

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/00812/2018

DATED THIS THE 22ND DAY OF MARCH, 2019

HON'BLE DR.K.B.SURESH, MEMBER (J)

HON'BLE SHRI C.V. SANKAR, MEMBER (A)

C. Harikrishnan
Aged about 42 years,
Son of Late M.R. Chandrasekharan Pillai
Senior Stores Officer – I (SSO-I)
GTRE, DRDO, CV Raman Nagar
Bengaluru – 560 093
R/o “Madhavam”
No. 42, Akash Nagar, B. Narayanapura
Bangalore – 560 016
(By Advocate M/s Biju & Co.)

..... Applicant

Vs.

1. The Director,
Gas Turbine Research Establishment
Ministry of Defence, DRDO,
CV Raman Nagar
Bengaluru - 560 093

2. Chairman, DRDO (formerly known as Director General DRDO) & Secretary D (R&D),
Ministry of Defence, DRDO Headquarters,
DRDO Bhawan, Rajaji Marg, New Delhi – 110 011

3. Ministry of Defence, Government of India
Represented by its Secretary,
South Block, New Delhi – 110 011

4. Shri DC Parmar, SAO-I
Naval Materials Research Laboratory
(NMRL), DRDO, Highway Road,
T Circle, East Ambarnath,
Shil, Badlpur – Katai Road, MIDC Aarea,
Ambarnath – 421 506 (Maharashtra)

5. Shri Amit Kumar Singh, SAO-I
Centre for Fire, Explosive & Environment
Safety (CFEES), DRDO Bigad,
SK Mazumdar marg, Timarpur,
Delhi – 110 054

6. Shri Gauran Mishra, SAO-I
Laser Science & Technology Centre
(LASTEC), DRDO Metcalfe House,
Delhi – 110 054

7. Shri Santanu Banerjee, SAO-I
Defence Food Research Laboratory (DFRL),
DRDO, Siddharth Nagar,
Mysore – 570 011 (Karnataka)

8. Shri Anupam Pandey, SAO-I
Defence Electronics Application Laboratory
(DEAL), DRDO, Post Box 54, Raipur Road,
Dehradun – 248 001 (Uttarakhand)

9. Smt. Deepthi Bhardwaj, SAO-I
Directorate of Personnel, DRDO Bhawan,
Rajaji Marg, New Delhi – 110 011

10. Shri Arun Kumar Yadav, SAO-I
Gas Turbine Research Establishment
(GTRE), DRDO, CV Raman Nagar,
Bengaluru – 560 093 (Karnataka)

11. Shri Prakash Singh, SAO-I
Joint Cypher Bureau (JCB), DRDO

Metcalfe House Complex, Delhi – 110 054

....Respondents

(By Shri H.R. Sreedhara, Counsel for the Respondent No. 1 to 3 and
Shri Izzhar Ahmed, Counsel for Respondent No. 5, 6, 9 & 10)

O R D E R (ORAL)

(HON'BLE DR. K.B. SURESH, MEMBER (J))

Heard. The matter relates to promotion and other consequential reliefs. But then there are two issues involved in it. Since multiple reliefs had been called for and in the interregnum of the events molding of reliefs has also become necessary, we will now hold prima facie that we will now look into the promotions of 2019 DPC only. If the applicant wants to have his seniority from the earlier date looked into, he may file an appropriate case impleading the necessary parties therein. The issue is very simple. We had the benefit of hearing Smt. Padmapriya, the department representative. It appears that one respondent Shri Parmar seems to be eligible as on 01.01.2019. We do not see any reason why he should not be considered. Therefore, we will hold in favour of Shri Parmar. Regarding Shri Amit Kumar Singh, Shri Gaurav Mishra, Shri Santanu Banerjee, Shri Anupam Pandey, Shri Arun Kumar Yadav, Smt Deepthi Bhardwaj etc., it appears that they are direct recruits whom the respondents submits that under the rule can be considered if their junior in the list has been considered and they have either half of the residency period or more than 2 years service. It appears that having been selected in November, 2018 Smt. Deepthi Bhardwaj is immediately out. Regarding others, they can come in only if the respondent

Shri Prakash Singh can be brought into the list. Attempts were made to serve notice on Shri Prakash Singh but the respondents had to admit that he had been unauthorizedly absent from 2017 onwards and not to be found but somehow on hearing about this matter Shri Prakash Singh had sent a friend of his Shri Govind Kumar, a colleague of his who is working at Bangalore. But then he was unable to answer any of the questions. We asked him whether he is attending office which he does not know but then the respondents counsel admit that he has been unauthorizedly absent which has been corroborated by Smt. Padmapriya that he is not seen or heard from 2017. Therefore, for not having completed residency period because his eligibility starts from 01.01.2014 and by 2017 he had completed only a residency period of 3 years, he cannot be considered. Since he cannot be considered, naturally the others also will not be considered. Applicant produces the names and criteria of the persons who were being considered, which we quote:

“Persons being considered for promotion to the grade of CAO for DPC 2019 from two feeder cadres as per the combined eligibility list prepared by the respondents.

Combined eligibility list

Sl. No	Name	DOA	DPC YEAR	Factual Position
1	DC Parmar	20-Dec-13	Sur DR-2013	Illegally absorbed to the post, no provision for absorption as per SRO 97. Also not meeting the qualification for the post (required experience of 6 years in Administration is lacking which is contrary ibid SRO)

2	<i>Amit Kumar Singh</i>	3-Mar-15	DR-2013	Not completed the 5 years qualifying service w.e.f. DOA as on 1/1/2019. Hence not meeting the eligibility criteria for promotion at all.
3	<i>Gaurav Mishra</i>	9-Nov-15	DR-2013	-DO-
4	<i>Santanu Banerjee</i>	25-Feb-15	DR-2013	-DO-
5	<i>Anupam Pandey</i>	9-Nov-15	DR-2013	-DO-
6	<i>Deepthi Bhardwaj</i>	28-Nov-2018	DR-2013	-DO-
7	<i>Arun Kumar Yadav</i>	31-Jul-15	DR-2013	-DO-
8	<i>Prakash Singh</i>	1-Jan-14 (notional) Actual Sep-15	DPC-2014	Copy of the seniority roll of SAO-I as issued by respondent No. 02 as on 1 st June 2015 is enclosed; wherein this officer was not on the roll at all. It is surprising as to how his name is emerging in this list. Apparently he is not eligible due to lack of minimum prescribed 05 years of qualifying service for sake of promotion as on 01/01/2019. As of now, his positioning as on 01/01/2014 stands illegal. He had undergone disciplinary proceedings & rejoined the service only in September 2015 with penalty. <u>He is currently not having vigilance clearance also; whereby his enlisting towards the promotion for the post of CAO is highly irregular.</u>
9	<i>DS Negi</i>	1-Jan-14	DPC 2014	Completed the qualifying service and

				<i>as such stands eligible</i>
10	C Harikrishnan	1-Jan-14	DPC 2014	-DO-
11	Suvro Banerjee	1-Jan-14	DPC 2014	-DO-
12	A K Puri	1-Jan-14	DPC 2014	-DO-
13	Saurabh Negi	1-Jan-14	DPC 2014	-DO-
14	KL Kothari	1-Jan-14	DPC 2014	-DO-
15	BR Chaudhary	1-Jan-14	DPC 2014	-DO-

This Hon'ble Tribunal may kindly refer Para No. 17 of the reply submitted by the respondents wherein respondents has confirmed that "Officers of Administrative cadre will not fill the vacancies for the post of CAO and the applicant will be considered for promotion to CAO in DPC 2019 w.e.f. 01/01/2019."

Contrary to the above, respondents were trying to promote ineligible officers of Administrative cadre for the 1st seven clear vacancies available on 01/01/2019 and trying to promote the applicant only in July 2019 making the applicant junior to ineligible Administrative cadre officers.

Confirmation given by the respondents in their reply in Para No. 17 was totally aimed at misleading this Hon'ble Tribunal and only aimed at deriving undue advantage to ineligible officers and to deny justice to the applicant. This Hon'ble Tribunal is pleaded to take a serious view on this deliberate attempt by respondents to mislead the Hon'ble Tribunal.

Sl. No. 06 in the above eligibility list had completed only one month of qualifying service against the requirement of 05 years. Hon'ble Tribunal may kindly note that this officer is posted in Directorate of Personnel and is involved in the preparation of the above list and officer has taken undue advantage of her position and being biased for her personal gain did not act fairly.

Combined seniority list of SSO-I & SAO-I

Sl. No	Name	DOA	DPC YEAR	Remarks
1	DC Parmar	20-Dec-13	Sur DR-2013	<i>Illegally absorbed to the post, no provision for absorption as per SRO 97. Also not meeting the</i>

				<i>qualification for the post (required experience of 6 years in Administration is lacking which is contrary ibid SRO).</i>
2	<i>Amit Kumar Singh</i>	<i>3-Mar-15</i>	<i>DR-2013</i>	
3	<i>Gaurav Mishra</i>	<i>9-Nov-15</i>	<i>DR-2013</i>	
4	<i>Santanu Banerjee</i>	<i>25-Feb-15</i>	<i>DR-2013</i>	
5	<i>Anupam Pandey</i>	<i>9-Nov-15</i>	<i>DR-2013</i>	
6	<i>Deepthi Bhardwaj</i>	<i>28-Nov-2018</i>	<i>DR-2013</i>	
7	<i>Arun Kumar Yadav</i>	<i>31-Jul-15</i>	<i>DR-2013</i>	
8	<i>Prakash Singh</i>	<i>1-Jan-14 (notional) Actual Sep-15</i>	<i>DPC-2014</i>	
9	<i>DS Negi</i>	<i>1-Jan-14</i>	<i>DPC 2014</i>	
10	<i>C Harikrishnan</i>	<i>1-Jan-14</i>	<i>DPC 2014</i>	
11	<i>Suvro Banerjee</i>	<i>1-Jan-14</i>	<i>DPC 2014</i>	
12	<i>A K Puri</i>	<i>1-Jan-14</i>	<i>DPC 2014</i>	
13	<i>Saurabh Negi</i>	<i>1-Jan-14</i>	<i>DPC 2014</i>	
14	<i>KL Kothari</i>	<i>1-Jan-14</i>	<i>DPC 2014</i>	
15	<i>BR Chaudhary</i>	<i>1-Jan-14</i>	<i>DPC 2014</i>	

This Hon'ble Tribunal may kindly refer to Para No. 12 of the reply statement wherein the last two lines it was confirmed that "Seniority roll of SAO-I & SSO-I are maintained under separate seniority roll as both the posts belong to different cadres and as such inter-se seniority of direct recruits and promotees of SAO-I cannot be determined with the promotees of SSO-I as per the OM dated 04th March 2014".

Respondents bluntly violated the above confirmation and made a illegal combined seniority roll to mislead UPSC and to derive undue advantage to ineligible candidates with ulterior motives. This Hon'ble Tribunal is pleaded to make a serious view on the above action of the respondents which is with their ulterior motive and nothing else. The following case law applies with full force in the instant case so as to deliver the justice to the applicant:-

“Hon’ble Supreme Court in the case of R Prabha Devi vs. Government of India, (1988) 2 SCC 233: AIR SC 902 has held-

When certain length of service in particular cadre can validly be prescribed and is so prescribed, unless a person posses that qualification, he cannot be considered eligible for appointment.”

In line with the above judgment DOP&T issued guidelines for the cases in which promotion is made from more than one grade and no quota has been fixed for various feeder grades. DOP&T has issued a guideline vide DOP&T OM No. 20011/1/2008-Estt.(D) dated 11th November, 2010. It clearly mentions that a combined eligibility list is to be prepared and while preparing this list date of completion of qualifying service prescribed in the relevant recruitment rule in the feeder grade of promotion is the criteria.

**DEFENCE RESEARCH AND DEVELOPMENT ORGANISATION
DRAFT SENIORITY LIST OF SENIOR ADMIN OFFICER GRADE-I
(AS ON 01 JUNE 2015)**

SE N	NAME	SC /S T	ESTT	DOB	DOA	EDUCAT ION	DPC DATE/ UPSC REFERENCE	REMARKS
1	S SOMANATHA	ST	CABS	17-Sep-55	1-Jan-11	SSLC	DPC 2011	
2	GR CHANDRA SEKHAR	ST	LRDE	18-Feb-60	1-Jan-11	B.CO M	DPC 2011	
3	Ms.VL GHODPAGE	ST	NMRL	14-Jul-55	1-Jan-12	SSC	DPC 2012	
4	NR CHOUDHARI	ST	R&DE (E)	1-Jun-61	1-Jan-13	HSC	DPC-2013	
5	AMIT KUMAR SINGH		CFEE S	2-Jan-82	3- Mar-15	MBA	F.1/130(36)/2 012-R- IV/SPC-II Dt 31.07.14	Provisiona l seniority
6	SANTANU BANERJEE		DRL (T)	6-Dec-66	25- Feb-15	Eco (Hons)	F.1/130(36)/2 012-R- IV/SPC-II Dt 31.07.14	Provisiona l seniority
7	DC PARMAR	S C	ARDE	16-Jun-65	20- Dec-13	B.E.	F.1/130(36)/2 012-R.IV Dt 20.09.2013	Provisiona l seniority

**OCCURRENCE OF VACANCIES OF CHIEF ADMINISTRATIVE OFFICER
FOR THE YEAR 2019**

Ser No	Events	Date of Occurrence	No of vacancie
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			S
1.	Unfilled from DPC 2018	01.01.2018	07
2.	Due to likely promotion of Shri BS Yadav to the grade of Joint Director (Admin)	01.01.2019	01
3.	Superannuation of Shri KS Manjunatha	01.06.2019	01
4.	Superannuation of Shri Praveen Kumar	01.08.2019	01
5.	Superannuation of Shri Shivkumar S Sunkad	01.11.2019	01
Total			11

DEFENCE RESEARCH DEVELOPMENT ORGANIZATION
COMBINED ELIGIBILITY LIST SAO-I AND SSO-I (FOR DPC – 2019)

<u>S</u> <u>E</u> <u>N</u>	<u>NAME</u>	<u>Grade</u>	<u>SC/</u> <u>ST</u>	<u>ESTT</u>	<u>DOB</u>	<u>DOA</u>	<u>UPSC</u> <u>REF/DPC</u> <u>YEAR</u>	<u>REMARKS</u>
1	DC PARMAR	SAO-I	SC	NMRL	16-Jun-65	20-Dec-13	Sur DR-2013/02/01	
2	AMIT KUMAR SINGH	SAO-I		CFEES	2-Jan-82	3-Mar-15	DR-2013/11/01	F.No.1/130(36)/2012-R-IV/SPC-II dt. 06.12.18
3	GAURAV MISHRA	SAO-I		LASTE C	14-Apr-80	9-Nov-15	DR-2013/11/02	F.No.1/130(36)/2012-R-IV/SPC-II dt. 06.12.18
4	SANTANU BANERJEE	SAO-I		DFRL	6-Dec-77	25-Feb-15	DR-2013/11/04	F.No.1/130(36)/2012-R-IV/SPC-II dt. 06.12.18
5	ANUPAM PANDEY	SAO-I		DEAL	30-May-71	9-Nov-15	DR-2013/11/05	F.No.1/130(36)/2012-R-IV/SPC-II dt. 06.12.18
6	Ms DEEPTI BHARDWAJ	SAO-I		HQ DOP	20-Jul-79	29-Nov-18	DR-2013/11/07	F.No.1/130(36)/2012-R-IV/SPC-II dt. 06.12.18
7	ARUN KUMAR YADAV	SAO-I	OB C	GTRE	30-Dec-81	31-Jul-15	DR-2013/11/09	F.No.1/130(36)/2012-R-IV/SPC-II dt. 06.12.18
8	PRAKASH SINGH	SAO-I		JCB	2-Dec-63	1-Jan-14	DPC-2014/01/01	
9	DS NEGI	SSO-I		DIPAS	25-Nov-73	1-Jan-14	DPC-2014	
1	C.	SSO-I		GTRE	26-	1-	DPC-2014	

0	HARIKRISHNAN				May-76	Jan-14		
11	SUVRO BANERJEE	SSO-I		DIC, Panagarih	19-Jun-75	1-Jan-14	DPC-2014	
1 2	AK PURI	SSO-I		TBRL	23-Jan-77	1-Jan-14	DPC-2014	
1 3	SAURABH NEGI	SSO-I		DMM	1-Feb-75	1-Jan-14	DPC-2014	
1 4	KL KOTHARI	SSO-I		HQ DFMM	4-May-64	1-Jan-14	DPC-2014	
1 5	BR CHAUDHARY	SSO-I		SPIC	15-Jul-63	1-Jan-14	DPC-2014	

2. Therefore, it appears that among the respondents only Shri Parmar is eligible to be considered. Therefore, the DPC can only now consider two names, i.e., the applicant as well as Shri Parmar who had admittedly completed the eligibility period. The OA is thus allowed. The other reliefs sought for can be agitated in another OA. We grant him liberty. The OA is allowed. No order as to costs.

3. At this point of time, Shri Izzhar Ahmed, learned counsel for Respondent No. 5,6,9 & 10, submits that Smt. Deepthi Bhardwaj came into position on a court order. Actually she was a selectee in the 2013 list but then because of the continuing litigation it took time upto 2018 for her to be considered. If that be so, she also can be considered.

4. The OA is allowed. No order as to costs.

(C.V. SANKAR)

MEMBER (A)

(DR.K.B.SURESH)

MEMBER (J)

/ksk/

Annexures referred to by the applicant in OA No. 170/00812/2018

Annexure-A1: Copy of the offer of appointment dated 04.07.2003

Annexure-A2: Copy of the promotion order of the applicant as SSO-II dated 22.04.2008

Annexure-A3: Copy of the order dated 27.11.2013

Annexure-A4: Copy of the gazette notification dated 10.08.2013

Annexure-A5: Copy of the office memorandum dated 04.03.2014

Annexure-A6: Copy of the office memorandum dated 03.03.2008

Annexure-A7: Copy of the request of the applicant dated 30.11.2016

Annexure-A8: Copy of the reminder submitted by the applicant

Annexure-A9: Copy of the letter dated 10.05.2018

Annexures with Rejoinder:

Annexure-A10: Copy of the OM dated 08.09.1998

Annexure-A11: Copy of the SRO 53 dated 08.07.2013

Annexure-A12: Copy of the DOP&T OM dated 03.03.2008

Annexures with Written Argument Note

Annexure-A13: Copy of the proforma for referring proposals for promotion to UPSC

Annexure-A14: Copy of the judgment of the Hon'ble Supreme Court dated 08.03.1988 in R. Prabha Devi & Ors Vs. Government of India

Annexure-A15: Copy of the S.R.O. 97 dated 22.10.2012

Annexures with Reply of R-5, R-6 & R-10

Annexure-Re-1: Copy of the duties and responsibilities the grade of CAO

Annexure-Re-2: Copy of the list of eligible candidates in DPC-2019

Annexure-Re-3: Copy of the order dated 11.09.2015 in OA No. 2719/2014

Annexure-Re-4: Copy of the letter dated 15.04.2018

Annexures with Reply of R-9

Annexure-Re-1: Copy of the duties and responsibilities the grade of CAO

Annexure-Re-2: Copy of the list of eligible candidates in DPC-2019

Annexure-Re-3: Copy of the order dated 11.09.2015 in OA No. 2719/2014

Annexure-Re-4: Copy of the letter dated 15.04.2018

Annexure-Re-5: Copy of the order dated 08.09.2017 in OA No. 2101/2014

Annexure-Re-6: Copy of the order dated 09.08.2018 in WP No. 10443/17

Annexure-Re-7: Copy of the letter dated 23.08.2018

Annexure-Re-8: Copy of the representation dated 15.02.2019

Annexures with Memo for production of documents

Annexure-M-01: Copy of the order dated 11.09.2015 in OA No. 2719/2014

Annexure-M-02: Copy of the order dated 03.06.2016 in WP No. 9580/2015

Annexure-M-03: Copy of the order dated 09.08.2018 in WP No. 10443/2017

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