred to in the later part of this verdict that rules created are not to be violated. The rule violation is crystal clear.

Moreover, the invalidity of the antedating clause is implicitly confirmed by the fact that the first respondent has put up in their web site, draft amendments to 1989 rules vide letter dt 4.5.2018 approved by the competent authority, seeking remarks of the stakeholders, wherein the clause for antedating seniority for those coming from the defense stream has now been inserted.

C. Is level jumping allowed as per 1989 rules and is it not supposed to be kept in view by the DPC as per rules on the subject?

Private respondents have been promoted to the NFSG - JAG without holding the post of JAG which is the intermediate post between STD (Sr. Time Scale) and Non Functional Selection Grade JAG. This is against OM No 22/1/2000-CRD dt June 6th 2000, of DOPT which states that

“The officer shall first hold the post in the basic grade of junior Administrative grade before he could be considered for appointment to NFSG.”

The respondents claim that as per sl no 3 and sl no 7 of schedule III of the 1989 rules the officers who have put in minimum of 13 years of commissioned service are eligible to be promoted. The DOPT is the nodal Ministry whose guidelines constitute the bedrock to administer the Ministries under G.O.I. guidelines are to be followed but not to be violated as held by Hon'ble Supreme Court in **Moni Shanker vs Union of India (2008) 3 SCC 484**. The respondents need to have harmonized the guidelines with the 1989 rules. There is a definite

purpose in insisting that an officer should hold the JAG post before getting promoted to JAG (NFSG), since the residence in such a post will give him the requisite wherewithal to hold a senior position. Obliterating such an exposure is detrimental to organizational interests. Another intrinsic defect noticed is that the post of JAG is a selection post as per sl no 4 of the 1989 rules under schedule III. Once it is a selection post the approval of UPSC is a must as the DPC composition for the said purpose is headed by the Chairman/Member of the UPSC as per sl 4 and sl 8 of Schedule III of 1989 rules. Therefore it implies that the role of the UPSC has been bypassed in its entirety. The JAG post is the basic grade and hence the rule framers in their wisdom and rightly so have brought in the UPSC to examine the suitability of officers to be considered for the basic JAG grade. The grant of NFSG is just an addendum to the JAG post where pay hike is given without any additional responsibilities being assigned. Hence, JAG NFSG etiolates and sinks into oblivion qua the importance of JAG where with pay hike along with additional responsibilities are intrinsic to the promotion from the level of Senior Time Scale. Unless one gets over this basic threshold he cannot get into NFSG JAG. The respondents did flounder by making an error of judgment in not first promoting the Private Respondents to JAG and then moving them to NFSG in JAG grade. This is the fundamental principle usually followed by the Ministries of the Govt. It is not known as to how the respondents could overlook this important step wherein the UPSC has a major role to play. Therefore the level jump provided by the respondents is against 1989 rules and DOPT instructions. In essence it is like trying to construct a building without a foundation. The consequence thereof needs no expounding.

D. Is it a valid organizational ethic to order for safeguards in holding DPC to protect the interests of one set of employees and turning a blind eye to others?

While the action of the respondents in bringing in a safeguard provision to protect the career prospects of defense personnel of creating supernumerary posts in case of wide disparity between civilian and defence officers is certainly laudable, which provision the DPC has been specifically asked to take care of vide 1st respondent letter no SM/01/025/99 dt 16.6.2000. Absence of a corresponding provision in respect of civilians makes the balance tilt towards the seconded military officers. An organization parenting both the groups cannot indulge in such discrimination whatever may be the compelling circumstances. It is time that the respondents should go into the issue and resolve it once for all. More so, in the context of civilian officers having to put in 13 to 18 years of service to be elevated to the grade of Director whereas the private respondents getting the same after 11 years as pointed out at para 21 of the additional affidavit of the applicants. Stagnation of civilian officers is not a healthy sign.

E. Would it be healthy for a junior to write the CRs of the seniors which is construed as one of the essential basis for consideration in a DPC ?

The answer needs no great pondering as the situation is piquant. The enabling provisions facilitating the accelerated promotions to the defense officers overslaughing their senior civilian officers in the feeder grade, more often than not land up to become their bosses. It is but human to carry a baggage of emotions of the past experience in deciding the fate of the erstwhile seniors by scribing the confidential reports accordingly. Given the hostility between the two as is seen in the present OA hoping for such impartiality calls for great mental restraint, generally found in rare cases. Therefore this is another aspect that the respondents need to look into. This situation has arisen because there is allocation in regard to number of posts but earmarking them separately for the civilian and the defence segment is evidently absent. It is time the respondents

may consider to do so for getting over the apprehension of CRs being written by superiors against whose elevation the applicants and similarly placed persons are waging a legal war. This observation we are making consciously since the seniority of the civilian officers and the defence officers gets merged in the senior administrative grade while making a selection for the post of Surveyor General of India. At that juncture the civilian segment is put to disadvantage because of the quick promotions of the defence personnel and the lurking aspect of writing of CRs. Such tilt towards one segment may not be congenial to the future of the organization.

F. The Hon'ble Supreme Court observation in **T.Kannan and ors vs S.K. Nayyar (1991) 1 SCC 544** held that "*Action in respect of matters covered by rules should be regulated by rules*". Again in **Seigal's case (1992) (1) supp 1 SCC 304** the Hon'ble Supreme Court has stated that "*Wanton or deliberate deviation in implementation of rules should be curbed and snubbed.*" In another judgment reported in (2007) 7 SCJ 353 the Hon'ble Apex court held "*the court cannot de hors rules*" Further the Hon'ble Supreme Court observation relevant to this case is the one held in **R. Kuppuswamy and anr vs UOI and ors 1991 (2) ATJ 355 (Hyderabad) dt 31.7.1990** wherein it was stated that "*Executive instructions do not amount to amendment of Recruitment rules and therefore they have no legal validity* ". The supremacy of the statutory rules over the executive instruction was elaborated by the Hon'ble Supreme Court in **UOI vs Somasundaram Viswanath (1988) 3 JT 724**. Lastly the respondent organization need to take note of a very significant judgment of the Hon'ble Apex Court in running the respondent organization which is extracted below for initiating the process of thinking to resolve the issue on hand. Sooner the better. The judgment reads as under:

“No Govt. can resort to actions depriving the benefits to a section of the service enbloc which admittedly is to their disadvantage. Such an enbloc deprivation of the promotional avenues and service benefits cannot be sustained when no cogent reasons are assigned by the administrative set up”

11. Thus as can be seen from the above the action of the respondents is violative of rules, discriminative and arbitrary. Further, the judicial pronouncements stated above do not approve of the decisions of the respondents. Antedating of seniority for Private Respondents is against 1989 rules. Hence the proceedings of the DPC held on 17.1.2012 promoting the Private respondents from 4 to 7 vide Lr No.SM/01/18/2011 dt.21.12.2012 are set aside. The respondents are therefore directed to

- (a) issue show cause notice to the private respondents in regard to their promotion as to why the same be not rescinded in the context of violation of 1989 rules in regard to ante dating of service for promoting them to the Director (Defense) and take action as per cited rules specified for Group A officers in Survey of India (Group A) Service Rules, 1989 within 15 days from the date of receipt of this order.
- (b) Consider conduct of a review DPC as per 1989 rules and promote the officers eligible for the respective stream within two months from the date of receipt of response to show cause notice. While doing so the service rendered by the private respondents in the promoted post of Director (defense stream) should be reckoned as commissioned service for working out the residency period for promotion.
- (c) Consider the following aspects to be got examined while finalizing the amendment to recruitment rules as per the draft letter of the first respondent dt 4.5.2018 put up in the Survey of India Website.

- i) Aspect of permanent secondment to survey of India at the level of Dy. Superintending Surveyor with proper and clear guidelines
- ii) Earmarking of posts separately for the civilian and the army officer so that the grievance of CRs is resolved
- iii) Providing for a safeguard clause for the civilian segment to do away with stagnation in the form of supernumerary posts and measures for periodical meetings of the DPC
- iv) Regulation of level jumping, if any, uniformly for both the streams within the ambit of rules.
- v) Issue of inclusion of the ante date seniority in 1989 rules and a counter balancing proviso for the civilian segment based on merits and the interest of the organization.
- vi) Any other aspects after calling for views from the defense and the civilian streams to give no room for friction between the two group of officers as they need to work in unison to further the interests of Survey of India and the Nation at large, so that a lawful balance is maintained between the civil and the defense streams and grievances forming the foundation for this OA do not emerge in the years to come.

12. In the result, the OA is allowed as above. No order to costs.

(SWARUP KUMAR MISHRA)
MEMBER (JUDL.)

(B.V. SUDHAKAR)
MEMBER (ADMN.)

Dated, the 25th day of September, 2018

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