

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

**Original Application No.180/00411/2017**

Thursday, this the 18<sup>th</sup> day of April 2019

**Hon'ble Mr.E.K.Bharat Bhushan, Administrative Member  
Hon'ble Mr.Ashish Kalia, Judicial Member**

Mr.Vindumadhav Shukla, INAS  
aged 37 years, S/o.Raghavendra Prasad Shukla  
Deputy General Manager, Naval Armament Depot  
NAD PO, Alwaye – 683 563, residing at 401  
Kataribagh, Naval Base, Kochi – 682 004

..... **Applicant**

**(By Advocate Mr.Shafik M.A)**

**V e r s u s**

1. Union of India, represented by the Secretary  
Ministry of Defence, New Delhi – 110 011
2. The Director of Civilian Personnel  
Directorate of Civilian Personnel  
Integrated Headquarters, Ministry of  
Defence (Navy), Sena Bhavan, New Delhi – 110 011
3. The Director General of Naval Armament  
Integrated Headquarters, Ministry of Defence (Navy)  
West Block-V, R.K.Puram, New Delhi – 110 066
4. Union Public Service Commission  
Dholpur House, Shahjahan Marg,  
New Delhi – 110 069
5. The Chief General Manager  
Naval Armament Depot, Alwaye – 683 563
6. Sri.Bhupendra Sharma, INAS  
Joint Director, O/o The Director General of  
Naval Armament, Integrated Headquarters  
Ministry of Defence (Navy), West Block-V  
R.K.Puram, New Delhi – 110 066
7. Sri.Manmohan Goyal, INAS  
Joint Director, O/o the Director General of  
Naval Armament, Integrated Headquarters

Ministry of Defence (Navy), West Block-V, RK Puram  
New Delhi – 110 066

8. Sri.Ramesh Kumar, INAS, Deputy General Manager  
Naval Armament Depot, Mumbai – 400 023 ..... **Respondents**

**(By Advocate – Mr.Keerthivas.G for R 6-8, Mr.N.Anilkumar,SCGSC for R 1-3 & 5 and Mr.Thomas Mathew Nellimoottil for R4)**

This Original Application having been heard on 11.4.2019, the Tribunal on 18.4.2019 delivered the following:

**ORDER**

**Per: Mr.Ashish Kalia, Judicial Member**

The reliefs sought for by the applicant in the Original Application are as follows:

“(I) To call for the records relating to Annexure A-1 to A-18 and to quash A-1 and A-2 to the extent it rejects the applicant's request, being illegal and arbitrary and against the law;

(II) To declare that the applicant is entitled to reckon his seniority vis a vis respondents 6 to 8, based on the marks obtained in the ESE examination, as per A-4, A-5, A-7, A-10, A-12 and A-18.

(III) To direct the respondents to revise and refix the seniority of the applicant and place him at serial no.8 above 5<sup>th</sup> respondent in A-2 seniority list;

(IV) To issue such other appropriate orders or directions this Hon'ble Court may deem fit, just and proper in the circumstances of the case;

(V) To grant the costs of this Original Application.”

2. The applicant, the Deputy General Manager of the respondents, is aggrieved by the non-correction of his seniority in the batch of recruits above respondent nos.5 to 7 based on the marks obtained in the examination conducted by UPSC. Applicant has qualified in the UPSC examination 2003 conducted by UPSC and

was offered a Group A post of DASO-II in the Indian Navy/Ministry of Defence (Navy) in the scale of pay of Rs.8000-275-13500/-. Though the applicant had obtained 673 marks out of 1200 in Electrical engineering stream, he was placed in the Reserve List due to amendment in Rule No.13 of Engineering Services Examination Rules, 2003. However, as soon as vacancy was created as per amended Rule No.13 of ESE Rules, 2003, he was appointed to INAS and joined services with effect from 8.9.2005 under the 3<sup>rd</sup> respondent at Vishakapatnam. Respondents 6 to 8 also qualified in the same examination, but in Electronics and Mechanical stream. The applicant has relied upon the judgement passed by the Apex Court in the matter of Shri.Ramesh Ram v. Union of India and DoP&T O.M dated 9.5.2012 in respect of the relative seniority of the officials of the same batch are fixed based on the consolidated ranking of the UPSC. Since seniority is not fixed correctly, the applicant has made a representation to the respondent. Consequent to his representation, A-1 order is issued, but without correcting the seniority. Feeling aggrieved by this, applicant has approached this Tribunal.

3 Notices were issued and respondents put their appearance. Respondents including party respondents have filed their reply statement.

4 The basic contention raised in the reply statement by the respondents is the settled seniority list should not be unsettled after lapse of so many years. The submission of the respondents is based upon judgment of the apwx court in B.S.Balwas v. State of Punjab and others. It was held that in service matters the question of seniority should not be reopened after lapse of reasonable period because that may result in unsettling the settled position which is not justifiable.

Delay in making grievance itself is sufficient reason to decline interference under Article 226. It was further submitted that the UPSC does not provide a consolidated seniority list of all Engineering Disciplines in case of Engineering Services Examination, the candidates from Supplementary List were being placed en block junior to the candidates from the Main Select List. Accordingly, the applicant was allocated service through Supplementary List, he was placed en block junior to candidates allocated through the Main list. Lastly, it is submitted that the seniority was accepted by the applicant from 2006 onwards.

5 The basic contention raised by the private respondents 6-8 is also based on the contention that delay in filing objection by the applicant and the delay in filing O.A would unsettling the settled seniority amongst the officials. They have also submitted that the respondents cannot penalised on the ground that merit of the applicant's case if there is an administrative fault of theirs. Lastly, they have submitted that change of criteria in the middle of selection process is not permissible under the judgment passed by the C.A.T Mumbai Bench in Shri. Atula Pandey, INAS v. Union of India. UPSC also filed reply statement and admitted that they have not sent consolidated list.

6 Applicant has filed rejoinder thereto and submitted therein that the applicant signed the draft seniority list circulated in November 2007 and March 2008 under the bonafide belief that UPSC order of merit could never be compromised and is sacrosanct for fixing the inter-se seniority of candidates from prestigious annual Engineering Service Examination 2003 as the UPSC were not disclosing the marks of other candidates and also sl.no.of lists of selected candidates was not the

real indicative of order of merit of selected candidates in a particular service in a multidiscipline cadre such as INAS. The applicant was under the bonafide belief that as the department told that the supplementary list candidates would be below the main list candidates in the seniority list. While circulating the seniority list, the 2<sup>nd</sup> respondent never circulated the marks of direct recruits from ESE-2003. The applicant never imagined that the UPSC order of merit could be manipulated and tinkered with in such a brazen and glaring manner. It was quite unbelievable and shocking to the applicant to know through some other source that the order of merit for fixing the inter-se seniority have not been confirmed/followed from UPSC. The applicant has stated in the O.A that he has obtained the highest marks than the three other direct recruit INAS officers selected from the same selection panel UPSC DR Select No.F.1/4(14)/2003/E.VII dated 9.6.2004 through ESE-2003. The details are as under:

Sl. No.	Name (Shri)	Roll No.	Branch	Marks	Exam
1	Vindumadhav Shukla	105	Electrical	673	ESE-2003 (Reserve list)
2	Bhupendra Sharma	27005	E&T	652	ESE-2003 (Main list)
3	Manmohan Goyal	29373	E&T	647	ESE-2003 (Main list)
4	Ramesh Kumar	21432	Mechanical	492	ESE-2003 (Main list)

7 The short question raised though belatedly is that whether relative seniority amongst colleagues shall be fixed on the basis of merit alone or by stream wise or otherwise.

8 The controversy have been narrowed down by the respondents by filing additional reply statement and submitted there in that the 2<sup>nd</sup> respondent has received the advice of the UPSC through the Ministry of Defence in September 2017 wherein the UPSC clarified that seniority is to be determined based on the aggregate marks secured by the candidates in ESE. However, the matter being subjudice before this Hon'ble Tribunal, the respondent has not revised the seniority list on their own. It is also mentioned that while forwarding the allocation of candidates selectd through the ESE-2003, the Railway Board had intimated only the all India rank secured by the candidates in the Main Select List. The all India rank secured by the candidates in the supplementary list was not intimated. The Aggregate marks obtained by the candidates were not intimated at all. Thus, in the absence of the aggregate marks secured by the candidates, the IHQ/DCP had placed the candidates from supplementary list en-bloc junior to all candidates from the Main Select List. The same seniority position has been continuing unaltered for the last 10 years and accepted by the applicant also.

9 Indirectly the department admitted their mistake and clarified that the relative seniority has to be fixed on the basis of marks obained by the applicants. The applicant is having the highest marks amongst the 4 candidates. As could be seen from the above table, applicant got 673 marks whereas other candidates got 652, 647 and 492 respectively, though their names have been shown in the main list. The Main List and the Reserve List have no relevance as per the latest clarificatory affidavit filed by the respondents. It is submitted therein that the senioirity has to be fixed on the basis of aggregate marks obtained by the

applicants. Now the second point raised by the respondents that whether at this belated stage, seniority can be altered or not. In view of this, Hon'ble Apex Court in the matter of ***Collector Land Acquisition, Anantnag & Anr. v. MST Katiji & Ors (AIR 1987 1353)*** held that:

“ Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties. ”

The apex court has laid down the law that where there is a merit in the case, the technicalities such as limitation should not come in the way for justice. Taking note of this judgment, this Tribunal is of the view that the applicant is entitled to get his seniority re-fixed from the date of joining. There is no prejudice caused to the other party respondents because their seniority has to be fixed in accordance with law after the seniority of the applicant because of the relative marks obtained by the candidates are lesser. In view of the above legal position, this Tribunal is of the view that the O.A has merit on its side. Hence, the O.A is allowed with a direction that the respondents may fix the applicant's seniority at appropriate place by taking into account the marks on the basis of the aggregate marks obtained by the applicant in terms of the clarification given by the UPSC within a period of 3 months from the date of receipt of a copy of this order.

10 The Original Application is disposed of as above. No costs.

**(ASHISH KALIA)  
JUDICIAL MEMBER**

**(E.K BHARAT BHUSHAN)  
ADMINISTRATIVE MEMBER**

**List of Annexures**

Annexure A1 - True copy6 of the letter No.CP(G)/2112/SL/INAS dated 23.5.2016 issued by the 2<sup>nd</sup> respondent

Annexure A2 - True copy of the seniority list letter No.CP(C)/2112/SL/INAS/(i) dated 23.5.2016 issued by the 2<sup>nd</sup> respondent

Annexure A3 - True copy of the letter no.3(2)/2002-D(Appts) dated 10.8.2005 issued by the Under Secretary, Ministry of Defence

Annexure A4 - True copy of the letter No.F.2/4/(219)/2016/E-VII dated 9.12.2016 issued by the CPIO of UPSC

Annexure A5 - True copy of the OM No.20011/1/2008- Estt(D) dated 11 Nov 2010 issued by the Ministry of Personnel

Annexure A6 - True copy of the representation dated 4.11.2010 submitted to the 2<sup>nd</sup> respondent

Annexure A7 - True copy of the DoP&T OM No.13015/1/2006-AIS Vol.III dated 9.5.2012 issued by the Ministry of Personnel

Annexure A8 - True copy of the representation dated 29.12.2012 submitted before the 2<sup>nd</sup> respondent

Annexure A9 - True copy of the letter No.F.2/4/(174)/2014/E-VIII dated 19.5.2014 of the CPIO of UPSC

Annexure A10 - True copy of the letter No.F.2/4(137)/2015/e-VII dated 11.6.2015 issued by the UPSC

Annexure A11 - True copy of the representation dated 29.5.2015 submitted to the 2<sup>nd</sup> respondent

Annexure A12 - True copy of the letter No.F 2/4(152)/2016/E-VII dated 13.7.2016 issued by the UPSC

Annexure A13 - True copy of the representation dated 21.6.2016 submitted by the applicant

Annexure A14 - True copy of the IHQ/MoD(Navy)/CPIO letter No.DL/0812/2139 dated 19.11.2016

Annexure A15 - True copy of the letter No.CP(G)/2112/INAS/SL dated 26.10.2016 issued by the 2<sup>nd</sup> respondent

Annexure A16 - True copy of the letter No.CP(G)/2112/INAS/SL dated 3.11.2016 issued by the 2<sup>nd</sup> respondent

Annexure A17 - True copy of Rule No.16 of Civil Services Examination (CSE) Rules-2005 published by DoP&T vide notification dated 4 Dec 2004

Annexure A18 - True copy of letter No.B/41023/AISL/EE/01 Apr 16/E1 (DPC) dated 26 Apr 16 issued by IHQ/MoD (Army)/DG(Personnel)/E1(DPC)

Annexure A19 - True copy of the Gazette Notification dated 22.1.2004 issued by the Railway Board, Ministry of Railways

Annexure A20 - True copy of the letter No.CP(G)/2112/JAG(NF)/VMS/CC dated 28.8.2017 issued by the IHQ/MoD(Navy)/PDCP

Annexure A21 - True copy of the extract of the introduction and function of Service – II division of UPSC taken from UPSC website

Annexure A22 - True copy of the letter No.F.2/4/(125)/2017/E-VII dated 17.7.2017 of the UPSC

Annexure A23 - True copy of the letter F.No.12/12/2017-s.II dated 04 July 2017 of the UPSC

Annexure A24 - True copy of the letter No.F.2/4/(68)/2010/E-II dated 23.11.2010 of the UPSC

Annexure A25 - True copy of the letter No.CP(G)/2112/SL/INAS dated 10.11.2017 issued by the 2<sup>nd</sup> respondent.

Annexure A26 - True copy of the letter No.CP(G)/2112/SL/INAS dated 17.7.2017 of the 2<sup>nd</sup> respondent

Annexure A27 - True copy of the letter No.F.No.2/10/2017-s.II dated 7.9.2017 of the UPSC

Annexure A28 - True copy of the letter F.No.12/21/2017-s.II dated 26.10.2017 of the UPSC

Annexure A29 - True copy of the letter No.DL/0812/4262 dated 30.11.2017 of the IHQ/MoD(Navy)/CPIO(N)

Annexure A30 - True copy of the OM No.9023/2/2006-Estt(B) dated 2.3.2016 of the DoP&T

Annexure A31 - True copy of the O.M No.39023/2/2006-Estt(B) dated 5.12.2006 of the DoP&T

Annexure A32 - True copy of the OM No.22012/15/2013-AIS(I) dated

8.8.2013 issued by the DoP&T

Annexure A 33 - True copy of the letter No.121/7/ADM/DE(II)/16 dated 2.9.2016 issued by the Directorate General Defence Estates

Annexure A34 - True copy of the letter No.121/7/ADM/DE(18)/17 dated 31.7.2017 issued by the Directorate General Defence Estates

Annexure A35 - True copy of the O.M No.A-23011/03/2016-Ad.II dated 20.4.2017 issued by the Ministry of Corporate Affairs

Annexure A36 - True copy of the seniority list as on 1.10.2016 of IpoS officers issued by Secretary, Department of Posts.

Annexure R1(a) - True copy of the judgment dated 11.12.2017 of the Hon'ble Supreme Court in the case of B.S.Balwas v. State of Punjab and others.

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