

Central Administrative Tribunal, Principal Bench

Original Application No. 1341 of 1999

New Delhi, this the 29th day of September, 2000

Hon'ble Mr. Kuldip Singh, Member (J)
Hon'ble Mr. S.A.T. Rizvi, Member (A)

Wali Mohammad Khan S/o Shri Abdulla Khan
R/o Military Farm School & Centre,
Grass Farm Road, Meerut Cantt.
Meerut.

- Applicant

(By Advocate - Shri S.K. Gupta)

Versus

1. Union of India, through
Secretary,
Min. of Defence,
South Block,
New Delhi.

2. Director General of Military Farm,
Directorate General of Military Farm,
Quarter Master General Branch,
Army Headquarters,
West Block-3, Wing No. 7,
R.K. Puram,
New Delhi-66.

- Respondents

(By Advocate - Shri D.S. Jagotra)

O R D E R

By Hon'ble Mr. Kuldip Singh, Member (J)

The applicant in this OA has challenged rejection of his representation vide impugned letter dated 26.8.1998, Annexure A-1 whereby his representation for promotion to the post of UDC from LDC has been rejected.

2. The applicant states that he joined the service with the respondents as LDC w.e.f. 6.12.1980 and was made permanent w.e.f. 1.3.1983. He further states that he has neither been punished nor any adverse entry was communicated to him throughout his service but his case has been rejected in the year

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1996-97 as well in the year 1997-98 despite the fact that promotion from the post of LDC to UDC is made by a non-selection method and applicant being seniormost, has been rejected whereas his juniors had been given promotion.

3. It is further pleaded that there is no other ineligibility on the part of the applicant and since the record of the applicant has all along been very clear, so he is entitled to be promoted.

4. The respondents are contesting the O.A. and it is submitted by them that the OA of the applicant is not maintainable since DPC had properly considered the applicant for promotion from the post of LDC to UDC. DPC had also followed the rules which are meant for promotion to a non-selection post and the applicant had been found to be of 'average' grading whereas the persons approved by the DPC were in possession of much better grading and superior on merits.

5. It is also stated that once the applicant was also punished with censure and because of that punishment he has not been found fit to be promoted to the post of UDC by the DPC, so he is not entitled for promotion and the OA deserves to be dismissed.

6. We have heard the learned counsel for the parties and have gone through the records.

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7. Admittedly it is a case where the non-selection method is to be adopted for promotion to the post of UDC from LDC. The DOP&T's instructions as compiled by Swamy's Complete Manual on Establishment and Administration on page 649 says that when promotion is 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 categorise 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 but should be placed in the panel in the order of their seniority in the grade from which promotions are to be made. These instructions make it quite clear that while considering the promotions to the post by a non-selection method, the DPC is required to categorise the candidates as 'fit' or 'unfit' and the DPC has also to keep in mind para 6.1.4 which is also reproduced hereinbelow:-

"6.1.4 Government also desires to clear the misconception about 'Average' performance. While 'Average' may not be taken as adverse remarks in respect of an officer, at the same time, it cannot be regarded as complimentary to the officer, as 'Average' performance should be regarded as routine and undistinguished. It is only performance that is above average and performance that is really noteworthy which should entitled an officer to recognition and suitable rewards in the matter of promotion". (emphasis supplied)

8. The above para deals with the remarks 'Average'. In this case we had also called for the record of the DPC and on perusal of the same we find that in both the DPCs, the DPC had assessed the

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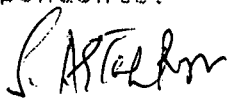
applicant as 'unfit'. Challenging the findings of the DPC, the learned counsel for the applicant submitted that since no adverse remarks has been communicated to the applicant, so the DPC could not have assessed the applicant as 'unfit'. If at all his ACRs were of 'Average Grade', then also due regard should have been given to his seniority and 'Average' cannot be considered as 'unfit', so the applicant should have been given promotion.

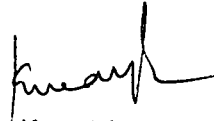
9. In this regard we may mention that first of all this court cannot sit in appeal over the recommendations made by the DPC because promotion is not itself a right but a candidate has always a right to be considered for promotion. In this case we find that the applicant has been duly considered on both the occasions by the DPC, who had found him unfit. Para 6.1.4 which is reproduced, above clearly shows that the grading of "Average" may not be taken as adverse remark in respect of the officer but at the same time it can be recorded as complementary to the officer and DPC has to assess the performance of the candidate and if it finds that on the basis of the performance that a candidate is unfit, then DPC can grade that candidate as unfit for their own purpose. Para 6.1.2 also says that DPC can have objective assessment of suitability of the candidates, who are to be considered by them and if the DPC has assessed the performance of the applicant as 'unfit' to be promoted to the post of UDC, so this Tribunal cannot substitute its own findings over the same and we find that the applicant has no case since he has already

been considered for promotion in both the DPCs in the year 1996-97 and 1997-98, as such no interference is called for.

10. In view of the above, OA does not call for any interference and the same is dismissed. No costs.

11. DPC record may be returned to the respondents.


(S.A.T. Rizvi)
Member (A)


(Kuldip Singh)
Member (J)

/Rakesh/